





Republic of the Philippines  
Department of Finance  
**PRIVATIZATION AND MANAGEMENT OFFICE**

**MEMORANDUM**

FOR :  **ATTY. MAAN VANESSA L. DOCTOR**  
*Chief Privatization Officer*

FROM: **SHAIRA MAE T. MALAPAD**  
*Team Leader- PMO FOI Team* 

RE : **Updated People's Freedom of Information Manual**

DATE : 30 January 2024

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This is to respectfully request for the approval of the updated People's Freedom of Information (FOI) Manual of the Privatization and Management Office (PMO).

The approval of the updated PMO's FOI Manual and submission to the Presidential Communications Operations Office (PCOO) is in compliance with Executive Order No. 2 series of 2016 "Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies of Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor", and PCOO Memorandum Circular No. 23-02 dated October 9, 2023 "Freedom of Information (FOI) Program Criteria and Validation Process for the Determination of Eligibility for the Grant of Fiscal Year 2023 Performance-Based Bonus (PBB).

For your approval.



**Privatization and Management Office (PMO)**

# **Freedom of Information (FOI) Manual**

**(in accordance with Executive Order No. 02, series of 2016)**

Office Address:  
Privatization and Management Office  
Central Receiving Unit  
3<sup>rd</sup> Floor, 104 Gamboa Street  
Legaspi Village, Makati City  
Telephone Number: (02) 8817-6661  
Email Address: FOI@pmo.gov.ph

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## 1. INTRODUCTION

The **Privatization and Management Office (PMO)** is a government agency under the Department of Finance, created pursuant to Executive Order No. 323 (E.O 323) by the former president Joseph E. Estrada on December 6, 2000 for the purpose of continuing privatization of government assets and corporations.

Prior to the creation of PMO, structural reforms have been instituted in the public sector since 1986. The government embarked on a privatization program that was authorized under Proclamation No. 50 issued on December 8, 1986. This program was implemented by the Asset Privatization Trust (APT) under the guidance of an inter-agency Committee on Privatization (COP) and intended to reduce substantially the size of the government corporate sector by limiting government corporations to areas where private sector involvement is not feasible, or where intervention can favor disadvantaged sectors of society. The term of the COP and APT expired on December 31, 2000.

On November 17, 2005, then President Gloria Macapagal-Arroyo issued E.O. 471, directing the merger of the Board of Liquidators (BOL) and the Privatization and Management Office (PMO), in which PMO is the surviving entity. As such, the administrative policies and operational guidelines of the PMO shall govern all transactions and disposition of the assets of the BOL.

### 1.1 What is Executive Order No. 02, series of 2016 (EO 2, s. 2016)?

The Executive Order was issued with a view to enforce the constitutionally guaranteed right of the people for public disclosure of government transactions involving public interest. It is meant to enhance transparency and accountability in government official acts, transactions, or decisions. It is entitled:

“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 Guideline Therefor”

In light of the above Executive No. 02, s. 2016, PMO has created a manual which aims to provide guidance and assistance to Officers and employees of PMO dealing with requests for copies of official documents or public records in the official custody of this Office pursuant to Executive Order No. 02, series of 2016.

### 1.2 What part of the government is covered by the EO No. 02?

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. (Sec. 2, EO 2, s. 2016).

### 1.3 What kind of information can be obtained?

Any official records, public records, documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development (Sec. 3, EO 2, s. 2016).

## 2. DEFINITION OF TERMS

<b>CRU</b>	Central Receiving Unit. Where FOI Request Forms are initially received and stamped.
<b>DOJ</b>	Department of Justice. Provides and updates the inventory of documents or information that are exempted from the coverage of FOI together with the OSG.
<b>DPO/DC</b>	Deputy Privatization Officer/Division Chief. The head of a particular division/office in the PMO. An officer that approves or denies FOI requests.
<b>Executive Branch of the Government</b>	Oversee the compliance of each office, bureaus, departments, instrumentalities under its jurisdiction with the provisions of EO 2, s. 2016.
<b>FOI</b>	Freedom of Information. Constitutionally guaranteed right of the people to have access to information which involves the public interest.
<b>FOI Manual</b>	Guidelines to follow in effecting or processing request pursuant to EO 2, series of 2016.
<b>Information</b>	Any records, documents, papers, reports etc., as defined in Sec. 1, EO 2, s. 2016.
<b>Private Courier</b>	The private or non-government company engaged in mailing services.
<b>Official Record(s)</b>	Any 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.
<b>OSG</b>	Office of the Solicitor General. Provides and updates the list of documents or information that are exempt from the coverage of FOI together with the DOJ.
<b>Personal Information</b>	<p>Any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably, directly ascertained by the entity holding the information, or when puttogether with other information would directly and certainly identify an individual.</p> <p>The term shall cover information about a natural person, whether from the public or the private sector, the disclosure of which would constitute an unwarranted invasion of his or her personal privacy, which may include signatures, addresses, telephone numbers, identification numbers, photographs, family members, or similar information.</p>

<b>Philippine Postal Service</b>	The official mail courier of the Philippine Government.
<b>PMO</b>	Privatization and Management Office. An office under the Department of Finance tasked of disposition or management of identified government assets.
<b>DIO</b>	Division Information Officer. The assigned personnel in a division that keeps certain records or information.
<b>Public Record(s)</b>	These are information required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available by a government office.
<b>RO</b>	Records Officer. The custodian of official records or documents kept by the PMO.
<b>Rules of Court</b>	Contains procedural rules to be followed in the conduct of judicial proceedings.
<b>Requester</b>	Any person qualified to make an FOI request pursuant to sec. 3, EO 2, s. 2016.
<b>SALN</b>	Statement of Assets, Liabilities and Net worth.

### 3. REQUEST OF ACCESS TO RECORDS (Sec. 3, EO No. 02, s. of 2016)

This section defines the process and provides the guidelines to follow in requesting records or information from the designated Records Officer (RO).

#### 3.1 Who can make a request?

Pursuant to Section 3, EO No. 2, s. 2016, any Filipino person or entity may make a request. This includes any corporation, partnership, or association duly recognized by Philippine laws.

#### 3.2 How quickly should an agency respond?

The designated RO must respond to the request as soon as practicable but not exceeding fifteen (15) working days from receipt of the request form and other requirements.

However, the DIO may ask for an extension in the processing of request if the information being requested requires extensive search, examination of voluminous records, fortuitous events or natural calamities and other similar cases. The extension will not exceed twenty (20) working days excluding the mandated fifteen (15) working days to act on the request, unless exceptional circumstances, as determined by PMO, warrant a longer period

Unless otherwise agreed upon by both parties, the requested documents will be mailed by the PMO through the Philippine Postal Service or private courier companies, at the option of

the requester, upon payment of applicable fees. The requester shall be asked to state clearly their complete mailing address.

### **3.3 How many times can I make a request?**

There is no prescribed limit on the number of request. However, the government office is not required to act upon an unreasonable subsequent identical or substantially similar request from the same requesting party whose request has already been previously granted or denied (Sec. 11, EO 2, s. 2016).

### **3.4 Request of personal information of PMO's Officers and Staff**

In providing access to information, public records, and official records, the responsible officers shall afford full protection to the right to privacy of the individual, as follows:

- a. Personal information in the custody or under the control of PMO 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 Manual or existing law, rules or regulations;
- b. PMO must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information which may unduly expose the individual whose personal information is requested for purposes of vilification, harassment or any other wrongful acts;
- c. Any employee, agent, consultant, contractor, or official of PMO who has access, authorized or unauthorized, to personal information in the custody of the office, must not disclose that information except when authorized pursuant to existing laws, rules or regulations.
- d. PMO, at its sole discretion may classify certain information as "Personal Information" in order to protect the privacy and security of its staff, as the circumstances warrant.

### **3.5 How to make a request**

**3.5.1** Completely fill-up the PMO FOI Request Form and attach a photocopy of one (1) valid proof of identification and mail it to PMO's address or send it to PMO's email at FOI@pmo.gov.ph. This form can be downloaded from the PMO webpage at no cost. Walk-in requester(s) can also fill up the FOI request form at the CRU, 3<sup>rd</sup> floor of PMO Building. PMO will follow the 15 days and 20 days maximum rule to respond to the walk-in request pursuant to Sec. 9 of EO No. 02, series of 2016.

For follow-up or inquiries, you may contact the Central Receiving Unit at telephone number (02) 8817-6661.

**3.5.2** The request should state the following:

- a. name and contact information of the requesting party;

- b. valid proof of his identification or authorization;
- c. reasonable and specific description of the information requested;
- d. reason for, or purpose of, the request for information; and
- e. requested mode of release of information (email or pick-up).

**3.5.3** PMO receives the FOI request thru hand carry, mail, email or facsimile. The PMO FOI Request Form will be forwarded to the PMO's Central Receiving Unit (CRU) where a barcode will be placed to determine when it was received, the time received and the requester's information.

**3.5.4** CRU will forward the soft copy of the PMO FOI Request Form to the RO who will locate the documents requested and if found/available, will reproduce it. If it is not found after diligent effort, RO will refer the request to DIF for checking of availability of document in their records. The initial evaluation of the request shall be completed by the CRU within one (1) working day from the filing of the request, immediately after which the CRU shall forward the PMO FOI Request Form with recommendation/s to the RO. The RO or DIF will then forward the request to DPO for approval or denial.

**3.5.5** If the request is approved, RO will notify the requester, through writing or telephone, within 15 days or 20 days as the case maybe, that document(s) being requested or part of the document requested is/are in PMO's custody and the applicable fees e.g., Philippine Postal Service or private courier fees, at the option of the requester, to be charged. Requested documents are stamped by the RO evidencing that the photocopied document is the subject of the request.

If the document(s) or part of the requested document(s) is/are in the list of the Inventory of Exceptions as provided for by the DOJ and OSG and circularized by the OP, RO will inform the requester thru mail, email or telephone of the non-availability of the requested documents or the denial in whole or in part, as the case may be, and states the reason thereof.

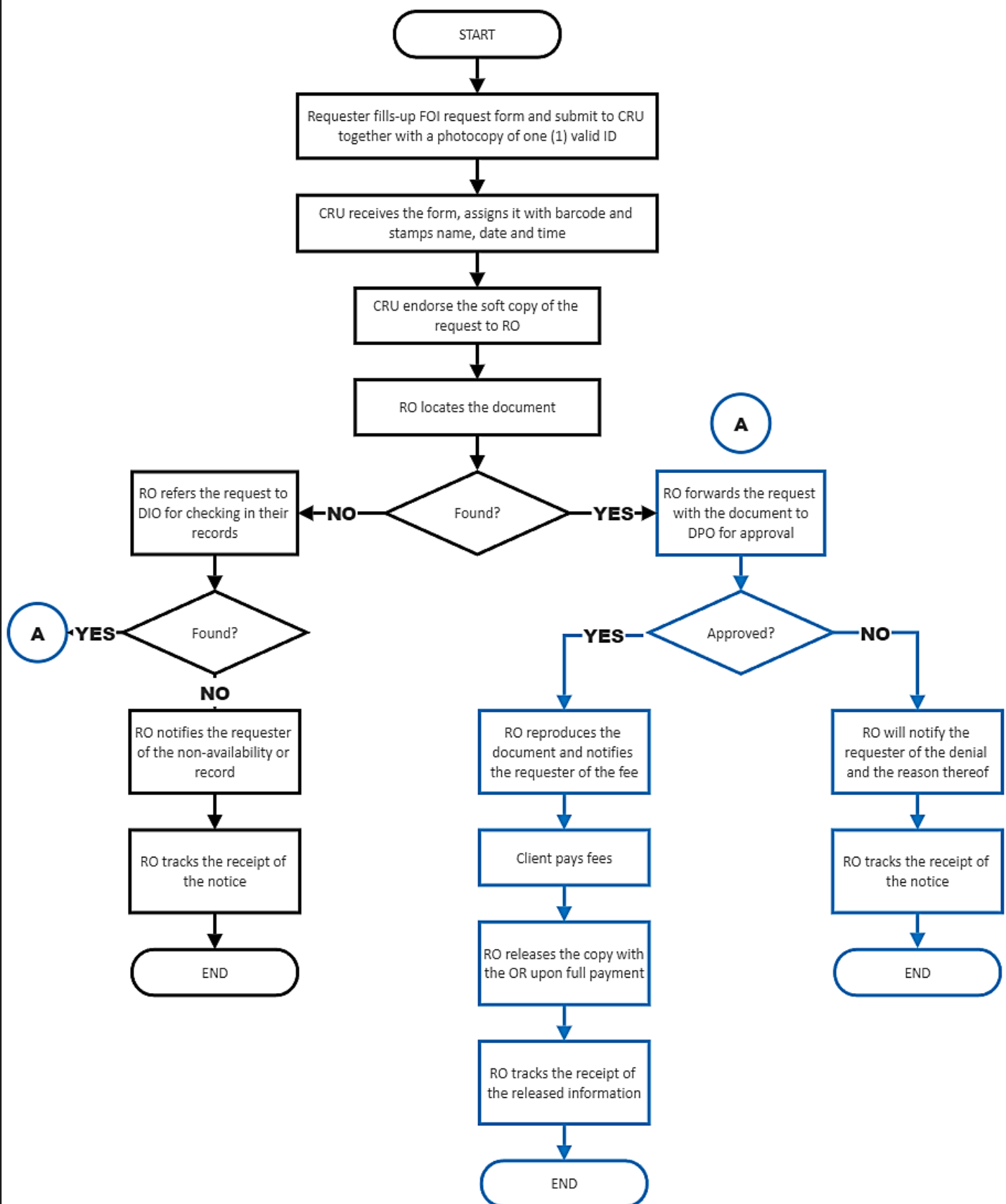
**3.5.6** In compliance with FOI-MC No. 21-05 or the **Guidelines on the Referral of Requested Information, Official Record/s and Public Record/s to the Appropriate Government Agency**, otherwise known as the **"No Wrong Door Policy for FOI"**, if the requested document(s) is/are not in PMO's custody but is available in another government agency under the Executive Branch, the PMO shall refer said request to the appropriate government agency.

**3.5.7** Fees can be paid thru PMO Landbank Account No. 1802-1015-34. Requester should email or fax the LBP deposit slip indicating full payment of the applicable fees before RO mails the requested document(s). RO may also email or fax the documents as initial copies at the option of the requester.

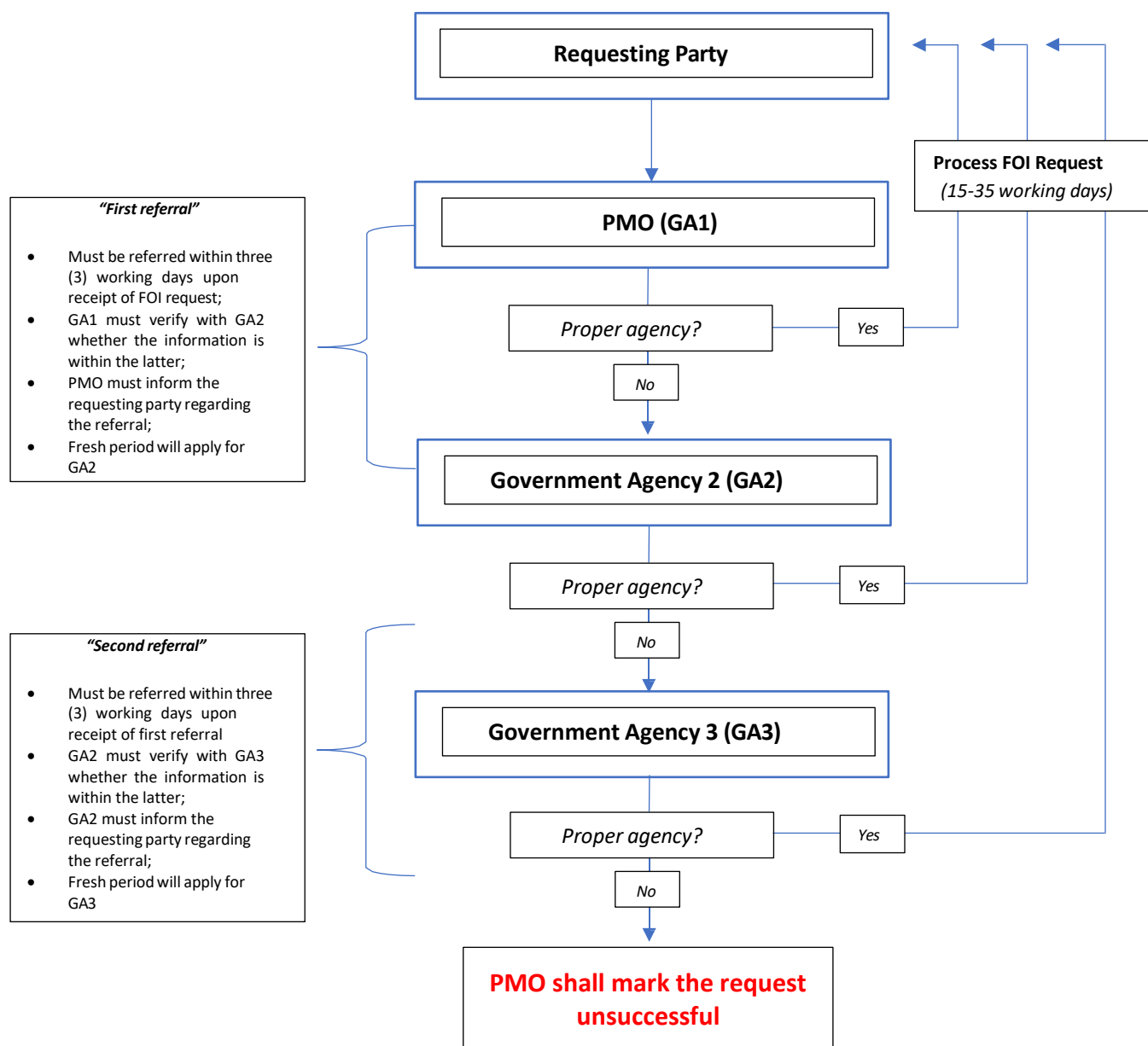
**3.5.8** RO will monitor if the requester received the documents.



#### 4. FLOWCHART FOR REQUEST



## 5. FLOWCHART FOR NO WRONG DOOR POLICY



### NOTE:

If PMO fails to refer the request within three (3) working days upon its receipt, the FOI Receiving Officer (FRO) shall act on it within the remaining period to respond pursuant to EO No. 2, s. 2016. No fresh period shall apply.

## 6. FEES AND CHARGES

Table of fees and charges:

KIND	FEES
	As of September 22, 2016
Photocopy	PhP 4.00 per page
Certification	PhP 20.00 per type of document
Mailing (for mail or email request)	Special Delivery (1 month) – PhP 15.00 Registered mail (1 week) – PhP 50.00 Private Courier – price varies
<i>*fees may vary depending on the location and the weight of the document.</i>	

## 7. NOTICE OF DENIAL

Upon receipt of PMO FOI request form and PMO denies in whole or in part the requested documents, the requester will be notified within 15 days or as soon as practicable, the ground or grounds for denial and the circumstances on which the denial is based, failure to notify the requester of such denial shall be deemed a denial of the request for access to information.

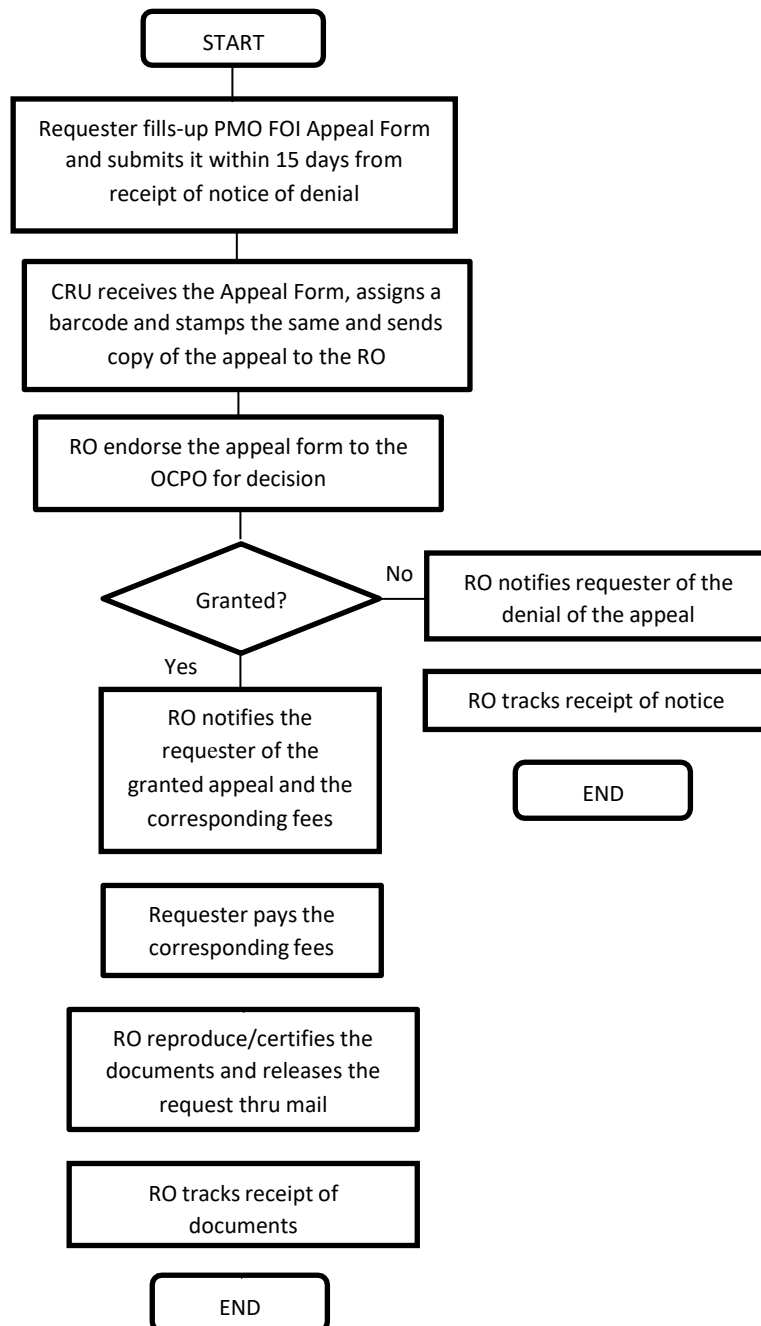
## 8. REMEDIES IN CASES OF DENIAL OF REQUEST

- a. Upon receipt of the notice of denial, the same person making the request may file a written appeal to the OCPO within 15 working days from the receipt of the notice of denial or from the lapse of the relevant period to respond to the request. The form for appeal may be downloaded from the PMO website.
- b. The OCPO will decide the appeal made within 30 working days from the filing of the written appeal. Failure of the OCPO to decide within the afore-sated period shall be deemed a denial of the appeal.
- c. Upon denial by the OCPO of the written appeal, the requester may file the appropriate case in the proper courts in accordance with the Rules of Court.

### Administrative Liability

Failure to comply with the provisions of this Manual may be a ground for administrative and disciplinary sanctions against any erring public officers and employees as provided for under Rule 7 and Rule 10 of the Revised Rules of Administrative Cases in Civil Service (RRAC) of the Civil Service Commission (CSC) and under relevant laws and regulations.

## 9. FLOWCHART FOR APPEAL



## 10. RESPONSIBLE OFFICERS

DESIGNATION	ROLE
Central Receiving Unit (CRU)	Receives the request, assigns the barcode, and stamps with date and time of receipt. Forwards the copy of the request to the Records Officer for processing.
Records Officer (RO)	Receives the copy of the request form from the (CRU). Checks the availability of the requested information/document. Forwards the request to the Deputy Privatization Officer (DPO) of the Division concerned for determination of whether to approve or deny the request. Mails letter of approval/denial or non-availability to the requester. Tracks the process of the request.
Deputy Privatization Officer (DPO)	Decides within 15 days, whether to approve or deny the request or if the information requested falls under the exceptions. Recommends the release of the requested information or documents to the RO.
Office of the Chief Privatization Officer (OCPO) or his/her designated officer	Reviews the appeal and decide whether to give due course to the appeal or not within 30 days.
Division's Information Officer (DIO)	Assigned personnel in a division which handles specific assets/accounts.

## 11. DOCUMENTS NOT COVERED BY THE FOI

The Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence. These exceptions are stated in the Inventory provided by the Department of Justice and the Office of the Solicitor General as mandated by Section 4, EO 2, s. of 2016.

Furthermore, in providing access to information, public records, and official records, the responsible officers shall afford full protection to the right to privacy of the individual, as stated in provision 3.4 of this manual.

# Appendices

## 12. FOI REQUEST FORM



### Privatization and Management Office REQUEST FOR ACCESS TO RECORDS Executive Order No. 02, series of 2016

#### 1. DETAILS OF REQUESTER (PLEASE USE BLOCK LETTERS)

Name : \_\_\_\_\_  
(First Name/Middle Initial/Surname)

Address : \_\_\_\_\_  
(No./Street/Barangay/Municipality/Province)

Telephone Number : \_\_\_\_\_

E-mail Address : \_\_\_\_\_

Valid ID Presented : \_\_\_\_\_

#### 2. DETAILS OF REQUEST

I request the following records/documents: ☐ Photocopy ☐ Certified True Copy ☐ No. of copies

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

#### 3. PURPOSE/s

This request is made for the purpose/s of:  
(please state the reasons below)

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

PLEASE SIGN HERE \_\_\_\_\_ DATE: \_\_\_\_\_

Please send your completed application to:  
Privatization and Management Office  
**Central Receiving Unit**  
3<sup>rd</sup> Floor  
104 Gamboa St., Legaspi Village, Makati City  
or email at **FOI@pmo.gov.ph**

### 13. FOI APPEAL FORM



#### Privatization and Management Office

#### APPEAL FORM

Executive Order No. 02, series of 2016

Appellant's Name : \_\_\_\_\_  
(First Name/Middle Initial/Surname)

Address : \_\_\_\_\_  
(No./Street/Barangay/Municipality/Province)

Telephone Number : \_\_\_\_\_

E-mail Address : \_\_\_\_\_

Valid ID Presented : \_\_\_\_\_

This appeal is taken pursuant to Sec. 13, EO 02, s. of 2016 for the denial of Request No. \_\_\_\_\_

Reasons why the document/information should be released:

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

PLEASE SIGN HERE \_\_\_\_\_ DATE: \_\_\_\_\_

Please send your completed application to:

Privatization and Management Office

**The Chief Privatization Officer**

3<sup>rd</sup> Floor

104 Gamboa St., Legaspi Village, Makati City

**FOI@pmo.gov.ph**



#### 14. CERTIFICATE OF NON-AVAILABILITY



##### **Privatization and Management Office**

104 Gamboa St., Legaspi Village

Makati City 1229

##### **CERTIFICATE OF NON-AVAILABILITY**

This is to certify that diligent examination of the current records of this Office has been conducted and as of the date of this certificate, the requested information/document(s) is/are not found in PMO's custody or part of the requested document(s) nor is/are in the list of exempted documents not subject of the FOI as provided for by the DOJ and OSG and circularized by the OP.

Issued pursuant to Executive Order No. 02, series of 2016, for whatever legal purpose it may serve.

Done this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Records Officer

## 15. LETTER OF APPROVED REQUEST



**Privatization and Management Office**  
104 Gamboa St., Legaspi Village  
Makati City 1229

DATE

NAME OF REQUESTER

Address

Dear \_\_\_\_\_:

This is to inform you that your request for a copy of \_\_\_\_\_ has been approved and is ready for reproduction.

Please pay a total of Php \_\_\_\_\_ to Landbank account no. 1802-1015-34. This amount represents the reproduction and mailing fee. Upon receipt of your payment, the document will be mailed at the address that you have provided in the FOI Request Form.

Please send thru fax a copy of the deposit slip at (02) 8810-7578 or email at FOI@pmo.gov.ph.

Should you have any inquiries, you may contact us at (02) 8817-6661.

Thank you.

Very truly yours,

\_\_\_\_\_  
Records Officer

## 16. LETTER DENYING A REQUEST



### Privatization and Management Office

104 Gamboa St., Legaspi Village  
Makati City 1229

DATE

NAME OF REQUESTER

Address

Dear \_\_\_\_\_:

This is to inform you that your request for a copy of \_\_\_\_\_ has  
been DENIED due to:

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As provided for in Sec. 13, EO 2, series of 2016, you may appeal the denial of your request  
within fifteen (15) days from receipt of this letter. Otherwise, the denial of your request is final

Should you have any inquiries, you may contact us at (02) 8817-6661. Thank you.

Very truly yours,

\_\_\_\_\_  
Records Officer

## 17. ENDORSEMENT SLIP



### Privatization and Management Office Freedom of Information (FOI) Endorsement Slip

Division in-charge : FOI Request Form no:

#### Requester Information

Name :

Requested Documents :

Purpose :

#### Request for Approval

Approval Status:	Approved	Denied		
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#### Request for Appeal

Approval Status:	Granted	Denied		
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Comment/s:

Prepared by:

(RO Name and Signature) Date

Approved by:

(DC/DPO/CPO Name and Signature) Date

## 18. STAMPS

### PRIVATIZATION AND MANAGEMENT OFFICE

**Approved**

This document(s) is not among the inventory of exceptions as defined by the OSG and DOJ pursuant to E.O. No. 2, series of 2016.

\_\_\_\_\_  
Signature over printed name

\_\_\_\_\_  
Date

### PRIVATIZATION AND MANAGEMENT OFFICE

**Denied**

This document(s) is among the inventory of exceptions as defined by the OSG and DOJ pursuant to E.O. No. 2, series of 2016.

\_\_\_\_\_  
Signature over printed name

\_\_\_\_\_  
Date

### PRIVATIZATION AND MANAGEMENT OFFICE

**Not Available**

This is to certify that after diligent search, the requested document does not exist in our records.

\_\_\_\_\_  
Signature over printed name

\_\_\_\_\_  
Date

### PRIVATIZATION AND MANAGEMENT OFFICE

**Released**

This document is a faithful reproduction of the document on file and exclusively issued to \_\_\_\_\_ for whatever legal purpose it may serve.

\_\_\_\_\_  
Signature over printed name

\_\_\_\_\_  
Date

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 Article 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 8 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 subsection (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 7 (f) of this Order: Provided, that the written appeal must be filed by the same person making the request within fifteen (15) working 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

**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

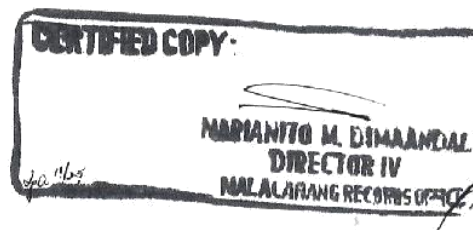
Pursuant to Section 4 of Executive Order (EO) No. 2 (s. 2016), the Office of the President hereby circularizes the inventory of exceptions to the right to access of information, for the guidance of all government offices and instrumentalities covered by EO No. 2 (s. 2016) and the general public.

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.

*sc*  
SALVADOR C. MEDIALDEA  
*N*



### **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

<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 carjacked vehicles and apprehension of the persons charged with carjacking;<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:

<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 Carjacking 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

<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>

<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>

<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:

<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>

<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);

<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>

<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.*

[REPUBLIC ACT NO. 10173]

**AN ACT PROTECTING INDIVIDUAL PERSONAL INFORMATION IN INFORMATION AND COMMUNICATIONS SYSTEMS IN THE GOVERNMENT AND THE PRIVATE SECTOR, CREATING FOR THIS PURPOSE A NATIONAL PRIVACY COMMISSION, AND FOR OTHER PURPOSES**

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

CHAPTER I  
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Data Privacy Act of 2012”.

SEC. 2. *Declaration of Policy.* – It is the policy of the State to protect the fundamental human right of privacy, of communication while ensuring free flow of information to promote innovation and growth. The State recognizes the vital role of information and communications technology in nation- building and its inherent obligation to ensure that personal information in information and communications systems in the government and in the private sector are secured and protected.

SEC. 3. *Definition of Terms.* – Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

(a) *Commission* shall refer to the National Privacy Commission created by virtue of this Act.

(b) *Consent of the data subject* refers to any freely given, specific, informed indication of will, whereby the data subject agrees to the collection and processing of personal information about and/or relating to him or her. Consent shall be evidenced by written, electronic or recorded means. It may also be given on behalf of the data subject by an agent specifically authorized by the data subject to do so.

(c) *Data subject* refers to an individual whose personal information is processed.

(d) *Direct marketing* refers to communication by whatever means of any advertising or marketing material which is directed to particular individuals.

(e) *Filing system* refers to any act of information relating to natural or juridical persons to the extent that, although the information is not processed by equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular person is readily accessible.

(f) *Information and Communications System* refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar device by or which data is recorded, transmitted or stored and any procedure related to the recording, transmission or storage of electronic data, electronic message, or electronic document.

(g) *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.

(h) *Personal information controller* refers to a person or organization who controls the collection, holding, processing or use of personal information, including a person or organization who instructs another person or organization to collect, hold, process, use, transfer or disclose personal information on his or her behalf. The term excludes:

(1) A person or organization who performs such functions as instructed by another person or organization; and

(2) An individual who collects, holds, processes or uses personal information in connection with the individual's personal, family or household affairs.

(i) *Personal information processor* refers to any natural or juridical person qualified to act as such under this Act to whom a personal information controller may outsource the processing of personal data pertaining to a data subject.

(j) *Processing* refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.

(k) *Privileged information* refers to any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication.

(l) *Sensitive personal information* refers to personal information:

(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.

SEC. 4. *Scope.* – This Act applies to the processing of all types of personal information and to any natural and juridical person involved in personal information processing including those personal information controllers and processors who, although not found or established in the Philippines, use equipment that are located in the Philippines, or those who maintain an office, branch or agency in the Philippines subject to the immediately succeeding paragraph: *Provided*, That the requirements of Section 5 are complied with.

This Act does not apply to the following:

(a) Information about any individual who is or was an officer or employee of a government institution that 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 individual on a document prepared by the individual in the course of employment with the government;

(b) Information about an individual who is or was performing service under contract for a government institution that relates to the services performed, including the terms of the contract, and the name of the individual given in the course of the performance of those services;

(c) Information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual, including the name of the individual and the exact nature of the benefit;

(d) Personal information processed for journalistic, artistic, literary or research purposes;

(e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions. Nothing in this Act shall be construed as to have amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act; and Republic Act No. 9510, otherwise known as the Credit Information System Act (CISA);

(f) Information necessary for banks and other financial institutions under the jurisdiction of the independent, central monetary authority or Bangko Sentral ng Pilipinas to comply with Republic Act

No. 9510, and Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act and other applicable laws; and

(g) Personal information originally collected from residents of foreign jurisdictions in accordance with the laws of those foreign jurisdictions, including any applicable data privacy laws, which is being processed in the Philippines.

*SEC. 5. Protection Afforded to Journalists and Their Sources.* – Nothing in this Act shall be construed as to have amended or repealed the provisions of Republic Act No. 53, which affords the publishers, editors or duly accredited reporters of any newspaper, magazine or periodical of general circulation protection from being compelled to reveal the source of any news report or information appearing in said publication which was related in any confidence to such publisher, editor, or reporter.

*SEC. 6. Extraterritorial Application.* – This Act applies to an act done or practice engaged in and outside of the Philippines by an entity if:

(a) The act, practice or processing relates to personal information about a Philippine citizen or a resident;

(b) The entity has a link with the Philippines, and the entity is processing personal information in the Philippines or even if the processing is outside the Philippines as long as it is about Philippine citizens or residents such as, but not limited to, the following:

(1) A contract is entered in the Philippines;

(2) A juridical entity unincorporated in the Philippines but has central management and control in the country; and

(3) An entity that has a branch, agency, office or subsidiary in the Philippines and the parent or affiliate of the Philippine entity has access to personal information; and

(c) The entity has other links in the Philippines such as, but not limited to:

(1) The entity carries on business in the Philippines; and

(2) The personal information was collected or held by an entity in the Philippines.

## CHAPTER II THE NATIONAL PRIVACY COMMISSION

*SEC. 7. Functions of the National Privacy Commission.* – To administer and implement the provisions of this Act, and to monitor and ensure compliance of the country with international standards set for data protection, there is hereby created an independent body to be known as the National Privacy Commission, which shall have the following functions:

(a) Ensure compliance of personal information controllers with the provisions of this Act;

(b) Receive complaints, institute investigations, facilitate or enable settlement of complaints through the use of alternative dispute resolution processes, adjudicate, award indemnity on matters affecting any personal information, prepare reports on disposition of complaints and resolution of any investigation it initiates, and, in cases it deems appropriate, publicize any such report: *Provided, That* in resolving any complaint or investigation (except where amicable settlement is reached by the parties), the Commission shall act as a collegial body. For this purpose, the Commission may be given access to personal information that is subject of any complaint and to collect the information necessary to perform its functions under this Act;

(c) Issue cease and desist orders, impose a temporary or permanent ban on the processing of personal information, upon finding that the processing will be detrimental to national security and public interest;

(d) Compel or petition any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting data privacy;



- (e) Monitor the compliance of other government agencies or instrumentalities on their security and technical measures and recommend the necessary action in order to meet minimum standards for protection of personal information pursuant to this Act;
- (f) Coordinate with other government agencies and the private sector on efforts to formulate and implement plans and policies to strengthen the protection of personal information in the country;
- (g) Publish on a regular basis a guide to all laws relating to data protection;
- (h) Publish a compilation of agency system of records and notices, including index and other finding aids;
- (i) Recommend to the Department of Justice (DOJ) the prosecution and imposition of penalties specified in Sections 25 to 29 of this Act;
- (j) Review, approve, reject or require modification of privacy codes voluntarily adhered to by personal information controllers: *Provided*, That the privacy codes shall adhere to the underlying data privacy principles embodied in this Act: *Provided, further*, That such privacy codes may include private dispute resolution mechanisms for complaints against any participating personal information controller. For this purpose, the Commission shall consult with relevant regulatory agencies in the formulation and administration of privacy codes applying the standards set out in this Act, with respect to the persons, entities, business activities and business sectors that said regulatory bodies are authorized to principally regulate pursuant to the law: *Provided, finally*. That the Commission may review such privacy codes and require changes thereto for purposes of complying with this Act;
- (k) Provide assistance on matters relating to privacy or data protection at the request of a national or local agency, a private entity or any person;
- (l) Comment on the implication on data privacy of proposed national or local statutes, regulations or procedures, issue advisory opinions and interpret the provisions of this Act and other data privacy laws;
- (m) Propose legislation, amendments or modifications to Philippine laws on privacy or data protection as may be necessary;
- (n) Ensure proper and effective coordination with data privacy regulators in other countries and private accountability agents, participate in international and regional initiatives for data privacy protection;
- (o) Negotiate and contract with other data privacy authorities of other countries for cross-border application and implementation of respective privacy laws;
- (p) Assist Philippine companies doing business abroad to respond to foreign privacy or data protection laws and regulations; and
- (q) Generally perform such acts as may be necessary to facilitate cross-border enforcement of data privacy protection.

SEC. 8. *Confidentiality*. – The Commission shall ensure at all times the confidentiality of any personal information that comes to its knowledge and possession.

SEC. 9. *Organizational Structure of the Commission*. – The Commission shall be attached to the Department of Information and Communications Technology (DICT) and shall be headed by a Privacy Commissioner, who shall also act as Chairman of the Commission. The Privacy Commissioner shall be assisted by two (2) Deputy Privacy Commissioners, one to be responsible for Data Processing Systems and one to be responsible for Policies and Planning. The Privacy Commissioner and the two (2) Deputy Privacy Commissioners shall be appointed by the President of the Philippines for a term of three (3) years, and may be reappointed for another term of three (3) years. Vacancies in the Commission shall be filled in the same manner in which the original appointment was made. The Privacy Commissioner must be at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity, and a recognized expert in the field of information technology and data privacy. The Privacy Commissioner shall enjoy the benefits, privileges and emoluments equivalent to the rank of Secretary.

The Deputy Privacy Commissioners must be recognized experts in the field of information and communications technology and data privacy. They shall enjoy the benefits, privileges and emoluments equivalent to the rank of Undersecretary.

The Privacy Commissioner, the Deputy Commissioners, or any person acting on their behalf or under their direction, shall not be civilly liable for acts done in good faith in the performance of their duties. However, he or she shall be liable for willful or negligent acts done by him or her which are contrary to law, morals, public policy and good customs even if he or she acted under orders or instructions of superiors: *Provided*, That in case a lawsuit is filed against such official on the subject of the performance of his or her duties, where such performance is lawful, he or she shall be reimbursed by the Commission for reasonable costs of litigation.

SEC. 10. *The Secretariat.* – The Commission is hereby authorized to establish a Secretariat. Majority of the members of the Secretariat must have served for at least five (5) years in any agency of the government that is involved in the processing of personal information including, but not limited to, the following offices: Social Security System (SSS), Government Service Insurance System (GSIS), Land Transportation Office (LTO), Bureau of Internal Revenue (BIR), Philippine Health Insurance Corporation (PhilHealth), Commission on Elections (COMELEC), Department of Foreign Affairs (DFA), Department of Justice (DOJ), and Philippine Postal Corporation (Philpost).

### CHAPTER III PROCESSING OF PERSONAL INFORMATION

SEC. 11. *General Data Privacy Principles.* – The processing of personal information shall be allowed, subject to compliance with the requirements of this Act and other laws allowing disclosure of information to the public and adherence to the principles of transparency, legitimate purpose and proportionality.

Personal information must, be:

- (a) Collected for specified and legitimate purposes determined and declared before, or as soon as reasonably practicable after collection, and later processed in a way compatible with such declared, specified and legitimate purposes only;
- (b) Processed fairly and lawfully;
- (c) Accurate, relevant and, where necessary for purposes for which it is to be used the processing of personal information, kept up to date; inaccurate or incomplete data must be rectified, supplemented, destroyed or their further processing restricted;
- (d) Adequate and not excessive in relation to the purposes for which they are collected and processed;
- (e) Retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained or for the establishment, exercise or defense of legal claims, or for legitimate business purposes, or as provided by law; and
- (f) Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected and processed: *Provided*, That personal information collected for other purposes may lie processed for historical, statistical or scientific purposes, and in cases laid down in law may be stored for longer periods: *Provided, further*, That adequate safeguards are guaranteed by said laws authorizing their processing.

The personal information controller must ensure implementation of personal information processing principles set out herein.

SEC. 12. *Criteria for Lawful Processing of Personal Information.* – The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:

- (a) The data subject has given his or her consent;

- (b) The processing of personal information is necessary and is related to the fulfillment of a contract with the data subject or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;
- (d) The processing is necessary to protect vitally important interests of the data subject, including life and health;
- (e) The processing is necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate; or
- (f) The processing is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.

SEC. 13. *Sensitive Personal Information and Privileged Information.* – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

- (a) The data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing;
- (b) The processing of the same is provided for by existing laws and regulations: *Provided*, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: *Provided, further*, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;
- (c) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;
- (d) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: *Provided*, That such processing is only confined and related to the *bona fide* members of these organizations or their associations: *Provided, further*, That the sensitive personal information are not transferred to third parties: *Provided, finally*, That consent of the data subject was obtained prior to processing;
- (e) The processing is necessary for purposes of medical treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured; or
- (f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

SEC. 14. *Subcontract of Personal Information.* – A personal information controller may subcontract the processing of personal information: *Provided*, That the personal information controller shall be responsible for ensuring that proper safeguards are in place to ensure the confidentiality of the personal information processed, prevent its use for unauthorized purposes, and generally, comply with the requirements of this Act and other laws for processing of personal information. The personal information processor shall comply with all the requirements of this Act and other applicable laws.

SEC. 15. *Extension of Privileged Communication.* – Personal information controllers may invoke the principle of privileged communication over privileged information that they lawfully control or

process. Subject to existing laws and regulations, any evidence gathered on privileged information is inadmissible.

#### CHAPTER IV RIGHTS OF THE DATA SUBJECT

SEC. 16. *Rights of the Data Subject.* – The data subject is entitled to:

(a) Be informed whether personal information pertaining to him or her shall be, are being or have been processed;

(b) Be furnished the information indicated hereunder before the entry of his or her personal information into the processing system of the personal information controller, or at the next practical opportunity:

(1) Description of the personal information to be entered into the system;

(2) Purposes for which they are being or are to be processed;

(3) Scope and method of the personal information processing;

(4) The recipients or classes of recipients to whom they are or may be disclosed;

(5) Methods utilized for automated access, if the same is allowed by the data subject, and the extent to which such access is authorized;

(6) The identity and contact details of the personal information controller or its representative;

(7) The period for which the information will be stored; and

(8) The existence of their rights, i.e., to access, correction, as well as the right to lodge a complaint before the Commission.

Any information supplied or declaration made to the data subject on these matters shall not be amended without prior notification of data subject: *Provided*, That the notification under subsection (b) shall not apply should the personal information be needed pursuant to a *subpoena* or when the collection and processing are for obvious purposes, including when it is necessary for the performance of or in relation to a contract or service or when necessary or desirable in the context of an employer-employee relationship, between the collector and the data subject, or when the information is being collected and processed as a result of legal obligation;

(c) Reasonable access to, upon demand, the following:

(1) Contents of his or her personal information that were processed;

(2) Sources from which personal information were obtained;

(3) Names and addresses of recipients of the personal information;

(4) Manner by which such data were processed;

(5) Reasons for the disclosure of the personal information to recipients;

(6) Information on automated processes where the data will or likely to be made as the sole basis for any decision significantly affecting or will affect the data subject;

(7) Date when his or her personal information concerning the data subject were last accessed and modified; and

(8) The designation, or name or identity and address of the personal information controller;

(d) Dispute the inaccuracy or error in the personal information and have the personal information controller correct it immediately and accordingly, unless the request is vexatious or otherwise unreasonable. If the personal information have been corrected, the personal information controller shall ensure the accessibility of both the new and the retracted information and the simultaneous receipt of the new and the retracted information by recipients thereof: *Provided*, That the third parties who have previously received such processed personal information shall be informed of its inaccuracy and its rectification upon reasonable request of the data subject;

(e) Suspend, withdraw or order the blocking, removal or destruction of his or her personal information from the personal information controller's filing system upon discovery and substantial proof that the personal information are incomplete, outdated, false, unlawfully obtained, used for

unauthorized purposes or are no longer necessary for the purposes for which they were collected. In this case, the personal information controller may notify third parties who have previously received such processed personal information; and

(f) Be indemnified for any damages sustained due to such inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorized use of personal information.

SEC. 17. *Transmissibility of Rights of the Data Subject.* – The lawful heirs and assigns of the data subject may invoke the rights of the data subject for, which he or she is an heir or assignee at any time after the death of the data subject or when the data subject is incapacitated or incapable of exercising the rights as enumerated in the immediately preceding section.

SEC. 18. *Right to Data Portability.* – The data subject shall have the right, where personal information is processed by electronic means and in a structured and commonly used format, to obtain from the personal information controller a copy of data undergoing processing in an electronic or structured format, which is commonly used and allows for further use by the data subject. The Commission may specify the electronic format referred to above, as well as the technical standards, modalities and procedures for their transfer.

SEC. 19. *Non-Applicability.* – The immediately preceding sections are not applicable if the processed personal information are used only for the needs of scientific and statistical research and, on the basis of such, no activities are carried out and no decisions are taken regarding the data subject: *Provided,* That the personal information shall be held under strict confidentiality and shall be used only for the declared purpose. Likewise, the immediately preceding sections are not applicable to processing of personal information gathered for the purpose of investigations in relation to any criminal, administrative or tax liabilities of a data subject.

## CHAPTER V SECURITY OF PERSONAL INFORMATION

SEC. 20. *Security of Personal Information.* – (a) The personal information controller must implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing.

(b) The personal information controller shall implement reasonable and appropriate measures to protect personal information against natural dangers such as accidental loss or destruction, and human dangers such as unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination.

(c) The determination of the appropriate level of security under this section must take into account the nature of the personal information to be protected, the risks represented by the processing, the size of the organization and complexity of its operations, current data privacy best practices and the cost of security implementation. Subject to guidelines as the Commission may issue from time to time, the measures implemented must include:

(1) Safeguards to protect its computer network against accidental, unlawful or unauthorized usage or interference with or hindering of their functioning or availability;

(2) A security policy with respect to the processing of personal information;

(3) A process for identifying and accessing reasonably foreseeable vulnerabilities in its computer networks, and for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach; and

(4) Regular monitoring for security breaches and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.

(d) The personal information controller must further ensure that third parties processing personal information on its behalf shall implement the security measures required by this provision.

(e) The employees, agents or representatives of a personal information controller who are involved in the processing of personal information shall operate and hold personal information under strict confidentiality if the personal information are not intended for public disclosure. This obligation shall continue even after leaving the public service, transfer to another position or upon termination of employment or contractual relations.

(f) The personal information controller shall promptly notify the Commission and affected data subjects when sensitive personal information or other information that may, under the circumstances, be used to enable identity fraud are reasonably believed to have been acquired by an unauthorized person, and the personal information controller or the Commission believes (but such unauthorized acquisition is likely to give rise to a real risk of serious harm to any affected data subject. The notification shall at least describe the nature of the breach, the sensitive personal information possibly involved, and the measures taken by the entity to address the breach. Notification may be delayed only to the extent necessary to determine the scope of the breach, to prevent further disclosures, or to restore reasonable integrity to the information and communications system.

(1) In evaluating if notification is unwarranted, the Commission may take into account compliance by the personal information controller with this section and existence of good faith in the acquisition of personal information.

(2) The Commission may exempt a personal information controller from notification where, in its reasonable judgment, such notification would not be in the public interest or in the interests of the affected data subjects.

(3) The Commission may authorize postponement of notification where it may hinder the progress of a criminal investigation related to a serious breach.

## CHAPTER VI ACCOUNTABILITY FOR TRANSFER OF PERSONAL INFORMATION

SEC. 21. *Principle of Accountability.* – Each personal information controller is responsible for personal information under its control or custody, including information that have been transferred to a third party for processing, whether domestically or internationally, subject to cross-border arrangement and cooperation.

(a) The personal information controller is accountable for complying with the requirements of this Act and shall use contractual or other reasonable means to provide a comparable level of protection while the information are being processed by a third party.

(b) The personal information controller shall designate an individual or individuals who are accountable for the organization's compliance with this Act. The identity of the individual(s) so designated shall be made known to any data subject upon request.

## CHAPTER VII SECURITY OF SENSITIVE PERSONAL INFORMATION IN GOVERNMENT

SEC 22. *Responsibility of Heads of Agencies.* – All sensitive personal information maintained by the government, its agencies and instrumentalities shall be secured, as far as practicable, with the use of the most appropriate standard recognized by the information and communications technology industry, and as recommended by the Commission. The head of each government agency or instrumentality shall be responsible for complying with the security requirements mentioned herein while the Commission shall monitor the compliance and may recommend the necessary action in order to satisfy the minimum standards.

*SEC. 23. Requirements Relating to Access by Agency Personnel to Sensitive Personal Information. –*

(a) On-site and Online Access – Except as may be allowed through guidelines to be issued by the Commission, no employee of the government shall have access to sensitive personal information on government property or through online facilities unless the employee has received a security clearance from the head of the source agency.

(b) Off-site Access – Unless otherwise provided in guidelines to be issued by the Commission, sensitive personal information maintained by an agency may not be transported or accessed from a location off government property unless a request for such transportation or access is submitted and approved by the head of the agency in accordance with the following guidelines:

(1) Deadline for Approval or Disapproval – In the case of any request submitted to the head of an agency, such head of the agency shall approve or disapprove the request within two (2) business days after the date of submission of the request. In case there is no action by the head of the agency, then such request is considered disapproved;

(2) Limitation to One thousand (1,000) Records – If a request is approved, the head of the agency shall limit the access to not more than one thousand (1,000) records at a time; and

(3) Encryption – Any technology used to store, transport or access sensitive personal information for purposes of off-site access approved under this subsection shall be secured by the use of the most secure encryption standard recognized by the Commission.

The requirements of this subsection shall be implemented not later than six (6) months after the date of the enactment of this Act.

*SEC. 24. Applicability to Government Contractors. –* In entering into any contract that may involve accessing or requiring sensitive personal information from one thousand (1,000) or more individuals, an agency shall require a contractor and its employees to register their personal information processing system with the Commission in accordance with this Act and to comply with the other provisions of this Act including the immediately preceding section, in the same manner as agencies and government employees comply with such requirements.

## CHAPTER VIII PENALTIES

*SEC. 25. Unauthorized Processing of Personal Information and Sensitive Personal Information. –* (a) The unauthorized processing of personal information shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

(b) The unauthorized processing of personal sensitive information shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

*SEC. 26. Accessing Personal Information and Sensitive Personal Information Due to Negligence. –* (a) Accessing personal information due to negligence shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who, due to negligence, provided access to personal information without being authorized under this Act or any existing law.

(b) Accessing sensitive personal information due to negligence shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos

(Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who, due to negligence, provided access to personal information without being authorized under this Act or any existing law.

SEC. 27. *Improper Disposal of Personal Information and Sensitive Personal Information.* – (a) The improper disposal of personal information shall be penalized by imprisonment ranging from six (6) months to two (2) years and a fine of not less than One hundred thousand pesos (Php100,000.00) but not more than Five hundred thousand pesos (Php500,000.00) shall be imposed on persons who knowingly or negligently dispose, discard or abandon the personal information of an individual in an area accessible to the public or has otherwise placed the personal information of an individual in its container for trash collection.

b) The improper disposal of sensitive personal information shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than One hundred thousand pesos (Php100,000.00) but not more than One million pesos (Php1,000,000.00) shall be imposed on persons who knowingly or negligently dispose, discard or abandon the personal information of an individual in an area accessible to the public or has otherwise placed the personal information of an individual in its container for trash collection.

SEC. 28. *Processing of Personal Information and Sensitive Personal Information for Unauthorized Purposes.* – The processing of personal information for unauthorized purposes shall be penalized by imprisonment ranging from one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00) shall be imposed on persons processing personal information for purposes not authorized by the data subject, or otherwise authorized under this Act or under existing laws.

The processing of sensitive personal information for unauthorized purposes shall be penalized by imprisonment ranging from two (2) years to seven (7) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons processing sensitive personal information for purposes not authorized by the data subject, or otherwise authorized under this Act or under existing laws.

SEC. 29. *Unauthorized Access or Intentional Breach.* – The penalty of imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who knowingly and unlawfully, or violating data confidentiality and security data systems, breaks in any way into any system where personal and sensitive personal information is stored.

SEC. 30. *Concealment of Security Breaches Involving Sensitive Personal Information.* – The penalty of imprisonment of one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00) shall be imposed on persons who, after having knowledge of a security breach and of the obligation to notify the Commission pursuant to Section 20(f), intentionally or by omission conceals the fact of such security breach.

SEC. 31. *Malicious Disclosure.* – Any personal information controller or personal information processor or any of its officials, employees or agents, who, with malice or in bad faith, discloses unwarranted or false information relative to any personal information or personal sensitive information obtained by him or her, shall be subject to imprisonment ranging from one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).



SEC. 32. *Unauthorized Disclosure.* – (a) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).

(b) Any personal information controller or personal information processor or any of its officials, employees or agents, who discloses to a third party sensitive personal information not covered by the immediately preceding section without the consent of the data subject, shall be subject to imprisonment ranging from three (3) years to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00).

SEC. 33. *Combination or Series of Acts.* – Any combination or series of acts as defined in Sections 25 to 32 shall make the person subject to imprisonment ranging from three (3) years to six (6) years and a fine of not less than One million pesos (Php1,000,000.00) but not more than Five million pesos (Php5,000,000.00).

SEC. 34. *Extent of Liability.* – If the offender is a corporation, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in, or by their gross negligence, allowed the commission of the crime. If the offender is a juridical person, the court may suspend or revoke any of its rights under this Act. If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties prescribed. If the offender is a public official or employee and he or she is found guilty of acts penalized under Sections 27 and 28 of this Act, he or she shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

SEC. 35. *Large-Scale.* – The maximum penalty in the scale of penalties respectively provided for the preceding offenses shall be imposed when the personal information of at least one hundred (100) persons is harmed, affected or involved as the result of the above mentioned actions.

SEC. 36. *Offense Committed by Public Officer.* – When the offender or the person responsible for the offense is a public officer as defined in the Administrative Code of the Philippines in the exercise of his or her duties, an accessory penalty consisting in the disqualification to occupy public office for a term double the term of criminal penalty imposed shall be applied.

SEC. 37. *Restitution.* – Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code.

#### CHAPTER IX MISCELLANEOUS PROVISIONS

SEC. 38. *Interpretation.* – Any doubt in the interpretation of any provision of this Act shall be liberally interpreted in a manner mindful of the rights and interests of the individual about whom personal information is processed.

SEC. 39. *Implementing Rules and Regulations (IRR).* – Within ninety (90) days from the effectivity of this Act, the Commission shall promulgate the rules and regulations to effectively implement the provisions of this Act.

SEC. 40. *Reports and Information.* – The Commission shall annually report to the President and Congress on its activities in carrying out the provisions of this Act. The Commission shall undertake

whatever efforts it may determine to be necessary or appropriate to inform and educate the public of data privacy, data protection and fair information rights and responsibilities.

SEC. 41. *Appropriations Clause.* – The Commission shall be provided with an initial appropriation of Twenty million pesos (Php20,000,000.00) to be drawn from the national government. Appropriations for the succeeding years shall be included in the General Appropriations Act. It shall likewise receive Ten million pesos (Php10,000,000.00) per year for five (5) years upon implementation of this Act drawn from the national government.

SEC. 42. *Transitory Provision.* – Existing industries, businesses and offices affected by the implementation of this Act shall be given one (1) year transitory period from the effectivity of the IRR or such other period as may be determined by the Commission, to comply with the requirements of this Act.

In case that the DICT has not yet been created by the time the law takes full force and effect, the National Privacy Commission shall be attached to the Office of the President.

SEC. 43. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 44. *Repealing Clause.* – The provision of Section 7 of Republic Act No. 9372, otherwise known as the “Human Security Act of 2007”, is hereby amended. Except as otherwise expressly provided in this Act, all other laws, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 45. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

## **EXECUTIVE ORDER NO. 323**

### **CONSTITUTING AN INTER-AGENCY PRIVATIZATION COUNCIL (PC) AND CREATING A PRIVATIZATION AND MANAGEMENT OFFICE (PMO) UNDER THE DEPARTMENT OF FINANCE FOR THE CONTINUING PRIVATIZATION OF GOVERNMENT ASSETS AND CORPORATIONS**

Whereas, pursuant to Republic Act No. 8758 s. 1999, the life of the Committee on Privatization (COP) and the Asset Privatization Trust (APT) will expire on December 31, 2000.

Whereas, Republic Act No. 8758 provided that, "All assets held by the Asset Privatization Trust, all moneys and other properties belonging to it, and all its liabilities outstanding upon the expiration of its term shall revert to and be assumed by the National Government".

Whereas, Republic Act No. 8758 mandated the transfer for disposition of the assets held by the APT by the President of the Philippines to the trust department of the appropriate government agency upon the expiration of the term of APT;

Whereas, Executive Order No. 12, s. 1998 reaffirmed the privatization policy of the Government by encouraging all heads of departments, bureaus, agencies and instrumentalities including government owned and controlled corporations to identify assets and activities that can be efficiently and effectively undertaken by the private sector; by broadening the coverage of privatization activities with the inclusion of some authorities such as Bases Conversion and Development Authority (BCDA), Public Estates Authority (PEA), Philippine Tourism Authority (PTA), Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA); and by directing the COP to consider other alternative modes of privatization such as leasing, management and maintenance contracts, BOT schemes or joint venture arrangements;

Whereas, under the Constitution and under the Administrative Code of 1987, the President, as Chief Executive, has control and supervision over, and the authority to reorganize, the Executive Branch of the Government, including the Office of the President; Whereas, the Government's privatization program has proven beneficial and helpful to the economy in terms of generating revenues, improving investment climate, attracting foreign capital and investments, broadening ownership base, developing capital markets and fostering private sector participation;

Whereas, there are remaining partially sold and undisposed accounts approved for privatization consisting of 150 transferred assets, of which 88 are partially sold and 62 are still undisposed, 57 government owned and controlled corporations, of which 31 have been partially sold and 26 are still undisposed, and several surrendered properties with sizeable amount of projected revenues for the much-needed resources of the Government;

Whereas, there is a vast opportunity for greater private sector participation in the development of the Philippine economy with the successful launching of Government's PROGRESS Bonds and the pending enactment by Congress of the bill restructuring of the power industry and privatizing the National Power Corporation;

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

## Article I. Restatement of the Policy

Section 1. Restatement of Policy. The National Government hereby restates its privatization policy to promote an orderly, coordinated and efficient privatization of remaining government corporations, assets, activities and idle properties which have been identified as unnecessary and inappropriate for the government sector to maintain.

## Article II. The Privatization Council

Section 1. Organization. There is hereby established a Privatization Council (PC), referred to as the "Council", to oversee the privatization program of the Government.

Section 2. Composition. The Council shall be composed of the Secretary of Finance as Chairman, with the Secretary of Budget and Management, Trade and Industry, National Economic and Development Authority and Justice as members. The National Treasurer and the Chairman of the Presidential Commission on Good Government shall be non-voting members of the Council.

The Technical Committee shall also be established to be composed of the representative of the Department of Finance as Chairman, and representatives of the Department of Justice, Department of Budget and Management, Department of Trade and Industry, National Economic Development Authority, Bureau of Treasury and the PCGG, as members.

Section 3. Objectives, Powers and Functions. The Council shall direct, supervise and coordinate all privatization and similar disposition efforts undertaken by the Government in order to promote private sector participation in developing the Philippine economy and to generate maximum cash recovery for the National Government. In pursuit of these objectives, the Council shall assume all the powers, functions, duties and responsibilities, all properties, real or personal assets, equipment and records, as well as the obligations and liabilities previously held or exercised by the COP under Proclamation No. 50, as amended, which have been devolved to the National Government pursuant to Republic Act No. 8758.

Section 4. Meetings. The Council shall meet at least twice a month, or as frequently as necessary to effectively discharge its functions and responsibilities and expedite the disposition of GOCCs, assets, activities and other government properties.

The presence of the majority of the voting members shall constitute a quorum and the concurrence of said majority should be adequate for any decision of the Council: Provided, that were a disposition or rehabilitation proposal is involved, the decision of the Council must be unanimous. In case they are unable to attend, the Chairman and Members may designate any of their immediate subordinates with the rank of Undersecretary or its equivalent to represent them in the meetings of the Council.

The Council shall act on any recommendation for disposition not later than thirty (30) days from the date of its submission to the Council.

Section 5. Legal Counsel. The Secretary of Justice shall be the ex-officio adviser to the Council on legal matters.

Section 6. Funding. The Council shall be provided with an initial budget of Ten Million Pesos (P10,000,000.00) to be drawn from the Organizational Adjustment Fund. Appropriations for the succeeding years shall be incorporated in the budget proposal for the Office of the President.

### Article III. Privatization and Management Office

Section 1. Organization – There is hereby organized under the Department of Finance an Office called Privatization and Management Office (PMO), hereinafter referred to as the “Office”.

The Office shall be headed by a Chief Privatization Officer (CPO) who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Finance.

The Chief Privatization Officer shall be assisted by four (4) Deputy Privatization Officers who shall be in charge of specific operations and undertakings as directed by the Chief Privatization Officer. These Deputy Privatization Officers shall be appointed by the Secretary of Finance upon recommendation by the Chief Privatization Officer.

Section 2. Powers and Functions. In addition to the powers, duties and functions under Proclamation No. 50, as amended, the Office shall be empowered to implement the actual marketing/disposition program of the government corporations, assets and idle properties after securing prior approval of the Council, to execute and deliver, on behalf of the National Government, the deeds of sale, contracts and other instruments as may be necessary or appropriate to convey title to such assets, to take title to and possession and conserve assets transferred to it, to engage external expertise as necessary in the fulfillment of its tasks, to adopt internal rules and regulations and to submit periodic reports to the Council on the status of the disposition program.

Any and all sales and other modes of privatization or disposition shall not be considered final unless and until approved by the Council.

All receipts from the sale of assets of the Office, except portions thereof for reimbursable custodianship and/or operational expenses, shall be remitted to the National Treasury.

Section 3. Powers and Functions of the CPO. The CPO shall have the following powers and functions.

1. To enter into management and other contracts as may be appropriate; and
2. To develop the staffing requirements of the Office, and for this purpose, appoint, remove and fix the remuneration of the personnel of the Office: Provided, That as far as practicable, the CPO should rely on secondment from government entities undertaking related functions, and or qualified external expertise in an advisory capacity and on a contractual basis.

Section 4. Qualifications. No person shall be appointed an Officer unless he or she is of good moral character, of unquestionable integrity and responsibility, and of recognized business competence. No person, or director, officer, consultant or stockholder of corporations constituting or having any interest in the assets assigned to the Office may be appointed as an Officer.

Section 5. Internal Guidelines. The Office, through its Chief Privatization Officer, may adopt and implement such internal rules and regulations necessary or convenient for the proper discharge of the functions of the Office. Provided, That such internal rules and regulations must be in accordance with existing laws, orders, decrees and proclamations. Provided further, That such rules and regulations may be subsequently amended, abrogated or disapproved by the Secretary of Finance.

Section 6. Funding. The Office shall be provided with an initial budget of Thirty Million Pesos (P30,000,000.00) to be drawn from the Organizational Adjustment Fund. The Office shall be allowed to retain commissions, due diligence fees and proceeds from the sale of Asset Bidding Rules,

information memoranda and similar documents, as well as a portion or percentage of proceeds from disposition efforts, not to exceed ten percent (10%), to be approved by the Council to maintain a revolving fund to be utilized for the payment of fees and reimbursable expenses and of the costs and expenses incurred by the Office in the conservation and disposition of the assets held by it or in the performance of its other responsibilities under this Executive Order.

Appropriations for the succeeding year shall be incorporated in the budget proposal for the Department of Finance.

#### Article IV. Operational Provisions

Section 1. Transfer of Assets. Pursuant to the provisions of Republic Act No. 8758, the financial assets of APT shall be transferred for disposition by the President to a trust department of the Land Bank of the Philippines. The physical assets remaining at the end of the term of APT shall immediately be transferred to the Office under the Department of Finance for appropriate disposition.

Section 2. Utilization of Proceeds. Upon the effectivity of this Executive Order, all receipts from the sale of assets shall be remitted to the National Treasury in the following proportion: sixty percent (60%) to the special account of the Agrarian Reform Fund and forty percent (40%) to the general fund: Provided further, That except for the subsidiaries of the Government Service Insurance System and the Social Security System, all government owned and controlled corporations shall remit to the National Treasury at least fifty percent (50%) of the net proceeds derived from the sale of shares or assets effective October 1, 1992. Provided further that the net proceeds shall mean gross proceeds less related liabilities and selling expenses as stipulated in the provisions of Republic Act No. 7661.

Section 3. Sale of Small Local Investors. Pursuant to the provisions of Republic Act No. 7886, a minimum of 10% of the sale of assets in corporate form shall be reserved to small local investors to develop the domestic capital market.

Any of the following transactions shall be deemed compliance on the sale to small local investors: (a) Initial Public Offering (IPO), (b) Employee Stock Option/Ownership Plans (ESOPs). Provided, that the Social Security System and Government Service Insurance System shall grant loans to qualified employees of the firms under privatization who would like to avail the ten percent (10%) stock offering as provided in this Executive Order, (c) sale to private and government employees, overseas workers, small farmers/fisherfolks and cooperatives through Government Financial Institutions such as GSIS, LBP, DBP and HDMF, (d) sales of assets/shares to individual investors not exceeding a maximum of P100,000.00, (e) sale of retirement funds, pension funds and other funds managed on behalf of employees and other individuals, (f) sale of privatization bonds issued by the Republic of the Philippines provided that the terms of such privatization bonds give the option to holders thereof to exercise the exchange option contained in such bonds either into shares in corporate assets privatized through the IPO or into a cash amount where the privatized corporate asset is being sold to one or more block investors.

#### Article V. Miscellaneous Provisions

Section 1. Separability Clause – Any portion or provision of this Executive Order that may be declared unconstitutional or invalid shall not have the effect of nullifying the other provisions thereof: Provided, That the remaining portions can still stand and be given effect in their entirety to accomplish the objectives of this Order.

Section 2. Repealing Clause – All executive orders, rules and regulations and other issuances or parts thereof that are inconsistent with the provisions of this Executive Order are hereby repealed and modified accordingly.

Section 3. Effectivity – This Executive Order shall take effect upon publication but not earlier than January 1, 2001.

DONE in the City of Manila, this 6th day of December in the year of our Lord, two thousand.

(Sgd.) JOSEPH EJERCITO ESTRADA  
President  
Republic of the Philippines