

JOINT POSITION PAPER ON FREEDOM OF INFORMATION

JUNE 12, 2021

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CHAIRMAN, COMMITTEE ON PUBLIC
INFORMATION
HOUSE OF REPRESENTATIVES

The undersigned business organizations respectfully submit our position and comments on the various House Bills on Freedom of Information (HBs 12, 51, 226, 644, 712, 813, 837, 1302, 1487, 1608, 1625, 1975, 3063, 4570, 4673, 5566, 5776, 7219, and 7229), which aim to strengthen the people's right to information enshrined under the Philippine Constitution.

The Business Community strongly supports the passage of the Freedom of Information Act. This proposed legislation has consistently been identified as a legislative priority by the Philippine Business Groups - Joint Foreign Chambers (PBG-JFC). We acknowledge the laudable aim of the bills of promoting and strengthening the people's right to information by allowing citizens to request from the government, information involving public interest or government transaction at any given time and subject to limitations.

To provide clarity on the provisions and further enhance the bills, below are our recommendations:

A. COMMENTS

On provisions common in all bills

1. On Coverage (Section 3 on House Bill Nos. 12, 226, 644, 712, 813, 837, 1487, 1608, 1625, 3063, 4570, 4673, 5566, 5776, and 7229; Section 4 on House Bill Nos. 51, 1302, 1975, and 7219)

- For complete transparency, we acknowledge the need to include documents submitted by private entities who enter into dealings, contracts, or transactions of whatever nature with the government or a government agency by which there is utilization of public funds. However, only the documents submitted by private entities in relation to the government-funded project or government transaction should be covered in order to maintain the privacy of and to protect, proprietary information relating to patents, formulation, packaging of products, intellectual property, production, testing methods, and the like, the disclosure of which can adversely affect or prejudice commercial or business interests.

2. On Definition of Terms (Section 4 on House Bill Nos. 12, 226, 644, 712, 813, 837, 1487, 1608, 1625, 3063, 4570, 4673, 5566, 5776, and 7229; Section 3 on House Bill Nos. 51, 1302, 1975, and 7219)

- A clear definition of “Data from Private Contractors” should be provided in the bill. Our proposal is for FOI to only cover information voluntarily given/submitted by the private sector in connection with its transactions with the government, where utilization of public funds is involved, such as those in Private-Public Partnership, Joint Venture Agreements, Build-Operate-Transfer Contracts, and the like.

There is a need to limit the data from private contractors that will be covered by the disclosure and access provisions under the proposed FOI law in order to protect the proprietary properties or commercial information owned by business entities. An unbridled right to access proprietary information from business entities simply because of their participation in government transactions or contracts can result in prejudice, especially if the right is abused and the law is invoked and utilized to conduct “commercial or industrial espionage”.

3. On Exceptions (Section 7 on House Bill Nos. 51, 644, 813, 837, 1302, 1487, 1608, 1625, 1975, 3063, 4673, 5566, 7219, and 7229; Section 10 on House Bill Nos. 226, 712, and 4570; Section 22 on House Bill No. 5776)

- While the law upholds the right to information, there is a need to exclude commercial and proprietary information from the coverage. This includes data relating to patents, formulation, packaging of products, intellectual property, production, testing methods, and the like, which may have been included in the submission of documents necessary for the procurement process. Commercial and proprietary information are key assets essential to the success of businesses and must remain confidential at all times.

B. PROPOSALS

Accordingly, we advocate the adoption of an FOI law that has these principal features as presented in some of the bills:

1. Adopts a Mandatory Government Disclosure Framework

- The FOI Bill should guarantee disclosure of public information as a mandated duty of all government agencies and bodies. All public information should be uploaded in a consistent and updated manner (quarterly) on their websites and bulletins to promote a culture of openness and transparency.

2. Prohibits use of information for illegal or malicious purposes or in violation of the principles of fair competition

- Appropriate provisions containing categorical prohibitions against use of information for illegal and malicious purposes, or in violation of the principles of fair competition should be included. What should be penalized is not merely the denial of access to public information. The law must also give legal basis for a cause of action for damages in favor of aggrieved persons. This would guarantee against any abuse of the exercise of this right under the FOI Law.

3. Adopts a proper Records Management System

- Proper safekeeping of records including storage, maintenance, and database should be established in all government agencies in order to expedite the process of accessing information. The period for retention of documents and a system of document classification shall also be set by government agencies. Proper preservation, retention, and transfer of records shall be ensured and mismanagement which in any way would hamper access to information shall be penalized accordingly.

4. Creates an Appeals and Review System by an Independent Body

- An independent FOI Commission should be created to implement the law and to create the appeals and review system on FOI requests. The FOI Commission will have exclusive jurisdiction to resolve appeals within a reasonable timeframe and under simple rules of procedure to avoid curtailing the right to information with burdensome processes.

5. Reduces Period to Respond to a Request

- The Committee should consider reducing the number of days for government agencies to respond to an FOI request from fifteen (15) working days to five (5) working days. This is in congruence with RA 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 and with a view to improving competitiveness and ease of doing business in the Philippines, which can contribute to better business conditions and lead to economic development.

The above recommendations are based on a series of consultations and roundtable discussions with different stakeholders, industries, and business organizations about FOI and the pending FOI Bills.

We fully commit to advocate for an FOI Act that will uphold integrity, accountability, and transparency of the government which at the same time, is protective of the rights of commercial undertakings or businesses as we believe this can pave the way for favorable economic development in the country.

We shall highly appreciate your kind consideration of our proposals.

Sincerely,



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The American Chamber of Commerce of the Philippines, Inc.



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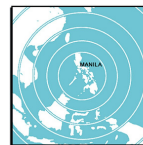
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