



NATIONAL TAX RESEARCH CENTER

People's Freedom of Information Manual

September 30, 2022

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SECTION 1: OVERVIEW

1. **Purpose of the Manual:** The NTRC People's Freedom of Information (FOI) Manual serves as a guide for requests for access to studies, researches and other data and information regarding taxation, fees, and charges and other related fields pursuant to Executive Order (EO) No. 2 on FOI. **(ANNEX A)**
2. **Structure of the Manual:** This Manual sets out the procedures, and rules to be followed by the management of the NTRC when a request for access to information is received. The Executive Director takes charge of all actions carried out under this Manual. He may delegate this responsibility to the chiefs of branches but he shall have overall responsibility for the final decision on FOI requests, (i.e. to decide whether to release all or partially the records, or deny access).
3. **Coverage of the Manual:** The Manual covers all requests for information directed to the NTRC.
4. **FOI Receiving Officer:** For purposes of this Manual, there is a designated FOI Receiving Officer to do the following duties and responsibilities:
 - a. Receive all requests for information and conduct initial evaluation of the request;
 - b. Forward the request to the FOI Decision Maker who has custody of the records;
 - c. Monitor and expedite all FOI requests and appeals;
 - d. Provide assistance to the FOI Decision Maker/s; and
 - e. Provide assistance and support to the public and staff with regard to FOI.
5. **FOI Decision Maker:** The chiefs of branches shall be the Decision Makers, who shall assist in evaluating the requested information and endorse it to the Executive Director for approval.
6. **Executive Director:** The Executive Director makes the final decision on the approval or denial of the request.
7. **Bases for Denial of Request:** A request can be denied on the following grounds:
 - a. NTRC does not have the information requested;
 - b. The information requested contains sensitive personal information protected by the Data Privacy Act of 2012;
 - c. The information requested falls under the list of exceptions to FOI but shall be advised accordingly; and
 - d. The requested information is already posted in the NTRC website but shall be advised accordingly.

SECTION 2: DEFINITION OF TERMS

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 recordings, 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 the NTRC pursuant to law, executive order, and rules and regulations or in connection with the performance or transaction of official business by the NTRC.

Official records shall refer to information produced or received by a public officer or employee or by the NTRC in an official capacity or pursuant to a public function or duty.

Public records shall include information required by laws, executive orders, rules, or regulations to be entered, kept, and made publicly available by the NTRC.

Personal information shall refer 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 NTRC, or when put together with other information would directly and certainly identify an individual.

Sensitive personal information shall be as defined in the Data Privacy Act of 2012 (Republic Act No. 10173) (**ANNEX B**):

- a. About an individual race, ethnic origin, marital status, age, color, and religious philosophical or political affiliations;
- b. About health, education, genetic or sexual life of a person, or to any proceedings 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;
- c. Issued by government agencies peculiar to an individual which includes but not limited to social security numbers, previous or current health records, licenses or denials, suspension or revocation, and tax returns; and
- d. Specifically established by an executive order or an act of Congress to be kept classified.

SECTION 3: PROTECTION TO PRIVACY

While providing for access to information, the NTRC shall afford full protection to a person's right to privacy, pursuant to the Data Privacy Act of 2012, to wit:

1. The NTRC shall ensure that personal information, particularly sensitive personal information, in its custody or under its control is disclosed only as permitted by existing laws;
2. The NTRC shall protect personal information in its custody or under its control by making reasonable security arrangements against unauthorized accesses, leaks or premature disclosures;

3. The FOI Officer, Decision Maker, or any employee or official who has access, whether authorized or unauthorized, to personal information in the custody of the NTRC, shall not disclose that information, except as authorized by existing laws.

SECTION 4: STANDARD PROCEDURE

The following procedure shall govern the filing and processing of request for access to information:

1. Accepting Request

- a. Any person who requests access to information shall submit a written request stating his/her name, contact information, provide valid proof of identification and describe the reason and purpose of the request to NTRC through its Public Assistance Desk (PAD), which handles the receiving and releasing of all FOI requests;
- b. In the absence of a formal written request, any person may request information by accomplishing the NTRC FOI Request Form (**ANNEX C**);
- c. The FOI Receiving Officer shall provide reasonable assistance, free of charge;
- d. The request shall be stamped received by the FOI Receiving Officer, indicating the date and time of the receipt of the written request, and the name, rank, title and position of the public officer who actually received it, with a corresponding signature and copy furnished the requesting party. In case of email request, the email shall be printed out and shall follow the procedure mentioned above, and be acknowledged by electronic mail.

For email request sent on a non-working day, and during non-working hours, receipt shall be at the start of the working hours of the next working day. A confirmation email shall then be sent to the requesting party. For email request to be considered received:

- i. It must be sent to *info@ntrc.gov.ph*; and
 - ii. An acknowledgement email must be sent to the requesting party within one working day.
- e. When the requested information is not in the possession of a government agency (GA1) but is available in another government agency (GA2) under the Executive Branch, the request shall be immediately referred by GA1 to GA2 through the most expeditious manner, but shall not exceed three working days from the receipt of the request. (**ANNEX F**).

2. Response on the Request

- a. Upon receipt of the request for information, the FOI Receiving Officer shall assess the information and endorse the request to the proper authority;
- b. The NTRC shall respond to the requesting party within 15 working days from the date of receipt of the complete request for information;

- c. The period may be extended whenever the request requires extensive search of the records facilities of the NTRC, examination of voluminous records, or in case of the occurrence of fortuitous events or other analogous cases. The FOI Receiving Officer shall inform the requesting party of the extension, setting forth the reasons for such extension. In no case shall the extension exceed 20 working days, unless exceptional circumstances warrant a longer period;
- d. In case of approval, the FOI Decision Maker shall process the request and ensure that all the records have been retrieved and considered;
- e. No requests shall be denied by the Executive Director unless:
 - i. The reason for the request is contrary to law or rules and regulations, or
 - ii. The request falls under the exceptions under the Inventory of Exceptions issued by the Office of the President (**ANNEX D**). The FOI officer shall notify the requesting party in writing, clearly setting forth the ground for denial and the circumstances on which the denial is based.
- f. The NTRC shall not be required to act if, upon determination by the FOI Decision Maker, the requested information is substantially similar or identical to a previous request by the requesting party, whether the same has been granted or denied. The requesting party shall be advised accordingly; and
- g. If the FOI Decision Maker determines that the requested information is already available on the NTRC website, the requesting party shall be advised accordingly and provided with the website link where the information is posted.

SECTION 5: REMEDIES IN CASE OF DENIAL

- 1. In case of a denial of a request for information, the requesting party may appeal to the Executive Director. The appeal shall be in writing, and shall be filed within 15 working days from the notice of denial or from the lapse of the period to respond to the request. The appeal shall be decided within 30 working days from receipt of the appeal.
- 2. Upon exhaustion of administrative appeal remedies, the requesting party may file the appropriate judicial action in accordance with the Rules of Court.

SECTION 6: FEES

- 1. **No Request Fee:** The NTRC shall not charge any fee for accepting requests for information.
- 2. **Reasonable Cost of Reproduction and Copying of the Information:** The NTRC may require the requesting party to shoulder necessary costs, including actual costs of reproduction, copying, and digitization of the information requested. The FOI Receiving Officer shall immediately notify the requesting party about this.

SECTION 7: ADMINISTRATIVE LIABILITY


- 1. **Non-compliance with FOI:** Failure to comply with the provisions of this Manual shall be a ground for the following administrative penalties:
 - a. 1st Offense – Reprimand

- b. 2nd Offense- Suspension of one day to 30 days
 - c. 3rd Offense - Suspension of one month to six months
 - d. 4th Offense - Dismissal from the service
2. **Procedure.** The Revised Rules on Administrative Cases in the Civil Service shall be applicable in the disposition of cases under this Manual.
3. **Provisions for More Stringent Laws, Rules and Regulations.** Nothing in this Manual shall be construed to derogate from any law, any rules, or regulation prescribed by any government authority which provides for more stringent penalties.

SECTION 8: KEY OFFICERS

Name	Designation	Telephone	Email Address
Marlene L. Calubag	Approver	8-527-2064	info@ntrc.gov.ph
Atty. Mark Lester L. Aure	Decision Maker	8-527-2071	info@ntrc.gov.ph
Atty. Jason P. Raposas	Decision Maker	8-527-2049	info@ntrc.gov.ph
Roselyn C. Domo	Decision Maker	8-527-2062	info@ntrc.gov.ph
Donaldo M. Boo	Decision Maker	8-527-2068	info@ntrc.gov.ph
Ma. Berlie L. Amurao	Decision Maker	8-527-2065	info@ntrc.gov.ph
Maria Cecelia B. Rodriguez	Decision Maker	8-527-4128	info@ntrc.gov.ph
Monica G. Rempillo	Decision Maker	8-527-2065	info@ntrc.gov.ph
Atty. Michael F. Ricaza	Decision Maker	8-5317-6363 loc. 8854	info@ntrc.gov.ph
Atty. Jocet Concisa P. Dita	Decision Maker	8-5317-6363 loc. 8854	info@ntrc.gov.ph
Ma. Rhea C. Caro	FOI Officer	8-527-2066	info@ntrc.gov.ph
Gian Carlo D. Rodriguez	FOI Officer	8-562-6825	info@ntrc.gov.ph

Issued this 24th day of October, 2022.


MARLENE LUCERO CALUBAG
 Executive Director

ANNEX A
EXECUTIVE ORDER NO. 02: 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



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 OF FULL PUBLIC DISCLOSURE AND TRANSPARENCY
IN THE PUBLIC SERVICE AND PROVIDING GUIDELINES
THEREFOR**

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

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

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

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

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

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

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

THE PRESIDENT OF THE PHILIPPINES

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 recordings, magnetic or other tapes, electronic data, computer-stored data, or 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, and instrumentalities, including government-owned or -controlled corporations, and state universities and colleges. Local government units (LGUs) are enjoined 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 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 laws 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 as provided in Section 4 hereof.

The determination of the applicability of any of the exceptions to the request shall be the responsibility of the Head of the Office which has custody or control of the information, public record or official record, or of 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 an individual's right to privacy 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 laws, 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; and
- (c) Any employee or official 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 regulations.

SECTION 8. People's Freedom of 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 information:

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

SECTION 9. Procedure. The following procedure shall govern the filing and processing of requests 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 of exceptions as hereinabove provided.
- (b) The public official receiving the request shall provide reasonable assistance, free of charge, to enable all requesting parties, 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 or 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 the requirements of sub-section (a) hereof as soon as practicable but not exceeding fifteen (15) working days from the receipt thereof. The response mentioned above refers to the decision of the 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 events or other analogous cases. The government office shall

notify the person making the request of such extension, setting forth the reasons for the extension. In no case shall the extension go beyond twenty (20) working days counted from the end of the original period, 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 requested, 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 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 wholly or partially, it shall, as soon as practicable and within fifteen (15) working days from the receipt of the request, notify the requesting party of 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 provided shall be deemed a denial of the request for access to information.

SECTION 13. Remedies in Case of Denial of Request for Access to Information. A person whose request for access to information has been denied may avail himself of the remedies set forth below:

- (a) Denial of any request for access to information may be appealed to the person or office next higher in authority, following the procedure mentioned in Section 8 (f) of this Order: Provided, that the written appeal must be filed by the same person making the request within fifteen (15) calendar days from the notice of denial or from the lapse of the relevant period to respond to the request.
- (b) The appeal shall 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 party may file the appropriate judicial action 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 and 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.

By the President:

R. Duterte



[Signature]
SALVADOR C. MEDIALDEA
Executive Secretary



CERTIFIED COPY:

MARIANITO M. DIMAANDAL
DIRECTOR IV
MALACANANG RECORDS OFFICE

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ANNEX B
RA NO. 10173: AN ACT PROTECTING INDIVIDUAL PERSONAL INFORMATION IN
INFORMATION COMMUNICATIONS SYSTEMS IN THE GOVERNMENT AND THE
PRIVATE SECTOR, CREATING FOR THIS PURPOSE A NATIONAL PRIVACY
COMMISSION, AND FOR OTHER PURPOSES

ANNEX B

Republic of the Philippines
Congress of the Philippines
Metro Manila
Fifteenth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fifth day of July, two thousand eleven.

[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.

- (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

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;

(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.

Approved,

(Sgd.) **FELICIANO BELMONTE JR.**
*Speaker of the House
of Representatives*

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

This Act which is a consolidation of Senate Bill No. 2965 and House Bill No. 4115 was finally passed by the Senate and the House of Representatives on June 6, 2012.

(Sgd.) **MARILYN B. BARUA-YAP**
*Secretary General
House of Representatives*


(Sgd.) **EMMA LIRIO-REYES**
Secretary of the Senate

Approved: **AUG 15 2012**

(Sgd.) **BENIGNO S. AQUINO III**
President of the Philippines

ANNEX C
FOI REQUEST FORM

FOI Request Form

		NATIONAL TAX RESEARCH CENTER 3F Palacio del Gobernador Condominium, General Luna Street corner A. Soriano Avenue, Intramuros, Manila
PORMULARYO NG KAHILINGAN (FOI) FOI Request Form		
TITULONG DOKUMENTO / (Title of the Document): _____		
MGA TAON/PANAHONG SAKLAW / (Year): _____		
LAYUNIN / (Purpose): _____ _____ _____		
PANGALAN / (Name): _____		CONTACT Nos. _____
LAGDA / (Signature): _____		PETA / (Date): _____
TIRAHAN / (Address): _____		KATIBAYAN NG PAGKAKAKILANLAN / (Proof of Identity): Passport No. _____ Driver's License _____ Other _____
PARAAN NG PAGTANGGAP NG IMPORMASYON / (How would you like to receive the information?)		
<input type="checkbox"/> Email _____		
<input type="checkbox"/> Fax _____		
<input type="checkbox"/> Postal Address _____		
<input type="checkbox"/> Pick-up (Office hours) _____		

Gawaing itinalaga kay: _____ (Submitted to) (Lumagda sa ibaba ng pangalang nakalimbag)		
Petsa/Oras ng pagkatalaga: _____ (Date / Time of Submission)		
Taong nagpapatunay ng gawaing natapos: _____ (Certified by) (Lumagda sa ibaba ng pangalang nakalimbag)		
Uri ng isinagawang aksiyon: _____ (Type of action conducted)		
		Tinanggap ni / (Received by): _____ _____ FOI Receiving Officer
Remarks: _____ _____		

INVENTORY OF EXCEPTIONS TO EXECUTIVE ORDER NO. 02

Office of the President of the Philippines Malacañang

MEMORANDUM CIRCULAR NO. 89

UPDATING THE INVENTORY OF EXCEPTIONS TO THE RIGHT TO ACCESS OF INFORMATION UNDER EXECUTIVE ORDER (EO) NO. 02, SERIES OF 2016

WHEREAS, pursuant to Section 4 of EO No. 02, series of 2016 (EO No. 02), the Office of the President (OP) issued a Memorandum circularizing the inventory of exceptions to the right to access information under EO No. 02 (Inventory of Exceptions) on 24 November 2016;

WHEREAS, Section 4 of EO No. 02 directs the Department of Justice (DOJ) and the Office of the Solicitor General (OSG) to update the Inventory of Exceptions as the need to do so arises and the OP to accordingly circularize the same;

WHEREAS, Section 1 of Memorandum Circular No. 49, series of 2018, created the Inter-Agency Freedom of Information Exceptions Policy Committee (IA-FOI-EPC), with the DOJ and the OSG as co-chairs, to review the Inventory of Exceptions and periodically update the same to reflect changes in existing laws and jurisprudence; and

WHEREAS, the IA-FOI-EPC, through IA-FOI-EPC Resolution Nos. 2019-001 and 2021-001, proposed updates to the Inventory of Exceptions;

NOW THEREFORE, the attached updated Inventory of Exceptions is hereby circularized for the guidance of all government offices and instrumentalities covered by EO No. 02 and the general public.

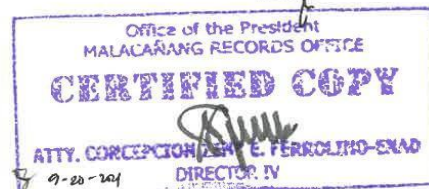
The foregoing list of exceptions shall be without prejudice to existing laws, jurisprudence, rules or regulations authorizing the disclosure of the excepted information upon satisfaction of certain conditions in certain cases, such as the consent of the concerned party or as may be ordered by the courts.

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.

DONE, in the City of Manila, this 13th day of September in the Year of our Lord, Two Thousand and Twenty-One.

By authority of the President:

SALVADOR C. MEDIALDEA



Exceptions to 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 following are the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence:¹

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.

¹ 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;² and
 - b. Matters covered by deliberative process privilege, namely:
 - i. advisory opinions, recommendations, resolutions, minutes of meetings, 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;³ and
 - ii. information, record or document comprising drafts of decisions, orders, rulings, policy decisions, memoranda, etc.;⁴
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;⁵

² 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.

³ *Akbayan v. Aquino*, *supra*; *Chavez v. NHA*, G.R. No. 164527, 15 August 2007; and *Chavez v. PCGG*, *supra*; *Sereno v. Committee on Trade and Related Matters of the National Economic Development Authority*, G.R. No. 175210, 01 February 2016, 780 PHIL 1-18; and *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, 29 June 2016. The privilege of invoking this exception ends when the executive agency adopts a definite proposition.

⁴ 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.

⁵ *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; *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, 4 July 2017, 812 PHIL 179-853; 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." This exception also includes records, papers, and information related to matters provided under Sections 16, 18, and 45, *The Anti-Terrorism Act of 2020* [Republic Act (RA) No. 11479] and its Implementing Rules and Regulations (IRR), as may be invoked by the government agency involved.

- b. Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs;⁶ and
 - c. Patent applications, the publication of which would prejudice national security and interests;⁷
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;⁸
 - 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;⁹
 - c. When disclosure of information would put the life and safety of an individual in imminent danger;¹⁰
 - d. Any information given by informants leading to the recovery of carjacked vehicles and apprehension of the persons charged with carjacking;¹¹ and
 - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;¹²

⁶ *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.

⁷ 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).

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

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

¹⁰ Section 3(b), Rule IV, Rules on CCESPOE.

¹¹ Section 19, *New Anti Carjacking Act of 2016* (RA No. 10883). May be invoked by law enforcement agencies.

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

4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused. These include:
- a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy,¹³ personal information or records,¹⁴ including sensitive personal information, birth records,¹⁵ school records,¹⁶ or medical or health records;¹⁷

Sensitive personal information as defined under the *Data Privacy Act of 2012* refers to personal information:¹⁸

- (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

¹³ Section 3(e), Rule IV, Rules on CCESPOE.

¹⁴ 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.

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

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

¹⁷ 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); Section 9, *Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act* (RA No. 11332); Section 36, *Universal Health Care Act* (RA No. 11223); Section 28, *National Integrated Cancer Control Act* (RA No. 11215); and Section 5(l), *Mental Health Act* (RA No. 11036). Mental health records under RA No. 11036 include information on any aspect of the mental health, treatment, or care of the service user.

¹⁸ Section 3(l), *Data Privacy Act of 2012*. See also Section 9, *Free Internet Access in Public Places Act* (RA No. 10929); Section 26, *Safe Spaces Act* (RA No. 11313); and Section 21, *Tax Amnesty Act* (RA No. 11213).

individual¹⁹ 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.²⁰

Disclosure of personal information about any individual who is or was an officer or employee of a government institution shall be allowed, provided that such information relates to the position or functions of the individual, including: (1) the fact that the individual is or was an officer or employee of the government institution; (2) the title, business address and office telephone number of the individual; (3) the classification, salary range and responsibilities of the position held by the individual; and (4) the name of the individual on a document prepared by the individual in the course of employment with the government;²¹

- b. Source of any news report or information appearing in newspapers, magazines or periodicals of general circulation obtained in confidence;²² 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;²³
 - (2) children in conflict with the law from initial contact until final disposition of the case;²⁴
 - (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;²⁵
 - (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;²⁶
 - (5) cases involving violence against women and their children, including the name, address, telephone number, school, business, address,

¹⁹ Article 26(2), *Civil Code*.

²⁰ Section 11, *Data Privacy Act of 2012*.

²¹ Section 4, *Data Privacy Act of 2012*.

²² *An Act Expanding the Coverage of Exemptions from Revealing the Source of Published News or Information Obtained in Confidence by Including Journalists from Broadcasts, and News Agencies, Amending for the Purpose Section 1 of RA No. 53, as Amended By RA No. 1477 (RA No. 11458)*. May be invoked by government newspapers.

²³ Section 12, *Family Courts Act of 1997* (RA Act No. 8369).

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

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

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

- employer, or other identifying information of a victim or an immediate family member;²⁷
- (6) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;²⁸
 - (7) names of victims of child abuse, exploitation or discrimination;²⁹
 - (8) cases of gender-based streets and public spaces sexual harassment, including information on the victim and the accused who is a minor;³⁰
 - (9) 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;³¹
 - (10) records, documents, and communications of proceedings involving domestic, inter-country, and administrative, adoptions, including the identity of the child, natural parents and adoptive parents;³²
 - (11) names of students who committed acts of bullying or retaliation;³³
 - (12) children in situations of armed conflict;³⁴
 - (13) 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; and³⁵
 - (14) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing;³⁶

²⁷ 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.

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

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

³⁰ Section 26, *Safe Spaces Act* (RA No. 11313).

³¹ 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*.

³² 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; Section 14, *Simulated Birth Rectification Act* (RA No. 11222) and Section 28 of IRR of RA No. 11222.

³³ Section 3(h), *Anti-Bullying Act* (RA No. 10627).

³⁴ Section 19, *Special Protection of Children in Situations of Armed Conflict Act* (RA No. 11188).

³⁵ Sections 60, 64 and 67, *Comprehensive Dangerous Drugs Act of 2002* (RA No. 9165).

³⁶ Section 44, *Philippine HIV and AIDS Policy Act* (RA No. 11166). Information covered by Section 44 may be disclosed with the written consent of the affected person or in accordance with Sections 45 and 46 of RA No. 11166.

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;³⁷
 - b. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics Authority;³⁸
 - c. Records and reports submitted to the Social Security System by the employer or member;³⁹
 - d. Information of registered persons with the Philippine Identification System;⁴⁰
 - e. Information gathered for the HIV and AIDS monitoring and evaluation program under RA No. 11166 and all other related health intelligence activities;⁴¹
 - f. 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;⁴²
 - g. Applications and supporting documents filed pursuant to the *Omnibus Investments Code of 1987*;⁴³

³⁷ 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); *Revised Philippine Ports Authority Manual of Corporate Governance*; and Section 18, *Energy Virtual One-Stop Shop Act* (RA No. 11234).

³⁸ Section 26, *Philippine Statistical Act of 2013* (RA No. 10625) and Section 4, *Commonwealth Act No. 591*. See also Section 10, *Community-Based Monitoring System Act* (RA No. 11315).

³⁹ Section 24(c), *Social Security Act of 1997* (RA No. 1161, as amended by RA No. 8282).

⁴⁰ Section 17, *Philippine Identification System Act* (RA No. 11055).

⁴¹ Section 43, *Philippine HIV and AIDS Policy Act* (RA No. 11166).

⁴² 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.

⁴³ Section 81, EO No. 226 (s. 1987), as amended.

- h. Documents submitted through the Government Electronic Procurement System;⁴⁴
- i. 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*;⁴⁵
- j. 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;⁴⁶
- k. 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;⁴⁷
- l. 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;⁴⁸
- m. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;⁴⁹
- n. Certain information and reports submitted to the Insurance Commissioner pursuant to the *Insurance Code*;⁵⁰
- o. Information on registered cultural properties owned by private individuals;⁵¹
- p. Data submitted by a higher education institution to the Commission on Higher Education (CHED);⁵²

⁴⁴ Section 9, *Government Procurement Reform Act* (RA No. 9184).

⁴⁵ Section 32, *Electronic Commerce Act of 2000* (RA No. 8792).

⁴⁶ Section 94(f), *Philippine Mining Act of 1995* (RA No. 7942).

⁴⁷ 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).

⁴⁸ Section 9(c), *Anti-Money Laundering Act of 2001*, as amended. May be invoked by AMLC, government banks and its officers and employees.

⁴⁹ Section 10, *Safeguard Measures Act*.

⁵⁰ Section 297 in relation with Section 295 and Section 356, *The Insurance Code* (as amended by RA No. 10607).

⁵¹ Section 14, *National Cultural Heritage Act of 2009* (RA No. 10066).

⁵² CHED Memorandum Order No. 015-13, 28 May 2013.

- q. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;⁵³
 - r. Records or information in connection with any investigation conducted by the Presidential Anti-Corruption Commission (PACC) when such disclosure will deprive the respondent of the right to a fair and impartial investigation;⁵⁴ and
 - s. Records of surveillance of suspects and interception and recording of communications acquired by a law enforcement agent or military personnel pursuant to the *Anti-Terrorism Act of 2020*.⁵⁵
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.⁵⁶
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:
- a. Mediation and domestic or international arbitration proceedings, including records, evidence and the arbitral awards, pursuant to the *Alternative Dispute Resolution Act of 2004*;⁵⁷
 - b. Matters involved in an Investor-State mediation;⁵⁸

⁵³ 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).

⁵⁴ Section 3, Rule IV, PACC Resolution No. 001, s. 2018 (IRR of the PACC).

⁵⁵ Section 16, *The Anti-Terrorism Act of 2020* (RA No. 11479).

⁵⁶ Section 3(g), Rule IV, Rules on CCESPOE.

⁵⁷ 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.

⁵⁸ Article 10, International Bar Association Rules for Investor-State Mediation.

- c. Information and statements made at conciliation proceedings under the *Labor Code*;⁵⁹
- d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);⁶⁰
- 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;⁶¹
- f. Information related to investigations which are deemed confidential under the *Securities Regulations Code*;⁶²
- g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;⁶³
- 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*;⁶⁴
- i. Investigation report and the supervision history of a probationer;⁶⁵
- j. Those matters classified as confidential under the *Anti-Terrorism Act of 2020* and its IRR;⁶⁶
- k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies;⁶⁷ 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;⁶⁸

⁵⁹ Article 237, *Labor Code*.

⁶⁰ Section 7.1, Rule 7, CIAC Revised Rules of Procedure Governing Construction Arbitration.

⁶¹ Section 178, *Revised Corporation Code of the Philippines*. May be invoked by the SEC and any other official authorized by law to make such examination.

⁶² Sections 13.4, 15.4, 29.2 (b), and 64.2 of the *Securities Regulation Code*.

⁶³ 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.

⁶⁴ DOJ Department Circular No. 006-16 (No. 6), 10 February 2016.

⁶⁵ Section 17, *Probation Law of 1976* [PD No. 968 (s.1976)].

⁶⁶ Sections 18 and 45, *The Anti-Terrorism Act of 2020* (RA No. 11479) and Rules 5.8 and 5.19 of the IRR of RA No. 11479.

⁶⁷ Section 14, Civil Service Commission Resolution No. 01-0940.

⁶⁸ Section 18, Rule 139-B and Section 24, Rule 130 of the Rules of Court; and Section 11 of the Rule on DNA Evidence, A.M. No. 06-11-5-SC.

8. Matters considered confidential under banking and finance laws and their amendatory laws, such as:
 - a. RA No. 1405 (*Law on Secrecy of Bank Deposits*);
 - b. RA No. 6426 (*Foreign Currency Deposit Act of the Philippines*) and relevant regulations;
 - c. RA No. 8791 (*The General Banking Law of 2000*);
 - d. RA No. 9160 (*Anti-Money Laundering Act of 2001*);
 - e. RA No. 9510 (*Credit Information System Act*); and
 - f. RA No. 245, as amended by Presidential Decree No. 1878;
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;⁶⁹
 - (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);⁷⁰ and
 - (3) Refugee proceedings and documents under the *1951 Convention Relating to the Status of Refugees*, as implemented by DOJ Circular No. 58 (s. 2012);
 - b. Testimony from a government official, unless pursuant to a court or legal order;⁷¹
 - 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

⁶⁹ 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.

⁷⁰ Article 7, UNCITRAL Transparency Rules.

⁷¹ *Senate v. Neri, supra*; *Senate v. Ermita, supra*.

- (2) any commercial purpose other than by news and communications media for dissemination to the general public;⁷²
- d. Lists, abstracts, summaries of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;⁷³
- e. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;⁷⁴
- f. Requested information pertains to comments and disclosures on pending cases in judicial proceedings;⁷⁵ and
- g. Attorney-client privilege existing between government lawyers and their client.⁷⁶

⁷² Section 8(D), *Code of Conduct and Ethical Standards for Public Officials and Employees*.

⁷³ *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.

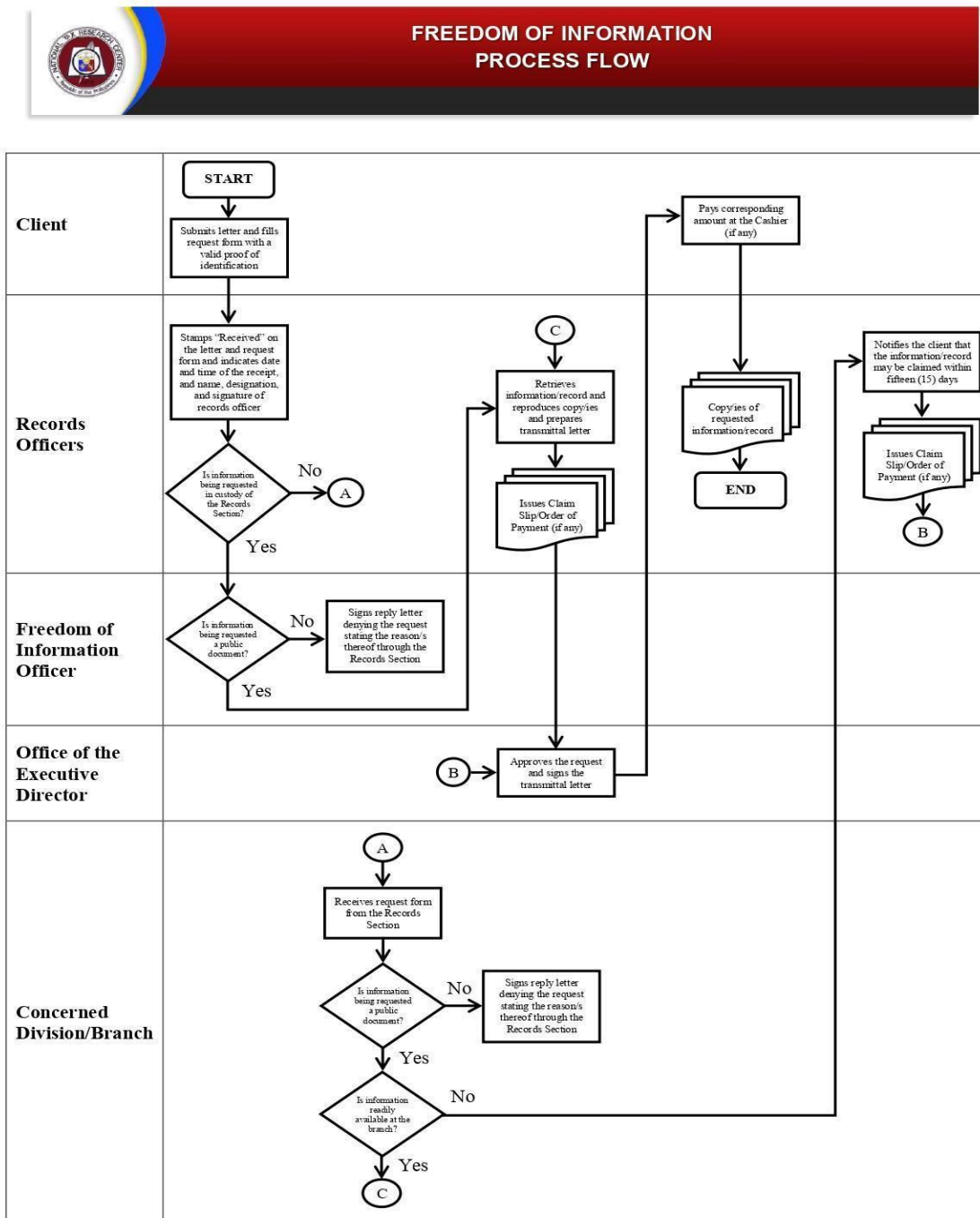
⁷⁴ Examples: 2012 Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses and the Provision of CHR Assistance; Government Service Insurance System's Rules of Procedure of the Committee on Claims; National Labor Relations Commission Resolution No. 01-02, Amending 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.

⁷⁵ *Romero v. Guerson*, G.R. No. 211816, 18 March 2015.

⁷⁶ Canon 21 of the *Code of Professional Responsibility*.

ANNEX E FOI PROCESS FLOW

ANNEX E



ANNEX F
GUIDELINES ON THE REFERRAL OF REQUESTED INFORMATION, OFFICIAL RECORD/S
AND PUBLIC RECORD/A TO THE APPROPRIATE GOVERNMENT AGENCY OTHERWISE
KNOWN AS THE “NO WRONG DOOR POLICY FOR FOI”



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Tanggapang Pampanguluhan sa Operasyong Komunikasyon
Ermita, City of Manila

FOI-MC No. 21- 05

FREEDOM OF INFORMATION
MEMORANDUM CIRCULAR

FOR : ALL AGENCIES, DEPARTMENTS, BUREAUS, OFFICES AND INSTRUMENTALITIES OF THE EXECUTIVE BRANCH INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS (GOCCS), STATE UNIVERSITIES AND COLLEGES (SUCS), AND LOCAL WATER DISTRICTS (LWDS)

SUBJECT : 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”

WHEREAS, Executive Order (EO) No. 02, s. 2016 was issued by President Rodrigo Roa R. Duterte to operationalize the Constitutional Right of Access to Information, and Policy of Full Public Disclosure in the Executive Department;

WHEREAS, Memorandum Order (MO) No. 10, s. 2016 designated the Presidential Communications Operations Office (PCOO) as the lead agency in the implementation of EO No. 02, s. 2016;

WHEREAS, Department Order No. 18, s. 2017, issued by the PCOO, created the Freedom of Information – Project Management Office (FOI-PMO) to exercise the mandate of MO No. 10, s. 2016;

WHEREAS, in order to ensure the policy of the President to have an open, transparent and accountable government, it is the mandate of the PCOO to develop programs and mechanisms to enhance the capacity of government agencies to comply with the FOI program;

WHEREAS, there is a need to break the prevailing “silo system” and lack of interconnection among government agencies, with the end goal of a government acting as a singular unit serving its primary client, its citizens;

NOW, THEREFORE, by virtue of PCOO's mandate to develop programs and mechanism to ensure compliance with the FOI program, particularly on addressing the issue regarding the referral of any requested information, official record/s, or public record/s to the appropriate government agency, these rules are hereby prescribed and promulgated for the information, guidance and compliance of all concerned:

Section 1. Purpose. – This rule seeks to set guidelines for the referral of any requested information, official record/s, or public record/s to the appropriate government agency by another agency which does not have in its possession or custody the requested information or records, or is not authorized to release the information to the public.

Section 2. Coverage. – This Order shall cover all government agencies under the Executive branch implementing the FOI Program, pursuant to EO No. 2, s. 2016 and all other related issuances, and applies to both paper-based and electronic form of requesting information.

Section 3. Request for Information. – Any person who requests for access to information shall comply with Section 9 of EO No. 02, s. 2016 and all other pertinent laws, existing rules and regulations, issuances, and orders. For purposes of this rule, information and records shall refer to information, official record/s, or public record/s as defined under EO No. 02, s. 2016.

Section 4. Acceptance of request. – As a general rule, all fully compliant requests for information shall be accepted by the FOI Receiving Officer (FRO) and FOI Decision Maker (FDM). No request for information shall be denied or refused acceptance by a government office unless the reason for the request is contrary to the Constitution, pertinent laws, existing rules and regulations, or it is one of the exceptions provided under the Inventory of Exceptions.

Section 5. Process of Referral. – When the requested information is not in the possession of a government agency (government agency no. 1 or GA1), but is available in another government agency (government agency no. 2 or GA2) under the Executive Branch, the request shall be immediately referred by GA1 to GA2 through the most expeditious manner but not exceeding three (3) working days from the receipt of the request. This shall be considered as the “**First Referral**” and a fresh period will apply.

Referral to the appropriate government agency shall mean that another government office is the proper repository or custodian of the requested information or records, or have control over the said information or records.

If GA1 fails to refer the request within three (3) working days upon its receipt, the FRO shall act on it within the remaining period to respond pursuant to EO No. 02, s. 2016. No fresh period shall apply.

If GA1, in good faith, erroneously referred the request to GA2, the latter shall immediately notify the former as well as the requesting party, that the information requested is not available in their agency.

GA2, to whom the request was referred under the First Referral may subsequently refer the request to another government agency (government agency no. 3 or GA3) under the procedure set forth in the first paragraph of this Section. This shall be considered as the **“Second Referral”** and another fresh period shall apply.

Referrals under this Order shall only be limited to two (2) subsequent transfers of request. A written or email acknowledgement of the referral shall be made by the FRO of the government agency where it was referred.

The requesting party shall be notified of the referral and must be provided with the reason or rationale thereof, and contact details of the government office where the request was referred.

Section 6. FOI Internal Messenger. - The FOI-PMO shall create a **“FOI Internal Messenger”**. Such feature shall be included in the dashboards of FROs and FDMs, located at the eFOI portal or www.foi.gov.ph, where all FROs and FDMs can ask or confirm with each other on which agency has the control and custody of any information or record being requested.

Please see Annex “A” of this Circular for the No Wrong Door Policy Flowchart.

Section 7. Status of the Request. - A request that is referred to the appropriate government agency is considered **successful** if the same is acknowledged and the requested information is disclosed to the requestor.

If GA3, after the second referral, still cannot provide the information requested, it shall deny the said request and shall properly notify the requesting party.

In all phases of the referral, the requesting party shall be informed in writing, email, and/or through the eFOI of the status of his/her request.

Section 8. Inventory of Receiving Officers and Decision Makers, and Agency Information Inventory. - For the convenience of all FROs and FDMs

in implementing this Circular, an inventory of the names and contact details of all designated FROs and FDMs of government agencies, and an Agency Information Inventory (AII) shall be compiled by the FOI-PMO.

The FOI-PMO shall be the central repository of the inventory of all designated FROs and FDMs and shall collate and update the names and contact information of the designated FROs and FDMs of each government agency. The inventory shall be posted at the eFOI portal, www.foi.gov.ph. FOI-PMO shall strictly adhere to Republic Act No. 10173 or the Data Privacy Act of 2012.

To assist the FROs in locating the requested information or record, an annual updating of the AII shall be required of all agencies on-boarded on the eFOI Portal. The consolidated inventory of information shall likewise be made available in the dashboard of the FRO and FDM for ease of access and information.

Section 9. Separability Clause. If, for any reason, any part or provision of this Memorandum Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

Section 10. Repealing Clause. All orders, rules and regulations, memoranda, circulars, and issuances or any part thereof inconsistent with the provisions of this Memorandum Circular are hereby repealed, amended or modified accordingly.

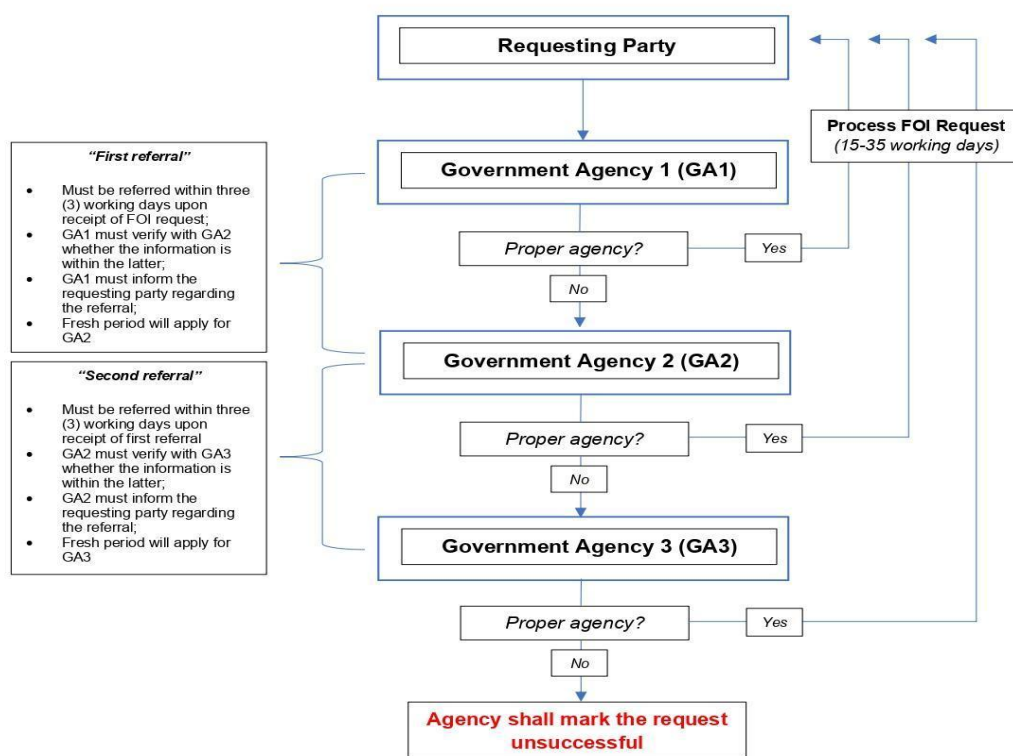
Section 11. Effectivity. This Memorandum Circular shall take effect immediately.

Manila, Philippines, 27th day of August 2021.


JOSE RUPERTO MARTIN M. ANDANAR
Secretary and FOI Champion

Annex A

NO WRONG DOOR POLICY FLOWCHART



NOTE:

If GA1 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.