

FOI MANUAL ANNEXES

LIST OF ANNEXES

- A: Executive Order No. 02 s. 2016
Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies of Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor
- B: Office of the President Memorandum Circular No. 15 (issued on March 17, 2023) Updating the Inventory of Exceptions to the Right to Access of Information Under Executive Order No. 02, s. 2016
- C: FOI Memorandum Circular No. 01 s. 2016
Freedom of Information Program
- D: National Privacy Commission Advisory No. 2017-02
Access to Personal Data Sheets of Government Personnel
- E: FOI Memorandum Circular No. 01 s. 2019
Guidelines on the Freedom of Information Appeals Mechanism
- F: FOI Memorandum Circular No. 04 s. 2019
Guidelines on Redaction and Extraction of Information before disclosure to the public
- G: FOI Request Form
- H: FOI - Memorandum Circular 21-05
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"

xxx



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.

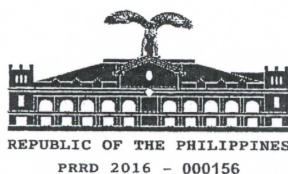
Done, in the City of Manila, this 23rd day of July in the year of our Lord Two Thousand and Sixteen.

By the President:

R. Duterte



[Signature]
SALVADOR C. MEDIALDEA
Executive Secretary



CERTIFIED COPY:

[Signature]
MARIANITO M. DIMAANDAL
DIRECTOR IV
MALACANANG RECORDS OFFICE

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

MEMORANDUM CIRCULAR NO. 15

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

WHEREAS, pursuant to Section 4 of Executive Order (EO) No. 02, (s. 2016), 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 (MC) No. 49, (s. 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;

WHEREAS, On 16 September 2021, MC No. 89, (s. 2021) was issued circularizing the updated Inventory of Exceptions;

WHEREAS, the IA-FOI-EPC, through IA-FOI-EPC Resolution Nos. 2021-002 and 2022-001, proposed further updates to the Inventory of Exceptions;

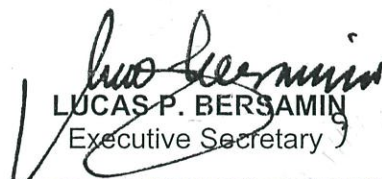
NOW THEREFORE, the attached updated Inventory of Exceptions is hereby circularized for the guidance of all government offices and instrumentalities covered by EO No. 02 and the general public.

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 ~~17th~~ day of March in the Year of our Lord, Two Thousand and Twenty-Three.

By authority of the President:


LUCAS P. BERSAMIN
Executive Secretary



Exceptions to Right to Access of Information

For the guidance of all government offices and instrumentalities covered by EO No. 02 (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 carnapped vehicles and apprehension of the persons charged with carnapping;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 Carnapping 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. This includes information collected pursuant to Section 18 of the *Department of Migrant Workers Act* (RA No. 11641).

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) records of cases and documents involving actions for support including petitions for recognition and enforcement of foreign decisions or judgments on support;²⁸
 - (7) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;²⁹
 - (8) names of victims of child abuse, exploitation or discrimination;³⁰
 - (9) cases of gender-based streets and public spaces sexual harassment, including information on the victim and the accused who is a minor;³¹
 - (10) 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;³²
 - (11) records, documents, and communications of proceedings involving domestic, inter-country, and administrative, adoptions, including the identity of the child, natural parents and adoptive parents;³³
 - (12) names of students who committed acts of bullying or retaliation;³⁴
 - (13) children in situations of armed conflict;³⁵
 - (14) 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;³⁶ and

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 Sections 29 and 30, A.M. No. 21-03-02-SC, *Re: Rules on Action for Support and Petition for Recognition and Enforcement of Foreign Decisions or Judgments on Support*.

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

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

³¹ Section 26, *Safe Spaces Act* (RA No. 11313).

³² 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*.

³³ Section 39, *Domestic Administrative Adoption and Alternative Child Care Act* (RA No. 11642); 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.

³⁴ Section 3(h), *Anti-Bullying Act* (RA No. 10627).

³⁵ Section 19, *Special Protection of Children in Situations of Armed Conflict Act* (RA No. 11188).

³⁶ Sections 60, 64 and 67, *Comprehensive Dangerous Drugs Act of 2002* (RA No. 9165).

(15) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing.³⁷

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

³⁷ 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.

³⁸ 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*; Section 18, *Energy Virtual One-Stop Shop Act* (RA No. 11234); Section 14, *Philippine Energy Research and Policy Institute Act* (RA No. 11572); Section 270, *National Internal Revenue Code* (RA No. 8424, as amended by RA No. 10963); and Section 33, *LPG Industry Regulation Act* (RA No. 11592).

³⁹ 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).

⁴⁰ Section 24(c), *Social Security Act of 1997* (RA No. 1161), as amended by RA No. 8282).

⁴¹ Section 17, *Philippine Identification System Act* (RA No. 11055).

⁴² Section 43, *Philippine HIV and AIDS Policy Act* (RA No. 11166).

- 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;⁴³
- g. Applications and supporting documents filed pursuant to the *Omnibus Investments Code of 1987*;⁴⁴
- h. Documents submitted through the Government Electronic Procurement System;⁴⁵
- 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*;⁴⁶
- 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;⁴⁷
- 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;⁴⁸
- 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;⁴⁹
- m. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;⁵⁰
- n. Certain information and reports submitted to the Insurance Commissioner pursuant to the *Insurance Code*;⁵¹

⁴³ 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.

⁴⁴ Section 81, EO No. 226 (s. 1987), as amended.

⁴⁵ Section 9, *Government Procurement Reform Act* (RA No. 9184).

⁴⁶ Section 32, *Electronic Commerce Act of 2000* (RA No. 8792).

⁴⁷ Section 94(f), *Philippine Mining Act of 1995* (RA No. 7942).

⁴⁸ 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).

⁴⁹ Section 9(c), *Anti-Money Laundering Act of 2001*, as amended. May be invoked by AMLC, government banks and its officers and employees.

⁵⁰ Section 10, *Safeguard Measures Act*.

⁵¹ Section 297 in relation with Section 295 and Section 356, *The Insurance Code* (as amended by RA No. 10607).

- o. Information on registered cultural properties owned by private individuals;⁵²
 - p. Data submitted by a higher education institution to the Commission on Higher Education (CHED);⁵³
 - q. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;⁵⁴
 - 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;⁵⁵ 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*.⁵⁶
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 where 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.⁵⁷
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:

⁵² Section 14, *National Cultural Heritage Act of 2009* (RA No. 10066).

⁵³ CHED Memorandum Order No. 015-13, 28 May 2013.

⁵⁴ 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).

⁵⁵ Section 3, Rule IV, PACC Resolution No. 001, s. 2018 (IRR of the PACC).

⁵⁶ Section 16, *The Anti-Terrorism Act of 2020* (RA No. 11479).

⁵⁷ Section 3(g), Rule IV, Rules on CCESPOE.

- a. Mediation and domestic or international arbitration proceedings, including records, evidence and the arbitral awards, pursuant to the *Alternative Dispute Resolution Act of 2004*;⁵⁸
- b. Matters involved in an Investor-State mediation;⁵⁹
- c. Information and statements made at conciliation proceedings under the *Labor Code*;⁶⁰
- d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);⁶¹
- 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;⁶²
- f. Information related to investigations which are deemed confidential under the *Securities Regulations Code*;⁶³
- g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;⁶⁴
- 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*;⁶⁵
- i. Investigation report and the supervision history of a probationer;⁶⁶
- j. Those matters classified as confidential under the *Anti-Terrorism Act of 2020* and its IRR;⁶⁷

⁵⁸ 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.

⁵⁹ Article 10, International Bar Association Rules for Investor-State Mediation.

⁶⁰ Article 237, *Labor Code*.

⁶¹ Section 7.1, Rule 7, CIAC Revised Rules of Procedure Governing Construction Arbitration.

⁶² 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.

⁶³ Sections 13.4, 15.4, 29.2 (b), and 64.2 of the *Securities Regulation Code*.

⁶⁴ 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.

⁶⁵ DOJ Department Circular No. 006-16 (No. 6), 10 February 2016.

⁶⁶ Section 17, *Probation Law of 1976* [PD No. 968 (s.1976)].

⁶⁷ 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.

- k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies;⁶⁸
 - l. Investigation proceedings and records during the preliminary investigation in administrative cases in the civil service;⁶⁹
 - m. 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;⁷⁰ and
 - n. Information on a bank inquiry orders issued by the Court of Appeals, including its contents and its receipt.⁷¹
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*), as amended by RA No. 11521;
 - 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:

⁶⁸ Section 14, Civil Service Commission (CSC) Resolution No. 01-0940.

⁶⁹ Section 21, 2017 Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1701077.

⁷⁰ Section 18, Rule 139-B and Section 24, Rule 130 of the Rules of Court; Section 11 of the Rule on DNA Evidence, A.M. No. 06-11-5-SC; and Section 26 of the Rule on Facilitated Naturalization of Refugees and Stateless Persons, A.M. No. 21-07-22-SC.

⁷¹ Section 16, A.M. No. 21-03-5-CA, *Re: Rule of Procedure in Cases of Bank Inquiry into or Examination of Deposit and Investment Accounts Relating to an Unlawful Activity or a Money Laundering Offense under Republic Act No. 9160, as Amended*.

- (1) When the disclosure would prejudice legitimate commercial interest or competitive position of investor-states pursuant to investment agreements;⁷²
 - (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);⁷³ 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;⁷⁴
 - c. When the purpose for the request of Statement of Assets, Liabilities and Net Worth is any of the following:
 - (1) any purpose contrary to morals or public policy; or
 - (2) any commercial purpose other than by news and communications media for dissemination to the general public;⁷⁵
 - d. Failure to comply with regulations on access of records imposed by the records custodian;⁷⁶
 - e. Lists, abstracts, summaries of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;⁷⁷
 - f. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;⁷⁸

⁷² 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.

⁷³ Article 7, UNCITRAL Transparency Rules.

⁷⁴ *Senate v. Neri, supra*; *Senate v. Ermita, supra*.

⁷⁵ Section 8(D), *Code of Conduct and Ethical Standards for Public Officials and Employees*.

⁷⁶ *Biraogo v. Ombudsman Martires*, G.R. No. 254516, 02 February 2021.

⁷⁷ *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.

⁷⁸ 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; Section X808 of Bangko Sentral ng Pilipinas Circular No. 706, s. 2011; 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*

- g. Requested information pertains to comments and disclosures on pending cases in judicial proceedings;⁷⁹ and
- h. Attorney-client privilege existing between government lawyers and their client.⁸⁰

A. Reyes, G.R. No. 163155, 21 July 2006; and Questionnaires in the Professional Regulation Commission test banks, pursuant to *Antolin-Rosero v. Professional Regulation Commission*, G.R. No. 220378, 30 June 2021.

⁷⁹ *Romero v. Guerzon*, G.R. No. 211816, 18 March 2015.

⁸⁰ Canon 21 of the *Code of Professional Responsibility*.



Republic of the Philippines
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Malacañang, Manila

FOI - MC No. 01 s. 2016

**FREEDOM OF INFORMATION
MEMORANDUM CIRCULAR**

FOR : All Agencies, Departments, Bureaus, Offices and Instrumentalities, Chartered Institutions, Government-Owned or – Controlled Corporations (GOCCs), including Government Financial Institutions (GFIs), Government Corporate Entities (GCE), and non-chartered GOCCs, and State Universities and Colleges.

SUBJECT : FREEDOM OF INFORMATION (FOI) Program

DATE : 11 November 2016

BACKGROUND

- 1.0 On 23 July 2016, President Rodrigo Roa Duterte signed Executive Order (EO) No. 2 entitled **Operationalizing in the Executive Branch of the People's Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor**. The Office of the President, through the Presidential Communications Operations Office (PCOO), was tasked to take the lead in the implementation of the FOI program including the preparation of a model manual and guidelines for the Executive Branch, including GOCCs and State Universities and Colleges.
- 2.0 Section 8 and 16 under EO 2 require all government offices in the Executive branch to prepare their respective People's FOI Manuals and implementing details (Agency FOI Manual) within one hundred twenty (120) days from the effectivity of the order.
- 3.0 On 25 November 2016, the 120th day from effectivity of the EO, the FOI program will be launched through an official government announcement which will also showcase the FOI manuals. To assist agencies with the compliance to the EO, this memorandum provides the essential guidelines and standard forms for FOI implementation.

MODEL AGENCY FOI MANUAL

- 4.0 As a guide for the agencies in the development of their agency FOI Manuals, the PCOO drafted a Model Agency FOI Manual (**Annex A**). This, however, only serves as a guide and does not limit agencies in crafting their own agency manuals.
- 5.0 The Agency FOI Manual details the internal FOI guidelines and defines the specific roles and responsibilities of the following agency personnel designated to handle agency FOI requests: the FOI Champion; the Decision Maker/s; and the Receiving Officer/s. It also includes provisions on the promotion of openness in government, protection of privacy, remedies in case of denial, charging of fees, and administrative liabilities. The manual should likewise contain the detailed FOI process flow; comprehensive list of exceptions; and templates for FOI responses.
- 6.0 On the other hand, the People's FOI Manual is a separate document designed for the general public to guide them in making FOI requests. It should include, among others the following:
- 6.1 the location and contact information of the head, regional, provincial, and field offices, and other established places where the public can obtain information or submit requests;
 - 6.2 the person or office responsible for receiving requests for information;
 - 6.3 the procedure for the filing and processing of the request as specified in the succeeding section 9 of this Order;
 - 6.4 the standard forms for the submission of requests and for the proper acknowledgment of requests;
 - 6.5 the process for the disposition of requests;
 - 6.6 the procedure for the administrative appeal of any denial for access to information; and,
 - 6.7 the schedule of applicable fees.

AGENCY INFORMATION INVENTORY

- 7.0 The Agency Information Inventory is a master list of all government information held by an agency, containing the title, description, and file type of each information (**Annex B**). This list will provide the scope and limitations of the types of information which can be requested from an agency. Any information requested not included in the agency inventory is considered a basis for denial of such request.

STANDARD FOI REQUEST FORM

- 8.0 An FOI request will only be considered valid if applied through the fully-accomplished Standard FOI Request Form (**Annex C**). If in case the Requesting Party cannot fill this out, the Receiving Officer is tasked to translate such request into the form.

- 9.0 This form is the standard form for all FOI requests submitted to agencies covered under Section 2 of the EO. Requesting parties are required to supply all information in the form and present at least one (1) valid government-issued ID. Once a request has been approved as valid, the Receiving Officer shall provide a stamped photocopy of the form to the Requesting Party.

STANDARD FOI REGISTRY

- 10.0 To facilitate a uniform tracking, monitoring and evaluation system for FOI program implementation, attached herein is the Standard FOI Registry sheet (**Annex D – accessible at <http://bit.ly/foipco>**) to be managed by FOI Receiving Officers. All FOI requests should be logged in to this form and should be updated accordingly. **Annex E** provides a comprehensive instructional note for accomplishing the FOI Registry.
- 11.0 The FOI Registry will be the basis for measuring agency performance and compliance alongside important FOI analytics to assess the initial financial costs of FOI implementation.
- 12.0 This is an interim solution to the standardized reporting procedure across the Executive Branch; moving forward, an online electronic FOI registry system will be developed.

FOI EXCEPTIONS

- 13.0 Section 4 of EO No. 2 states that “access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law, or jurisprudence”. The list of exceptions from the Office of the President will be forwarded and disseminated as soon as it becomes available. Agencies may refer to this master list in their respective FOI manuals.
- 14.0 This inventory of exceptions will be periodically updated to properly reflect any changes in the existing law and jurisprudence.

REQUIRED ACTIONS

- 15.0 In compliance to this memorandum, all agencies covered under EO No. 2 shall observe the following requirements before November 25, 2016:
- 15.1 Agencies are required to submit their **Agency FOI Manual** and **People’s FOI Manual** (.pdf/.doc). PCOO’s Model Agency FOI Manual can be converted into a People’s FOI Manual by removing its Section 3 (Promotion of Openness in Government), Annex E – 2 (Detailed FOI Request Process), Annex E – 3 (FOI Request Process in Days), and Annex G-1 to G-6 (FOI Response Templates).

15.2 All Heads of Agencies shall designate its **FOI Champion, Decision Maker/s, and Receiving Officer/s** who will handle its FOI implementation. Information about these FOI Officers should be submitted before November 18, 2016 (.pdf/.doc), enumerating the following:

- 15.2.1 Agency Name & Address;
- 15.2.2 Full Names;
- 15.2.3 Positions;
- 15.2.4 Email addresses; and
- 15.2.5 Landline & fax numbers.

16.0 All agencies are required to submit to the PCOO the Agency Information Inventory and the accomplished FOI Registry every quarter starting March 2017. Non-submission of these requirements will be labeled as non-compliance.

17.0 As part of the compliance to the EO, all requirements shall be submitted both in soft copies and hard copies.

17.1 Soft copies of the Agency FOI Model Manual, templates, and forms, provided as annexes to this memo, can be accessed and retrieved from this link:

<http://bit.ly/foipco>

17.2 Send all soft copies of submissions to foi@pco.gov.ph and foi.pco@gmail.com

17.3 Hard copies should be submitted to the following address:

Sec. JOSE RUPERTO MARTIN M. ANDANAR
Presidential Communications Operations Office (PCOO)
Office of the President
3F, New Executive Building, J.P. Laurel St.,
Malacañang Compound, Manila

COMPLIANCE

18.0 Section 15 of EO No. 2 states, "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".

19.0 Pursuant to this, PCOO will monitor and report on FOI program compliance to the Office of the Executive Secretary. The status of submissions will be published online via foi.gov.ph, which will be unveiled on November 25, 2016.

20.0 For compliance.


JOSE RUPERTO MARTIN M. ANDANAR
Secretary



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

NATIONAL PRIVACY COMMISSION
RECEIVED

NPC Advisory No. 2017-02

MAR 31 2017

DATE : 3 April 2017

SUBJECT : **ACCESS TO PERSONAL DATA SHEETS
OF GOVERNMENT PERSONNEL**

By: AI2HO Time: 1:48
RM0/OTB-033117-00654

WHEREAS, Article II, Section 24, of the 1987 Constitution provides that the State recognizes the vital role of communication and information in nation-building. At the same time, Article II, Section 11 thereof emphasizes that the State values the dignity of every human person and guarantees full respect for human rights;

WHEREAS, pursuant to Article III, Section 7 of the 1987 Constitution, the right of the people to information on matters of public concern is recognized. Each citizen shall be afforded access to official records, documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, subject to limitations provided by law;

WHEREAS, under Article IX, (B) Section 3, of the 1987 Constitution, the Civil Service Commission (CSC), as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.

WHEREAS, pursuant to Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, Book V, Chapter 3, Section 12(8), the CSC prescribes all forms for Civil Service examinations, appointments, reports and such other forms that may be required by law, rules, and regulations. In addition, Book V, Chapter 3, Section 12 (18) thereof also states that the CSC shall keep and maintain personnel records of all officials and employees in the Civil Service;

WHEREAS, Section 2 of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012 (DPA), provides that 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 shall also ensure that personal information in Information and Communications Systems in the government and in the private sector are secured and protected;

WHEREAS, Section 4 of the DPA states that the law applies to the processing of all types of personal information and to any person involved in personal information processing, except for certain instances, including information that fall within matters of public concern. Section 11 of the law also permits the processing of personal information, provided there is compliance with the requirements of the Act and other laws allowing the disclosure of information to the

public and adherence to the principles of transparency, legitimate purpose and proportionality;

WHEREAS, Section 17 of the Implementing Rules and Regulations (IRR) of the DPA states that the processing of personal data shall be allowed, subject to compliance with the requirements of the Act and other laws allowing disclosure of information to the public, and adherence to the principles of transparency, legitimate purpose, and proportionality.

WHEREFORE, in consideration of the foregoing premises, the National Privacy Commission (NPC) hereby issues this Advisory regarding access to Personal Data Sheets (PDS) of government personnel:

Background

The people have a fundamental right to information, particularly on matters of public concern.¹ Every Filipino citizen is afforded this right, subject to certain limitations provided by law.

One statute that sanctions the limited disclosure of public documents is Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees". Its Implementing Rules and Regulations (IRR) state that all public documents must be made accessible to the public during office hours,² except for certain types of official information, records or documents.³

Occasionally, a law would provide for a disclosure policy regarding a specific type of public document. With a birth certificate, for instance, Presidential Decree (PD) No. 603, otherwise known as "*The Child and Youth Welfare Code*", states that it may only be issued upon request by certain persons and under certain conditions.⁴

Jurisprudence also offers some guidance on this subject. In a case, the Supreme Court permitted access to the Statement of Assets, Liabilities and Net Worth (SALN), Personal Data Sheets (PDS), and Curriculum Vitae (CV) of sitting Justices, but not before clarifying that the constitutional guarantees of right to information and right to access to public records are not absolute. The people's right to know, the Court reasoned, is limited to matters of "public concern"⁵ and may further be restricted by limitations provided by law. The Court then went

¹ 1987 Constitution, Article III, §7.

² Rule VI, §6.

³ IRR of RA 6813, §3.

⁴ Article 7. *Non-disclosure of Birth Records*. - The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

The person himself, or any person authorized by him;

His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;

The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and

In case of the person's death, the nearest of kin."

⁵ In *Legaspi vs. Civil Service Commission* (150 SCRA 530), the Supreme Court ruled that:

"In determining whether or not a particular information is of public concern there is no rigid test which can be applied.

'Public concern' like 'public interest' is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public."

on to establish guidelines for the release of the aforesaid documents vis-à-vis judiciary personnel.⁶

In *Legaspi vs. Civil Service Commission*⁷, the Court also took up the authority of a government agency or office to regulate access to public records, *to wit*:

“The authority to regulate the manner of examining public records does not carry with it the power to prohibit. A distinction has to be made between the discretion to refuse outright the disclosure of or access to particular information and the authority to regulate the manner in which the access is to be afforded. The first is a limitation upon the availability of access to the information sought, which only the Legislature may impose (Art. III, Sec. 6, 1987 Constitution). The second pertains to the government agency charged with the custody of public records. Its authority to regulate access is to be exercised solely to the end that damage to, or loss of, public records may be avoided, undue interference with the duties of said agencies may be prevented, and more importantly, that the exercise of the same constitutional right by other persons shall be assured.” (underscoring supplied)

The issuance of Executive Order No. 2 (2016) by the Office of the President did not deviate from these established principles and only served to affirm them. The issuance, which relates to the operationalization of the people’s right to information under the executive branch, permits the disclosure of information in the possession or under the custody of the government unless they fall under any of the exceptions “enshrined in the Constitution, existing law or jurisprudence”.⁸ These exceptions were taken up in greater detail in the Memorandum issued by the Executive Secretary, dated 24 November 2016, and which had for its subject “Inventory of Exceptions to Executive Order No. 2 (S. 2016)”.

At the same time, there is also Republic Act No. 10173, or the Data Privacy Act of 2012 (DPA), which is the Philippines’ first comprehensive data protection law. It aims to uphold the State’s twin policies of protecting the right to privacy of communication, while ensuring the free flow of information.⁹ In so doing, it sets certain parameters under which personal data may be processed (e.g., disclosed) in a manner that is consistent with data privacy principles. It is worth noting that the law distinguishes between personal information and sensitive personal information, and establishes a different criteria for the processing of each type. It also imposes obligations on those persons engaged in the processing of personal data, and prescribes penalties for specific offenses.

Much has been said about the perceived conflict between the tenets of transparency and public accountability ensured by the right to information, and an individual’s right to privacy. Today, this view has gone on to permeate the parallel implementation of such policies as EO 2 (2016) on the one hand, and the DPA on the other. It bears stressing, however, that the purported inconsistencies between the two are more apparent than real. Not only are they both intended to benefit the public interest, but, more often than not, their provisions complement and reinforce each other, and are not contradictory as some observers are wont to suggest.

⁶ *Re: Request for Copy of 2008 Statement of Assets, Liabilities and Net Worth (SALN) and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary*, A.M. No. 09-8-6-SC and *Re: Request of Philippine Center for Investigative Journalism (PCIJ) for the 2008 Statement of Assets, Liabilities and Net Worth (SALN) and Personal Data Sheet of the Court of Appeals Justice*, A.M. No. 09-8-07-CA (13 June 2012). *see also*: *Legaspi vs. Civil Service Commission*, G.R. No. L-72119 (29 May 1987).

⁷ G.R. No. L-72119 (29 May 1987).

⁸ §4.

⁹ DPA, §2.

With EO 2, it clarifies that “while providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of the individual”.¹⁰ For this purpose, it requires that: (a) disclosure of said materials shall only be made if they are material or relevant to the subject matter of the request; (b) security arrangements against leaks or premature disclosure are established; and (c) disclosure shall only be made when permitted or authorized by existing law or rules.¹¹

The DPA, meanwhile, excludes from its scope those information that fall within matters of public concern. They include: (a) personal data relating to the position or functions of a current or former government employee;¹² (b) personal data relating to the service performed by a current or former government contractor;¹³ and (c) information regarding a benefit of a financial nature given by the government, at its discretion, to an individual.¹⁴

Discussion

A PDS is an official document that the Civil Service Commission (CSC) requires each government employee or official to accomplish prior to his or her assumption of office. It is a repository of information pertaining to that employee or official, including his or her personal background, qualifications, and eligibility.¹⁵

It is considered a public document.¹⁶ According to the Rules of Court, public documents are: “(a) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; (b) documents acknowledge before a notary public, except last wills and testaments; and (c) public records, kept in the Philippines, of private documents required by law to be entered therein”.¹⁷

Premised on the principles raised herein, it is clear that access to or disclosure of the PDS of a particular government personnel may be regulated despite its nature as a public record and/or public document. Each government agency or office, acting as its proper custodian, may provide for certain rules or a set criteria against which a request for such document shall be measured or assessed.

The right to information on matters of public concern is a fundamental right but it must always be balanced with an individual’s right to privacy, particularly data privacy. While each individual that enters into government service, or works in some other capacity for the State, may lose some degree of privacy in the process, this does not, under any circumstances, equate to a full or absolute surrender of such right. After all, his or her personal data is no less susceptible to abuse and other perils such as unlawful or unauthorized processing.

¹⁰ EO 2 (2016), §7.

¹¹ *id.*

¹² IRR of RA 10173, §5(a)(1); *see also*: RA 10173, §4(a).

¹³ IRR of RA 10173, §5(a)(2); *see also*: RA 10173, §4(b).

¹⁴ IRR of RA 10173, §5(a)(3); *see also*: RA 10173, §4(c).

¹⁵ *Advincula vs. Dicen*, G.R. No. 162403, (16 May 2005).

¹⁶ *Fullero vs. People*, 533 SCRA 97, G.R. No. 170583, (12 September 2007), *citing Lumancas v. Intas*, 347 SCRA 22, G.R. No. 133472 (5 December 2000).

¹⁷ Rule 132, §19.

Recommendations

Disclosure of personal data shall only be allowed when permitted by existing laws. Under the DPA, only those that relate to the position or function of an individual working for the government may be made available to the public. Other types of personal data, especially sensitive personal information, may be released only if necessary to the declared, specified, and legitimate purpose of the requesting party.

Thus, when resolving a pending request for access to a PDS, a government agency or office must consider the following:

1. the information requested falls under matters of public concern;
2. the individual requesting for personal data has declared and specified the purpose of his or her request;
3. the declared and specified purpose is not contrary to law, morals, and public policy; and
4. the personal data requested is necessary to the declared, specified, and legitimate purpose.

At the same time, the requesting party is obliged to use the data obtained only for the purpose declared at the time of making the request. The individual must also commit to complying with the provisions of the DPA.

Suffice to say, each request should be evaluated in relation to its declared purpose. In all cases, the rights of the data subject should be respected, including the right to be informed and notified about the processing of his or her personal data.

Approved:

[Sgd] RAYMUND E. LIBORO
Privacy Commissioner

[Sgd] IVY D. PATDU
Deputy Privacy Commissioner

[Sgd] DAMIAN DOMINGO O. MAPA
Deputy Privacy Commissioner

Date: 3 April 2017



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Tanggapang Pampanguluhan sa Operasyong Pangkomunikasyon
Malacañang, Manila

FOI – MC No. 001, s. 2019

**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) AND STATE
UNIVERSITIES AND COLLEGES (SUCS)**

**SUBJECT : GUIDELINES ON THE FREEDOM OF INFORMATION
APPEALS MECHANISM**

WHEREAS, Executive Order (EO) No. 2, s. 2016 was issued by President Rodrigo R. Duterte on 23 July 2016 to operationalize the People's Constitutional Right to Information and the State Policies to full public disclosure and transparency in the public service;

WHEREAS, Section 8 of EO No. 2, s. 2016 instructed all government offices of the Executive Branch to prepare their respective People's Freedom of Information (FOI) Manual which shall include among others the procedure for the administrative appeal of any denial for access to information;

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. 2, s. 2016, and all other FOI programs and initiatives including electronic FOI;

WHEREAS, Department Order No. 018, s. 2017, issued by the PCOO, created the Freedom of Information – Project Management Office (FOI-PMO) to exercise the mandate under MO No. 10, s. 2016;

WHEREAS, government offices shall respond to a request as soon as practicable but not exceeding fifteen (15) working days upon receipt thereof, whether to grant or deny access to the information requested. Period to respond may be extended for not more than twenty (20) working days in cases provided under EO No. 2, s. 2016;

WHEREAS, Section 12 of EO No. 2, s. 2016, provides that in case of denial of request, in whole or in part, it shall as soon as practicable, in any case within fifteen (15) working days from the receipt of the request, notify the requesting party of the denial in writing. The notice shall clearly set forth the ground/s

for denial. Failure to notify the requesting party of the action taken within the period provided herein shall be deemed a denial of the request for information;

WHEREAS, pursuant to MO No. 10, s. 2016, the PCOO is mandated to develop programs and mechanisms to enhance the capacity of government agencies to comply with the FOI Programs;

WHEREAS, Section 13 of EO No. 2, s. 2016, provides the remedies in cases of denial of request for access to information, wherein denial of any request for information may be appealed to the person or office next higher in authority. However, while most agencies have formally established their appeals mechanism and designated those in charge to handle appeals, there are still those who do not have a formal appeals mechanism or who have not designated officers who should handle appeals from the denial of request for information;

WHEREAS, Administrative Order No. 22, s. 2011, prescribes for the rules and regulations governing appeals to the Office of the President;

NOW, THEREFORE, for and in consideration of the foregoing, the implementing agencies are encouraged to provide in their FOI Manual the following appeals mechanism for efficiency and uniformity:

Section 1. Creation of Central Appeals and Review Committee (CARC). Implementing agencies are advised to establish a Central Appeals and Review Committee that will exercise the following functions:

- Receive, review, evaluate, and assess the appeal on the denial of the request for information;
- Determine if the appeal was filed within the period provided under EO No. 2, s. 2016;
- Recommend to the head of agency the actions on the appeal filed by the requesting party;
- Ensure that the appeal be decided within thirty (30) working days from the filing of said appeal; and
- Implement the decision of the head of agency regarding the appeal.

Section 2. Composition of CARC. The CARC shall be composed of at least three (3) senior officers with equal or higher rank to the decision maker. The CARC shall review and analyze the grant or denial of request of information and provide expert advice to the head of agency on granting or denying of said request for information.

Section 3. Alternative to CARC. Appeal may be filed to a person or office next higher in authority, if the implementing agency does not establish its CARC or whose decision maker is the head of agency.

Section 4. Procedure of filing an Appeal. The requesting party shall file a written appeal to the CARC, or to the person or office next higher in authority,

whichever is applicable, within fifteen (15) working days upon receipt of the notice of denial or lapse of the period within which the receiving officer or decision maker should have notified the requesting party of the denial of the request.

Where the decision maker is the head of agency, the requesting party may file its appeal to the department head where said agency/bureau is attached. In case the decision of the department head is unfavorable, the requesting party may file its appeal to the Office of the President.

Section 5. Submission of names to FOI-PMO. All agencies covered by EO No. 2, s. 2016 shall submit names of members of CARC or designated officer/s tasked to handle appeals to the denial of request for access to information to:

FREEDOM OF INFORMATION – PROJECT MANAGEMENT OFFICE

Presidential Communications Operations Office

Atty. Kristian R. Ablan

Assistant Secretary and FOI Program Director

Unit 103, 1575 BFB Building, JP Laurel St.,

San Miguel, Malacañang, Manila

Section 6. Filing of petition/case to proper Courts. The requesting party, upon exhaustion of administrative appeal remedies under AO No. 22, s. 2011, may file the appropriate petition or case to the proper court in accordance with the Rules of Court.

Section 7. Filing of Administrative Case. The requesting party, upon exhaustion of administrative remedies, may file the appropriate administrative case against erring public officials in violation of EO No. 2, s. 2016.

Section 8. Effectivity. This Circular shall take effect immediately.

JAN 31 2019 Manila, Philippines


JOSE RUPERTO MARTIN M. ANDANAR
Secretary and FOI Champion



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Tanggapang Pampanguluhan sa Operasyong Pangkomunikasyon
Malacañang, Manila

FOI – MC No. 4, s. 2019

**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), AND STATE
UNIVERSITIES AND COLLEGES (SUCS)**

SUBJECT : **GUIDELINES ON REDACTION AND EXTRACTION OF
INFORMATION BEFORE DISCLOSURE TO THE PUBLIC**

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

WHEREAS, Article III, Section 7 of the 1987 Constitution provides that the right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law;

WHEREAS, Executive Order (EO) No. 02, s. 2016 was issued by President Rodrigo R. Duterte on 23 July 2016 to operationalize the constitutional mandate of the people's right to information;

WHEREAS, Memorandum Order (MO) No. 10, s. 2016 designated the PCOO as the lead agency in the implementation of EO No. 2, s. 2016, and all other FOI programs and initiatives including electronic FOI;

WHEREAS, Section 3 of EO No. 02, s. 2016 provides that every Filipino shall have access to information, official records, public records and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development;

WHEREAS, Article II, Section 11 of the 1987 Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights;

WHEREAS, Section 2 of RA No. 10173 or the Data Privacy Act of 2012, provides that 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;

WHEREAS, pursuant to National Privacy Commission (NPC) Advisory No. 2017-02, disclosure of Personal Data Sheet (PDS) shall only be allowed when permitted by law. Information in the PDS that relate to the position or function of a government official or employee shall be disclosed. Sensitive Personal Information¹ may only be disclosed if necessary to the declared, specified, and legitimate purpose of the requesting party. Information not necessary to be disclosed or prohibited to be disclosed under existing laws, rules and regulations, shall be redacted before release of information to the requesting party;

WHEREAS, there is a need to guide the information officers of the government agencies in disclosing information through FOI requests to avoid violation of the Data Privacy Act, Code of Conduct and Ethical Standards for Public Officials and Employees, privacy rights of individuals and existing laws, rules and regulations with respect to protection of personal information and disclosure of information;

NOW, THEREFORE, in consideration of the foregoing, this Memorandum Circular (MC) is issued to provide guidelines on how to balance the disclosure of information with the protection of personal information when a document will be disclosed under the Freedom of Information Program in the Executive Branch pursuant to EO No. 2, s. 2016.

SECTION 1. DEFINITION OF TERMS. The following shall be defined as follows:

- a. **FOI officers** – individuals designated as FOI receiving officers and shall include the decision maker/s of an agency.

¹ Section 3 (l) of RA No. 10173, provides that 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.

- b. **Mosaic Effect** – This occurs when the information in an individual dataset, in isolation, may not pose a risk identifying an individual, but when combined with other information, could pose such risk (*US Department of Labor, Open Data Policy*).

Further, when disparate pieces of information—although individually of limited use—become significant when combined with other types of information (*Yale Law Journal, David E. Pozen, 2005*). Applied to public use data, the concept of a mosaic effect suggests that even anonymized data, which may seem innocuous in isolation, may become vulnerable to re-identification if enough datasets containing similar or complementary information are released.

- c. **Sensitive Personal Information** - Section 3 (l) of RA No. 10173, provides that sensitive personal information refers to personal information:

- i. About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- ii. 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;
- iii. 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
- iv. Specifically established by an executive order or an act of Congress to be kept classified.

Sensitive Personal Information may only be disclosed, if necessary, to the declared, specified, and legitimate purpose of the requesting party. Information not necessary to be disclosed or prohibited to be disclosed under existing laws, rules and regulations, shall be redacted before release of information to the requesting party.

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

SECTION 3. REDACTION OF INFORMATION THAT ARE INCLUDED IN THE LIST OF EXCEPTIONS. All information under the inventory of

exceptions, pursuant to EO No. 2, s. 2016, which are included in the document to be released shall be redacted.

SECTION 4. MANNER OF REDACTING. Redactions can be made to physical documents using redaction tape or a black marker pen. After the concerned information has been redacted from the physical document, it must be scanned and checked to ensure all the redacted information is unreadable.

In redacting a digital document, the rule is to ensure that sensitive information is not just visually hidden or made illegible, but is actually deleted from the source file. In some documents, deleting sections can cause an undesirable reflow of text and graphics. Redactions made to digital documents can in some circumstances be reversed, therefore an edited version of an electronic document must never be released.

The information officer redacting a digital document shall ensure that the redacted information can never be recovered by the requesting party by using pertinent application tools.

SECTION 5. EXTRACTION OF INFORMATION. Information extraction is the process of separating/isolating specific information from a set of data. As an alternative to redaction, where a document or file contain information which are included in the inventory of exceptions and a part or parts thereof are disclosable to the public, and redaction is deemed difficult, the information shall be extracted by reproducing it in a separate file or by photocopying a part or parts of a set of data.

SECTION 6. RESPONSIBILITIES OF THE FREEDOM OF INFORMATION OFFICER. The following are the responsibilities of FOI officers:

- a. Evaluate the request received, ensuring that the request has a declared, specified, and legitimate purpose not contrary to morals or public policy.
- b. Consider the mosaic effect of data aggregation. It is the responsibility of each information officer to perform the necessary analysis to determine whether some combination of existing data and the data intended to be disclosed could allow for the identification of an individual or pose a security concern, otherwise, such data should be redacted before disclosure;
- c. Before the redacted government information, official records, and public records are released, the FOI officers shall require the requesting party to sign a written undertaking that he or she shall not share nor disclose the information obtained through the FOI Program to any other person or entity, or use the information obtained in a manner that is not in accordance with the purpose stated in the request.

Failure of the requesting party to comply with the undertaking may be a ground to refuse any future requests or open the requesting party to criminal prosecutions under existing laws; and

- d. Any other responsibilities as may be deemed necessary in accordance with this Circular.

SECTION 7. SEPARABILITY CLAUSE. If any provisions or sections of this Circular are declared unconstitutional, void or in contravention of any existing laws, rules and regulations, the remaining portions or provisions hereof shall continue to be valid and effective.

SECTION 8. EFFECTIVITY. This Circular shall take effect immediately.

SECTION 9. COMPLIANCE. For your guidance and strict compliance.



JOSE RUPERTO MARTIN M. ANDANAR
Secretary & FOI Champion

28 September 2019 Manila, Philippines.

Freedom of Information Request Form

Tracking No. _____

Please read the following information carefully before proceeding with your application. Use blue or black ink. Write neatly and in BLOCK letters. Improper or incorrectly filled-out forms will not be acted upon. Tick or mark boxes with "✓" if necessary.

REQUESTING PARTY

Name:

Surname

First Name

Middle Name

Complete Address:

Email:

Mobile Number:

Preferred Mode of Communication

(If your request is successful, you will be receiving the documents in this manner)

- ☐ Email
- ☐ Postal Address
- ☐ Pick-up at Agency

Type of ID Given

(Please ensure that your IDs contain your photo and signature)

- ☐ Passport
- ☐ Driver's License
- ☐ SSS ID
- ☐ Postal ID
- ☐ Voter's ID
- ☐ Company ID
- ☐ School ID
- ☐ Others _____

REQUESTED INFORMATION

Document/Record Requested

(Please be as detailed as possible):

Period Covered:

Reference Numbers *(if known)*:

Other Relevant Information:

Purpose:

Freedom of Information Request Form

Privacy Notice:

Once deemed valid, your information from your application will be used by PCW to deal with your FOI request as set out in Executive Order No. 02, s. 2016. If PCW gives you access to a document, and if the document contains no personal information about you, the document will be published online in our disclosure log, along with your name and the date you applied.

DECLARATION

I declare that:

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

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

Signature Over Printed Name

Date Accomplished

MONITORING OF REQUEST [INTERNAL USE ONLY]

FOI Receiving Officer: _____

The request is recommended to be: ☐ Approved ☐ Denied ☐ Referred

If denied, please tick the reason for the denial:

- ☐ Incomplete request
☐ The information requested is already available online
☐ The information requested is not within the custody of PCW

Decision Maker: _____

Decision on Application: ☐ Successful ☐ Partially Successful ☐ Denied

If denied, please tick the reason for the denial:

- ☐ Incomplete request
☐ The information requested is already available online
☐ The information requested is not within the custody of PCW
Exception: _____

Freedom of Information Request Form

Date Request Finished: _____
Date entered on EFOI _____
(if applicable): _____

FOI Registry Accomplished:
___ Yes ___ No



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.

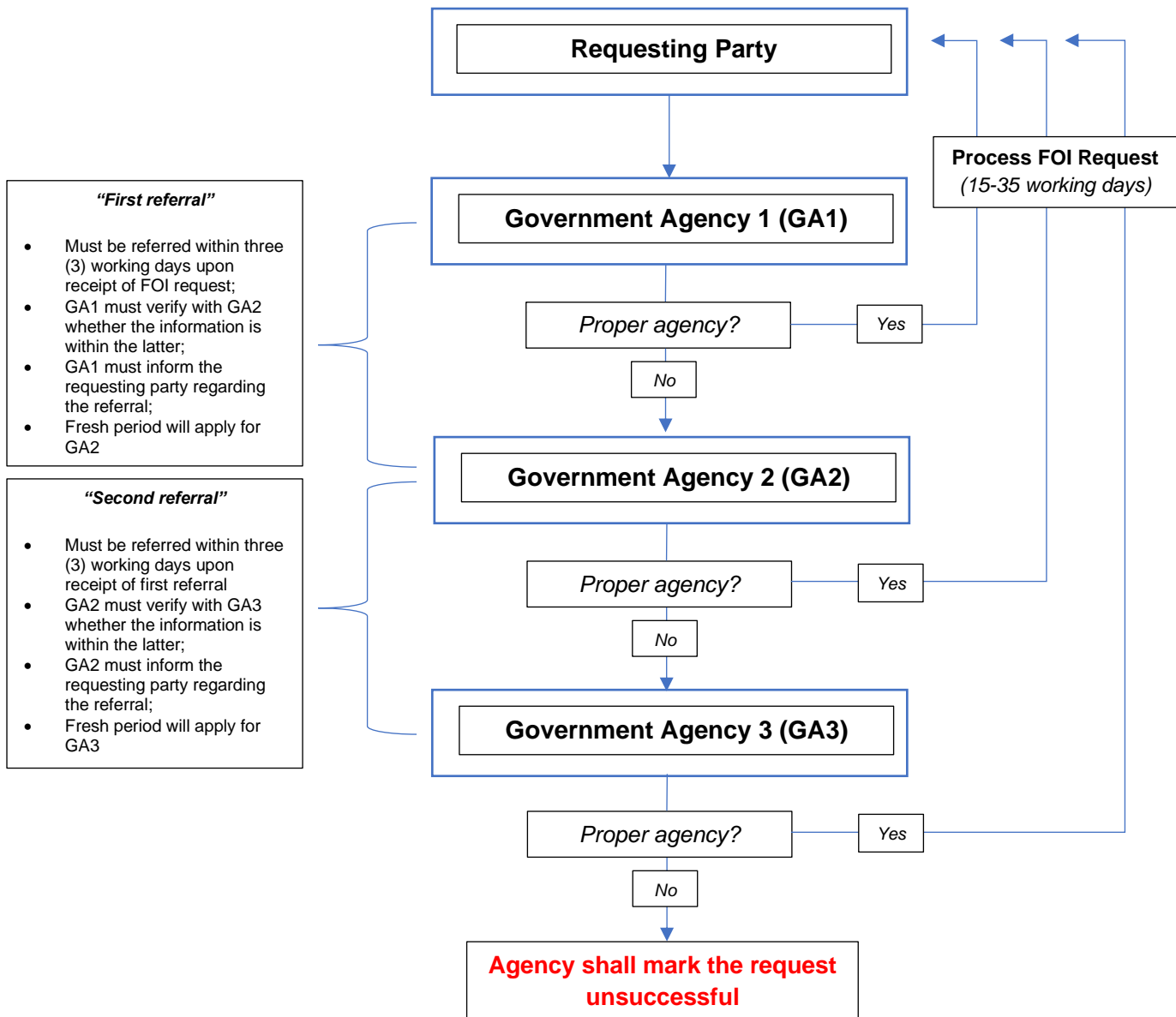
Section 11. Effectivity. This Memorandum Circular shall take effect immediately.

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.