



# 2020 CODE OF PRACTICE

A COMPILATION OF BEST PRACTICES IN THE  
FOI PROGRAM IMPLEMENTATION

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# CHAPTER 1

# INTRODUCTION



# I. FOREWORD

- i. In the Philippine context, the people's right to information is a constitutionally-mandated right enshrined in the Bill of Rights of the 1987 Philippine Constitution. For more than three (3) decades, people have been advocating for a Freedom of Information (FOI) legislation that calls for unfettered access to government documents vested with public interest.
- ii. On 23 July 2016, President Rodrigo Duterte issued Executive Order (EO) No. 2, which operationalizes the people's Constitutional right to information in the Executive Branch. A laudable initiative demonstrating the Duterte administration's commitment to fostering a culture of openness across the government.
- iii. Similarly, the United Nations launched the Sustainable Development Goals (SDGs) back in 2015, which focuses on the 17 key areas that will help achieve a sustainable future for all. In line with this, ensuring public access to information is specifically incorporated under Goal 16 target 10 of the SDGs.
- iv. The Freedom of Information-Project Management Office (FOI-PMO) strongly supports the achievement of the SDGs. It is our vision to cultivate an informed and empowered citizenry through continuously promoting awareness-raising, capacity building, and knowledge sharing on the FOI Program.
- v. The challenge of implementing a new program and embedding a new culture in public governance requires pure dedication, hard work and cooperation. The accomplishment of the FOI Program weaves government agencies to partner and work together for the enhancement of public service in delivering government information. As insularity is never an option for governance, fostering partnerships with agencies has proven to be critical for further realization of our democratic principles.



## II. MESSAGE FROM THE FOI CHAMPION



As one of the President's landmark policies, Executive Order (EO) No. 2, series of 2016 became the enabling force for the Freedom of Information (FOI) in the country. The EO is a testament that the present administration is keen on providing the Filipino people access to information.

The Presidential Communications Operations Office (PCOO), through the FOI Project Management Office (FOI-PMO), believes that the Program stands as a beacon of hope for the country as it gradually emerges with better systems fueled by better ideals of transparency, accountability, and open governance. And because we aim for a finer country, we put our best foot forward when it comes to public service delivery.

PCOO being the lead agency for the implementation of the FOI Program has been steadfast in its vocation of operationalizing the people's Constitutional right to information in the Executive branch by religiously conducting capacity building activities and innovating on mechanisms to adapt with recent circumstances, all for the benefit of its stakeholders.

Part of our mandate is to ensure that government agencies are equipped with effective tools and their personnel with apt skills to fulfill their roles as implementers of the Program. And as we move toward institutionalizing the Program, we bring you the 2020 FOI Code of Practice.

We compiled the best practices in the implementation of the FOI Program with the vision of sharing them so that agencies who are administering the FOI service would be guided of their functions and responsibilities and may adopt these in their respective offices.

We have high hopes that this FOI Code of Practice will be useful and insightful to our FOI implementers. We also trust the FOI Code of Practice will help you acclimate to the waves of a budding FOI culture.

As the FOI Champion, I always keep an open mind to new learnings and take wisdom from the simplest of occurrences. As public servants, we may be assigned diverse and distinct functions, but I hope we all see our commonality of being of service to the Filipino people by granting them access to information. May we be inspired to pursue greater endeavors for FOI.

  
**JOSE RUPERTO MARTIN M. ANDANAR**  
Secretary and FOI Champion  
Presidential Communications Operations Office



### III. MESSAGE FROM THE FOI PROGRAM DIRECTOR

As part of its official mandate, the Freedom of Information - Project Management Office (FOI-PMO) is committed to formulating policies and mechanisms for the effective implementation of the FOI Program. We are keen in adapting to changes and improving our structure to advance our vision for a transparent and accountable governance.

The team has been active in partnering and developing strong relations with the FOI Officers across the Executive Branch. Thus, we conducted numerous training and consultation programs to continually impart our knowledge on FOI Program implementation and be acquainted with their best practices, as well as the challenges that government agencies encounter.



Our four years in FOI have taught us to be attentive and responsive: we put importance in harnessing knowledge from the experiences of our FOI Receiving Officers and Decision Makers in facilitating FOI requests, which serve as our primary reference for program development and policy-making.

The current pandemic made us realize the vulnerability of government service delivery and the need for an inclusive and encompassing FOI policy as a backbone of FOI operations. Hence, we crafted the FOI Code of Practice which serves as a guide for government offices in meeting their FOI responsibilities and sets the standard for efficient facilitation of FOI requests.

The Code of Practice is one of our "future-proofing" efforts to establish easy access to information despite any crisis and changes that we may face. Rest assured that we at FOI will be more assertive in engaging and coordinating with FOI implementers, partners, and stakeholders as we advance our causes for a more transparent and open government.

To conclude, I would like to share the wisdom of former United States President James Madison, which has been our constant guide all these years:

*"A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."*

A stylized, handwritten signature in white ink, appearing to read 'Kristian R. Ablan'.

**ATTY. KRISTIAN R. ABLAN, CESO II**

Assistant Secretary and FOI Program Director  
Presidential Communications Operations Office



## IV. OBJECTIVES OF THE CODE

- i. By virtue of PCOO's mandate to develop policies, procedures, and regulations necessary to provide the strategic direction in implementing the FOI Program, this Code aims to provide better guidance and support to government agencies to effectively and efficiently implement the FOI Program as a tool for citizen's participation in accessing information. The main objectives of the Code are:
- Institutionalize FOI best practices in government agencies implementing the FOI Program;
  - Guide implementers on their functions and responsibilities under the EO 2, s. 2016;
  - Assess, monitor and inform implementers on their performance and compliance; and
  - Provide a framework for appropriate oversight and accountability of the performance of government offices implementing the Program

## V. COVERAGE

All departments, bureaus, offices, and instrumentalities of the Executive Branch including, but not limited to, government-owned or controlled corporations (GOCCs), state universities and colleges (SUCs). Local water districts (LWDs) and local government units (LGUs) are encouraged to be guided by this Code.





## VI. SALIENT POINTS OF EO NO. 2, S. 2016

- i. Every Filipino shall have access to information, official records, public records, and documents and papers pertaining to official acts, transactions or decisions, in any format, whether paper-based or digital.
- ii. All government offices under the Executive Branch are included in the scope of EO No. 2, s. 2016, including but not limited to the national government agencies (NGAs) and all its offices, departments, bureaus, and instrumentalities, including government-owned or -controlled corporations (GOCCs), and state universities and colleges (SUCs).
- iii. Government entities outside the Executive Branch (e.g. Judiciary, Legislative, Constitutional Commissions, and Local Government Units) are encouraged to implement the FOI Program within their respective jurisdiction.
- iv. All government offices in the Executive branch are required to prepare their respective People's FOI Manuals and implementing details (Agency FOI Manual) within one hundred twenty (120) days upon issuance of the said EO or on 25 November 2016.
- v. Government offices shall respond, whether approve or deny, to a request within fifteen (15) working days upon receipt of the said request. Resolution of complex requests may be extended for an additional twenty (20) working days.
- vi. There shall be a legal presumption in favor of access to information, public records, and official records. No request for information shall be denied unless it is not in the custody of the agency or clearly falls under any of the exceptions listed in the inventory or updated inventory of exceptions. The determination of the applicability of any of the exceptions to the request shall be the responsibility of the FOI Decision Maker or Head of Office which is in custody or control of the information, public record or official record, or the responsible central or field officer duly designated, in writing , by the Head of Office.



- vii.** The Office of the President issued the list of exceptions from the inventory of exceptions submitted by the Department of Justice (DOJ) and the Office of the Solicitor General (OSG), for the guidance of all government offices and instrumentalities covered by EO No. 2, s. 2016 and the general public. Said inventory of exceptions shall be periodically updated, through the Inter-agency FOI Exceptions Committee, to properly reflect any changes in law and jurisprudence.
- viii.** Government offices shall not charge any fee for accepting requests for information. However, a reasonable fee may be imposed to reimburse actual costs of reproduction of the requested information, subject to existing rules and regulations.
- ix.** In case of denial, the requestor may appeal to the person or office next higher in authority or committee within fifteen (15) calendar days from the notice of denial. The appeal shall be decided by the person or office next higher in authority or committee within thirty (30) working days from the filing of said written appeal.
- x.** Failure to comply with EO No. 2, s. 2016 may be a ground for administrative and disciplinary sanctions against any erring public officer or employee.





Freedom of Information  
Project Management Office



## VII. ROLES OF THE FOI-PROJECT MANAGEMENT OFFICE (FOI-PMO)

- i. To continuously monitor the implementation of EO No. 2, s. 2016 or the FOI Program in the Executive Branch, the Presidential Communications Operations Office (PCOO) was designated as the lead agency, through Memorandum Order (MO) No. 10, s. 2016 issued by the Office of the Executive Secretary on 29 October 2016. As part of its mandate as the lead agency, the PCOO shall (a) oversee implementation of all FOI and e-FOI programs for all government agencies in the Executive Branch and monitor compliance therewith; (b) develop programs and mechanisms to capacitate all government agencies in the Executive Branch, including assisting the Local Government Units in drafting their ordinances in implementing FOI in their respective jurisdictions; and (c) conduct capacity building programs and information education campaigns.
- ii. Subsequently, FOI-PMO was established through PCOO Department Order No. 18 issued on 22 September 2017. The FOI-PMO shall perform all necessary functions to implement the FOI Program with its core values -- Accountability, Transparency, Good Governance, and Citizens Participation.
- iii. On 04 April 2017, Assistant Secretary Michel Kristian R. Ablan was designated as FOI Program Director through PCOO Office Order No. 017.
- iv. The FOI-PMO has three (3) divisions namely, (1) Policy, Planning, and Support Division (PPSD), (2) Compliance Monitoring Division (CMD), and (3) Communications and Capacity Development Division; and one (1) unit under the Program Director, the Strategic Partnership Unit (SPU).



# **CHAPTER 2**

## **INSTITUTIONALIZATION OF THE BEST PRACTICES IN FOI PROGRAM IMPLEMENTATION**



## A. KEY FOI OFFICERS

It is essential to have motivated and dedicated key FOI Officers in the implementation of the FOI Program, as they play an important role in maintaining and enhancing the trust and confidence of citizens in the Government.

The FOI Officers must be given appropriate administrative support according to the size of the organization and the volume of requests received. Adequate resources such as financial, infrastructure, and responsible officers are necessary to fully and effectively implement the FOI Program.

### 1.1. Appointment of FOI Champion. FOI Champion is the Head of Agency.

1.1.1. **Functions.** The following are the functions of the FOI Champion:

- a) Oversee the implementation and compliance of the agency in the FOI Program;
- b) Supervise, lead, direct, and administer the creation and operation of an FOI team of the Agency;
- c) Represent the Agency on various boards/commissions/committees/and task forces dealing with FOI policy matters; and,
- d) Perform other functions as necessary in the exigency of service, determined by the lead agency.

### 1.2. Designation of FOI Receiving Officer (FRO). There shall be at least one (1) FRO, with a rank of at least Administrative Officer I, designated per government agency. The FRO shall preferably come from the Public Assistance or Information Office, or its equivalent, of the Agency. Local or regional offices of the Agency shall assign their respective FROs.

1.2.1. **Functions.** The functions of the FRO shall include receiving, on behalf of the agency, all requests for information and forward the same to the appropriate office who has custody of the records; monitor all FOI requests and appeals; provide assistance to the FOI Decision Maker; provide assistance and support to the public and staff with regards to FOI; compile statistical information as required (FOI Reports); and, conduct initial evaluation of the request and advise the requesting party whether the request will be forwarded to the FOI Decision Maker for further evaluation, or deny the request based on:



- a) Wrong agency or the information is not within the agency;
- b) Invalid request or not counted as FOI request; and
- c) The request is a subsequent identical or substantially similar request from another requesting party whose request has been previously denied by the Agency.

1.2.2. **Responsibilities.** The FRO is the first point of contact with the public and must liaise effectively and maintain a good and consistent relationship with all concerned parties (i.e., FDM, Appeals Authority/CARC, and FOI-PMO).

1.2.3. **Service standards.** The FRO plays a central role in the implementation of FOI and must ensure that the government agency is guided by good practice and exhibits a commitment to quality service in responding to FOI requests.

1.2.4. **Responding to request.** There is a need to ensure that plain language is used which can be easily understood by the requesting party in responding to FOI requests. The relevant section of the EO or the specific item in the list of exceptions being relied on by FDM shall be cited in the denial of the request. The right to appeal of the requesting party must also be fully explained in the response.

1.2.5. **Contact information.** The FRO should provide their updated official email addresses and phone numbers for ease and convenience of the requesting parties in communicating with the agency.

1.2.6. **Compliance to EO No. 2, s. 2016.** The FRO should advise agency officials and/or the Board of any steps which are necessary to help achieve the overall compliance to the FOI program, including prompt response to requests and timely submission of reports.

1.2.7. **Information available online.** Should the information being requested be already posted and publicly available on the Agency website, data.gov.ph, or foi.gov.ph, the FRO shall inform the requesting party of the said fact and provide them the website link where the information can be accessed.

1.2.8. **Walk-in requester.** In case of a walk-in requester, the FRO shall make a log of the date of the transaction, the title and coverage of the document, and the details of the requesting party. The FRO shall report the said transaction on the FOI registry on the corresponding quarter the transaction was made.



1.2.9. *Reasonable Assistance.* The FRO shall provide reasonable assistance, free of charge, to enable all requesting parties and particularly those with special needs, to comply with the requirements in filing a request.

1.2.10. *Unable to make a written request.* In case the requesting party is unable to make a written request because of illiteracy or due to disability, he or she may make an oral request, and the FRO shall reduce it in writing.

1.2.11. *Pro-active engagement with requesters.* The FRO shall provide reasonable assistance to requesting parties to resolve the FOI requests. FOI officers shall pro-actively assist in clarifying vague requests and referring the requesting party to the proper government agency in case the original request can only be resolved by another government agency.

**1.3. FOI Decision Maker (FDM).** There shall be an FDM designated by the FOI Champion, with a rank of not lower than a Division Chief or its equivalent.

1.3.1. *Functions.* The functions of the FDM shall include the conduct of an evaluation of the request and shall have the authority to grant or deny the request, based on the following:

- a) The Agency does not have the information requested;
- b) The information requested contain sensitive personal information protected by the Data Privacy Act (DPA) of 2012;
- c) The information requested falls under the list of exceptions; or
- d) The request is identical or substantially similar from the same requesting party whose request has been previously granted or denied by the Agency; or
- e) Vexatious requests.

1.3.2. *Responsibilities.* The FDM is the focal person to provide guidance in implementing the FOI program within his/her office; and should have the ability to provide guidance on, including but not limited to, exceptions, application and clarification on search and retrieval procedures, redaction and extraction of data, and handling of non-traditional requests.

1.3.3. The FDM should report directly to the FOI Champion regularly on the performance of the organization's responsibilities under FOI as set out in the guidelines under this Code.



- 1.3.4. The FDM should maintain up-to-date information on relevant precedents for similar requests received in his or her government office particularly in relation to exceptions applied and including those subsequently confirmed or overturned by decisions of the Appeals Authority and disseminate these amongst FDM.
- 1.3.5. The FRO should develop a strong awareness and knowledge of other existing laws, regulations, and jurisprudence, so as to be in a position to advise the requester if there is a possibility of obtaining access under alternative mechanisms.
- 1.3.6. The FDM must have received at least basic training (or have an adequate level of experience in dealing with FOI requests equivalent to have undertaken basic FOI training) in order to equip them in processing and handling FOI requests. Advance training, where appropriate, is required for FDM who is handling complex requests to have a solid understanding of the application of the exceptions.
- 1.3.7. The FDM should ensure they have good knowledge of the EO and any new guidance in relation to the processing of requests. The FDM shall be up to date on the latest issuances and policies related to the implementation of the FOI program.
- 1.3.8. In addition to the provisions contained in the EO No. 2, s. 2016, the FDMs shall ensure that policies and guidelines are being implemented in their respective agencies.
- 1.3.9. *Engagement with requesters.* The FDM should work proactively with requesters to help them refine requests to ensure requests are specific and targeted, are not voluminous, do not give rise to excessive administrative demands on government offices, and that there is a clear understanding of what information is being requested. The FDM should also have the ability to explain search and retrieval procedures and appeals mechanisms to requesters.
- 1.3.10. *Service delivery / standards.* FDM should ensure they adhere to deadlines and proactively engage with requesters, and consult third parties as necessary, in a timely manner to resolve FOI requests.



1.3.11. The FDM should work collaboratively and cooperatively with FOI officers in dealing with requests, and provide responses, estimates of costs (if applicable) and other assistance, as necessary, on requests that are coordinated by the FRO.

1.3.12. In complex or difficult cases, the FDM should liaise closely with the FRO to identify relevant precedents relating to similar requests received by the body or should consider relevant decisions made by the courts.

1.3.13. In cases where a request involves non-personal records provided by other government offices that may appear in the media once released, it is advisable to contact other government offices to advise them that records are being released so that they may be prepared for any press queries arising from it. It is also advisable for FDM to contact counterparts in other Departments on related requests for advice and to ensure consistency in handling the requests.

1.3.14. The FDM should ensure that all records, including electronic records, that may be relevant to the request are identified and that all staff engaged in the search and retrieval process have a clear understanding of the records that should be extracted for review.

**1.4. FOI Alternate.** Agencies may create a committee or may designate alternate FROs and/or alternate FDMs. This, in any way, addresses the concern of agencies in instances wherein the permanent FROs or permanent FDMs are on official business or on-leave. The FOI Alternate shall assume the functions and responsibilities of the permanent FRO or FDM.

**1.5. FOI Action Officer.** Large agencies, such as departments, may designate FOI Action Officer/s or its equivalent, who shall initially evaluate the request (forwarded by the FRO). FOI Action Officer shall assist the FDM by giving initial assessment of the request and by preparing the pertinent documents for the latter's review and approval.



### 1.6. Central Appeals and Review Committee (CARC)

- 1.6.1. **Purpose.** It is recommended to all implementing agencies to establish their Central Appeals and Review Committee (CARC) who shall be in charge to handle appeals from the denial of a request for information.
- 1.6.2. **Composition.** The CARC shall be composed of at least three (3) senior officers with equal or higher rank to the decision maker. The CARC shall review and analyze the denial of a request for information and provide advice to the head of the agency on granting or denying the request for information.
- 1.6.3. **Alternate to CARC.** If the implementing agency does not establish its CARC or whose decision-maker is the head of the agency, an appeal may be filed to a person or office next higher in authority and shall be called as "FOI Appeals Authority." The FOI Appeals Authority refers to the office or person who decides appeals from the action of the FOI Decision Maker, and has authority to affirm, reverse, or modify such action. It shall have the power to review by appeal the decisions of the FDM and take final action on an FOI request within the agency.
- 1.6.4. **Functions.** Receive, review, evaluate, and assess the appeal on the denial of the request for information; determine if the appeal was filed within the period provided for under EO No. 2, s. 2016; if applicable, recommend to the FDM for actions on the appeal filed by the requesting party; ensure that the appeal is decided within thirty (30) working days from the filing of said appeal; and implement the decision of the CARC or FOI Appeals Authority regarding the appeal.
- 1.6.5. **Benefits.** Provides remedies in cases of denial of request for access to information, wherein denial of any request for information may be appealed to the person or office next higher in authority. It also enhances the capacity of government agencies to comply with the FOI program.





## B. POLICY DEVELOPMENT

The guidance provided in this section is additional to that covered in the manuals and is intended to cover new developments pending updating of the manuals.

**1.1. Guidelines.** FOI Manuals including process flow and processing time, necessary requirements for FOI requests, and name/s of responsible person/s, including their contact details and positions shall be posted on the respective website of the agencies and in a conspicuous place within the office premises. FOI Frequently Asked Questions (FAQs) and a list of exceptions shall be posted on the website or office premises, as well.

**1.2. FOI Officers.** The name of the designated FOI Receiving Officer/s, office address, official contact numbers, including email addresses shall be posted.

**1.3. FOI Request Forms.** FOI Request forms shall be available at all times, in paper-based/physical copy in the head office and/or respective regional offices and can be downloaded in the website of respective offices.

**1.4. Centralized Platforms.** Agencies may receive requests in either of the two (2) platforms: standard paper-based or electronic FOI (eFOI) portal. However, other agencies have the discretion to make their platforms centralized using the eFOI portal only, as long as the agency can provide a place where walk-in requesters can lodge their requests through the online platform. Reasonable assistance to walk-in requesters shall be extended.





## C. CONDUCT OF FOI TRAININGS / FOI NETWORKS

- 1.1. Purpose.** To enhance their skill set and knowledge, regular trainings and seminars must be participated by FOI Officers in order to effectively and efficiently fulfill their functions on the process, system, and implementation of the FOI Program.
- 1.2. Content.** The trainings and seminars must cover broad discussion on the procedures, policies, and requirements for FOI Program implementation, including but not limited to, the Data Privacy Act (DPA) of 2012, national security, records management, an work attitude and values enhancement (empathy). It can be conducted, either monthly, quarterly, semestral, or annually, depending on the organizational structure of an office.
- 1.3. Participants.** All FOI Officers must ensure that they have attended trainings and seminars on the FOI Program, either conducted by the Agency or FOI-PMO and must continuously participate in the consultations and meetings conducted by the FOI-PMO. Frontliners, not included in the process flow of FOI Program, may participate at least one (1) training or seminar to be aware of the process in case they encounter an FOI request.
- 1.4. Benefits.** The FOI networks are events and activities that serve as platforms for learning and sharing of best practices among FOI officers. During these events, FOI officers share updates and raise their concerns in the implementation of the FOI program. The FOI networks provide an excellent platform in sharing new learnings, expertise, challenges and assistance in implementing the FOI program. FOI officers are encouraged to participate in relevant FOI networks to realize the benefits of collaboration and coordination with other FOI Officers.











## D. KEY ISSUES ON PROCESSING OF REQUEST

### On receipt of request by FOI Officer

- 1.1. Written Request.** The requesting party may submit a written request form or log-in through the eFOI portal. The requesting party shall complete the form and include their name and contact information, provide valid proof of identification, reasonably describe the information requested, and the reason for, or purpose of, the request for information.
- 1.2. Standard Requests.** The request can be made through walk-in, email, snail mail and other electronic or paper-based means. In case of a request received through email or any electronic means (other than the eFOI portal), the requesting party shall attach in the said email (or in any electronic means) a scanned copy of the FOI request form, and a copy of a valid proof of identification. Agencies may entertain requests received through telephone calls and social media platforms. However, FRO must instruct the requesting party to comply with the necessary requirements provided under EO No. 2, s. 2016. The 15-working period will commence upon the receipt of the said requirements.
- 1.3. Official electronic mail (email) account.** All FOI Receiving Officers should have an official email where all documents and correspondences should be coursed through. Ideally, this email account can be accessed remotely provided that security and confidentiality measures are in place. In the unavoidable event that only personal email can be used, any official information contained in the communication shall be marked as confidential and for FOI purposes only.
- 1.4. Validity.** The FOI officer should initially evaluate if the request is valid, such as but not limited to the following:
  - the request is made under the EO No. 2, s. 2016;
  - the records sought are likely to be within the custody of the government office;
  - the request is not vexatious; and
  - unreasonable subsequent identical or substantially similar request.
- 1.5. The record does not exist or cannot be found.** If the records sought either do not exist or the records cannot be found upon taking of reasonable steps, the request may be denied. FROs shall review the title and coverage of the requested information and must conduct initial evaluation whether the information can be found in their agency. Otherwise, no need to further ask for other necessary requirements and may deny the



**1.6. Information outside the FOI Program.** If the information requested falls outside the scope of the FOI Program, the FDM should advise the requester that the information or services may be provided through other platforms and cannot be counted as an FOI request.

- **Front-line/Government services.** This refers to the process or transaction between clients and government offices or agencies involving applications for any privilege, right, permit, reward, license, concession, or for any modification, renewal or extension of the enumerated applications and/or requests which are acted upon in the ordinary course of business of the agency or office concerned.
- **Complaints.** A complaint lodged in the FOI platform/s shall be forwarded to the appropriate office or unit. This shall not be counted as an FOI request.
- **FOI requests lodged outside the FOI portal.** A request for information lodged in the complaint platform/s shall be forwarded accordingly to the FRO or office responsible for receiving requests for information. The transaction under the complaint system shall be closed, while the transaction under the FOI Program shall start, upon the receipt of the FRO or office for receiving requests for information.

**1.7. Voluminous Requests.** A request should be treated as voluminous under the FOI Program, if it includes requests comprised of more than one subject involving different/unrelated matters. In case of voluminous request, the FDM shall clarify with the requester regarding his/her request, and assist them to simplify the request to be able to process their request properly and promptly.

**1.8. Identical or Substantially Similar Requests.** The government office shall not be required to act on a subsequent identical or substantially similar request from the same requester or from different requesters whose request has been previously denied by the same government office, the request may be refused.

**1.9. Request relating to more than one office under the Agency.** If a request for information requires it to be resolved by various offices under one agency or department, the FRO shall forward such request to the offices concerned and ensure that it is well coordinated and monitored. Also, the FRO must make it clear with the concerned FROs of such offices that they should only provide the specific information related to their respective offices. The whole agency must ensure that they respond within fifteen (15) working days as provided under EO No. 2



**1.10. Acknowledgement.** The FRO shall send an acknowledgement to the requesting party, in case the request for information is valid. The acknowledgement should contain the following details: (a) date of receipt of the request; (b) the date of issuance of the response; and (c) status of the request.

#### Processing the request

**1.11. Awaiting Clarification.** Should the requested information need further details to provide full resolution, the FRO shall advise the requesting party and request for the additional information needed to clarify the FOI request. The 15-working day period will commence the day after it receives the required clarification from the requesting party. If no clarification is received from the requesting party after sixty (60) calendar days, the request shall be automatically be considered as closed.

**1.12. Request for time extension.** If the information requested requires extensive search of the government's office records, examination of voluminous records, the occurrence of fortuitous events or other analogous cases, the FDM should inform the FRO. The FRO shall then inform the requesting party of the extension, setting forth the reasons for such extension in writing. In no case shall the extension exceed twenty (20) working days on top of the mandated fifteen (15) working days to act on the request, unless exceptional circumstances warrant a longer period.

#### Disclosure of information relating to personal information

**1.13. Protection of Privacy.** While providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of an individual. Government offices shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject-matter of the request, and its disclosure is permissible under this order or existing law, rules or regulations.

**1.14.** If the details about the employee **relates to his or her position or functions** (e.g., a fact that he or she is an officer or employee, his or her title, his or her business address, his or her office telephone number, his or her classification, his or her salary grade, etc.) then these are not protected by the DPA. Thus, they are disclosable.



**1.15. Redaction and Extraction.** If the FDM considers that any or all of the information sought should not be released in full or in part, the FDM should review guidance available in the inventory of exceptions to the EO and apply them as appropriate. Best practices such as redaction and extraction can be used to balance the disclosure of information with the protection of personal information when a document will be disclosed. Redaction is the process of ensuring that sensitive information is unreadable before disclosing to the requesting party. On the other hand, extraction is the process of separating/isolating specific information from a set of data.

**1.16.** If the FDM decides to release information which he/she considers may be politically sensitive, he/she should bring this to the attention of the FOI Champion as early as possible.

**1.17. Statement of Assets Liabilities and Net Worth (SALN).** If a government office receives a request for a copy of SALN, the agency may refer it to the proper repositories of SALN.

#### Inventory of Exceptions

**1.18. Additional list of exceptions.** The government agency may propose a list of exempted government information and official documents in addition to the inventor list of exceptions. If the agency considered it as "deemed confidential" (e.g. internal documents), the FOI Decision Maker should submit a letter to the Inter-Agency FOI Exceptions Policy Committee (IA FOI EPC), requesting for inclusion of such information or document in the FOI list of exceptions. The letter should clearly state the basis and justification for the inclusion of said information or document.

#### Relationship between FOI and DPA

**1.19.** The implementation of the FOI and Data Privacy Act (DPA) shall complement each other. Though there are a number of differences between the FOI and DPA processes which make it challenging to operate under both policies, the National Privacy Commission and the FOI-PMO shall cooperate, collaborate and provide assistance to each other in the performance of their respective functions.



## Vexatious Requests

**1.20.** The FDM may deny a request if it is determined as vexatious as provided under FOI Memorandum Circular No. 5, s. 2020.

## Providing the response

**1.21. Notice to the Requesting Party of the Approval/Denial of Request.** Once the FDM approved or denied the request, he shall immediately notify the FRO who shall prepare a response to the requesting party either in writing or by email. In responding to the requester, the FDM (or the FOI officer if coordinating the response) should set out clearly:

- As far as practicable, a response to a request for information shall be written in plain and concise language;
- the number and nature of records considered;
- the specific factors were taken into account in making the decision; and
- a schedule should be attached providing details of those records being released in full, of those to which partial access is being given or/and of those being refused and setting out the reasons why access has not been granted in full or in part, and referencing relevant sections of the EO or list of exceptions where refusals/denials are made.

**1.22. Partially Successful.** If some information being requested is not available, the agency must provide all information that can be disclosed and exhaust all assistance (consultation with other government agencies) to the requesting party and the request shall be marked as partially successful.

**1.23. Transferring requests to other government agencies.** A government office may refer or transfer the request it received to another government agency, if upon its assessment, the information requested is lodged to the said agency.

**1.24. Request for information of an Agency to another government entity.** In case where the requesting party is a government office/entity, the request for information, public records and official records related to the official functions and mandate of an agency shall be excluded from the ambit of the FOI Program and may be released in the normal business process of the agency. In addition, information or documents that are not related to the official function and mandate of the requesting agency may undergo the process provided for under the FOI program.



## **E. MONITORING AND STATISTICS REPORTING**

**1.1. Recording and Tracking System (RTS).** A recording and tracking system (RTS) is maintained to monitor the status of all FOI requests, using the prescribed computer-based (excel) format or similar open and accessible formats.

**1.2. FOI Registry and Summary.** To facilitate a uniform tracking, monitoring, and evaluation system for FOI program implementation, the FOI Quarterly Registry and Summary sheet is accomplished by FROs. All FOI requests should be logged in to this Excel sheet (the template was provided by the FOI-PMO) and should be updated accordingly. The FOI Registry will be the basis for measuring agency performance and compliance alongside important FOI analytics to assess the initial financial costs of FOI implementation.

The FOI Registry and Summary should provide summary information:

- Date of request;
- Type of request;
- Description of the request (categories of records sought) or link to actual request letter;
- Decision made: whether it was granted in whole or in part, or refused; and
- Date of release.

1.2.1. In calculating the number of days lapsed for FOI requests, the FRO must exclude the date of receipt if it falls on holidays, weekends, and the days where the FOI-PMO announced suspension of the period to resolve FOI requests due to coronavirus disease 2019 (COVID-19) pandemic.

In case the requesting party is unable to acknowledge receipt of response (of the agency) or was not able to claim the requested information, the FRO may discontinue the counting of days until the requesting party received and/or acknowledged receipt of the said information.

**1.3. Feedback mechanism.** As the government commits for a fast and reliable service delivery, a feedback mechanism shall be established in order to generate valid and consistent feedback from stakeholders, which can be used to initiate strategies that will improve the implementation of the FOI Program in the agency.



## F. RECORDS MANAGEMENT

Records management poses a significant challenge for government offices due to the advent and adoption of new information and communication technologies. In particular, there is a lack of clarity and knowledge deficit relating to the management of electronic records. While records management relates to a broader set of corporate responsibilities other than FOI, in order to facilitate the smoother operation of FOI in government offices, there is a compelling need for sound record management practices and systems.

**1.1. Keeping of Records.** The Agency shall create and/or maintain appropriate formats, accurate and reasonably complete documentation or records, policies, transactions, decisions, resolutions, enactments, actions, procedures, operations, activities, communications and documents received or filed with them and the data generated or collected. Subject to existing laws, rules, and regulations, government offices shall create and/or maintain accurate and reasonably complete records of important information in appropriate formats, and implement a records management system that facilitates easy identification, retrieval and communication of information to the public.

**1.2. Agency Information Inventory.** The Agency Information Inventory is a master list of all government information held by an agency, containing the title, description, and file type of each information.

**1.3.** In the case where an organization chooses to publish the non-personal records it releases (in whole or in part) in response to the requests it has received, there is a need to ensure that:

- privacy rights are not infringed;
- persons are not subject to commercial disadvantage through the inadvertent release of records;
- exempt information is not published erroneously; and
- records, if any, released under FOI and published should be provided in searchable formats where possible.

## G. PUBLICATION SCHEME

**1.1. Frequently Requested Information.** Information released in response to an FOI request, which the agency determines has become the subject of subsequent requests may be published in their 'Frequently Requested Information' page. This is a list of answers to common FOI questions to an agency.



**1.2. Duty to Publish Information.** The Agency shall regularly publish, print and disseminate at no cost to the public and in an accessible form, and through their website, specifically under the agency's transparency seal and/or conspicuous places.

## **H. FOI REQUIREMENTS UNDER THE PERFORMANCE-BASED BONUS**

One of the cross-cutting requirements, under the physical targets for the grant of the Performance-Based Bonus (PBB) set by the Inter-Agency Task Force on the Harmonization of National Government Performance Monitoring, Information and Reporting System (Task Force AO 25) under the Administrative Order (AO) No. 25, s. 2011 is the compliance with the FOI Program. In coordination with the FOI-PMO, a performance-based incentive system was established to ensure the compliance of government agencies to the FOI program.

Requirements under E.1.2. FOI Registry and Summary, F.1.2. Agency Information Inventory, and G.1.2 Duty to Publish Information are necessary and relevant to the agencies' compliance to the said requirements under the guidelines on the grant of the PBB issued by the Task Force AO 25.

## **I. ELECTRONIC FOI PORTAL**

The electronic Freedom of Information (eFOI) Portal ([www.foi.gov.ph](http://www.foi.gov.ph)) is an online platform that was developed to provide users ease and convenience in requesting for information, tracking of requests, and receiving the information that they requested online. Likewise, in order to efficiently handle the influx of requests, the platform is designed to assist government offices in receiving, processing, and responding to the requests that they received online.

Government agencies covered by EO No. 2, s. 2016 shall enroll and onboard to the eFOI portal, [www.foi.gov.ph](http://www.foi.gov.ph), to ensure that the public will have ease and convenience in requesting for information to different agencies under the Executive Branch. As transparency is the primary goal of the program, the details of the requested information, response time, and outcomes of requests lodged to the eFOI portal are published publicly.





# ANNEXES



MALACAÑAN PALACE  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 02

**OPERATIONALIZING IN THE EXECUTIVE BRANCH THE PEOPLE'S CONSTITUTIONAL RIGHT TO INFORMATION AND THE STATE POLICIES TO FULL PUBLIC DISCLOSURE AND TRANSPARENCY IN THE PUBLIC SERVICE AND PROVIDING GUIDELINES THEREFOR**

**WHEREAS**, pursuant to Section 28, Article II of the 1987 Constitution, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by law;

**WHEREAS**, Section 7, Article III of the Constitution guarantees the right of the people to information on matters of public concern;

**WHEREAS**, the incorporation of this right in the Constitution is a recognition of the fundamental role of free and open exchange of information in a democracy, meant to enhance transparency and accountability in government official acts, transactions, or decisions;

**WHEREAS**, the Executive Branch recognizes the urgent need to operationalize these Constitutional provisions;

**WHEREAS**, the President, under Section 17, Article VII of the Constitution, has control over all executive departments, bureaus and offices, and the duty to ensure that the laws be faithfully executed;

**WHEREAS**, the Data Privacy Act of 2012 (R.A. 10173), including its implementing Rules and Regulations, strengthens the fundamental human right of privacy, and of communication while ensuring the free flow of information to promote innovation and growth;

**NOW, THEREFORE, I, RODRIGO ROA DUTERTE**, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:



**SECTION 1. Definition.** For the purpose of this Executive Order, the following terms shall mean:

- (a) "Information" shall mean any records, documents, papers, reports, letters, contracts, minutes and transcripts of official meetings, maps, books, photographs, data, research materials, films, sound and video recording, magnetic or other tapes, electronic data, computer stored data, any other like or similar data or materials recorded, stored or archived in whatever format, whether offline or online, which are made, received, or kept in or under the control and custody of any government office pursuant to law, executive order, and rules and regulations or in connection with the performance or transaction of official business by any government office.
- (b) "Official record/records" shall refer to information produced or received by a public officer or employee, or by a government office in an official capacity or pursuant to a public function or duty.
- (c) "Public record/records" shall include information required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available by a government office.

**SECTION 2. Coverage.** This order shall cover all government offices under the Executive Branch, including but not limited to the national government and all its offices, departments, bureaus, offices, and instrumentalities, including government-owned or -controlled corporations, and state universities and colleges. Local government units (LGUs) are encouraged to observe and be guided by this Order.

**SECTION 3. Access to information.** Every Filipino shall have access to information, official records, public 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.

**SECTION 4. Exception.** Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence.

The Department of Justice and the Office of the Solicitor General are hereby directed to prepare an inventory of such exceptions and submit the same to the Office of the President within thirty (30) calendar days from the date of effectivity of this Order.

The Office of the President shall thereafter, immediately circularize the inventory of exceptions for the guidance of all government offices and instrumentalities covered by this Order and the general public.



Said inventory of exceptions shall periodically be updated to properly reflect any change in existing law and jurisprudence and the Department of Justice and the Office of the Solicitor General are directed to update the inventory of exceptions as the need to do so arises, for circularization as hereinabove stated.

**SECTION 5. *Availability of SALN.*** Subject to the provisions contained in Sections 3 and 4 of this Order, all public officials are reminded of their obligation to file and make available for scrutiny their Statements of Assets, Liabilities and Net Worth (SALN) in accordance with existing laws, rules and regulations, and the spirit and letter of this Order.

**SECTION 6. *Application and Interpretation.*** There shall be a legal presumption in favor of access to information, public records and official records. No request for information shall be denied unless it clearly falls under any of the exceptions listed in the inventory or updated inventory of exceptions circularized by the Office of the President provided in the preceding section.

The determination of the applicability of any of the exceptions to the request shall be the responsibility of the Head of the Office, which is in custody or control of the information, public record or official record, or the responsible central or field officer duly designated by him in writing.

In making such determination, the Head of the Office or his designated officer shall exercise reasonable diligence to ensure that no exception shall be used or availed of to deny any request for information or access to public records, or official records if the denial is intended primarily and purposely to cover up a crime, wrongdoing, graft or corruption.

**SECTION 7. *Protection of Privacy.*** While providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of the individual as follows:

- (a) Each government office per Section 2 hereof shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject matter of the request and its disclosure is permissible under this order or existing law, rules or regulations;
- (b) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information, which unduly exposes the individual, whose personal information is requested, to vilification, harassment or any other wrongful acts.
- (c) Any employee, official or director of a government office per Section 2 hereof who has access, authorized or unauthorized, to personal information in the custody of the



office, must not disclose that information except when authorized under this order or pursuant to existing laws, rules or regulation.

**SECTION 8. *People's Freedom to Information (FOI) Manual.*** For the effective implementation of this Order, every government office is directed to prepare within one hundred twenty (120) calendar days from the effectivity of this Order, its own People's FOI Manual, which shall include among others the following provisions:

- (a) The location and contact information of the head, regional, provincial, and field offices, and other established places where the public can obtain information or submit requests;
- (b) The person or office responsible for receiving requests for information;
- (c) The procedure for the filing and processing of the request as specified in the succeeding section 9 of this Order.
- (d) The standard forms for the submission of requests and for the proper acknowledgment of requests;
- (e) The process for the disposition of requests;
- (f) The procedure for the administrative appeal of any denial for access to information; and
- (g) The schedule of applicable fees.

**SECTION 9. *Procedure.*** The following procedure shall govern the filing and processing of request for access to information:

- (a) Any person who requests access to information shall submit a written request to the government office concerned. The request shall state the name and contact information of the requesting party, provide valid proof of his identification or authorization, reasonably describe the information requested, and the reason for, or purpose of, the request for information: Provided, that no request shall be denied or refused acceptance unless the reason for the request is contrary to law, existing rules and regulations or it is one of the exceptions contained in the inventory or updated inventory of exception as hereinabove provided.
- (b) The public official receiving the request shall provide reasonable assistance, free of charge, to enable, to enable all requesting parties and particularly those with special needs, to comply with the request requirements under this Section.
- (c) The request shall be stamped by the government office, 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. Each government office shall establish a system to trace the status of all requests for information received by it.
- d) The government office shall respond to a request fully compliant with requirements of sub-section (a) hereof as soon as practicable but not exceeding fifteen (15) working



days from the receipt thereof. The response mentioned above refers to the decision of the agency or office concerned to grant or deny access to the information requested.

(e) The period to respond may be extended whenever the information requested requires extensive search of the government office's records facilities, examination of voluminous records, the occurrence of fortuitous cases or other analogous cases. The government office shall notify the person making the request of the extension, setting forth the reasons for such extension. In no case shall the extension go beyond twenty (20) working days unless exceptional circumstances warrant a longer period.

(f) Once a decision is made to grant the request, the person making the request shall be notified of such decision and directed to pay any applicable fees.

**SECTION 10. Fees.** Government offices shall not charge any fee for accepting requests for access to information. They may, however, charge a reasonable fee to reimburse necessary costs, including actual costs of reproduction and copying of the information required, subject to existing rules and regulations. In no case shall the applicable fees be so onerous as to defeat the purpose of this Order.

**SECTION 11. Identical or Substantially Similar Requests.** The government office shall not be required to act upon an unreasonable subsequent identical or substantially similar request from the same requesting party whose request from the same requesting party whose request has already been previously granted or denied by the same government office.

**SECTION 12. Notice of Denial.** If the government office decides to deny the request, in whole or in part, it shall as soon as practicable, in any case within fifteen (15) working days from the receipt of the request, notify the requesting party the denial in writing. The notice shall clearly set forth the ground or grounds for denial and the circumstances on which the denial is based. Failure to notify the requesting party of the action taken on the request within the period herein stipulated shall be deemed a denial of the request for access to information.

**SECTION 13. Remedies in Cases of Denial of Request for Access to Information.**

(a) Denial of any request for access to information may be appealed to the person or office next higher in the authority, following the procedure mentioned in Section 9 of this Order: Provided, that the written appeal must be filed by the same person making the request within fifteen (15) calendar days from the notice of denial or from the lapse of the relevant period to respond to the request.

(b) The appeal be decided by the person or office next higher in authority within thirty (30) working days from the filing of said written appeal. Failure of such person or office to decide within the afore-stated period shall be deemed a denial of the appeal.



(c) Upon exhaustion of administrative appeal remedies, the requesting part may file the appropriate case in the proper courts in accordance with the Rules of Court.

**SECTION 14. *Keeping of Records.*** Subject to existing laws, rules, and regulations, government offices shall create and/or maintain accurate and reasonably complete records of important information in appropriate formats, and implement a records management system that facilitates easy identification, retrieval and communication of information to the public.

**SECTION 15. *Administrative Liability.*** Failure to comply with the provisions of this Order may be a ground for administrative and disciplinary sanctions against any erring public officer or employee as provided under existing laws or regulations.

**SECTION 16. *Implementing Details.*** All government offices in the Executive Branch are directed to formulate their respective implementing details taking into consideration their mandates and the nature of information in their custody or control, within one hundred twenty (120) days from the effectivity of this Order.

**SECTION 17. *Separability Clause.*** If any section or part of this Order is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force or effect.

**SECTION 18. *Repealing Clause.*** All orders, rules and regulations, issuances or any part thereof inconsistent with the provisions of this Executive Order are hereby repealed, amended or modified accordingly: Provided, that the provisions of Memorandum Circular No. 78 (s. 1964), as amended, shall not be deemed repealed pending further review.

**SECTION 19. *Effectivity.*** This Order shall take effect immediately upon publication in a newspaper of general circulation.

DONE, in the City of Manila, this 23rd day of July in the year of our Lord two thousand and sixteen.

(Sgd.) **RODRIGO ROA DUTERTE**  
President of the Philippines

By the President:

(Sgd.) **SALVADOR C. MEDIALDEA**  
Executive Secretary



## ANNEX B: INVENTORY LIST OF EXCEPTIONS

### LIST OF EXCEPTIONS

The following are the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence:<sup>1</sup>

1. Information covered by Executive privilege;
2. Privileged information relating to national security, defense or international relations;
3. Information concerning law enforcement and protection of public and personal safety;
4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
6. Prejudicial premature disclosure;
7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
8. Matters considered confidential under banking and finance laws, and their amendatory laws; and
9. Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

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<sup>1</sup> These exceptions only apply to governmental bodies within the control and supervision of the Executive department. Unless specifically identified, these exceptions may be invoked by all officials, officers, or employees in the Executive branch in possession of the relevant records or information.



For the implementation of the exceptions to the right of access to information, the following provide the salient details and legal bases that define the extent and application of the exceptions.<sup>2</sup>

1. Information covered by Executive privilege:

- a. Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings;<sup>3</sup> and
- b. Matters covered by deliberative process privilege, namely:
  - i. advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated; 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; or information pertaining to the decision-making of executive officials;<sup>4</sup> and
  - ii. information, record or document comprising drafts of decisions, orders, rulings, policy decisions, memoranda, etc.;<sup>5</sup>

2. Privileged information relating to national security, defense or international relations:

- a. Information, record, or document that must be kept secret in the interest of national defense or security;<sup>6</sup>
- b. Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs;<sup>7</sup> and

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<sup>2</sup> As enumerated in the Memorandum from the Office of the Executive Secretary entitled, "Inventory of Exceptions to Executive Order No. 2 (s. 2016)", dated 24 November 2016, signed by Executive Secretary Salvador C. Medialdea.

<sup>3</sup> This exception may only be invoked by the President and his close advisors. The extent of the privilege is defined by applicable jurisprudence: *Senate v. Ermita*, G.R. No. 169777, 20 April 2006, 488 SCRA 1; *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 4 September 2008, 564 SCRA 152; *Akbayan v. Aquino*, G.R. No. 170516, 16 July 2008, 558 SCRA 468; and *Chavez v. PCGG*, G.R. No. 130716, 9 December 1998, 299 SCRA 744.

<sup>4</sup> *Akbayan v. Aquino*, supra; *Chavez v. NHA*, G.R. No. 164527, 15 August 2007; and *Chavez v. PCGG*, supra. The privilege of invoking this exception ends when the executive agency adopts a definite proposition (*Department of Foreign Affairs v. BCA International Corp.*, G.R. No. 210858, 20 July 2016).

<sup>5</sup> Section 3(d) Rule IV, Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (Rules on CCESPOE). Drafts of decisions, orders, rulings, policy decisions, memoranda, and the like, such as resolutions prepared by the investigating prosecutor prior to approval for promulgation and release to parties [Revised Manual for Prosecutors of the Department of Justice (DOJ)] are also covered under this category of exceptions.

<sup>6</sup> *Almonte v. Vasquez*, G.R. No. 95367, 23 May 1995, 244 SCRA 286; *Chavez v. PCGG*, supra; *Legaspi v. Civil Service Commission*, L-72119, 29 May 1987, 150 SCRA 530; *Chavez v. NHA*, supra; *Neri v. Senate*, supra; *Chavez v. Public Estates Authority*, G.R. No. 133250, 9 July 2002, 384 SCRA 152; and Section 3(a), Rule IV, Rules on CCESPOE. This exception generally includes matters classified under Memorandum Circular (MC) No. 78, as amended by MC No. 196 as "Top Secret," "Secret," "Confidential," and "Restricted."

<sup>7</sup> *Akbayan v. Aquino*, supra; Section 3(a) Rule IV, Rules on CCESPOE. This privilege may be invoked by the Department of Foreign Affairs and other government bodies involved in diplomatic negotiations.



- c. Patent applications, the publication of which would prejudice national security and interests;<sup>8</sup>
3. Information concerning law enforcement and protection of public and personal safety:
    - a. Investigation records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of such records or information would -
      - i. interfere with enforcement proceedings;
      - ii. deprive a person of a right to a fair trial or an impartial adjudication;
      - iii. disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; or
      - iv. unjustifiably disclose investigative techniques and procedures;<sup>9</sup>
    - b. Informer's privilege or the privilege of the Government not to disclose the identity of a person or persons who furnish information of violations of law to officers charged with the enforcement of law;<sup>10</sup>
    - c. When disclosure of information would put the life and safety of an individual in imminent danger;<sup>11</sup>
    - d. Any information given by informants leading to the recovery of carnapped vehicles and apprehension of the persons charged with carnapping;<sup>12</sup> and
    - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;<sup>13</sup>
  4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused. These include:
    - a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy,<sup>14</sup> personal information or records,<sup>15</sup> including sensitive personal information, birth records,<sup>16</sup> school records,<sup>17</sup> or medical or health records;<sup>18</sup>

<sup>8</sup> The applicability of this exception is determined by the Director General of the Intellectual Property Office and subject to the approval of the Secretary of the Department of Trade and Industry. Section 44.3 of the Intellectual Property Code (RA No. 8293, as amended by RA No. 10372).

<sup>9</sup> Section 3(f), Rule IV, Rules on CCESPOE; Chavez v. PCGG, supra. May be invoked by law enforcement agencies.

<sup>10</sup> Akbayan v. Aquino, supra; and Section 51, Human Security Act of 2007 (RA No. 9372). May be invoked by law enforcement agencies.

<sup>11</sup> Section 3(b), Rule IV, Rules on CCESPOE.

<sup>12</sup> Section 19, New Anti Carnapping Act of 2016 (RA No. 10883). May be invoked by law enforcement agencies.

<sup>13</sup> Section 7, Witness Protection, Security and Benefit Act (RA No. 6981).



Sensitive personal information as defined under the Data Privacy Act of 2012 refers to personal information:<sup>19</sup>

- (1) about an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) about an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
- (4) specifically established by an executive order or an act of Congress to be kept classified.

However, personal information may be disclosed to the extent that the requested information is shown to be a matter of public concern or interest, shall not meddle with or disturb the private life or family relations of the individual<sup>20</sup> and is not prohibited by any law or regulation. Any disclosure of personal information shall be in accordance with the principles of transparency, legitimate purpose and proportionality.<sup>21</sup>

Disclosure of personal information about any individual who is or was an officer or employee of a government institution shall be allowed, provided that such information relates to the position or functions of the individual, including: (1) the fact that the individual is or was an officer or employee of the government institution; (2) the title, business address and office telephone number of the individual; (3) the classification, salary range and responsibilities of the position held by the individual; and (4) the name of the

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<sup>14</sup> Section 3(e), Rule IV, Rules on CCESPOE.

<sup>15</sup> Sections 8 and 15, Data Privacy Act of 2012 (RA No. 10173); Personal information refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual [Section 3(g), Data Privacy Act of 2012]; Article 26, Civil Code. May be invoked by National Privacy Commission and government personal information controllers.

<sup>16</sup> Article 7, The Child and Youth Welfare Code [Presidential Decree (PD) No. 603].

<sup>17</sup> Section 9(4), Education Act of 1982 [Batas Pambansa (BP) Blg. 232].

<sup>18</sup> Medical and health records are considered as sensitive personal information pursuant to Section 3(l)(2), Data Privacy Act of 2012; See also Department of Health-Department of Science and Technology (DOST)-Philippine Health Insurance Corporation Joint Administrative Order No. 2016-0002 (Privacy Guidelines for the Implementation of the Philippine Health Information Exchange).

<sup>19</sup> Section 3(l), Data Privacy Act of 2012.

<sup>20</sup> Article 26(2), Civil Code.

<sup>21</sup> Section 11, Data Privacy Act of 2012.



individual on a document prepared by the individual in the course of employment with the government;<sup>22</sup>

- b. Source of any news report or information appearing in newspapers, magazines or periodicals of general circulation obtained in confidence;<sup>23</sup> and
- c. Records of proceedings and processes deemed confidential by law for the privacy and/or protection of certain individuals, such as children, victims of crime, witnesses or a crime or rehabilitated drug offenders, including those pertaining to the following:
  - (1) records of child and family cases;<sup>24</sup>
  - (2) children in conflict with the law from initial contact until final disposition of the case;<sup>25</sup>
  - (3) a child who is a victim of any offense under the Anti-Child Pornography Act of 2009, including the name and personal circumstances of the child, or the child's immediate family, or any other information tending to establish the child's identity;<sup>26</sup>
  - (4) a child witness, who is a victim of a crime, an accused of a crime, or a witness to a crime, including the name, address, telephone number, school, or other identifying information of a child or an immediate family of the child;<sup>27</sup>
  - (5) cases involving violence against women and their children, including the name, address, telephone number, school, business, address, employer, or other identifying information of a victim or an immediate family member;<sup>28</sup>
  - (6) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;<sup>29</sup>
  - (7) names of victims of child abuse, exploitation or discrimination;<sup>30</sup>
  - (8) disclosure which would result in undue and sensationalized publicity of any case involving a child in conflict with the law, child abuse, or violation of anti-trafficking of persons;<sup>31</sup>

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<sup>22</sup> Section 4, Data Privacy Act of 2012.

<sup>23</sup> An Act to Exempt the Publisher, Editor or Reporter of any Publication from Revealing the Source of Published News or Information Obtained in Confidence (RA No. 53), as amended by RA No. 1477. May be invoked by government newspapers.

<sup>24</sup> Section 12, Family Courts Act of 1997 (RA Act No. 8369).

<sup>25</sup> Section 43, Juvenile Justice and Welfare Act of 2006 (RA No. 9344).

<sup>26</sup> Section 13, Anti-Child Pornography Act of 2009 (RA No. 9775).

<sup>27</sup> Section 31, A.M. No. 00-4-07-SC, Re: Proposed Rule on Examination of a Child Witness.

<sup>28</sup> Section 44, Anti-Violence Against Women and their Children Act of 2004 (RA No. 9262); and *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.



- (9) records, documents and communications of proceedings involving domestic and inter-country adoptions, including the identity of the child, natural parents and adoptive parents;<sup>32</sup>
- (10) names of students who committed acts of bullying or retaliation;<sup>33</sup>
- (11) first time minor (drug) offenders under suspended sentence who comply with applicable rules and regulations of the Dangerous Drugs Board and who are subsequently discharged; judicial and medical records of drug dependents under the voluntary submission program; and records of a drug dependent who was rehabilitated and discharged from treatment and rehabilitation centers under the compulsory submission program, or who was charged for violation of Section 15 (use of dangerous drugs) of the Comprehensive Dangerous Drug Act of 2002, as amended; and<sup>34</sup>
- (12) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing;<sup>35</sup>

5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers, such as but not limited to the following:

<sup>29</sup> Section 7, Anti-Trafficking in Persons Act of 2003 (RA No. 9208), as amended by RA No. 10364.

<sup>30</sup> Section 29, Special Protection of Children Against Abuse, Exploitation and Discrimination Act (RA No. 7610).

<sup>31</sup> Section 14, Juvenile Justice and Welfare Act of 2006; Section 7, Anti-Trafficking in Persons Act of 2003, as amended; and Section 29, Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

<sup>32</sup> Section 15, Domestic Adoption Act of 1998 (RA No. 8552) and Section 43, IRR of RA No. 8552; Sections 6 and 16(b), Inter-Country Adoption Act of 1995 (RA No. 8043) and Sections 53, 54 and 55 of IRR of RA No. 8043.

<sup>33</sup> Section 3(h), Anti-Bullying Act (RA No. 10627).

<sup>34</sup> Sections 60, 64 and 67, Comprehensive Dangerous Drugs Act of 2002 (RA No. 9165).

<sup>35</sup> Sections 2(b), 18, 30, and 32, Philippine AIDS Prevention and Control Act of 1998 (RA No. 8504).

<sup>36</sup> Sections 45, 106.1, and 150.2, The Intellectual Property Code (RA No. 8293, as amended by RA No. 10372); Section 66.2, Securities Regulation Code (RA No. 8799); DOST Administrative Order No. 004-16; Section 142, The Corporation Code (BP Blg. 68); Section 34, Philippine Competition Act (RA No. 10667); Sections 23 and 27 (c), The New Central Bank Act (RA No. 7653); Anti-Money Laundering Act (RA No. 9160); Section 18, Strategic Trade Management Act (RA No. 10697); Sections 10 and 14, Safeguard Measures Act (RA No. 8800); Section 12, Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 (RA No. 6969); Article 290, Revised Penal Code; Section 10.10, Rule 10, 2012 Revised IRR of Build-Operate-Transfer Law (RA No. 6957); and Revised Philippine Ports Authority Manual of Corporate Governance.

<sup>37</sup> Section 26, Philippine Statistical Act of 2013 (RA No. 10625); and Section 4, Commonwealth Act No. 591. May be invoked only by the PSA.

<sup>38</sup> Section 24(c), Social Security Act of 1997 (RA No. 1161, as amended by RA No. 8282).



- a. Trade secrets, intellectual property, business, commercial, financial and other proprietary information;<sup>36</sup>
- b. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics Authority (PSA);<sup>37</sup>
- c. Records and reports submitted to the Social Security System by the employer or member;<sup>38</sup>
- d. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;<sup>39</sup>
- e. Confidential information submitted to the Philippine Competition Commission prohibited from disclosure by law, including the identity of the person who provided the information under condition of anonymity;<sup>40</sup>
- f. Applications and supporting documents filed pursuant to the Omnibus Investments Code of 1987;<sup>41</sup>
- g. Documents submitted through the Government Electronic Procurement System;<sup>42</sup>
- h. Information obtained from accessing any electronic key, electronic data message, or electronic document, book, register, correspondence, information or other material pursuant to any powers conferred under the Electronic Commerce Act of 2000;<sup>43</sup>
- i. Any confidential information supplied by the contractors in mineral agreements, and financial or technical assistance agreements pursuant to the Philippine Mining Act of 1995 and its Implementing Rules and Regulations (IRR), during the term of the project to which it relates;<sup>44</sup>
- j. Information received by the Department of Tourism (DOT) in relation to the accreditation of accommodation establishments (such as hotels and resorts) and travel and tour agencies;<sup>45</sup>
- k. The fact that a covered transaction report to the Anti-Money Laundering Council (AMLC) has been made, the contents thereof, or any information in relation thereto;
- l. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;<sup>46</sup>
- m. Certain information and reports submitted to the Insurance Commissioner pursuant to the Insurance Code;<sup>48</sup>

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<sup>39</sup> Section 29, Philippine AIDS Prevention and Control Act of 1998 (RA No. 8504).

<sup>40</sup> Section 34, Philippine Competition Act (PCA), RA No. 10667 and Section 13, Rule 4 of the IRR of PCA. This exception can be invoked by the Philippine Competition Commission subject to well-defined limitations under the PCA.

<sup>41</sup> Section 81, EO No. 226 (s. 1987), as amended.

<sup>42</sup> Section 9, Government Procurement Reform Act (RA No. 9184).

<sup>43</sup> Section 32, Electronic Commerce Act of 2000 (RA No. 8792).

<sup>44</sup> Section 94(f), Philippine Mining Act of 1995 (RA No. 7942).



- n. Information on registered cultural properties owned by private individuals;<sup>49</sup>
- o. Data submitted by a higher education institution to the Commission on Higher Education (CHED);<sup>50</sup> and
- p. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;<sup>51</sup>

6. Information of which a premature disclosure would:

- a. in the case of a department, office or agency which agency regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities, or significantly endanger the stability of any financial institution; or
- b. be likely or significantly frustrate implementation of a proposed official action, except such department, office or agency has already disclosed to the public the content or nature of its proposed action, or where the department, office or agency is required by law to make such disclosure on its own initiative prior to taking final official action on such proposal.<sup>52</sup>

7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged, including but not limited to the following:

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<sup>45</sup> Section 1, Rule IX, DOT MC No. 2010-02 (Rules and Regulations to Govern, the Accreditation of Accommodation Establishments – Hotels, Resorts and Apartment Hotels); and Section 23, DOT MC No. 2015-06 (Revised Rules and Regulations to Govern the Accreditation of Travel and Tour Agencies).

<sup>46</sup> Section 9(c), Anti-Money Laundering Act of 2001, as amended. May be invoked by AMLC, government banks and its officers and employees.

<sup>47</sup> Section 10, Safeguard Measures Act.

<sup>48</sup> Section 297 in relation with Section 295 and Section 356, The Insurance Code (as amended by RA No. 10607).

<sup>49</sup> Section 14, National Cultural Heritage Act of 2009 (RA No. 10066).

<sup>50</sup> CHED Memorandum Order No. 015-13, 28 May 2013.

<sup>51</sup> Articles 229 and 230, Revised Penal Code; Section 3(k), Anti-Graft and Corrupt Practices Act (RA No. 3019); Section 7(c), Code of Conduct and Ethical Standards for Public Officials and Employees (RA No. 6713); Section 7, Exchange of Information on Tax Matters Act of 2009 (RA No. 10021); and Section 6.2, Securities Regulation Code (RA No. 8799).

<sup>52</sup> Section 3(g), Rule IV, Rules on CCESPOE.

<sup>53</sup> Sections 9, 23 and 33, Alternative Dispute Resolution (ADR) Act of 2004 (RA No. 9285); and DOJ Circular No. 98 (s. 2009) or the IRR of the ADR Act.

<sup>54</sup> Article 10, International Bar Association Rules for Investor-State Mediation.

<sup>55</sup> Article 237, Labor Code.



- a. Mediation and domestic or international arbitration proceedings, including records, evidence and the arbitral awards, pursuant to the Alternative Dispute Resolution Act of 2004;<sup>53</sup>
- b. Matters involved in an Investor-State mediation;<sup>54</sup>
- c. Information and statements made at conciliation proceedings under the Labor Code;<sup>55</sup>
- d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);<sup>56</sup>
- e. Results of examinations made by the Securities and Exchange Commission (SEC) on the operations, books and records of any corporation, and all interrogatories propounded by it and the answers thereto;<sup>57</sup>
- f. Information related to investigations which are deemed confidential under the Securities Regulations Code;<sup>58</sup>
- g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;<sup>59</sup>
- h. Information related to the assignment of the cases to the reviewing prosecutors or the undersecretaries in cases involving violations of the Comprehensive Dangerous Drugs Act of 2002;<sup>60</sup>
- i. Investigation report and the supervision history of a probationer;<sup>61</sup>
- j. Those matters classified as confidential under the Human Security Act of 2007;<sup>62</sup>
- k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies;<sup>63</sup> and
- l. Those information deemed confidential or privileged pursuant to pertinent rules and regulations issued by the Supreme Court, such as information on disbarment proceedings, DNA profiles and results, or those ordered by courts to be kept confidential;<sup>64</sup>

<sup>56</sup> Section 7.1, Rule 7, CIAC Revised Rules of Procedure Governing Construction Arbitration.

<sup>57</sup> Section 142, Corporation Code. May be invoked by the SEC and any other official authorized by law to make such examination.

<sup>58</sup> Sections 13.4, 15.4, 29.2 (b), and 64.2 of the Securities Regulation Code.

<sup>59</sup> Section 53(b)(1) of the Pre-Need Code of the Philippines. The confidentiality of the proceedings is lifted after the issuance of the cease and desist order.

<sup>60</sup> DOJ Department Circular No. 006-16 (No. 6), 10 February 2016.

<sup>61</sup> Section 17, Probation Law of 1976 [PD No. 968 (s.1976)].

<sup>62</sup> Sections 9, 13, 14, 29, 33 and 34, Human Security Act of 2007 (RA No. 9372).

<sup>63</sup> Section 14, Civil Service Commission Resolution No. 01-0940. Section 18, Rule 139-B and Section 24, Rule 130 of the Rules of Court; and Section 11 of the Rule on DNA Evidence, A.M. No. 06-11-5-SC.

<sup>64</sup> Section 18, Rule 139-B and Section 24, Rule 130 of the Rules of Court; and Section 11 of the Rule on DNA Evidence, A.M. No. 06-11-5-SC.



8. Matters considered confidential under banking and finance laws and their amendatory laws, such as:
  - a. RA No. 1405 (Law on Secrecy of Bank Deposits);
  - b. RA No. 6426 (Foreign Currency Deposit Act of the Philippines) and relevant regulations;
  - c. RA No. 8791 (The General Banking Law of 2000);
  - d. RA No. 9160 (Anti-Money Laundering Act of 2001); and
  - e. RA No. 9510 (Credit Information System Act);
  
9. Other exceptions to the right to information under laws, jurisprudence, rules and regulations, such as:
  - a. Those deemed confidential pursuant to treaties, executive agreements, other international agreements, or international proceedings, such as:
    - (1) When the disclosure would prejudice legitimate commercial interest or competitive position of investor-states pursuant to investment agreements;<sup>65</sup>
    - (2) Those deemed confidential or protected information pursuant to United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (UNCITRAL Transparency Rules);<sup>66</sup> and
    - (3) Refugee proceedings and documents under the 1951 Convention Relating to the Status of Refugees, as implemented by DOJ Circular No. 58 (s. 2012);
  - b. Testimony from a government official, unless pursuant to a court or legal order;<sup>67</sup>
  - c. When the purpose for the request of Statement of Assets, Liabilities and Net Worth is any of the following:
    - (1) any purpose contrary to morals or public policy; or
    - (2) any commercial purpose other than by news and communications media for dissemination to the general public;<sup>68</sup>
  - d. Lists, abstracts, summaries of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;<sup>69</sup>

<sup>65</sup> Examples: Article 20 (2), ASEAN Comprehensive Investment Agreement; Article 15 (2) Agreement on Investment under the Framework Agreement on the Comprehensive Economic Cooperation between the ASEAN and the Republic of India; and Article 15 (2) of the Agreement on Investment under the Framework Agreement on the Comprehensive Economic Cooperation among the Government of the Member Countries of the ASEAN and the Republic of Korea.

<sup>66</sup> Article 7, UNCITRAL Transparency Rules.

<sup>67</sup> *Senate v. Neri*, *supra*; *Senate v. Ermita*, *supra*.

<sup>68</sup> Section 8(D), Code of Conduct and Ethical Standards for Public Officials and Employees.

<sup>70</sup> *Belgica v. Ochoa*, G.R. No. 208566, 19 November 2013; and *Valmonte v. Belmonte Jr.*, G.R. No. 74930, 13 February 1989, 252 Phil. 264.



- e. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;<sup>70</sup>
- f. Requested information pertains to comments and disclosures on pending cases in judicial proceedings;<sup>71</sup> and
- g. Attorney-client privilege existing between government lawyers and their client.<sup>72</sup>

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<sup>70</sup> Examples: 2012 Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses and the Provision of CHR Assistance; Government Service Insurance System's Rules of Procedure of the Committee on Claims; National Labor Relations Commission Resolution No. 01-02, Amending Certain Provisions of the New Rules of Procedure of the National Labor Relations Commission, 08 March 2002; Department of Agrarian Reform MC No. 07-11, 19 July 2011; Department of Social Welfare and Development MC No. 021-12, 16 October 2012; and Section 42, Investment Company Act (RA No. 2629); When the information requested is not a matter of public concern or interest as decided in *Hilado v. Judge Amor A. Reyes*, G.R. No. 163155, 21 July 2006.

<sup>71</sup> *Romero v. Guerzon*, G.R. No. 211816, 18 March 2015.

<sup>72</sup> Canon 21 of the Code of Professional Responsibility.



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