



**PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE  
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**

Joint Memorandum Circular No: 2018 - 01

Date: October 9, 2018

**REITERATION OF EXECUTIVE ORDER NO. 2, S. 2016, "OPERATIONALIZING THE PEOPLE'S  
RIGHT TO INFORMATION AND THE STATE POLICIES OF FULL PUBLIC DISCLOSURE  
AND TRANSPARENCY IN THE PUBLIC SERVICE"**

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**1. BACKGROUND**

- 1.1. Freedom of Information (FOI) is the government's response to the call for transparency and full public disclosure of information. It is a mechanism which allows the Filipino citizens access to information about government transactions and operations, provided that it shall not compromise one's right to privacy and national security matters.
- 1.2. Executive Order No. 2, series of 2016, seeks to operationalize the constitutional provisions on public disclosure of state transactions involving public interests, and the right of people to information on matters of public concern. It also enjoins local governments to observe, accordingly, be guided by this policy.

**2. PURPOSE**

This Joint Memorandum Circular is issued to encourage provinces, cities, and municipalities to enact an ordinance, or issue a local chief executive's Order, in support of FOI.

**3. POLICY CONTENT AND GUIDELINES**

- 3.1. LGUs are highly encouraged to operationalize, at the local level, the people's right to information and state policies of full public disclosure and transparency in the public service by enacting an ordinance, or issuing an executive order from the office of the governor or mayor, supporting the FOI.
- 3.2. Said ordinance or executive order may contain the salient provisions of EO No. 2, s. 2016 including: (a) procedures in filing and processing of requests for access to information; (b) inventory of exceptions; (c) remedies in case of denial of request; (d) fees; (e) protection of privacy; and (f) keeping of records.

- 3.3. It is also recommended that the LGUs adopt the “disclose to one, disclose to all” policy for the information released through the observance of FOI and exercise proactive disclosure of information not included in their inventory of exceptions.
- 3.4. LGUs may also designate a focal person (preferably the local information officer, if any) who will oversee the implementation of FOI at the local level.
- 3.5. Relative to Section 5 of the FOI EO, local officials and authorities are also reminded of their responsibility to file, and make available for scrutiny, their Statements of Assets, Liabilities and Net Worth in accordance with existing laws, rules and regulations.<sup>0</sup>
- 3.6. To ensure that the public will have ease and convenience in requesting for information, LGUs are encouraged to enroll in PCOO’s electronic FOI platform at [www.foi.gov.ph](http://www.foi.gov.ph). The PCOO will train FOI focal persons on using the said platform.

Interested LGUs may send, via post or e-mail address: [foipco@gmail.com](mailto:foipco@gmail.com), a letter signed by the local chief executive, along with the copy of FOI ordinance or local executive order, addressed to:

**Secretary Jose Ruperto Martin M. Andanar**  
Presidential Communications Operations Office  
3F New Executive Building, JP Laurel Street,  
Malacanang, Manila

#### **4. ANNEXES**

- Annex 1: Sample FOI Policy
- Annex 2: Sample FOI Request Form
- Annex 3: Memorandum from the Executive Secretary  
(Inventory of Exceptions to EO No. 2 s. 2016)

#### **5. DISSEMINATION**

The Regional and Field Officers of DILG and the ARMM Regional Governor shall cause the immediate dissemination of this Circular in their respective areas of jurisdiction for the guidance of all concerned LGUs.




#### **6. MONITORING**

Profiling of LGUs with enacted FOI ordinance or local executive order shall be monitored through the Local Governance Performance Management System (LGPMS) of DILG’s Bureau of Local Government Supervision.

**7. EFFECTIVITY**

This Joint Memorandum Circular shall take effect immediately.

**8. APPROVING AUTHORITY**

  
**EDUARDO M. AÑO**  
Officer-in-Charge, DILG  
  
  
DILG-OSEC 07012016-26161

  
**JOSE RUPERTO MARTIN M. ANDANAR**  
Secretary, PCOO 

**9. FEEDBACK**

For related queries, kindly contact the Presidential Communications Operations Office at Telephone Number (02) 588-0691, or at email address foipco@gmail.com or the Bureau of Local Government Supervision-Department of the Interior and Local Government at Telephone Number (02) 876 3454 loc 4208/4209, or at email address lgpms.team@yahoo.com.



**Annex 1: Sample FOI Policy**

**Republic of the Philippines**  
**Province/City/Municipality of \_\_\_\_\_**

\_\_\_\_\_ - \_\_\_\_\_

**OFFICE OF THE SANGGUNIANG PANLALAWIGAN/PANLUNGSOD/BAYAN**

Draft Provincial/City/Municipal Ordinance No. \_\_\_\_\_

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Sponsored by \_\_\_\_\_

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**AN ORDINANCE OPERATIONALIZING FREEDOM OF INFORMATION IN  
THE PROVINCIAL/CITY/MUNICIPAL GOVERNMENT OF \_\_\_\_\_  
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 1987 Constitution guarantees the right of the people to information on matters of public concern;

**WHEREAS**, on 23 July 2016, President Rodrigo R. Duterte issued Executive Order No. 2 entitled "Operationalizing in the Executive Branch the People's Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor;"

**WHEREAS**, the said Executive Order is limited in scope to government offices under the Executive Branch, and merely enjoins local government units to observe and be guided accordingly;

**WHEREAS**, recognizing the importance of the people's right to government information, and guided by the President's Executive Order, the Provincial/City/Municipal Government deems it necessary to provide a local mechanism for its offices where the people's right to information is respected and upheld, subject to exceptions provided by law and jurisprudence;

**NOW, THEREFORE**, Be it Ordained that:

**SECTION 1. Title.** This ordinance shall be known as the "**FOI Ordinance of 2018.**"

**SECTION 2. Definition of Terms.** For the purpose of this Ordinance, 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 under the Provincial/City/Municipal Government of \_\_\_\_\_ pursuant to law, ordinance, executive order, and rules and regulations or in connection with the performance or transaction of official business by any government office under the Provincial/City/Municipal Government of \_\_\_\_\_.



(b) **"Official record"** 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"** shall include information required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available by a government office.

**SECTION 3. Coverage.** This order shall cover all government offices under the Provincial/City/Municipal Government of \_\_\_\_\_.

**SECTION 4. 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, in the custody of the Provincial/City/Municipal Government of \_\_\_\_\_ or any of its offices.

**SECTION 5. Exceptions.** Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law, or jurisprudence.

Pursuant to this, the Provincial/City/Municipal Legal Officer is directed to prepare a local inventory of FOI exceptions and submit the same to the Sangguniang Panlalawigan/Panlungsod/Bayan within thirty (30) calendar days from the date of effectivity of this Ordinance, for its approval.

Thereafter, the Sangguniang Panlalawigan/Panlungsod/Bayan Secretary shall cause the publication of the local inventory of FOI exceptions for the guidance of all government offices covered by this Ordinance. Said local inventory of FOI exceptions shall be periodically updated by the Provincial/City/Municipal Legal Officer and the Sangguniang Panlalawigan/Panlungsod/Bayan.

**SECTION 6. Availability of SALN.** Subject to the provisions contained in Sections 4 and 5 of this Ordinance, all public officials of the Provincial/City/Municipal Government of \_\_\_\_\_ 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 Ordinance.

**SECTION 7. 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 in the inventory of FOI exceptions. The Provincial/City/Municipal Government of \_\_\_\_\_ shall adopt the "disclose to one, disclose to all" policy for the information requested through this Ordinance and shall exercise proactive disclosure of information not subject to the exceptions.

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

In making such determination, the Head of Office or his/her 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 8. 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, pursuant to the Data Privacy Act of 2012 (Republic Act No. 10173), as follows:

(a) Each government office 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 Ordinance 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 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 Ordinance or pursuant to existing laws, rules or regulation.

#### **SECTION 9. FOI Focal Person and FOI Receiving Officers**

(a) The \_\_\_\_\_ is designated to be the FOI Focal Person. He/she is tasked to oversee the implementation of the FOI Ordinance. The focal person shall also develop the standard forms for the submission of requests and for the proper acknowledgment of such requests.

(b) The FOI Focal Person shall monitor the status of all requests for access to information filed in the Provincial/City/Municipal Government of \_\_\_\_\_ and its offices. Thus, the FOI Focal Person shall establish a system to trace the status of all requests for information in the LGU.

(c) Each of the offices under the LGU shall also designate an FOI Receiving Officer who will accommodate requests for access to information filed through their office.

**SECTION 10. Procedure.** The following procedure shall govern the filing and processing of request for access to information:

(a) Any person who requests access to information may consult the LGU's FOI Focal Person to identify the concerned office who keeps the information being requested. The requestor may also go directly to the concerned office which he/she thinks has the information being requested.

(b) The requestor shall submit a written request to the FOI Receiving Officer of the concerned office using the standard form of the LGU. 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.

(c) The FOI Receiving Officer receiving the request shall provide reasonable assistance, free of charge, to enable all requesting parties and particularly those with special needs, to comply with the request requirements under this Section.

(d) The request shall be stamped by the concerned office, indicating the date and time of receipt and the name, rank, title and position of the FOI Receiving Officer with the



corresponding signature, and a copy thereof furnished to the requesting party. Each office shall establish a system to trace the status of all requests for information received by it.

- (e) The concerned office shall respond to a request fully compliant with requirements of subsection (b) 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 concerned office to grant or deny access to the information requested.
- (f) The period to respond may be extended whenever the information requested requires extensive search of the office's records facilities, examination of voluminous records, the occurrence of fortuitous cases or other analogous cases. The concerned 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.
- (g) 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 11. Fees.** (a) Government offices shall not charge any fee for accepting requests for access to information. Likewise, there shall be no charge for obtaining information in digital format (i.e. PDF, JPEG, etc.). However, the following schedule of fees is imposed for printing, photocopying, and certification services rendered by a government office:

<b>Certification of Official Records</b>	-	P50.00/page for the 1 <sup>st</sup> copy and 5.00/page for succeeding copies.
<b>Printing</b>	-	P5.00/page
<b>Photocopying</b>		
Long	-	P3.00/page
Short/A4	-	P2.00/page

(b) The fee shall be paid to the Provincial/City/Municipal Treasurer at the time of the request, whether written or verbal. The Official Receipt number, the amount of the total fees, and the date of payment shall be indicated at the bottom of the certificate.

(c) The concerned office may exempt any requesting party from payment of fees, upon request stating the valid reason why such party should not pay the fee.

**SECTION 12. 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 Local Chief Executive: 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 shall be decided by the Local Chief Executive within thirty (30) working days from the filing of said written appeal. Failure of the person or office next higher in the authority to decide within the afore-stated period shall be deemed a denial of the appeal.

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

**SECTION 13. 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 14. Penalties.** Failure of any government officer to comply with the provisions of this Ordinance shall be a ground for the following penalties:

- 1<sup>st</sup> Offense - Reprimand;
- 2<sup>nd</sup> Offense - Suspension of one (1) to thirty (30) days; and
- 3<sup>rd</sup> Offense - Dismissal from the service.

The FOI Focal Person shall submit the list of government officers who fail to comply with the provisions of this Ordinance to the Local Chief Executive who shall decide on the appropriate administrative and disciplinary sanctions.

**SECTION 15. Separability Clause.** If any section or part of this Ordinance is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force or effect.

**SECTION 16. Repealing Clause.** All other ordinances, orders, issuances, rules and regulations, which are inconsistent with the provisions of this Ordinance are hereby repealed, amended or modified accordingly.

**SECTION 17. Effectivity.** This Ordinance shall take effect fifteen (15) days after publication.



## **Annex 2: Sample FOI Request Form**

FOI Tracking Number: \_\_\_\_\_

Please read the following information carefully before proceeding with your application. Use black or blue ink. Write neatly and in BLOCK letters. Improper or incorrectly-filled out forms will not be acted upon. Mark boxes with X where necessary. Note: (\*) denotes a MANDATORY field.

### **A. REQUESTING PARTY**

You are required to supply your name, address, and affiliation for correspondence. Additional contact details will help us deal with your application and correspond with you in the manner you prefer.

#### **A.1. Personal Information**

1. Title (e.g. Dr., Atty., Mr., Mrs.): \_\_\_\_\_ 2. Given Name:\* \_\_\_\_\_  
3. Middle Initial:\* \_\_\_\_\_ 4. Surname:\* \_\_\_\_\_  
5. Complete Address (Apt./House Number, Street, Barangay, City/Municipality, Province):\* \_\_\_\_\_  
6. Tel/Fax:\* \_\_\_\_\_ 7. Mobile Number:\* \_\_\_\_\_ 8. Email Ad:\* \_\_\_\_\_

#### **A.2. Affiliation**

9. Position:\* \_\_\_\_\_ 10. Office Name:\* \_\_\_\_\_  
11. Office Address:\* \_\_\_\_\_ 12. Tel/Fax:\* \_\_\_\_\_  
13. Mobile Number:\* \_\_\_\_\_ 14. Email Ad:\* \_\_\_\_\_

### **B. REQUESTED INFORMATION**

15. Title of Information/Document/Record Requested (Please be detailed as possible):\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Date or Period:\* \_\_\_\_\_  
\_\_\_\_\_

17. Purpose (Please be detailed as possible):\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **C. DECLARATION**

#### **Privacy Notice:**

Once deemed valid, the Information from your application will be used by the LGU to deal with your application as set out in the Freedom of Information Ordinance. Your FOI Request will also be indicated in the LGU's FOI Log.

I declare that:

- The information provided in this form is complete and correct;
- I have presented at least one (1) government-issued ID to establish proof of my identity;
- I have read the Privacy Notice; and
- I will only use the information requested for the purpose indicated in this form.

I understand that it is an offense to give misleading information about my identity, and that doing so may result in a decision to refuse to process my application.

\_\_\_\_\_  
Signature over Printed Name\*

\_\_\_\_\_  
Date Accomplished\*

**D. FOI RECEIVING OFFICER**

Name of FOI Receiving Officer: \_\_\_\_\_

Position: \_\_\_\_\_

Office: \_\_\_\_\_

Date Received: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_  
Signature over Printed Name

**D. HEAD OF OFFICE**

Decision on Application:  Full Approval  Partial Approval  Full Denial

If partially approved, indicate the information/data/record that cannot be released:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If denied, please provide reason for denial:

No available data

Exception/s:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature over Printed Name of the Head of Office



**Annex 3: Memorandum from the Executive Secretary**  
(Inventory of Exceptions to EO No. 2 s. 2016)

**Office of the President  
of the Philippines  
Malacañang**

**MEMORANDUM FROM THE EXECUTIVE SECRETARY**

TO: All Heads of Departments, Bureaus and Agencies of the National/**Local Governments** Including Government-Owned and Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), and All Others Concerned

SUBJECT: **INVENTORY OF EXCEPTIONS TO EXECUTIVE ORDER NO. 2 (S. 2016)**

DATE: 24 November 2016

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Pursuant to Section 4 of Executive Order (EO) No. 2 (s. 2016), the Office of the President hereby circularizes the inventory of exceptions to the right to access of information, for the guidance of all government offices and instrumentalities covered by EO No. 2 (s. 2016) and the general public.

The foregoing list of exceptions shall be without prejudice to existing laws, jurisprudence, rules or regulations authorizing the disclosure of the excepted information upon satisfaction of certain conditions in certain cases, such as the consent of the concerned party or as may be ordered by the courts.

In evaluating requests for information, all heads of offices are enjoined to ensure the meaningful exercise of the public of their right to access to information on public concerns.

For your information and guidance.

SALVADOR C. MEDIALDEA  
*N* *se* *u*

CERTIFIED COPY:  
*11/24*  
MARIANITO M. DYNARDA  
DIRECTOR IV  
MALACAÑANG RECORDS OFFICE

## **Exceptions to Right of Access to Information**

For the guidance of all government offices and instrumentalities covered by EO No. 2 (s. 2016) and the general public, 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.

1. Information covered by Executive privilege:
  - a. Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings;<sup>2</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>3</sup> and
    - ii. information, record or document comprising drafts of decisions, orders, rulings, policy decisions, memoranda, etc.;<sup>4</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>5</sup>
  - b. Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs;<sup>6</sup> and

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<sup>2</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>3</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>4</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>5</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>6</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>7</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>8</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>9</sup>
  - c. When disclosure of information would put the life and safety of an individual in imminent danger;<sup>10</sup>
  - d. Any information given by informants leading to the recovery of carnapped vehicles and apprehension of the persons charged with carnapping;<sup>11</sup> and
  - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;<sup>12</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:

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<sup>7</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>8</sup> Section 3(f), Rule IV, Rules on CCESPOE; *Chavez v. PCGG, supra*. May be invoked by law enforcement agencies.

<sup>9</sup> *Akbayan v. Aquino, supra*; and Section 51, *Human Security Act of 2007* (RA No. 9372). May be invoked by law enforcement agencies.

<sup>10</sup> Section 3(b), Rule IV, Rules on CCESPOE.

<sup>11</sup> Section 19, *New Anti Carnapping Act of 2016* (RA No. 10883). May be invoked by law enforcement agencies.

<sup>12</sup> Section 7, *Witness Protection, Security and Benefit Act* (RA No. 6981).



- a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy,<sup>13</sup> personal information or records,<sup>14</sup> including sensitive personal information, birth records,<sup>15</sup> school records,<sup>16</sup> or medical or health records;<sup>17</sup>

Sensitive personal information as defined under the *Data Privacy Act of 2012* refers to personal information:<sup>18</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>19</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>20</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

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<sup>13</sup> Section 3(e), Rule IV, Rules on CCESPOE.

<sup>14</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>15</sup> Article 7, *The Child and Youth Welfare Code* [Presidential Decree (PD) No. 603].

<sup>16</sup> Section 9(4), *Education Act of 1982* [Batas Pambansa (BP) Blg. 232].

<sup>17</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>18</sup> Section 3(l), *Data Privacy Act of 2012*.

<sup>19</sup> Article 26(2), *Civil Code*.

<sup>20</sup> Section 11, *Data Privacy Act of 2012*.



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 individual on a document prepared by the individual in the course of employment with the government;<sup>21</sup>

- b. Source of any news report or information appearing in newspapers, magazines or periodicals of general circulation obtained in confidence;<sup>22</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 to a crime or rehabilitated drug offenders, including those pertaining to the following:
  - (1) records of child and family cases;<sup>23</sup>
  - (2) children in conflict with the law from initial contact until final disposition of the case;<sup>24</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>25</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>26</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>27</sup>
  - (6) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;<sup>28</sup>
  - (7) names of victims of child abuse, exploitation or discrimination;<sup>29</sup>

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<sup>21</sup> Section 4, *Data Privacy Act of 2012*.

<sup>22</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>23</sup> Section 12, *Family Courts Act of 1997* (RA Act No. 8369).

<sup>24</sup> Section 43, *Juvenile Justice and Welfare Act of 2006* (RA No. 9344).

<sup>25</sup> Section 13, *Anti-Child Pornography Act of 2009* (RA No. 9775).

<sup>26</sup> Section 31, A.M. No. 00-4-07-SC, *Re: Proposed Rule on Examination of a Child Witness*.

<sup>27</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.

<sup>28</sup> Section 7, *Anti-Trafficking in Persons Act of 2003* (RA No. 9208), as amended by RA No. 10364.

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



- (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>30</sup>
  - (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>31</sup>
  - (10) names of students who committed acts of bullying or retaliation;<sup>32</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 Drugs Act of 2002*, as amended; and<sup>33</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>34</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:
- a. Trade secrets, intellectual property, business, commercial, financial and other proprietary information;<sup>35</sup>

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<sup>30</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>31</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>32</sup> Section 3(h), *Anti-Bullying Act* (RA No. 10627).

<sup>33</sup> Sections 60, 64 and 67, *Comprehensive Dangerous Drugs Act of 2002* (RA No. 9165).

<sup>34</sup> Sections 2(b), 18, 30, and 32, *Philippine AIDS Prevention and Control Act of 1998* (RA No. 8504).

<sup>35</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*.



- b. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics Authority (PSA);<sup>36</sup>
- c. Records and reports submitted to the Social Security System by the employer or member;<sup>37</sup>
- d. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;<sup>38</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>39</sup>
- f. Applications and supporting documents filed pursuant to the *Omnibus Investments Code of 1987*;<sup>40</sup>
- g. Documents submitted through the Government Electronic Procurement System;<sup>41</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>42</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>43</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>44</sup>

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<sup>36</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>37</sup> Section 24(c), *Social Security Act of 1997* (RA No. 1161, as amended by RA No. 8282).

<sup>38</sup> Section 29, *Philippine AIDS Prevention and Control Act of 1998* (RA No. 8504).

<sup>39</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>40</sup> Section 81, EO No. 226 (s. 1987), as amended.

<sup>41</sup> Section 9, *Government Procurement Reform Act* (RA No. 9184).

<sup>42</sup> Section 32, *Electronic Commerce Act of 2000* (RA No. 8792).

<sup>43</sup> Section 94(f), *Philippine Mining Act of 1995* (RA No. 7942).

<sup>44</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).



- 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;<sup>45</sup>
  - 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>47</sup>
  - n. Information on registered cultural properties owned by private individuals;<sup>48</sup>
  - o. Data submitted by a higher education institution to the Commission on Higher Education (CHED),<sup>49</sup> and
  - p. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;<sup>50</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>51</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 9(c), *Anti-Money Laundering Act of 2001*, as amended. May be invoked by AMLC, government banks and its officers and employees.

<sup>46</sup> Section 10, *Safeguard Measures Act*.

<sup>47</sup> Section 297 in relation with Section 295 and Section 356, *The Insurance Code* (as amended by RA No. 10607).

<sup>48</sup> Section 14, *National Cultural Heritage Act of 2009* (RA No. 10066).

<sup>49</sup> CHED Memorandum Order No. 015-13, 28 May 2013.

<sup>50</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>51</sup> Section 3(g), Rule IV, Rules on CCESPOE.

- 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>52</sup>
- b. Matters involved in an Investor-State mediation,<sup>53</sup>
- c. Information and statements made at conciliation proceedings under the *Labor Code*,<sup>54</sup>
- d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC),<sup>55</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>56</sup>
- f. Information related to investigations which are deemed confidential under the *Securities Regulations Code*,<sup>57</sup>
- g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;<sup>58</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>59</sup>
- i. Investigation report and the supervision history of a probationer;<sup>60</sup>
- j. Those matters classified as confidential under the *Human Security Act of 2007*,<sup>61</sup>

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<sup>52</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>53</sup> Article 10, International Bar Association Rules for Investor-State Mediation.

<sup>54</sup> Article 237, *Labor Code*.

<sup>55</sup> Section 7.1, Rule 7, CIAC Revised Rules of Procedure Governing Construction Arbitration.

<sup>56</sup> Section 142, *Corporation Code*. May be invoked by the SEC and any other official authorized by law to make such examination.

<sup>57</sup> Sections 13.4, 15.4, 29.2 (b), and 64.2 of the *Securities Regulation Code*.

<sup>58</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>59</sup> DOJ Department Circular No. 006-16 (No. 6), 10 February 2016.

<sup>60</sup> Section 17, *Probation Law of 1976* [PD No. 968 (s.1976)].

<sup>61</sup> Sections 9, 13, 14, 29, 33 and 34, *Human Security Act of 2007* (RA No. 9372).



- k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies;<sup>62</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>63</sup>
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>64</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>65</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);

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<sup>62</sup> Section 14, Civil Service Commission Resolution No. 01-0940.

<sup>63</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.

<sup>64</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>65</sup> Article 7, UNCITRAL Transparency Rules.

- b. Testimony from a government official, unless pursuant to a court or legal order;<sup>66</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>67</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>68</sup>
- e. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;<sup>69</sup>
- f. Requested information pertains to comments and disclosures on pending cases in judicial proceedings;<sup>70</sup> and
- g. Attorney-client privilege existing between government lawyers and their client.<sup>71</sup>

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<sup>66</sup> *Senate v. Neri, supra; Senate v. Ermita, supra.*

<sup>67</sup> Section 8(D), *Code of Conduct and Ethical Standards for Public Officials and Employees.*

<sup>68</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.

<sup>69</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>70</sup> *Romero v. Guerzon*, G.R. No. 211816, 18 March 2015.

<sup>71</sup> Canon 21 of the *Code of Professional Responsibility.*