



Department of
**PUBLIC WORKS
AND HIGHWAYS**



People's Manual



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I. Overview

A. Background

The people's right to be informed on matters of public concern is enshrined in Article III, Section 7 of the 1987 Constitution, which read as follows:

"Section 7. 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 the basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

Moreover, Article II, Section 28 of the 1987 Constitution states the Government's policy on full public disclosure, to wit.:

"Section 28. 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."

When President Rodrigo R. Duterte was elected in 2016, one of his first issuances was Executive Order (EO) No. 2, Series of (S.) 2016 entitled *"Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor"* (See **Annex "A"**). Section 8 of EO No. 2, S. 2016 provides:

"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 provisions:

- (a) The location and contact information of the head, regional, provincial, and field offices, and other established places where the public can submit requests or obtain information;
- (b) The person or office 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 requests,
- (e) The process for the disposition of requests,
- (f) The procedure for the administrative appeal of any denial for access to information; and
- (g) The schedule of applicable fees."

Accordingly, this DPWH People's FOI Manual is created.

B. Purpose and Coverage

This Manual is intended to guide the public in making FOI requests pursuant to EO No. 2, S. 2016. It covers all FOI requests directed to the DPWH and all offices under it.

C. Persons Who May Avail

Pursuant to EO No. 2, S. 2016, 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, subject to the provisions of this Manual.

A foreign national may request for information in so far as it is allowed under applicable laws of the Philippines, its implementing rules and regulations, or any jurisprudence interpreting the same which shall be cited in his or her request. In processing said request, this Manual shall be applied in a suppletory manner.

D. Exceptions

Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing laws, or jurisprudence. See **Annex "B"** for Inventory of Exceptions to EO No. 2, S. 2016 and FOI Memorandum Circular No. 89, s. 2021 Updating the Inventory of Exceptions to the Right to Access of Information Under Executive Order (EO) 02, Series of 2016.

E. Responsible Officers

1. **FOI Receiving Officer (FRO).** All FOI request shall be submitted to the FRO. The FRO ensures that all FOI requests are made in the prescribed form and manner. The FRO is also responsible for maintaining communication with Requesting Parties concerning the progress of their FOI requests, including the grant or denial thereof.
2. **FOI Regional/District Focal Person.** The Regional Public Information Officer (PIO) and Designated PIO in the District Engineering Offices are the designated Regional/District FOI Focal Person assigned to immediately act on all FOI request in coordination with the FRO.
3. **FOI Decision Maker (FDM).** The FDM evaluates all FOI requests and decides whether to grant or to deny them, either fully or partially, based on any of the grounds enumerated in this Manual and other applicable laws, rules, and regulations.
4. **FOI Champion.** Assigned Management Committee Member in charge of overall supervision of the DPWH FOI Program.
5. **Central Appeals and Review Committee (CARC).** The CARC evaluates and reviews decisions of the FDM on FOI requests. Membership of the said body is composed of the following officials:

Chairperson: The Assistant Secretary for Support Services
Vice-Chair: The Director of the Stakeholders Relations Service

Members: The Director of the Information Management Service
 The Director of the Bureau of Research and Standards
 The Director of the Bureau of Construction
 The Director of the Bureau of Design
 Representative from Planning Service
 Representative from Procurement Service
 Representative from Public-Private Partnership Service
 Representative from Unified Project Management Office

For purposes of issuing a decision, the presence of the Chair, along with five (5) other members of the CARC, shall constitute a quorum. A majority vote of the members present at the meeting is necessary to render a valid decision.

6. **Secretary.** All decisions of the CARC on the denial of FOI requests may be further appealed to the Secretary, whose decision shall be final and immediately executory.

See **Annex "C"** for Freedom of Information Memorandum Circular No. 001 series of 2019 entitled Guidelines on the Freedom of Information Appeals Mechanism

II. Definition of Terms

- A. DPWH.** The Department of Public Works and Highways.
- B. DPWH Website.** The official website of the DPWH accessible via URL <https://www.dpwh.gov.ph>
- C. eFOI.** The online FOI platform accessible through URL <https://www.foi.gov.ph> which functions as an alternative avenue for the filing of FOI requests.
- D. FOI Request.** A written request made in the prescribed manner and submitted to the DPWH asking for any information on any topic, subject to the limitations provided for under this Manual.
- E. FOI Request Form.** The prescribed pro-forma template a person making a request pursuant to EO No. 2, S. 2016 is required to fill out and submit to the DPWH to initiate the FOI process. See Annex "D" for FOI Request Form.
- F. Freedom of Information (FOI).** The policy of the Executive Branch embodied in EO No. 2, S. 2016 which recognizes the right of the people to information on matters of public concern and adopts and implements full public disclosure of all its transactions involving public interest, subject to the procedures and limitations provided in the said EO and other laws, rules, and regulations.
- G. Full Denial.** A manner of disposition of an FOI request by which the information requested is not released based on any ground provided for under this Manual.
- H. Information.** Any record, document, paper, report, letter, contract, minutes and transcript of official meetings, map, book, photograph, datum, research material, film, sound and video recording, magnetic or other tape, electronic datum, computer-stored

datum, any other like or similar datum or material recorded, stored, or archived in whatever format, whether offline or online, which is made, received, or kept in or under the control and custody of the DPWH pursuant to laws, rules, and regulations, or in connection with the performance or transaction of official business.

- I. Official Record.** Information produced or received by the DPWH or any of its officials and employees in an official capacity or pursuant to a public function or duty.
- J. Open Data.** Publicly available data structured in a way that enables the same to be fully discoverable and usable by end users.
- K. Open Data Philippines Website.** The official government portal which makes accessible open government data collected from different government agencies and accessible through URL <https://www.data.gov.ph>.
- L. Partial Denial.** A manner of disposition of an FOI request by which certain portions of the requested information are not released based on any ground provided for under this Manual
- M. Personal Information.** 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; or information which, when put together with other information, would directly and certainly identify an individual.
- N. Public Records.** Information required by law, rule, or regulation to be entered, kept, and made publicly available by the DPWH.
- O. Requesting Party.** The person seeking disclosure of information from the DPWH pursuant to FOL.

III. Protection of Privacy

- A.** While providing access to information, public records, and official records, the DPWH shall afford full protection to the right to privacy of individuals by:
 - 1. Ensuring 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 EO No. 2, S. 2016, Republic Act (RA) No. 10173, otherwise known as the "*Data Privacy Act of 2012*" herein attached as **Annex "E"**, and other applicable laws, rules, and regulations;
 - 2. Protecting personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure thereof, which unduly exposes the concerned individual to vilification, harassment, or any other wrongful acts; and
 - 3. Prohibiting any of its employees, officials, or directors who has access, authorized or unauthorized, to personal information in his or her custody, from disclosing the said information, except when authorized under EO No. 2, S. 2016, RA No. 10173, and other applicable laws, rules, and regulations.

Before making a request, the Requesting Party may consult a lawyer or an expert on data privacy about his or her rights and/or obligations under RA No. 10173 and its implementing rules and regulations to ensure that his or her requests may be given due course under the existing laws and/or jurisprudence.

IV. Standard Procedure

(See **Annex "G"** for FOI Process Flowchart)

A. Submission of Requests

1. ***Making the Request.*** To make a request, completely fill out the FOI Request Form. Make sure that:
 - a. It contains your name and contact information;
 - b. Attached to it is a photocopy of at least one (1) of your Government-issued ID;
 - c. It describes the information you are requesting for with enough details to allow retrieval; and
 - d. It states the reason or purpose for the request.
2. ***Requesting Through Representatives.*** You may make an FOI request through a representative, as long as you provide your representative with proof of authority, such as a special power of attorney or authorization letter. The proof of authority must be attached to the FOI Request Form, along with a photocopy of at least one (1) of the representative's Government-issued ID in addition to your own proof of identity.
3. ***Sending Requests Electronically.*** The official government portal in making an electronic FOI request is accessible through <https://www.foi.gov.ph/agencies>. In case of electronic transmissions from the DPWH, it shall be presumed that you have received the same on the day appearing on the proof of delivery (Le. the unforgeable time stamped proof of when the DPWH has sent the electronic transmissions to you, independent of your ability to receive it).
4. ***Requests by Persons Unable to Write.*** In case you are unable to put your request into writing for whatever reason, you may seek the assistance of the FRO or any authorized DPWH official or employee in filling out the FOI Request Form.
5. ***Acceptance of the Request.*** Should your request not comply with any requirement, the FRO must return it to you, accompanied by a list of the deficiencies. Otherwise, the FRO will provide you with a receiving copy of your request with the following information stamped:
 - a. Date and time of receipt,
 - b. Tracking number, and
 - c. Signature of the FRO or any authorized DPWH officer or employee.

If your request was sent electronically, the FRO will provide you the requested Information through the same means that you made your request.

6. ***Transmittal to the FDM.*** Upon acceptance of your request, the FRO shall transmit the same to the FDM on the same day that it was received.

B. Evaluation by the FDM

1. *Denial of Requests.* The FDM may deny your request, fully or partially, based on any of the following grounds:
 - a. The information you are requesting is not in the custody of the DPWH;
 - b. The information you are requesting is already available on the DPWH website, the eFOI platform, the Open Data Philippines website, or any other publicly accessible source;
 - c. Your present request is identical or substantially similar to your previous requests;
 - d. The information you are requesting is protected under RA No. 10173 or other laws, rules, or regulations; or
 - e. The information you are requesting is included in the FOI Inventory of Exceptions.

Pursuant to FOI-Memorandum Circular No. 21- 05, s. 2021: 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", when the requested information is not in the possession of a government agency (GA 1) but is available to another government agency (GA 2), the FOI request shall be referred to GA 2. Note that this referral shall only be limited to two (2) subsequent transfers of request.

In case of full denial, the FDM shall inform the FRO, who will, in turn, notify you in writing within fifteen (15) workings days from receipt of your request, clearly stating the reasons for the denial.

2. *Processing of the Request.* If there are no grounds for the denial of your request, the FDM will collect the information you are requesting. Requests are processed on a "first in, first out" basis. Once complete, the FDM will transmit your requested information to the FRO no later than twelve (12) working days from receipt of your request, with copy furnished to the Secretary. The FRO will forward your requested information to you or notify you of its availability for pick up no later than fifteen (15) working days from receipt of your request.
3. *Referral to Other Government Agencies.* If your request is denied based on Article IV.B.1.a above, and the government agency having custody of the requested information is known, the FRO may, at his discretion, forward the request to the said government agency with copy furnished to you.
4. *Requests for Clarification.* When, for any reason, additional information is required in order to successfully process your request, the FDM, through the FRO, will contact you to make the necessary clarifications. In case the FRO is unable to reach you through all of the contact information you provided in your FOI Request Form, the FDM will stop processing your request, which will be considered completed.
5. *Redaction of Information.* Pursuant to FOI-Memorandum Circular No. 4, s. 2019, please be advised on the Redaction and Extraction of data and/or information before disclosure to the public subject to applicable existing laws, rules and regulations. Should it appear that a portion of the information you are requesting is covered by any ground for the denial of an FOI request, the FDM will exclude the said portion from release, of which you will be notified of upon the release of the information.
6. *Notice of Extension of Time.* In case the processing of your request necessitates extensive search of records, involves the examination of voluminous documents, affected by fortuitous events, or otherwise involves circumstances requiring a longer processing period,

the FDM, through the FRO, will notify you in writing (or electronically) of the extension, clearly stating the reasons behind it. Any extension of processing time should not exceed twenty (20) working days over the original period of fifteen (15) working days and may be allowed only once, unless there are exceptional circumstances which may justify a longer or another extension period.

C. Appeal to the CARC

1. *Making an Appeal.* In case of partial or full denial, you may file a written appeal to the CARC within fifteen (15) calendar days from receiving the notice of denial. In case you have received a notice of denial by email or other electronic message, you must acknowledge its receipt likewise by email or electronic message. Any acknowledgement email received by the FDM after fifteen (15) calendar days from the issuance of a notice of denial must be supported by valid reasons. It shall be presumed that you received the electronic notice of denial on the day appearing on the proof of delivery (Le. the unforgeable time stamped proof of when the FDM has sent the electronic notice of denial to you, independent of your ability to receive it).
2. *Period to Decide.* The CARC will decide on your appeal within fifteen (15) days from receiving it.

See attached **Annex "G"** for the Rules of Procedure Governing the Conduct of Proceedings Before the FOI CARC.

D. Appeal to the Secretary

1. *Making an Appeal.* You may further appeal the decision of the CARC to the Secretary in writing within ten (10) calendar days from receiving the CARC's decision.
2. *Period for Decision.* The Secretary will decide on the appeal within thirty (30) working days from receipt thereof.

V. Fees and Costs

A. No Request Fee: You will not be charged for making an FOI requests.

B. Reasonable Costs of Reproduction. Depending on the volume of documents subject for reproduction, you may be required to pay for the reasonable costs of reproducing the information you have requested. The payment is not intended as a charge for the processing of the FOI requests, but as compensation for the costs of paper, envelopes, or other materials the DPWH may use in providing you with the information you have requested. Upon payment, the DPWH will issue you an official receipt covering the transaction.

C. Exemption from Costs. If you are unable to pay for the reasonable costs of reproduction due to poverty, indigence, or similar causes, you may request for exemption from payment in writing addressed to the FRO. The DPWH may require you to provide proof of the ground(s) you are invoking to be exempted from payment.

VI. Administrative Liability

A. Penalties for Violations. DPWH officials and employees who fail to follow the procedures and requirements in processing FOI requests will be sanctioned, as follows:

- | | | |
|----------------|---|--|
| 1. 1st Offense | - | Reprimand |
| 2. 2nd Offense | - | Suspension for a period not exceeding thirty (30) days |
| 3. 3rd Offense | - | Dismissal from service |

B. Procedure. In disciplinary actions involving FOI, the procedure outlined in the Revised Rules on Administrative Cases in the Civil Service (See **Annex "H"**) will be followed.

C. Sanctions Imposed by Other Laws. Nothing in this Manual shall be deemed to prevent the application of more stringent sanctions for violation imposed by other laws, rules, or regulations.

D. Concerns and Feedbacks. Any concern or feedback regarding the conduct of an official, employee, or personnel of the DPWH in relation to the implementation of this Manual may be submitted through its official website at <http://www.dpwh.gov.ph/dpwh/contact>.

VII. Miscellaneous Provisions

A. General Inquiries. For follow ups and other inquiries, the Requesting Party may contact the designated FRO at (02) 5304-3267, email: foi@dpwh.gov.ph or proceed with the FOI Receiving Office at Stakeholders Relations Service, G/F DPWH Central Office, Bonifacio Drive, Port Area, Manila City.

B. Separability Clause. If any section or part of this Manual is held unconstitutional or invalid, other sections or provisions not otherwise affected shall remain in full force and effect.

C. Effectivity. This Order shall take effect immediately upon publication in the DPWH Website.

Department of Public Works and Highways
Office of the Secretary



WIN5K00680

Approved by:


MANUEL M. BONOAN
Secretary



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.

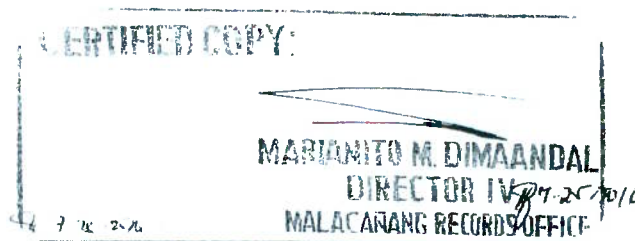
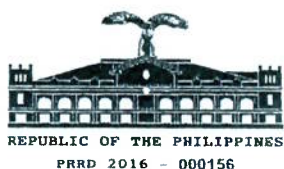
Done, in the City of Manila, this 23rd day of July in the year of our Lord Two Thousand and Sixteen.

By the President:

R Duterte



SIC
SALVADOR C. MEDIALDEA
Executive Secretary



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

MEMORANDUM FROM THE EXECUTIVE SECRETARY

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

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

DATE: 24 November 2016

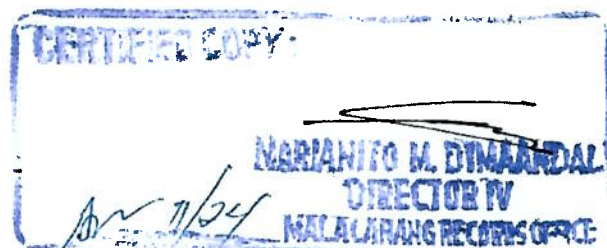
Pursuant to Section 4 of Executive Order (EO) No. 2 (s. 2016), the Office of the President hereby circularizes the inventory of exceptions to the right to access of information, for the guidance of all government offices and instrumentalities covered by EO No. 2 (s. 2016) and the general public.

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

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

For your information and guidance.

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SALVADOR C. MEDIALDEA



Exceptions to Right of Access to Information

For the guidance of all government offices and instrumentalities covered by EO No. 2 (s. 2016) and the general public, the following are the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence: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 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
 - b. Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs;⁶ and

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*. The privilege of invoking this exception ends when the executive agency adopts a definite proposition (*Department of Foreign Affairs v. BCA International Corp.*, G.R. No. 210858, 20 July 2016).

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; 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."

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.

- c. Patent applications, the publication of which would prejudice national security and interests;⁷
- 3. Information concerning law enforcement and protection of public and personal safety:
 - a. Investigation records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of such records or information would –
 - i. interfere with enforcement proceedings;
 - ii. deprive a person of a right to a fair trial or an impartial adjudication;
 - iii. disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; or
 - iv. unjustifiably disclose investigative techniques and procedures;⁸
 - b. Informer's privilege or the privilege of the Government not to disclose the identity of a person or persons who furnish information of violations of law to officers charged with the enforcement of law;⁹
 - c. When disclosure of information would put the life and safety of an individual in imminent danger;¹⁰
 - d. Any information given by informants leading to the recovery of carjacked vehicles and apprehension of the persons charged with carjacking;¹¹ and
 - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;¹²
- 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:

⁷ The applicability of this exception is determined by the Director General of the Intellectual Property Office and subject to the approval of the Secretary of the Department of Trade and Industry. Section 44.3 of the *Intellectual Property Code* (RA No. 8293, as amended by RA No. 10372).

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

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

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

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

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

- 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 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

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

¹⁴ Sections 8 and 15, *Data Privacy Act of 2012* (RA No. 10173); *Personal information* refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual [Section 3(g), *Data Privacy Act of 2012*]; Article 26, Civil Code. May be invoked by National Privacy Commission and government personal information controllers.

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

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

¹⁷ Medical and health records are considered as sensitive personal information pursuant to Section 3(l)(2), *Data Privacy Act of 2012*; See also Department of Health-Department of Science and Technology (DOST)-Philippine Health Insurance Corporation Joint Administrative Order No. 2016-0002 (Privacy Guidelines for the Implementation of the Philippine Health Information Exchange).

¹⁸ Section 3(l), *Data Privacy Act of 2012*.

¹⁹ Article 26(2), *Civil Code*.

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

the government institution; (2) the title, business address and office telephone number of the individual; (3) the classification, salary range and responsibilities of the position held by the individual; and (4) the name of the individual on a document prepared by the individual in the course of employment with the government;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, employer, or other identifying information of a victim or an immediate family member;²⁷
 - (6) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;²⁸
 - (7) names of victims of child abuse, exploitation or discrimination;²⁹

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

²² *An Act to Exempt the Publisher, Editor or Reporter of any Publication from Revealing the Source of Published News or Information Obtained in Confidence* (RA No. 53), as amended by RA No. 1477. May be invoked by government newspapers.

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*.

²⁷ Section 44, *Anti-Violence Against Women and their Children Act of 2004* (RA No. 9262); and *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

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

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

- (8) disclosure which would result in undue and sensationalized publicity of any case involving a child in conflict with the law, child abuse, or violation of anti-trafficking of persons;³⁰
 - (9) records, documents and communications of proceedings involving domestic and inter-country adoptions, including the identity of the child, natural parents and adoptive parents;³¹
 - (10) names of students who committed acts of bullying or retaliation;³²
 - (11) first time minor (drug) offenders under suspended sentence who comply with applicable rules and regulations of the Dangerous Drugs Board and who are subsequently discharged; judicial and medical records of drug dependents under the voluntary submission program; and records of a drug dependent who was rehabilitated and discharged from treatment and rehabilitation centers under the compulsory submission program, or who was charged for violation of Section 15 (use of dangerous drugs) of the *Comprehensive Dangerous Drugs Act of 2002*, as amended; and³³
 - (12) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing;³⁴
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;³⁵

³⁰ 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*.

³¹ Section 15, *Domestic Adoption Act of 1998* (RA No. 8552) and Section 43, IRR of RA No. 8552; Sections 6 and 16(b), *Inter-Country Adoption Act of 1995* (RA No. 8043) and Sections 53, 54 and 55 of IRR of RA No. 8043.

³² Section 3(h), *Anti-Bullying Act* (RA No. 10627).

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

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

³⁵ Sections 45, 106.1, and 150.2, *The Intellectual Property Code* (RA No. 8293, as amended by RA No. 10372); Section 66.2, *Securities Regulation Code* (RA No. 8799); DOST Administrative Order No. 004-16; Section 142, *The Corporation Code* (BP Blg. 68); Section 34, *Philippine Competition Act* (RA No. 10667); Sections 23 and 27 (c), *The New Central Bank Act* (RA No. 7653); *Anti-Money Laundering Act* (RA No. 9160); Section 18, *Strategic Trade Management Act* (RA No. 10697); Sections 10 and 14, *Safeguard Measures Act* (RA No. 8800); Section 12, *Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990* (RA No. 6969); Article 290, *Revised Penal Code*; Section 10.10, Rule 10, 2012 Revised IRR of *Build-Operate-Transfer Law* (RA No. 6957); and *Revised Philippine Ports Authority Manual of Corporate Governance*.

- b. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics Authority (PSA);³⁶
- c. Records and reports submitted to the Social Security System by the employer or member;³⁷
- d. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;³⁸
- e. Confidential information submitted to the Philippine Competition Commission prohibited from disclosure by law, including the identity of the person who provided the information under condition of anonymity;³⁹
- f. Applications and supporting documents filed pursuant to the *Omnibus Investments Code of 1987*;⁴⁰
- g. Documents submitted through the Government Electronic Procurement System;⁴¹
- h. Information obtained from accessing any electronic key, electronic data message, or electronic document, book, register, correspondence, information or other material pursuant to any powers conferred under the *Electronic Commerce Act of 2000*;⁴²
- i. Any confidential information supplied by the contractors in mineral agreements, and financial or technical assistance agreements pursuant to the *Philippine Mining Act of 1995* and its Implementing Rules and Regulations (IRR), during the term of the project to which it relates;⁴³
- j. Information received by the Department of Tourism (DOT) in relation to the accreditation of accommodation establishments (such as hotels and resorts) and travel and tour agencies;⁴⁴

³⁶ Section 26, *Philippine Statistical Act of 2013* (RA No. 10625); and Section 4, *Commonwealth Act No. 591*. May be invoked only by the PSA.

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

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

³⁹ 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.

⁴⁰ Section 81, EO No. 226 (s. 1987), as amended.

⁴¹ Section 9, *Government Procurement Reform Act* (RA No. 9184).

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

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

⁴⁴ Section 1, Rule IX, DOT MC No. 2010-02 (Rules and Regulations to Govern, the Accreditation of Accommodation Establishments – Hotels, Resorts and Apartment Hotels); and Section 23, DOT MC No. 2015-06 (Revised Rules and Regulations to Govern the Accreditation of Travel and Tour Agencies).

- k. The fact that a covered transaction report to the Anti-Money Laundering Council (AMLC) has been made, the contents thereof, or any information in relation thereto;⁴⁵
 - l. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;⁴⁶
 - m. Certain information and reports submitted to the Insurance Commissioner pursuant to the *Insurance Code*;⁴⁷
 - n. Information on registered cultural properties owned by private individuals;⁴⁸
 - o. Data submitted by a higher education institution to the Commission on Higher Education (CHED);⁴⁹ and
 - p. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;⁵⁰
6. Information of which a premature disclosure would:
- a. in the case of a department, office or agency which agency regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities, or significantly endanger the stability of any financial institution; or
 - b. be likely or significantly frustrate implementation of a proposed official action, except such department, office or agency has already disclosed to the public the content or nature of its proposed action, or where the department, office or agency is required by law to make such disclosure on its own initiative prior to taking final official action on such proposal.⁵¹
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:

⁴⁵ Section 9(c), *Anti-Money Laundering Act of 2001*, as amended. May be invoked by AMLC, government banks and its officers and employees.

⁴⁶ Section 10, *Safeguard Measures Act*.

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

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

⁴⁹ CHED Memorandum Order No. 015-13, 28 May 2013.

⁵⁰ 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).

⁵¹ 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*;⁵²
- b. Matters involved in an Investor-State mediation;⁵³
- c. Information and statements made at conciliation proceedings under the *Labor Code*;⁵⁴
- d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);⁵⁵
- 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;⁵⁶
- f. Information related to investigations which are deemed confidential under the *Securities Regulations Code*;⁵⁷
- g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;⁵⁸
- 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*;⁵⁹
- i. Investigation report and the supervision history of a probationer;⁶⁰
- j. Those matters classified as confidential under the *Human Security Act of 2007*;⁶¹

⁵² 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.

⁵³ Article 10, International Bar Association Rules for Investor-State Mediation.

⁵⁴ Article 237, *Labor Code*.

⁵⁵ Section 7.1, Rule 7, CIAC Revised Rules of Procedure Governing Construction Arbitration.

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

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

⁵⁸ 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.

⁵⁹ DOJ Department Circular No. 006-16 (No. 6), 10 February 2016.

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

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

- k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies;⁶² and
 - l. Those information deemed confidential or privileged pursuant to pertinent rules and regulations issued by the Supreme Court, such as information on disbarment proceedings, DNA profiles and results, or those ordered by courts to be kept confidential;⁶³
- 8. Matters considered confidential under banking and finance laws and their amendatory laws, such as:
 - a. RA No. 1405 (*Law on Secrecy of Bank Deposits*);
 - b. RA No. 6426 (*Foreign Currency Deposit Act of the Philippines*) and relevant regulations;
 - c. RA No. 8791 (*The General Banking Law of 2000*);
 - d. RA No. 9160 (*Anti-Money Laundering Act of 2001*); and
 - e. RA No. 9510 (*Credit Information System Act*);
- 9. Other exceptions to the right to information under laws, jurisprudence, rules and regulations, such as:
 - a. Those deemed confidential pursuant to treaties, executive agreements, other international agreements, or international proceedings, such as:
 - (1) When the disclosure would prejudice legitimate commercial interest or competitive position of investor-states pursuant to investment agreements;⁶⁴
 - (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);⁶⁵ 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);

⁶² Section 14, Civil Service Commission Resolution No. 01-0940.

⁶³ Section 18, Rule 139-B and Section 24, Rule 130 of the Rules of Court; and Section 11 of the Rule on DNA Evidence, A.M. No. 06-11-5-SC.

⁶⁴ 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.

⁶⁵ Article 7, UNCITRAL Transparency Rules.

- b. Testimony from a government official, unless pursuant to a court or legal order;⁶⁶
- 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;⁶⁷
- d. Lists, abstracts, summaries of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;⁶⁸
- e. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;⁶⁹
- f. Requested information pertains to comments and disclosures on pending cases in judicial proceedings;⁷⁰ and
- g. Attorney-client privilege existing between government lawyers and their client.⁷¹

⁶⁶ *Senate v. Neri, supra; Senate v. Ermita, supra.*

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

⁶⁸ *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.

⁶⁹ Examples: 2012 Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses and the Provision of CHR Assistance; Government Service Insurance System's Rules of Procedure of the Committee on Claims; National Labor Relations Commission Resolution No. 01-02, Amending Certain Provisions of the New Rules of Procedure of the National Labor Relations Commission, 08 March 2002; Department of Agrarian Reform MC No. 07-11, 19 July 2011; Department of Social Welfare and Development MC No. 021-12, 16 October 2012; and Section 42, *Investment Company Act* (RA No. 2629); When the information requested is not a matter of public concern or interest as decided in *Hilado v. Judge Amor A. Reyes*, G.R. No. 163155, 21 July 2006.

⁷⁰ *Romero v. Guerzon*, G.R. No. 211816, 18 March 2015.

⁷¹ Canon 21 of the *Code of Professional Responsibility*.



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Manila



Annex C

09.10.2024

SEP 10 2024

SPECIAL ORDER)

NO. **178**)

Series of 2024

09/10/2024

SUBJECT: Designation of DPWH Freedom of Information (FOI) Officers and Focal Persons

Pursuant to the provisions of Executive Order No. 2, series of 2016 also known as the Freedom of Information Order, the following officials and employees are hereby designated DPWH FOI Officers and Focal Persons to ensure the effective implementation of the DPWH FOI Program:

FOI Champion	: Undersecretary MARICHU A. PALAFOX, Support Services
FOI Decision Maker	: Director GLIRICIDIA C. TUMALIUAN-ALI, Legal Service
FOI Receiving Officer	: Mr. ANDRO V. SANTIAGO, Stakeholders Relations Service
FOI Focal Person	: Regional Public Information Officer (PIO) and Designated PIO in Unified Project Management Offices and District Engineering Offices

FOI Central Appeals and Review Committee:

Chairperson	: OIC Assistant Secretary MICHAEL S. VILLAFRANCA, Support Services
Members:	: Director RANDY R. DEL ROSARIO, Stakeholders Relations Service Director, Concerned Office in Custody of Requested Data

The specific function, duties and responsibilities of the above stated FOI Officers and Focal Persons are stipulated in Department Order No. 144 series of 2018 entitled "Issuance of Freedom of Information (FOI) People's Manual and Re-issuance of FOI Agency Manual".

This Order shall supersede Department Order No. 62, series of 2017 and shall take effect immediately.


MANUEL M. BONOAN
Secretary

Department of Public Works and Highways
Office of the Secretary


REG4XB01037



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Manila



Annex D

11-18-2024

NOV 15 2024

SPECIAL ORDER)
NO. 245)
Series of 2024

**SUBJECT: Reconstitution of the DPWH
Freedom of Information (FOI)
Central Appeals and Review
Committee (CARC)**

11/18/2024

Pursuant to the provisions of Executive Order No. 2, Series of 2016, otherwise known as the Freedom of Information Order, the following officials and employees are hereby designated as members of the **DPWH Freedom of Information Central Appeals and Review Committee (CARC)**:

Chairperson : **Assistant Secretary MICHAEL S. VILLAFRANCA**, Support Services
Vice-Chair : **Director RANDY R. DEL ROSARIO**, Stakeholders Relations Service
Members: : **Director RHALF B. CAWALING**, Information Management Service
 OIC Assistant Director GERARDO A. MACALINAO, Bureau of Research and Standards
 Assistant Director MELROSE I. PAILMA, Bureau of Construction
 OIC Assistant Director LARA MARISSE T. INGUITO, Bureau of Design
 Mr. PETER PAUL CORTEZ, Planning Service
 Atty. MIKKO PAULO O. ALIBIN, Procurement Service
 Atty. ARJAY N. PERALTA, Public-Private Partnership Service
 Atty. ABDUL HALIM P. DIRON, Unified Project Management Office

The CARC shall perform such functions and duties as outlined in Department Order No. 144, Series of 2018, entitled "Issuance of the Freedom of Information (FOI) People's Manual and Re-issuance of the FOI Agency Manual".

This Order supersedes the composition of CARC as prescribed by Special Order No. 178, Series of 2024, which designates the DPWH Freedom of Information (FOI) Officers and Focal Persons

This Order shall take effect immediately.

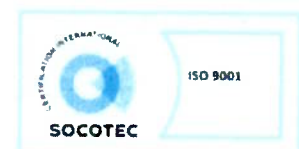

MANUEL M. BONOAN
Secretary

Department of Public Works and Highways
Office of the Secretary



WIN4K00675

Website: <https://www.dpwh.gov.ph>
Tel. No(s).: 5304-3000 / (02) 165-02





FREEDOM OF INFORMATION REQUEST FORM

IMPORTANT – Please read this information carefully before you complete the FOI request form. Once you have completed your request, we strongly advise that you keep a copy for your records.

What is Executive Order No.2 s. 2016?

On July 23, 2016, President Rodrigo Roa Duterte signed Executive Order No. 2, also known as the Freedom of Information (FOI) Executive Order (EO). It upholds the constitutional right of people to information on matters of public concern.

The Executive Order covers all government offices under the Executive Branch, including government-owned or -controlled corporations (GOCCs) and state universities and colleges (SUCs). It requires all executive departments, agencies, bureaus, and offices to make public records, contracts, transactions and any information requested by a member of the public, except for sensitive information and matters affecting national security.

What is Freedom of Information?

The FOI EO is an important enabling mechanism to promote transparency in the government's administrative process. Through FOI, citizens are empowered to make a formal request to get information held by the government, barring certain sensitive and important data related to the nation's security. The FOI complements continuing proactive information disclosure efforts where agencies are duty-bound to publish information in the spirit of openness and transparency.

Freedom of Information is an integral element of President Duterte's Good Governance Plan aligned to reforms and initiatives that pursue greater transparency, accountability, and citizen participation in governance.

Who is overseeing the implementation of FOI Executive Order No. 2?

The Presidential Communications Operations Office (PCOO) is over-seeing the implementation and operationalization of the FOI program. PCOO is also responsible for monitoring compliance and performance of all government agencies.

MAKING AN FOI REQUEST

Who can make an FOI request?

Under the FOI EO, any Filipino citizen can make an FOI request. As a matter of policy, requesting parties are required to present proof of identification (e.g., passport, driver's license, SSS ID, voters ID) in the submission of an FOI request.

Which agencies can I request information from?

An FOI request can be made to any government office 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.

What is the procedure for making a valid FOI request?

To make a valid request, you must:

- Place your request in writing. Ensure to state your full name, contact information and provide a valid copy of your government-issued ID as proof of your identity. You can use the attached form or send a letter detailing your request submitted directly to the concerned agency or by email;
- Describe in detail the documents you wish to access; and
- Include the preferred mode of communication in order to be alerted about the status of your request, as well the preferred mode of receiving the documents, should your request be granted.

What information can I request for through FOI?

Information, official records, public records, documents, and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, subject to exceptions necessary to protect essential public or private interest.

Is there an online alternative to making an FOI request?

You may choose to fill out an online application on foi.gov.ph after signing up for an account. You will also need to upload a valid copy of your government-issued ID upon registration.

FEES

How much does it cost to make an FOI request?

There are **NO FEES** for making an FOI request. An agency however, may charge a reasonable fee for necessary costs associated with processing a request - including costs of printing, delivery, reproduction and/or photocopying.

NOTE: Use of this FOI request form is optional. Any written format for a Freedom of Information request is acceptable.

PROCESSING TIMES

When can I expect to receive a response to an FOI request?

Under the FOI EO, the standard processing time is fifteen (15) working days. During this time, you will be contacted regarding your FOI request through your preferred mode of communication.

If your request is granted, you can expect to receive the documents either through regular mail or email, or be requested to collect the documents at the office you had applied to. Otherwise, the agency will explain why your request is delayed or denied.

Can an agency request for a time extension?

In some cases, an agency may need more time to review your request and thereby inform you of an extension of processing period. Under such circumstances, an agency is permitted to extend an additional twenty (20) working days should the need arise.

Can I have my request expedited?

There is no process by which requests can be expedited. All requests will be reviewed equally on a case-by-case basis and allotted the fifteen (15) working day processing period from the time of receipt.

COMPLAINTS HANDLING

What if you are not happy with how the agency has handled your request?

Denial of any request for access to information may be appealed to the person or office next higher in the authority, following the procedure indicated in the Agency FOI Manual; 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.

The appeal will 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.

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

IMPORTANT INFORMATION

Privacy

Once deemed valid, your information from your application will be used by the agency you have applied to, to deal with your application as set out in the Freedom of Information Executive Order No. 2.

If the agency gives you access to a document, and if the document contains no personal information about you, the document may be published online in the Agency's disclosure log, along with your name and the date you applied, and, if another person, company or body will use or benefit from the documents sought, the name of that person, entity or body.

Copyright

According to Sec. 176.1 of the Intellectual Property Code of the Philippines (RA No. 8293, as amended), No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings



FREEDOM OF INFORMATION REQUEST FORM

(Pursuant to Executive Order No. 2, s. 2016)
(as of November 2016)

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 "X" where necessary. Note: (◀) denotes a MANDATORY field.

A. Requesting Party

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

1. Title (e.g. Mr, Mrs, Ms, Miss)

2. Given Name/s (including M.I)

3. Surname

4. Complete Address (Apt/House Number, Street, City/Municipality, Province)

5. Landline/Fax

6. Mobile

7. Email

8. Preferred Mode of Communication ☐ Landline ☐ Mobile Number ☐ Email ☐ Postal Address

(If your request is successful, we will be sending the documents to you in this manner.)

9. Preferred Mode of Reply

☐ Email ☐ Fax ☐ Postal Address ☐ Pick-Up at Agency

10. Type of ID Given (Please ensure your IDs contain your photo and signature)

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

B. Requested Information

11. Agency - Connecting Agency
(if applicable)

12. Title of Document/Record
Requested (Please be as detailed as possible)

13. Date or Period (DD/MM/YY)

14. Purpose

15. Document Type

16. Reference Numbers (if known)

17. Any other Relevant Information

C. Declaration

Privacy Notice: Once deemed valid, your information from your application will be used by the agency you have applied to, to deal with your application as set out in the Freedom of Information Executive Order No. 2. If the Department or Agency gives you access to a document, and if the document contains no personal information about you, the document will be published online in the Department's or Agency's disclosure log, along with your name and the date you applied, and, if another person, company or body will use or benefit from the documents sought, the name of that person, entity or body.

I declare that:

- The information provided in the form is complete and correct;
- I have read the Privacy notice;
- 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

◀ _____

Date Accomplished (DD/MM/YYYY)

◀ _____

D. FOI Receiving Officer [INTERNAL USE ONLY]

Name (Print name)

◀ _____

Agency - Connecting Agency (if applicable, otherwise N/A)

◀ _____ ◀ _____

Date entered on eFOI (if applicable, otherwise N/A)

◀ _____

Proof of ID Presented (Photocopies of original should be attached)

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

The request is recommended to be:

☐ Approved ☐ Denied

If Denied, please tick the Reason for the Denial

☐ Invalid Request ☐ Incomplete ☐ Data already available online

Second Receiving Officer Assigned (print name)

◀ _____

Decision Maker Assigned to Application (print name)

◀ _____

Decision on Application

☐ Successful ☐ Partially Successful ☐ Denied ☐ Cost

If Denied, please tick the Reason for the Denial

☐ Invalid Request ☐ Incomplete ☐ Data already available online
☐ Exception Which Exception? _____

Date Request Finished (DD/MM/YYYY)

◀ _____

Date Documents (if any) Sent (DD/MM/YYYY)

◀ _____

FOI Registry Accomplished

☐ Yes ☐ No

RO Signature

◀ _____

Date (DD/MM/YYYY)

◀ _____



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.

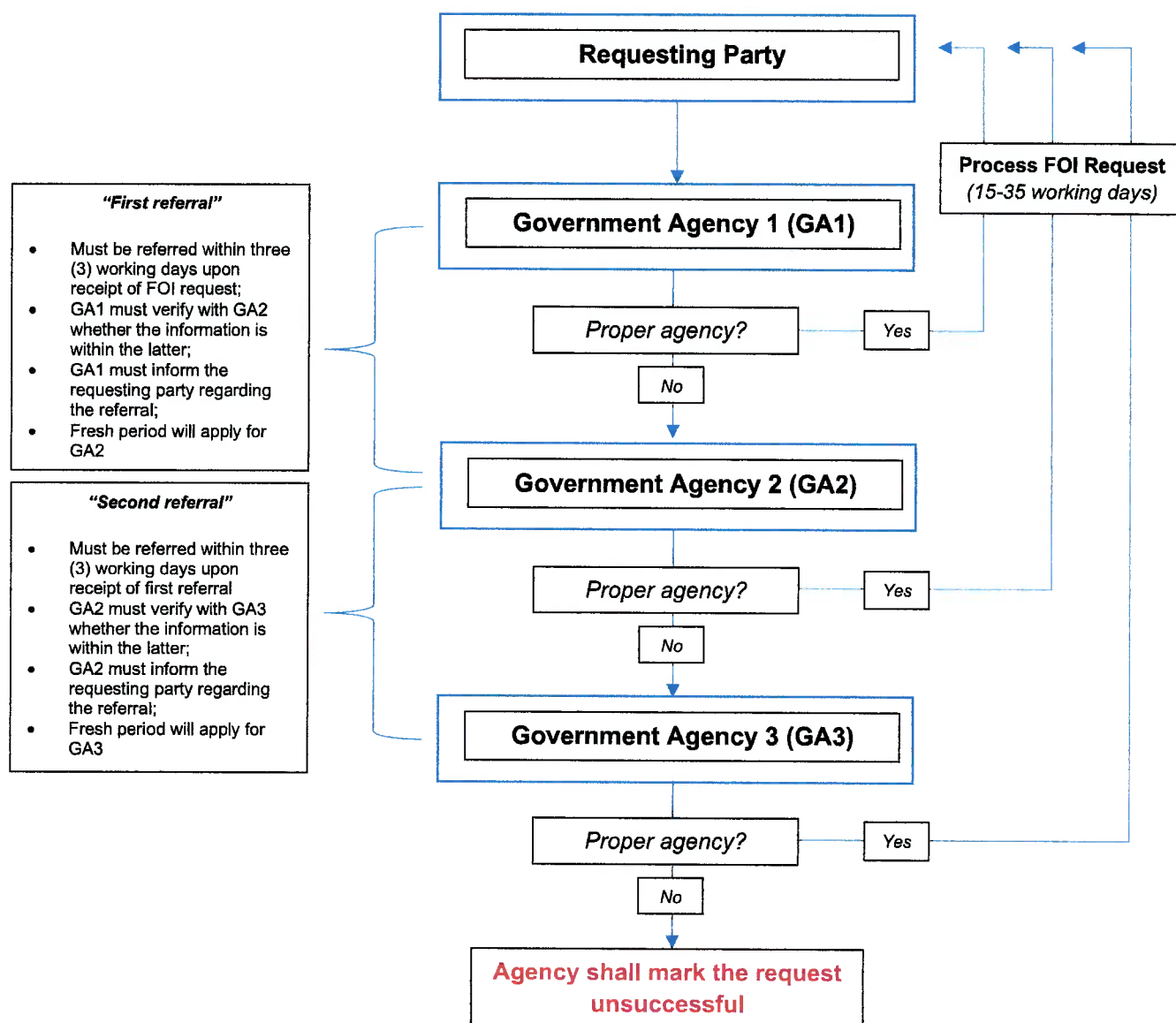
Section 11. Effectivity. This Memorandum Circular shall take effect immediately.

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.



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Tanggapang Pampanguluhan sa Operasyong Pangkomunikasyon
 Malacanang, 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 *th*

28 September 2019 Manila, Philippines.



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

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

[REPUBLIC ACT NO. 10173]

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

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

**CHAPTER I
GENERAL PROVISIONS**

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

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

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



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

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

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

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

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

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

(g) *Personal information* refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.



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

- (1) A person or organization who performs such functions as instructed by another person or organization; and
 - (2) An individual who collects, holds, processes or uses personal information in connection with the individual's personal, family or household affairs.
- (i) *Personal information processor* refers to any natural or juridical person qualified to act as such under this Act to whom a personal information controller may outsource the processing of personal data pertaining to a data subject.
- (j) *Processing* refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.
- (k) *Privileged information* refers to any and all forms of data which under the Rules of Court and other pertinent laws constitute privileged communication.

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

- (1) About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- (2) About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;



(3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and

(4) Specifically established by an executive order or an act of Congress to be kept classified.

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

This Act does not apply to the following:

(a) Information about any individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual, including:

(1) The fact that the individual is or was an officer or employee of the government institution;

(2) The title, business address and office telephone number of the individual;

(3) The classification, salary range and responsibilities of the position held by the individual; and

(4) The name of the individual on a document prepared by the individual in the course of employment with the government;

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



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

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

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

(f) Information necessary for banks and other financial institutions under the jurisdiction of the independent, central monetary authority or Bangko Sentral ng Pilipinas to comply with Republic Act No. 9510, and Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act and other applicable laws; and

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

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

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



- (a) The act, practice or processing relates to personal information about a Philippine citizen or a resident;
- (b) The entity has a link with the Philippines, and the entity is processing personal information in the Philippines or even if the processing is outside the Philippines as long as it is about Philippine citizens or residents such as, but not limited to, the following:
 - (1) A contract is entered in the Philippines;
 - (2) A juridical entity unincorporated in the Philippines but has central management and control in the country; and
 - (3) An entity that has a branch, agency, office or subsidiary in the Philippines and the parent or affiliate of the Philippine entity has access to personal information; and
- (c) The entity has other links in the Philippines such as, but not limited to:
 - (1) The entity carries on business in the Philippines; and
 - (2) The personal information was collected or held by an entity in the Philippines.

CHAPTER II THE NATIONAL PRIVACY COMMISSION

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

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



- (b) Receive complaints, institute investigations, facilitate or enable settlement of complaints through the use of alternative dispute resolution processes, adjudicate, award indemnity on matters affecting any personal information, prepare reports on disposition of complaints and resolution of any investigation it initiates, and, in cases it deems appropriate, publicize any such report: *Provided, That* in resolving any complaint or investigation (except where amicable settlement is reached by the parties), the Commission shall act as a collegial body. For this purpose, the Commission may be given access to personal information that is subject of any complaint and to collect the information necessary to perform its functions under this Act;
- (c) Issue cease and desist orders, impose a temporary or permanent ban on the processing of personal information, upon finding that the processing will be detrimental to national security and public interest;
- (d) Compel or petition any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting data privacy;
- (e) Monitor the compliance of other government agencies or instrumentalities on their security and technical measures and recommend the necessary action in order to meet minimum standards for protection of personal information pursuant to this Act;
- (f) Coordinate with other government agencies and the private sector on efforts to formulate and implement plans and policies to strengthen the protection of personal information in the country;
- (g) Publish on a regular basis a guide to all laws relating to data protection;
- (h) Publish a compilation of agency system of records and notices, including index and other finding aids;
- (i) Recommend to the Department of Justice (DOJ) the prosecution and imposition of penalties specified in Sections 25 to 29 of this Act;



- (j) Review, approve, reject or require modification of privacy codes voluntarily adhered to by personal information controllers: *Provided*, That the privacy codes shall adhere to the underlying data privacy principles embodied in this Act: *Provided, further*, That such privacy codes may include private dispute resolution mechanisms for complaints against any participating personal information controller. For this purpose, the Commission shall consult with relevant regulatory agencies in the formulation and administration of privacy codes applying the standards set out in this Act, with respect to the persons, entities, business activities and business sectors that said regulatory bodies are authorized to principally regulate pursuant to the law: *Provided, finally*. That the Commission may review such privacy codes and require changes thereto for purposes of complying with this Act;
- (k) Provide assistance on matters relating to privacy or data protection at the request of a national or local agency, a private entity or any person;
- (l) Comment on the implication on data privacy of proposed national or local statutes, regulations or procedures, issue advisory opinions and interpret the provisions of this Act and other data privacy laws;
- (m) Propose legislation, amendments or modifications to Philippine laws on privacy or data protection as may be necessary;
- (n) Ensure proper and effective coordination with data privacy regulators in other countries and private accountability agents, participate in international and regional initiatives for data privacy protection;
- (o) Negotiate and contract with other data privacy authorities of other countries for cross-border application and implementation of respective privacy laws;
- (p) Assist Philippine companies doing business abroad to respond to foreign privacy or data protection laws and regulations; and
- (q) Generally perform such acts as may be necessary to facilitate cross-border enforcement of data privacy protection.



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

SEC. 9. *Organizational Structure of the Commission.* – The Commission shall be attached to the Department of Information and Communications Technology (DICT) and shall be headed by a Privacy Commissioner, who shall also act as Chairman of the Commission. The Privacy Commissioner shall be assisted by two (2) Deputy Privacy Commissioners, one to be responsible for Data Processing Systems and one to be responsible for Policies and Planning. The Privacy Commissioner and the two (2) Deputy Privacy Commissioners shall be appointed by the President of the Philippines for a term of three (3) years, and may be reappointed for another term of three (3) years. Vacancies in the Commission shall be filled in the same manner in which the original appointment was made.

The Privacy Commissioner must be at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity, and a recognized expert in the field of information technology and data privacy. The Privacy Commissioner shall enjoy the benefits, privileges and emoluments equivalent to the rank of Secretary.

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

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



performance is lawful, he or she shall be reimbursed by the Commission for reasonable costs of litigation.

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

CHAPTER III PROCESSING OF PERSONAL INFORMATION

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

Personal information must, be:

- (a) Collected for specified and legitimate purposes determined and declared before, or as soon as reasonably practicable after collection, and later processed in a way compatible with such declared, specified and legitimate purposes only;
- (b) Processed fairly and lawfully;
- (c) Accurate, relevant and, where necessary for purposes for which it is to be used the processing of personal information, kept up to date; inaccurate or incomplete data must be rectified, supplemented, destroyed or their further processing restricted;
- (d) Adequate and not excessive in relation to the purposes for which they are collected and processed;



(e) Retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained or for the establishment, exercise or defense of legal claims, or for legitimate business purposes, or as provided by law; and

(f) Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected and processed: *Provided*, That personal information collected for other purposes may lie processed for historical, statistical or scientific purposes, and in cases laid down in law may be stored for longer periods: *Provided, further*, That adequate safeguards are guaranteed by said laws authorizing their processing.

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

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

- (a) The data subject has given his or her consent;
- (b) The processing of personal information is necessary and is related to the fulfillment of a contract with the data subject or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) The processing is necessary for compliance with a legal obligation to which the personal information controller is subject;
- (d) The processing is necessary to protect vitally important interests of the data subject, including life and health;
- (e) The processing is necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate; or



(f) The processing is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.

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

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



(f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

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

SEC. 15. *Extension of Privileged Communication.* – Personal information controllers may invoke the principle of privileged communication over privileged information that they lawfully control or process. Subject to existing laws and regulations, any evidence gathered on privileged information is inadmissible.

CHAPTER IV RIGHTS OF THE DATA SUBJECT

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

- (a) Be informed whether personal information pertaining to him or her shall be, are being or have been processed;
- (b) Be furnished the information indicated hereunder before the entry of his or her personal information into the processing system of the personal information controller, or at the next practical opportunity:
 - (1) Description of the personal information to be entered into the system;
 - (2) Purposes for which they are being or are to be processed;
 - (3) Scope and method of the personal information processing;



- (4) The recipients or classes of recipients to whom they are or may be disclosed;
- (5) Methods utilized for automated access, if the same is allowed by the data subject, and the extent to which such access is authorized;
- (6) The identity and contact details of the personal information controller or its representative;
- (7) The period for which the information will be stored; and
- (8) The existence of their rights, i.e., to access, correction, as well as the right to lodge a complaint before the Commission.

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

- (c) Reasonable access to, upon demand, the following:
 - (1) Contents of his or her personal information that were processed;
 - (2) Sources from which personal information were obtained;
 - (3) Names and addresses of recipients of the personal information;
 - (4) Manner by which such data were processed;
 - (5) Reasons for the disclosure of the personal information to recipients;



- (6) Information on automated processes where the data will or likely to be made as the sole basis for any decision significantly affecting or will affect the data subject;
 - (7) Date when his or her personal information concerning the data subject were last accessed and modified; and
 - (8) The designation, or name or identity and address of the personal information controller;
- (d) Dispute the inaccuracy or error in the personal information and have the personal information controller correct it immediately and accordingly, unless the request is vexatious or otherwise unreasonable. If the personal information have been corrected, the personal information controller shall ensure the accessibility of both the new and the retracted information and the simultaneous receipt of the new and the retracted information by recipients thereof: *Provided, That* the third parties who have previously received such processed personal information shall be informed of its inaccuracy and its rectification upon reasonable request of the data subject;
- (e) Suspend, withdraw or order the blocking, removal or destruction of his or her personal information from the personal information controller's filing system upon discovery and substantial proof that the personal information are incomplete, outdated, false, unlawfully obtained, used for unauthorized purposes or are no longer necessary for the purposes for which they were collected. In this case, the personal information controller may notify third parties who have previously received such processed personal information; and
- (f) Be indemnified for any damages sustained due to such inaccurate, incomplete, outdated, false, unlawfully obtained or unauthorized use of personal information.

SEC. 17. Transmissibility of Rights of the Data Subject. – The lawful heirs and assigns of the data subject may invoke the rights of the data subject for, which he or she is an heir or assignee at any time after the death of the data subject or



when the data subject is incapacitated or incapable of exercising the rights as enumerated in the immediately preceding section.

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

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

CHAPTER V SECURITY OF PERSONAL INFORMATION

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

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



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

- (1) Safeguards to protect its computer network against accidental, unlawful or unauthorized usage or interference with or hindering of their functioning or availability;
 - (2) A security policy with respect to the processing of personal information;
 - (3) A process for identifying and accessing reasonably foreseeable vulnerabilities in its computer networks, and for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach; and
 - (4) Regular monitoring for security breaches and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.
- (d) The personal information controller must further ensure that third parties processing personal information on its behalf shall implement the security measures required by this provision.
- (e) The employees, agents or representatives of a personal information controller who are involved in the processing of personal information shall operate and hold personal information under strict confidentiality if the personal information are not intended for public disclosure. This obligation shall continue even after leaving the public service, transfer to another position or upon termination of employment or contractual relations.
- (f) The personal information controller shall promptly notify the Commission and affected data subjects when sensitive personal information or other information that may, under the circumstances, be used to enable identity fraud are reasonably believed to have been acquired by an unauthorized person, and



the personal information controller or the Commission believes (but such unauthorized acquisition is likely to give rise to a real risk of serious harm to any affected data subject. The notification shall at least describe the nature of the breach, the sensitive personal information possibly involved, and the measures taken by the entity to address the breach. Notification may be delayed only to the extent necessary to determine the scope of the breach, to prevent further disclosures, or to restore reasonable integrity to the information and communications system.

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

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

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

CHAPTER VI ACCOUNTABILITY FOR TRANSFER OF PERSONAL INFORMATION

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

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

(b) The personal information controller shall designate an individual or individuals who are accountable for the organization's compliance with this Act.



The identity of the individual(s) so designated shall be made known to any data subject upon request.

CHAPTER VII SECURITY OF SENSITIVE PERSONAL INFORMATION IN GOVERNMENT

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

SEC. 23. Requirements Relating to Access by Agency Personnel to Sensitive Personal Information. – (a) On-site and Online Access – Except as may be allowed through guidelines to be issued by the Commission, no employee of the government shall have access to sensitive personal information on government property or through online facilities unless the employee has received a security clearance from the head of the source agency.

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

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



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

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

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

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

CHAPTER VIII PENALTIES

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

(b) The unauthorized processing of personal sensitive information shall be penalized by imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Four million pesos (Php4,000,000.00) shall be imposed on persons who



process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.

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

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

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

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



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

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

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

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

SEC. 31. Malicious Disclosure. – Any personal information controller or personal information processor or any of its officials, employees or agents, who, with malice or in bad faith, discloses unwarranted or false information relative to any personal information or personal sensitive information obtained by him or her,



shall be subject to imprisonment ranging from one (1) year and six (6) months to five (5) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than One million pesos (Php1,000,000.00).

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

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

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

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



prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

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

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

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

CHAPTER IX MISCELLANEOUS PROVISIONS

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

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

SEC. 40. *Reports and Information.* – The Commission shall annually report to the President and Congress on its activities in carrying out the provisions of this Act. The Commission shall undertake whatever efforts it may determine to be necessary or appropriate to inform and educate the public of data privacy, data protection and fair information rights and responsibilities.

SEC. 41. *Appropriations Clause.* – The Commission shall be provided with an initial appropriation of Twenty million pesos (Php20,000,000.00) to be drawn



from the national government. Appropriations for the succeeding years shall be included in the General Appropriations Act. It shall likewise receive Ten million pesos (Php10,000,000.00) per year for five (5) years upon implementation of this Act drawn from the national government.

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

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

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

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

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

Approved,

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

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



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

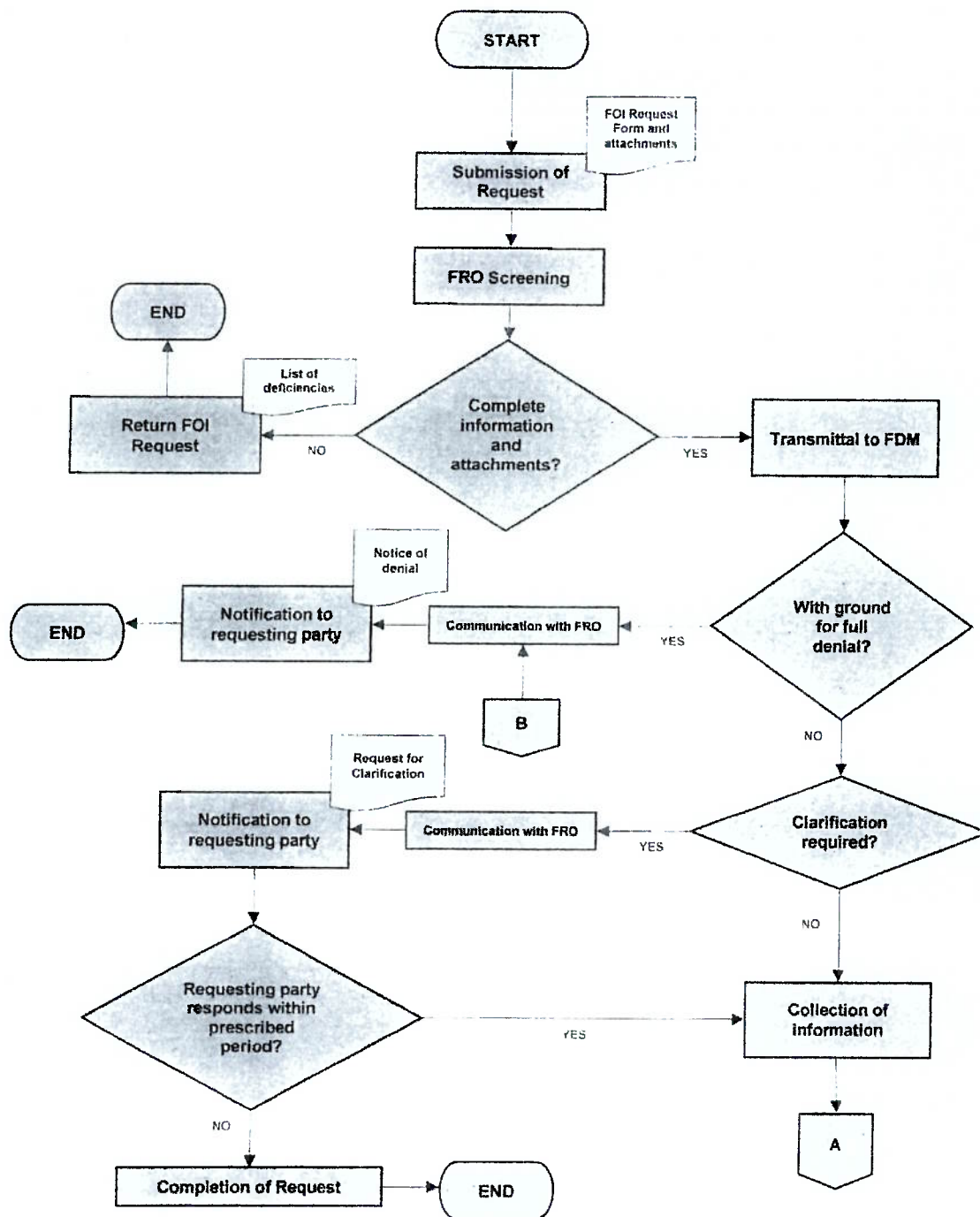
(Sgd.) **MARILYN B. BARUA-YAP**
Secretary General
House of Representatives

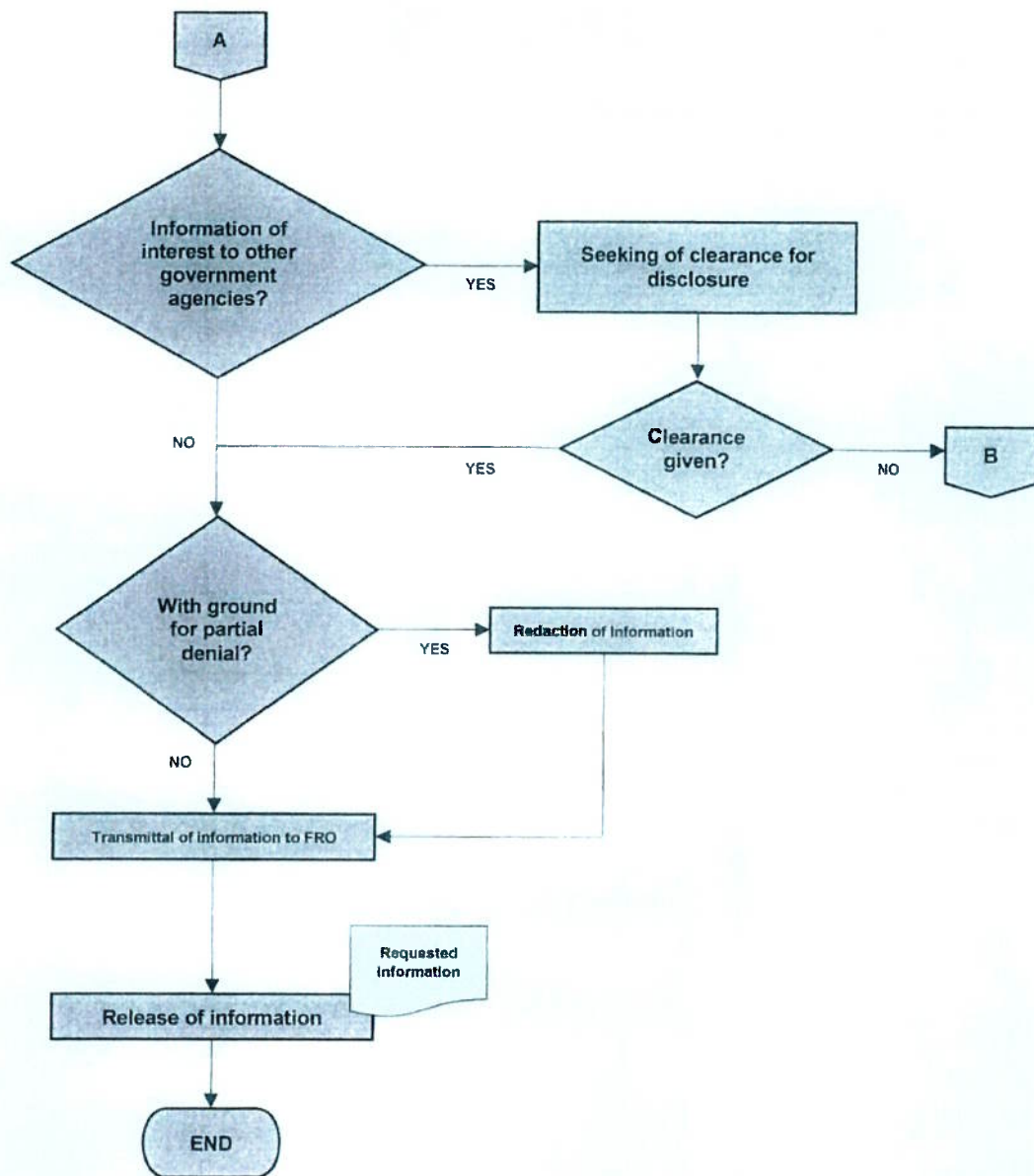
(Sgd.) **EMMA LIRIO-REYES**
Secretary of the Senate

Approved: **AUG 15 2012**

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

FOI Request Flowchart







Freedom of Information
Central Appeals and Review Committee

Rules of Procedure

Ver. 1.0

PREFATORY STATEMENT

In line with the State's policy of full public disclosure laid down in Section 28, Article II of the 1987 Constitution and in recognition of the people's right to be informed on matters of public concern enshrined in Section 7, Article III of the 1987 Constitution, Executive Order (EO) No. 02, Series of (S.) 2016 was issued. Pursuant to Section 13 of the said EO, the following rules governing the conduct of proceedings before the Freedom of Information (FOI) Central Appeals and Review Committee (CARC) are hereby adopted and promulgated.

PART I – GENERAL PROVISIONS

Section 1. Title. These Rules shall be known and cited as the "CARC Rules of Procedure".

Section 2. Construction. These Rules shall be liberally construed and applied to promote the State policy of full public disclosure, to give the greatest effect to the people's constitutional right to be informed on matters of public concern, and to provide speedy and inexpensive disposition of all FOI appeals. Any doubt shall be resolved in favor of the requesting party.

Section 3. Applicability. These Rules shall apply to appeals made from any full or partial denial made by the FOI Decision Maker (FDM) of any FOI request.

Section 4. Proper Party. An appeal to the CARC may only be made by the requesting party or by the requesting party's duly authorized representative. An appeal by any other party shall be denied due course, with proper notice.

PART II – DEFINITION OF TERMS

Section 5. Terminologies. For purposes of these Rules, the following terms shall mean:

- a. *Central Appeals and Review Committee* – The body created by the DPWH responsible for reviewing full or partial denials made by the FDM of FOI requests.
- b. *FOI Decision Maker* – The DPWH official or employee designated to decide on whether to grant FOI requests, or to deny them, either fully or in part.
- c. *FOI Inventory of Exceptions* – The list drawn up by the Office of the President setting forth all information not subject to disclosure pursuant to EO No. 02, S. 2016.
- d. *FOI Request* - A written request for disclosure of information held by the DPWH made pursuant to EO No. 02, S. 2016.
- e. *FOI Request Form* - The prescribed pro-forma template the requesting party is required to fill out and submit to the DPWH to initiate an FOI request.
- f. *Freedom of Information* – The policy of the Executive Branch embodied in EO No. 02, S. 2016 which recognizes the right of the people to information on matters of public concern, and adopts and implements full public disclosure of all its transactions involving public interest, subject to the procedures and limitations provided in the said EO and other laws, rules, and regulations.

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06 DEC 2017

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- g. *Full Denial* – A manner of disposition of an FOI request in which the requested information or any portion thereof are not disclosed.
- h. *Notice of Denial* – The document informing the requesting party of the full or partial denial of the FOI request and the corresponding reason(s) for such denial.
- i. *Partial Denial* – A manner of disposition of an FOI request in which certain portions of the requested information are not disclosed.
- j. *Request for Review* – A letter addressed to the CARC Chair asking for a review of the FDM's full or partial denial of an FOI request.
- k. *Requested Information* – Any information the disclosure of which is requested pursuant to EO No. 02, S. 2016.
- l. *Requesting Party* – Any person asking for information from the DPWH pursuant to EO No. 02, S. 2016 and whose FOI request was fully or partially denied by the FDM.

PART III – GROUNDS FOR APPEAL

Section 6. *Grounds.* An appeal of a previously denied FOI request, in part or in full, may be filed only on the following grounds:

- a. The requested information is in the actual custody of the DPWH;
- b. The requested information is not publicly available elsewhere;
- c. The request is not identical or substantially similar to any previous request made by the requesting party which was already finally denied;
- d. The requested information is not protected under Republic Act (RA) No. 10173 (*Data Privacy Act of 2012*) or any other law, rule, or regulation; and
- e. The requested information is not included in the FOI Inventory of Exceptions.

PART IV – PROCEDURE

Section 7. *Commencement of Appeal.* An appeal to the CARC shall be commenced through the filing of a written request for review with the Chair within fifteen (15) days from the requesting party's receipt of the notice of denial. In case the last day falls on a Saturday, a Sunday, or a legal holiday, the next working day shall be considered as the last day. Filing of the request for review beyond the said period shall be a ground for the denial of the appeal, unless there is clear merit appearing on the face of the request for review and the failure of the requesting party to make a timely filing is due to fraud, accident, mistake, or excusable negligence.

Section 8. *Form, Contents, and Attachments of the Request for Review.* The request for review shall be in writing and shall bear all the following information:

- a. The name of the requesting party;
- b. The requesting party's residence and postal address, telephone number, mobile number, e-mail address, and other contact details;
- c. The ground(s) on which the appeal is based; and,
- d. The requesting party's signature.

Further, the requesting party shall attach to the request for review the following:

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- a. A photocopy of the receiving copy of the FOI Request Form and its attachments;
- b. A photocopy of the notice of denial;
- c. The representative's proof of authority, if applicable; and
- d. A photocopy of at least one (1) of the representative's Government-issued ID.

Section 9. *Assignment of Case Number.* Upon receipt of the request for review, the Chair shall assign a case number to the appeal.

Section 10. *Amendment or Completion of Requests for Review.* Should the request for review lack any of the required information or attachments, the Chair shall immediately require the requesting party in writing to amend the same or to submit the lacking attachments, or both, as the case may be. The requesting party shall be given a period of five (5) days from receipt of the directive to comply, failure to do which shall be a ground for the denial of the appeal. In case the last day falls on a Saturday, a Sunday, or a legal holiday, the next working day shall be considered as the last day.

The period for the resolution of appeals shall not run from the time the directive requiring the amendment or completion of the request for review is transmitted until the time the compliance of the requesting party is received or the period for compliance expires.

Section 11. *Examination of the Requested Information.* Upon receipt of the complete request for review or completion thereof, as the case may be, the Chair shall require the officer or employee having actual or supposed custody of the requested information to submit the same for examination. Should the ground for the FDM's denial of the FOI request be the lack of DPWH custody over the requested information, the said actual or supposed custodian shall be required to instead submit a certification to that effect. If the Chair deems it proper, the same information custodian may be required to submit a comment on the request along with the requested information or certification.

Section 12. *Constitution of Records.* Upon receipt of all documentary requirements, the Chair shall cause the constitution of the records of the appeal, to be composed of the following:

- a. Request for review;
- b. Photocopy of at least one (1) of the requesting party's Government-issued ID;
- c. Proof of the representative's authority, if applicable;
- d. Photocopy of at least one (1) of the representative's Government-issued ID, if applicable;
- e. The requested information or certification of no custody thereof, as the case may be; and
- f. Comment of the information custodian, if applicable.

The Chair shall cause the consolidation of the said documents into a single binder, properly paginated.

Section 13. *Setting for Deliberation.* Within three (3) days from the constitution of the records, the Chair shall set the appeal for deliberations to be held no later than three (3) days from notice. At least one (1) day before the date of the deliberations, the Chair shall notify the Vice Chair and all Members of the date, time, and venue of the deliberations, providing them with copies of the records.

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Upon receipt of the notice for the deliberation, the Vice Chair and all Members shall immediately advise the Chair of their ability or inability to attend the said proceedings. Should it become apparent that the required quorum would not be met through a direct meeting, the deliberation may be held by teleconferencing or any other official electronic means, provided that in all cases, the decision must be reached within one (1) day and through consultative means.

Section 14. *Quorum and Voting Requirements.* The presence of the Chair or Vice Chair, along with at least six (6) of the Members shall constitute a quorum. The vote of a majority of those present in a quorum shall be required to issue a decision.

Section 15. *Deliberations and Manner of Voting.* Upon call to order, the Chair shall open the floor to suggestions from all those present on whether to grant, partially grant, or deny the appeal. Thereafter, the Chair, Vice Chair, and Members shall register their votes on the appropriate manner of disposition verbally. However, if deemed by the Chair to be appropriate, voting may be done by secret ballot.

The manner of disposition receiving the most number of votes shall be the CARC's decision. In case two (2) or more manners of disposition receive the same number of votes, the one more or most favorable to the requesting party shall be adopted as the CARC's decision.

Section 16. *Notice of Decision.* Within three (3) days from deliberations, the Chair shall cause the preparation of a notice to the requesting party. The notice shall state whether the appeal is granted, partially granted, or denied. If partially granted, the notice shall state which portions of the requested information may be disclosed and which may not. The notice shall also state the specific grounds for denying the release of the information or portion thereof.

Decisions of the CARC shall become final and unappealable after the lapse of ten (10) days from receipt of the notice thereof.

Section 17. *Records of Proceedings.* The Vice Chair shall be responsible for the production of minutes of all deliberations or other meetings, which shall be appended to the pertinent records of appeals and shall form integral parts thereof.

PART V – REMEDIES IN CASE OF DENIAL

Section 18. *Request for Reconsideration.* Within ten (10) days from receipt of the notice of the CARC's decision, the requesting party may seek reconsideration of the full or partial denial of the appeal by writing a request for reconsideration to the Chair, who shall set the same for re-deliberation following the procedure set forth under Sections 13 to 17 above.

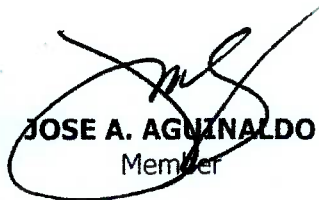
The CARC shall decide on the request for reconsideration within fifteen (15) days from receipt thereof. The request for reconsideration shall have a suspensive effect, and as such, said period shall toll the ten (10)-day period for the finality of the CARC decision.

Section 19. *Appeal to the Secretary.* In case of denial of the request for reconsideration, the requesting party may further appeal the CARC's decision to the Office of the Secretary within ten (10) days from receipt thereof under such rules of procedure which the said Office may prescribe.

Adopted 22 September 2017, Manila.

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JASPER ALLEN B. BARRIGUAS
06 DEC 2017


JOSE A. AGUINALDO
 Member


MA. NIEVA S. DELA PAZ
 Member


REYNALDO P. FAUSTINO
 Member


MELROSE I. PAILMA
 Member


JESUS I. OBA
 Member


MADELYN B. LOYOLA
 Member

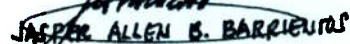

MARY GRACE N. OBJA-AN
 Member


MARILOU M. CAMUA
 Member


ELIZABETH P. PILORIN
 Vice-Chair


ESTRELLA T. DECENA-ZALDIVAR
 Chair

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JASPER ALLEN B. BARRIENTOS

06 DEC 2017



**2017 RULES ON ADMINISTRATIVE CASES
IN THE CIVIL SERVICE (2017 RACCS)**

X-----X

Number: 1701077

Promulgated: 03 JUL 2017

RESOLUTION

Pursuant to Section 6, Article IX-A of the 1987 Constitution, the Civil Service Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights. Likewise, Section 12 (2), Chapter 3, Title I, Subtitle (A), Book V of the Administrative Code of 1987 (Executive Order No. 292) empowers the Civil Service Commission, among others, to prescribe, amend and enforce rules and regulations to effectively carry into effect the provisions of the Civil Service Law and other pertinent laws which include the procedure in administrative cases in the Civil Service.

NOW, THEREFORE, the Commission hereby adopts and promulgates the following rules concerning disciplinary and non-disciplinary proceedings in administrative cases in the Civil Service.

GENERAL PROVISIONS

Rule 1

APPLICABILITY AND CONSTRUCTION

Section 1. Title. These Rules shall be known and cited as the **2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)**.

Section 2. Coverage. These Rules shall apply to all disciplinary and non-disciplinary administrative cases or matters brought before the Civil Service Commission (CSC) and its regional/field offices, agencies of the national government, local government units, state universities and colleges (SUCs) or local universities and colleges (LUCs), and government-owned or controlled corporations with original charters except as may be provided by law.

Unless otherwise provided by law, rules formulated by the agencies shall not be in conflict with these Rules.

Bawat Kawani, Lingkod Bayani

Section 3. Construction. These Rules shall be liberally construed in order to promote their objective in obtaining just, speedy, and inexpensive disposition of administrative cases.

Administrative investigations shall be conducted without strict recourse to technical rules of procedure and evidence applicable to judicial proceedings.

Section 4. Definition of Terms. The terms hereunder shall be construed, as follows:

- a. **AGENCY** refers to any bureau, office, commission, administration, board, council, institute, state university and college (SUC) or local university and college (LUC), corporation with original charter, whether performing governmental or proprietary function, or any other unit of the national government as well as provincial, city, municipal or autonomous regional government.
- b. **APPOINTING AUTHORITY** refers to the person or body duly authorized to issue appointments and other human resource actions in the civil service.
- c. **BACK WAGES** refers to the compensation and other benefits that should have been earned but were not collected because of the illegal dismissal/separation or suspension following the principle that an illegally dismissed government employee who is later reinstated is entitled to all the rights and privileges that accrue by virtue of the office held.
- d. **CIVIL SERVICE** is the generic term which refers to all officials and employees in all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters.
- e. **CIVIL SERVICE COMMISSION FIELD OFFICES (CSC FOs)** refer to the Civil Service Commission Field Offices under the direct supervision of the Civil Service Commission Regional Office, each headed by a Field Director.
- f. **CIVIL SERVICE COMMISSION REGIONAL OFFICES (CSC ROs)** refer to the Civil Service Commission Regional Offices, each headed by a Regional Director.
- g. **COMMISSION** refers to the Civil Service Commission composed of the Chairperson/Chairman and two (2) Commissioners.
- h. **DEPARTMENT** refers to any of the executive departments or entities having the category of a department, including the judiciary, legislative and the other constitutional commissions.
- i. **DEVELOPMENTAL INTERVENTIONS** refer to appropriate learning activities which may include coaching, mentoring, cross posting program, job rotation, temporary assignment, secondment, team building, knowledge sharing and learning session, shadowing, counselling, etc.



- j. **DISCIPLINING AUTHORITY** refers to the person or body duly authorized by law to impose the penalty provided for by law or rules.
- k. **EMPLOYEE** refers to a person who works for an agency and occupies a position in either the first and second level whose functions are not managerial in nature.
- l. **EX-PARTE** refers to the act or manner of conducting a proceeding where only one party is present without representation from or to other parties.
- m. **FIXER** refers to any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.
- n. **FORUM SHOPPING** refers to the filing of several administrative actions or complaints either simultaneously or successively before agencies or tribunals having concurrent jurisdiction over a case against the same party involving the same essential facts, circumstances, acts, causes of action or relief, and all raising substantially the same issues. Such case can either be pending in, or already resolved adversely by, some other tribunal or agency.
- o. **HUMAN RESOURCE (HR)** refers to the people, including their qualifications, competencies, talents and potentials. **HR** as a function pertains to the management, development and utilization of the people towards the excellent and ethical achievement of vision of the organization.
- p. **HUMAN RESOURCE (HR) ACTION** refers to any action denoting the movement or progress of officials and employees in the civil service which shall include appointment, promotion, transfer, reappointment, reinstatement, reemployment, reclassification, detail, designation, reassignment, secondment, demotion and separation from the service.
- q. **MOTU PROPRIO** refers to an action taken by the disciplining authority on its own initiative.
- r. **OFFICIAL** refers to a person who occupies either a professional, technical, or scientific position and whose functions are managerial in character, exercising management over people, resource and/or policy and exercising functions such as planning, organizing, directing, coordinating, controlling, and overseeing the activities of an organization, a unit thereof or of a group, requiring some degree of professional, technical or scientific knowledge and experience, application of managerial skills required to carry out basic duties and responsibilities involving leadership, functional guidance and control. Positions of officials require intensive and thorough knowledge of a specialized field.



- s. **PARTY ADVERSELY AFFECTED** refers to the respondent against whom a decision in an administrative case has been rendered or to the disciplining authority or prosecuting agency in an appeal from a decision reversing or modifying the original decision.
- t. **PERSON COMPLAINED OF** refers to the person who is the subject of a complaint but who is not yet issued a notice of charge or formal charge by the disciplining authority.
- u. **PRIMA FACIE CASE** refers to the evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.
- v. **PROBATIONARY EMPLOYEE** refers to an employee who is required to undergo a thorough character investigation and assessment of capability to perform the duties of the position enumerated in the Position Description Form (PDF) during the probationary period which is generally six (6) months or depending on the duration of the probationary period as required by the position or by law.
- w. **PROTEST** refers to an action filed by a qualified next-in-rank official or employee questioning the issuance of an appointment in favor of another on the basis of lack of qualifications of the appointee.
- x. **PSYCHOLOGICAL INTERVENTIONS** refer to psychological counseling; psychotherapy; psychosocial support; life coaching; psychological debriefing; group processes; and all other psychological interventions that involve the application of psychosocial principles and methods to improve the psychological functioning of individuals; families; groups; and organizations¹.
- y. **QUALIFIED NEXT-IN-RANK** refers to an employee appointed on a permanent basis to a position previously determined to be a next-in-rank to the vacancy and who meets the requirements for appointment thereto as previously determined by the appointing authority and approved by the Commission.
- z. **RESPONDENT** refers to the person who is issued a notice of charge or formal charge by the disciplining authority.
- aa. **SEXUAL HARASSMENT** refers to an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a government employee or official

¹ Section 3(b) (1), Rule III of the Implementing Rules and Regulations of Republic Act No. 10029 or AN ACT TO REGULATE THE PRACTICE OF PSYCHOLOGY CREATING FOR THIS PURPOSE A PROFESSIONAL REGULATORY BOARD OF PSYCHOLOGY, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES known as "*Philippine Psychology Act of 2009*"



in a work-related, training or education related environment of the person complained of.

- bb. **SHOW-CAUSE ORDER** refers to the written document requiring a person to explain, or justify before the disciplining authority or its duly authorized representative within a given period why no disciplinary action shall be taken against him/her.

Rule 2

JURISDICTION AND VENUE OF ACTIONS

Section 5. *Jurisdiction of the Civil Service Commission.* The Civil Service Commission shall hear and decide administrative cases or matters instituted by or brought before it, directly or on appeal, including contested appointments, and review decisions and actions of its offices and other government agencies.

Section 6. *Referral of Case or Matter to the Proper Office.* When an administrative case or matter is filed before the Commission or any of the CSC ROs, but jurisdiction over such case or matter properly belongs to any other CSC RO or to the Commission, the same shall be forwarded by the office concerned to the appropriate CSC RO having jurisdiction over the case or matter or to the Commission as the case may be. The Commission or the CSC RO may also refer a case or matter to other agencies as it may deem necessary.

Section 7. *Cases Cognizable by the Commission.* The Civil Service Commission shall take cognizance of the following cases:

A. Disciplinary

1. Decisions of CSC ROs brought before it on petition for review;
2. Complaints brought against CSC officials and employees both in the Central Office (CO) and CSC ROs.

For this purpose, CSC ROs shall conduct the investigation and submit report and recommendation to the Commission in cases involving their own appointed officials and employees. Complaints against CO officials and employees shall be brought before the Commission through the Office for Legal Affairs (OLA) unless the Commission directs otherwise.

3. Complaints against officials who are not presidential appointees or elective officials;



4. Decisions of disciplining authorities imposing penalties exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary brought before it on appeal;
5. Decisions of disciplining authorities imposing penalties not exceeding thirty (30) days suspension or fine equivalent to 30 days salary but violating due process;
6. Requests for transfer of venue of hearing on cases being heard by CSC ROs;
7. Appeals or petitions for review from orders of preventive suspension; and
8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumeration.

B. Non-Disciplinary

1. Decisions of department secretaries and bureau heads on human resource actions;
2. Decisions of CSC ROs;
3. Requests for favorable recommendation on petition for the removal of administrative penalties or disabilities;
4. Requests for extension of service excluding presidential appointees;
5. Appeals from reassignment of public health workers and public social workers;
6. Such other analogous actions or petitions arising out of or in relation with the foregoing enumerations.

Section 8. Cases Cognizable by Regional Offices. Except as otherwise directed by the Commission, the CSC ROs shall take cognizance of the following cases:

A. Disciplinary

1. Cases initiated by, or brought before, the CSC ROs provided that the alleged acts or omissions were committed within the jurisdiction of the



CSC RO, including fraudulent acquisition of civil service eligibility (violation of Republic Act No. 9416²) and its related offenses.

2. Petitions to place respondent under preventive suspension in connection with cases pending before the CSC RO concerned.

B. Non-Disciplinary

1. Disapproval/Recall of Approval/Invalidation of appointments brought before it on appeal;
2. Decisions of appointing authorities within their geographical boundaries relative to protests and other human resource actions as well as other non-disciplinary actions brought before them on appeal; and
3. Requests for corrections of personal information in the records of the Commission.

Section 9. *Jurisdiction of Disciplining Authorities.* The disciplining authorities of agencies and local government units shall have original concurrent jurisdiction with the Commission over their respective officials and employees. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary subject to Section 7(A)(5) of these Rules. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is dismissal from the service, in which case the same shall be executory only after confirmation by the Secretary concerned.

DISCIPLINARY CASES

Rule 3 COMPLAINT

Section 10. *Who May Initiate.* Administrative proceedings may be initiated by the disciplining authority *motu proprio* or upon complaint of any other person.

Section 11. *Requisites of a Valid Complaint.* No complaint against an official or employee shall be given due course unless the same is in writing, subscribed and sworn to by

² AN ACT DECLARING AS UNLAWFUL ANY FORM OF CHEATING IN CIVIL SERVICE EXAMINATIONS, UNAUTHORIZED USE AND POSSESSION OF CIVIL SERVICE COMMISSION (CSC) EXAMINATION-RELATED MATERIALS, AND GRANTING THE CSC EXCLUSIVE JURISDICTION OVER THESE CASES INCLUDING THOSE COMMITTED BY PRIVATE INDIVIDUALS



the complainant. In cases initiated by the proper disciplining authority or an authorized representative, a show cause order is sufficient.

The complaint shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation and to enable the person complained of to intelligently prepare a defense or answer/comment. Should there be more than one person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of.

The complaint shall contain the following:

- a. full name and address of the complainant;
- b. full name and address of the person complained of as well as his/her position and office;
- c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed;
- d. certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
- e. certification or statement of non-forum shopping.

The absence of any of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refiling upon compliance with the same.

Section 12. *Anonymous Complaint.* No anonymous complaint shall be entertained unless the act complained of is of public knowledge or the allegations can be verified or supported by documentary or direct evidence.

Section 13. *When and Where to File a Complaint.* Except when otherwise provided for by law, an administrative complaint may be filed anytime with the Commission or any of its regional offices, heads of departments, agencies, national government, local government units, state universities and colleges (SUCs) or local universities and colleges (LUCs), and government-owned or controlled corporations with original charters except as may be provided by law.

Section 14. *Complaints in Sexual Harassment Cases.* In sexual harassment cases, the complaint shall be filed with the Committee on Decorum and Investigation (CODI) which shall be created in all national or local agencies of the government, state/local colleges and universities, including government-owned or controlled corporations with original charters.



In a work-related environment, a CODI shall be composed of at least one (1) representative each from the management, the accredited union, if any, the second level employees, and the first level employees, duly selected by the unit concerned.

In an educational or training institution, the Committee shall be composed of at least one (1) representative from the administration, teaching and non-teaching staff and students or trainees, as the case may be, duly selected by the level concerned.

When the complainant or the person complained of is a member of the Committee, he/she shall be disqualified from being a member thereof or the complaint may be filed directly with the Civil Service Commission.

The agency may formulate its own rules governing the term of office of its members which should not be more than two years, and other matters pertaining to the functions of the Committee not otherwise provided in these Rules.

The head of office who fails to create a CODI shall be charged with Neglect of Duty.

Section 15. *Jurisdiction of the CSC over Sexual Harassment Cases.* In case a complaint for sexual harassment is filed with the Commission, the same shall be remanded to the agency where the alleged offender is employed. However, the Commission may take cognizance of the case under any of the following circumstances:

- a. the agency has no CODI;
- b. the disciplining authority is the subject of the complaint;
- c. the subject of the complaint is a CODI member ; or
- d. there is unreasonable delay in complying with the periods provided in these Rules for the investigation and adjudication of a sexual harassment complaint.

For this purpose, there is unreasonable delay when any of the periods set in these Rules lapsed for a period of more than thirty (30) days without justifiable reason.

Section 16. *Withdrawal of the Complaint.* The withdrawal of the complaint does not result in its outright dismissal or discharge of the person complained of from any administrative liability.

Section 17. *Action on the Complaint.* Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall conduct a preliminary investigation to determine the existence of a *prima facie* case. The disciplining authority may create an investigating committee or designate an investigator for such purpose.



In sexual harassment cases, the CODI shall perform the following functions:

1. Receive complaints of sexual harassment;
2. Investigate sexual harassment complaints including preliminary investigation in accordance with the prescribed procedure;
3. Submit a report of its findings with the corresponding recommendation to the disciplining authority for decision; and
4. Lead in the conduct of discussions about sexual harassment within the agency or institution to increase understanding and prevent incidents of sexual harassment;

Localized CODI established in the regional or field offices, as the case may be, of the agency or institution shall have the same functions as stated above and shall submit the report of investigation with its recommendation directly to the disciplining authority.

The agency shall adopt mechanisms to provide assistance to the alleged victim of sexual harassment which may include counselling, referral to an agency offering professional help, and advice on options available before the filing of the complaint.

Rule 4 **PRELIMINARY INVESTIGATION**

Section 18. *Preliminary Investigation; Definition.* A Preliminary Investigation is a mandatory proceeding undertaken to determine whether a *prima facie* case exists to warrant the issuance of a formal charge/notice of charge.

Section 19. *How conducted.* Preliminary investigation may be conducted in any of the following manner: a) requiring the submission of counter affidavit or comment and/or other documents from the person complained of within five (5) days from receipt of the complaint which is sufficient in form and substance; b) ex-parte evaluation of the records; or c) clarificatory meeting with the parties to discuss the merits of the case.

When the complaint is initiated by the disciplining authority, it or its authorized representative shall issue a show-cause order directing the person complained of to explain within the same period why no administrative case should be filed against the said person. The failure to submit a comment/counter-affidavit/explanation shall be considered a waiver thereof and the preliminary investigation may be completed even without the counter-affidavit/comment/explanation.

The right to counsel may be exercised even during the preliminary investigation.



For cases filed before the Commission or any of its Regional Offices, the preliminary investigation may be entrusted to lawyers of other agencies pursuant to Section 113 of these Rules.

Section 20. *Duration of the Preliminary Investigation.* A preliminary investigation shall commence within a non-extendible period of five (5) days upon receipt of the complaint by the disciplining authority and shall be terminated within twenty (20) days thereafter. However, the disciplining authority may extend such periods in meritorious cases.

Section 21. *Investigation Report.* Within five (5) days from the termination of the preliminary investigation, the investigating officer/body shall submit the Investigation Report with recommendation and the complete records of the case to the disciplining authority.

The Investigation Report shall be treated with confidentiality.

Section 22. *Decision or Resolution After Preliminary Investigation.* If a *prima facie* case is established after preliminary investigation, the disciplining authority may issue either a formal charge or a notice of charge pursuant to Rule 5 of these Rules.

In the absence of a *prima facie* case, the complaint shall be dismissed.

Rule 5

FORMAL CHARGE/NOTICE OF CHARGE

Section 23. *Issuance of Formal Charge; Contents.* After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge, a brief statement of material or relevant facts, which may be accompanied by certified true copies of the documentary evidence, sworn statements covering the testimony of witnesses, a directive to answer the charge in writing, under oath in not less than three (3) days but not more than ten (10) days from receipt thereof, an advice for the respondent to indicate in the answer whether or not a formal investigation is demanded, and a notice that respondent may opt to be assisted by a counsel.

Section 24. *Notice of Charge.* In instances where the complaint was initiated by a person other than the disciplining authority, the disciplining authority may issue a written notice of the charge against the person complained of who will now be called respondent, to which shall be attached copies of the complaint, sworn statement and other documents submitted. The notice shall contain the charge against the respondent with a statement that a *prima facie* case exists. It shall also include a directive to answer the charge in writing, under oath in not less than three (3) days but not more than ten (10) days from receipt thereof, and a



notice that he/she may opt to be assisted by a counsel of his/her choice and may elect to have a formal investigation.

If the respondent receives a notice of charge with incomplete attachments, the respondent may request for the lacking documents within 10 days from receipt of the formal/notice of charge and the period to answer will not run until the same is received by the respondent.

Section 25. *Prohibited Pleadings.* The disciplining authority shall not entertain requests for clarification, bills of particulars, motions to dismiss, motions to quash, motions for reconsideration and motion for extension of time to file answer. The same shall be noted without action and attached to the records of the case.

Rule 6

ANSWER

Section 26. *Requisites and Contents.* The answer, which is in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any, including original or certified copies of documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of one's case.

When the disciplining authority determines that the answer is satisfactory, the case shall be dismissed. Otherwise, the investigation shall proceed.

Section 27. *Failure to File an Answer.* If respondent fails or refuses to file an answer to the formal charge or notice of charge within the given period, he/she shall be considered to have waived his/her right to submit the same and the case shall be decided based on available records.

Rule 7

PREVENTIVE SUSPENSION

Section 28. *Preventive Suspension; Nature.* Preventive suspension is not a penalty. It is designed merely as a measure of precaution so that the respondent may be removed from the scene of the alleged misfeasance/malfeasance/nonfeasance while the case is being investigated.

Section 29. *When Issued; Grounds.* The proper disciplining authority, upon motion or *motu proprio*, may issue an order of preventive suspension against the respondent upon issuance of the formal charge or notice of charge, or immediately thereafter, if:



- A) The charge involves:
 - 1. Dishonesty;
 - 2. Oppression;
 - 3. Grave Misconduct;
 - 4. Neglect in the Performance of Duty;
 - 5. Other offenses punishable by dismissal from the service; or
 - 6. An administrative offense committed on its second or third instance and the penalty is dismissal from the service; and
- B) The respondent is in a position to exert undue influence or pressure on the witnesses and/or tamper with evidence.

In order for a preventive suspension order to be valid, any of the conditions in Items A and B must be present.

Section 30. *Alternative to Preventive Suspension.* The proper disciplining authority may reassign respondent to another unit of the agency subject to the same periods as provided in the immediately succeeding section.

Section 31. *Duration of Preventive Suspension.* Unless otherwise provided for by law, the disciplining authority may place the respondent under preventive suspension for a maximum period of ninety (90) days in the case of national agencies including government-owned or controlled corporations with original charters, state universities and colleges (SUCs) or sixty (60) days in the case of local government units including local universities and colleges (LUCs). When the administrative case against respondent under preventive suspension is not finally decided by the disciplining authority within the period of preventive suspension, the respondent shall be automatically reinstated in the service unless the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, in which case, the period of delay shall not be included in the counting of the period of preventive suspension. Any period of delay caused by motions filed by the respondent shall be added to the period of preventive suspension. Provided, that where the order of preventive suspension is for a period less than the maximum period, the disciplining authority undertakes to finish the formal investigation within the said period and is precluded from imposing another preventive suspension. Provided, further, that should the respondent be on authorized leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully exhausted.

Provided finally that if the respondent is placed under preventive suspension in another case, the duration of the second preventive suspension shall simultaneously run with the first



preventive suspension without prejudice to the service of the remaining period of the second preventive suspension.

Section 32. Remedies from the Order of Preventive Suspension. The respondent may file an appeal to the Commission within fifteen (15) days from receipt of the preventive suspension order. Pending appeal, the order shall be executory. A motion for reconsideration from the order of preventive suspension shall not be allowed. In case such motion is filed, the same shall be noted without action and attached to the records of the case and shall not stay the execution of the said order nor shall have the effect of stopping the running of the reglementary period to appeal.

If the preventive suspension is imposed by the Civil Service Commission, the same is executory unless a Temporary Restraining Order is issued by the Court of Appeals or the Supreme Court.

Section 33. Payment of Back Wages During Preventive Suspension. The payment of back wages during the period of suspension shall be governed by the following:

- a. A declaration by the Commission that an order of preventive suspension is void on its face entitles the respondent to immediate reinstatement and payment of back wages corresponding to the period of the illegal preventive suspension without awaiting the outcome of the main case.

The phrase "void on its face" in relation to a preventive suspension order, imports any of the following circumstances:

- i. The order was issued by one who is not authorized by law;
 - ii. The order was not premised on any of the conditions under Section 29;
 - iii. The order of preventive suspension was issued without a formal charge or notice of charge or with defective formal charge / notice of charge; or
 - iv. While the order is lawful in the sense that it is based on the enumerated grounds, but the duration of the imposed preventive suspension has exceeded the prescribed periods, the payment of back wages shall correspond to the excess period only.
- b. A declaration of invalidity of a preventive suspension order not based on any of the reasons enumerated in the immediately preceding Section 33 (a), shall result in the reinstatement of the respondent. The payment of back wages shall, however, await the final outcome of the principal case. If the decision rendered in the principal case is for exoneration or when the



penalty imposed is reprimand, the respondent shall be paid back wages. Otherwise, no back wages shall be paid.

The term "exoneration" contemplates a finding of not guilty for the offense/s charged. Downgrading of the charge to a lesser offense shall not be construed as "exoneration" within the contemplation of these Rules.

Even if the respondents be eventually found innocent of the charge against them, the same shall not give rise to payment of back wages corresponding to the period of preventive suspension in the absence of any finding of its illegality.

Rule 8

FORMAL INVESTIGATION

Section 34. *Conduct of Formal Investigation; When Held.* A formal investigation shall be conducted where the merits of the case cannot be decided judiciously without conducting such investigation or when the respondent elects to have one, in which case, the investigation shall be held not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer or upon the expiration of the period to answer. Said investigation shall be finished within thirty (30) days from the issuance of the Formal Charge/Notice of Charge unless the period is extended by the disciplining authority or its authorized representative, or heads of agencies, or the Commission in meritorious cases.

For this purpose, the Commission may entrust the formal investigation to lawyers of other agencies pursuant to Section 113 of these Rules.

Section 35. *Submission of Position Paper/Memorandum.* At any stage of the proceedings, the parties may, based on their mutual consent, submit position paper/memorandum and consider the case submitted for decision without any need for further hearings.

Section 36. *Pre-Hearing Conference.* At the commencement of the formal investigation, the hearing officer shall conduct a pre-hearing conference for the parties to appear, consider and agree on any of the following:

- a. Stipulation of facts;
- b. Simplification of issues;
- c. Identification and marking of evidence of the parties;
- d. Waiver of objections to admissibility of evidence;

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- e. Limiting the number of witnesses, and their names;
- f. Dates of subsequent hearings; and
- g. Such other matters as may aid in the prompt and just resolution of the case.

The agreement entered into during the pre-hearing conference shall be embodied in a pre-hearing order and is binding on both parties unless in the interest of justice, the hearing officer may allow a deviation from the same. The parties may file their respective pre-hearing briefs, copy furnished the adverse party, before the date of the pre-hearing conference.

The conduct of pre-hearing conference is mandatory. The failure of any party to attend the pre-hearing conference may cause the submission of the case for decision based on available records upon appropriate motion of the present party.

The designated prosecutor or the hearing officer who fails to appear, without justifiable reason, at the pre-hearing conference may be liable for Neglect of Duty.

Section 37. Continuous Hearing Until Terminated; Postponement. Hearings shall be conducted on the hearing dates set by the hearing officer or as agreed upon during the pre-hearing conference.

Each party may be granted one (1) postponement upon oral or written request.

If respondents fail or refuse to appear or not represented by counsel during a particular hearing despite due notice, the investigation shall proceed and the respondents shall be deemed to have waived the right to present evidence.

Section 38. Preliminary Matters. At the start of the hearing, the hearing officer shall note the appearances of the parties.

If, after being apprised of the right to counsel, respondents appear without the aid of a counsel, they shall be deemed to have waived the right thereto.

Before taking the testimony, the hearing officer shall place the witness under oath and then take the name, address, civil status, age, and complete name and address of employment.

A sworn statement of the witness properly identified and affirmed shall constitute direct testimony, copy furnished the other party.

The use of Judicial Affidavit may also be adopted in place of the direct testimonies of witnesses. The adoption of the Judicial Affidavit Rule is without prejudice to clarificatory questions that may be asked during the hearing.



Section 39. *Appearance of Counsel.* Any counsel who is a member of the Integrated Bar of the Philippines (IBP) appearing before any hearing or investigation shall manifest orally or in writing, his/her appearance, stating his/her full name and complete address, which should not be a P.O. box address, where he/she can be served with notices and other pleadings, Professional Tax Receipt (PTR) number, attorney's roll number, Mandatory Continuing Legal Education (MCLE) compliance certificate and IBP dues receipt number. A lawyer/counsel who works for the government is required to present an Authority to Practice Profession from his/her agency head or the agency head's authorized representative.

A private prosecutor may be allowed to appear provided that the public prosecutor shall have direct control and supervision over the private prosecutor at all times.

Section 40. *Order of Hearing.* Unless the hearing officer directs otherwise, the order of hearing may be as follows:

- a. The prosecution shall present its evidence;
- b. The respondent shall present evidence in support of his/her defense;
- c. There may be rebuttal or sur-rebuttal.

When the presentation of the witnesses has been concluded, the parties shall formally offer their evidence either orally or in writing and thereafter objections thereto may also be made either orally or in writing. After which, both parties may be given time to submit their respective memorandum which in no case shall be beyond five (5) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

Section 41. *Objections.* All objections raised during the hearing shall be resolved by the hearing officer. However, objections that cannot be ruled upon by the hearing officer shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the proper disciplining authority.

The hearing officer shall admit all evidence formally offered subject to the objection/s interposed against its admission.

Section 42. *Markings.* All documentary evidence or exhibits shall be properly marked by letters (A,B,C, etc.) if presented by the prosecution and by numbers (1,2,3, etc.) if presented by the respondent. These shall form part of the complete records.

Section 43. *Issuance of Subpoena.* The hearing officer may issue *subpoena ad testificandum* to compel the attendance of witnesses and *subpoena duces tecum* for the production of documents or things.



If a party desires the attendance of a witness and/or the production of documents, he/she shall make a request for the issuance of the necessary *subpoena ad testificandum* and/or *subpoena duces tecum*, at least seven (7) days before the scheduled hearing.

Section 44. *Record of Proceedings.* Records of the proceedings during the formal investigation may be taken in shorthand or stenotype or any other means of recording.

Section 45. *Filing of Pleadings.* All pleadings filed by the parties shall be copy furnished the other party with proof of service. Failure in this regard shall justify non-receipt or non-action on the pleading. Any pleadings sent by registered mail or private courier service shall be deemed filed on the date stamped on the envelope or courier pack which shall be attached to the records of the case, and in case of personal delivery, the date stamped thereon.

Section 46. *Effects of the Pendency of an Administrative or Criminal Case.* Except as otherwise provided by law, pendency of an administrative or criminal case shall not disqualify respondent from promotion and other human resource actions or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as such when the disciplining authority has issued a formal charge or a notice of charge to the respondent.

The release of the retirement benefits of a person with pending case shall be governed by **Republic Act No. 10154** otherwise known as "An Act Requiring All Concerned Government Agencies to Ensure the Early Release of the Retirement Pay, Pensions, Gratuities and Other Benefits of Retiring Government Employees" and its implementing rules.³

Section 47. *Formal Investigation Report.* Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the hearing officer to the disciplining authority. The complete records of the case shall be attached to the report of investigation which shall be treated with confidentiality.

The complete records with Table of Contents shall be systematically and chronologically arranged, paged and securely bound to prevent loss.

³ CSC Resolution No. 1302242 promulgated on October 1, 2013 Re: Amendments to the Implementing Rules and Regulations of Republic Act No. 10154, Otherwise Known as an Act Requiring All Concerned Government Agencies to Ensure the Early Release of the Retirement Pay, Pensions, Gratuities and Other Benefits of Retiring Government Employees



Rule 9
DECISION

Section 48. *When Case is Decided.* The disciplining authority shall decide the case within thirty (30) days from receipt of the Formal Investigation Report.

Section 49. *Finality of Decisions.* A decision rendered by the disciplining authority or CSC ROs whereby a penalty of reprimand, or suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall not be appealable. It shall be final and executory unless a motion for reconsideration is seasonably filed. However, the respondent may file an appeal or petition for review when the issue raised is violation of due process.

If the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days' salary, the decision shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

Rule 10
ADMINISTRATIVE OFFENSES AND PENALTIES

Section 50. *Classification of Offenses.* Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct;
4. Being Notoriously Undesirable;
5. Conviction of a Crime Involving Moral Turpitude;
6. Falsification of Official Document;
7. Physical or mental disorder or disability due to immoral or vicious habits;



8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
 9. Contracting loans of money or other property from persons with whom the office of the employee has business relations;
 10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value in the course of one's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of one's office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
 11. Nepotism; and
 12. Disloyalty to the Republic of the Philippines and to the Filipino people.
- B.** The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:
1. Less Serious Dishonesty;
 2. Oppression;
 3. Disgraceful and Immoral Conduct;
 4. Inefficiency and Incompetence in the Performance of Official Duties;
 5. Frequent Unauthorized Absences (Habitual Absenteeism);
 6. Habitual tardiness in reporting for duty causing prejudice to the operations of the office;
 7. Loafing from Duty During Regular Office Hours;
 8. Refusal to Perform Official Duty;



9. Gross Insubordination;
 10. Conduct Prejudicial to the Best Interest of the Service;
 11. Directly or indirectly having financial and material interest in any transaction requiring the approval of one's office. Financial and material interest is defined as pecuniary or proprietary interest by which a person will gain or lose something;
 12. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by one's office, unless expressly allowed by law;
 13. Disclosing or misusing confidential or classified information officially known by reason of one's office and not made available to the public, to further one's private interests or give undue advantage to anyone, or to prejudice the public interest;
 14. Obtaining or using any statement filed under the Code of Conduct and Ethical Standards for Public Officials and Employees for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public; and
 15. Recommending any person to any position in a private enterprise which has a regular or pending official transaction with one's office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or (3) as part of the function of one's office.
- C. The grave offense of Inefficiency and Incompetence in the performance of official duties may be punishable by Demotion. In this case, the guilty person shall suffer diminution in salary corresponding to the next lower salary grade with the same salary step.
- D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal from the service for the second offense:
1. Simple Neglect of Duty;
 2. Simple Misconduct;
 3. Discourtesy in the Course of Official Duties;

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4. Violation of existing Civil Service Law and rules of serious nature;
 5. Insubordination;
 6. Habitual Drunkenness;
 7. Unfair discrimination in rendering public service due to party affiliation or preference;
 8. Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections including those of one's spouse and unmarried children under eighteen (18) years of age living in one's household;
 9. Failure to resign from one's position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest oneself of one's shareholdings or interest in private business enterprise within sixty (60) days from assumption of public office when conflict of interest arises: Provided, however, that for those who are already in the service and conflict of interest arises, the official or employee must either resign or divest himself/herself of said interest within the periods hereinabove provided, reckoned from the date when the conflict of interest had arisen; and
 10. Engaging directly or indirectly in partisan political activities by one holding non-political office.
- E.** The less grave offense of Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year for the second offense; and dismissal for the third offense.
- F.** The following light offenses are punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense:
1. Simple Discourtesy in the Course of Official Duties;
 2. Improper or unauthorized solicitation of contributions from subordinate employees and in the case of teachers or school officials from school children;
 3. Violation of Reasonable Office Rules and Regulations;



4. Habitual Tardiness;
5. Gambling Prohibited by Law;
6. Refusal to Render Overtime Service;
7. Disgraceful, Immoral or Dishonest Conduct Prior to Entering the service;
8. Borrowing Money by Superior Officers from Subordinates;
9. Willful failure to pay just debts or willful failure to pay taxes due to the government;

The term "just debts" shall apply only to:

- a. Claims adjudicated by a court of law, or
 - b. Claims the existence and justness of which are admitted by the debtor.
10. Lobbying for personal interest or gain in legislative halls and offices without authority;
 11. Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases, if there is no prior authority;
 12. Failure to act promptly on letters and request within fifteen (15) working days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
 13. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
 14. Failure to attend to anyone who wants to avail himself/herself of the services of the office, or act promptly and expeditiously on public transactions;
 15. Engaging in private practice of one's profession unless authorized by the Constitution, law or regulation or the head of the office where the



employee or official is assigned, and provided that such practice will not conflict with one's official functions.

16. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations.

Section 51. *Other Specific Offenses.* The following acts also constitute administrative offenses.

A. The Offense of Sexual Harassment.

- I. Grave Offenses punishable by dismissal from the service shall include, but are not limited to:
 - a. unwanted touching of private parts of the body (inner thighs, genitalia, buttocks and breast);
 - b. sexual assault;
 - c. malicious touching;
 - d. requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting of honors or scholarship, or the grant of benefits or payment of a stipend or allowance; and
 - e. other analogous cases.
- II. Less Grave Offenses shall include, but are not limited to:
 - a. unwanted touching or brushing against a victim's body;
 - b. pinching not falling under grave offenses;
 - c. derogatory or degrading remarks or innuendoes directed toward the members of one sex, or one's sexual orientation or used to describe a person;
 - d. verbal abuse with sexual overtones; and
 - e. other analogous cases.



III. Light Offenses shall include, but are not limited to:

- a. surreptitiously looking at a person's private part or worn undergarments;
- b. making sexist statements and uttering smutty jokes or sending these through text, electronic mail including but not limited to social media platform, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;
- c. malicious leering or ogling;
- d. display of sexually offensive pictures, materials or graffiti;
- e. unwelcome inquiries or comments about a person's sex life;
- f. unwelcome sexual flirtation, advances, propositions;
- g. making offensive hand or body gestures at an employee;
- h. persistent unwanted attention with sexual overtones;
- i. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and
- j. other analogous cases.

IV. For the purpose of these Rules, the administrative offense of sexual harassment is further described in the following circumstances:

- a. Work-related sexual harassment is committed under the following circumstances:
 1. submission to or rejection of the act or series of acts is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other human resource action) affecting the applicant/employee; or
 2. the act or series of acts have the purpose or effect of interfering with the complainant's work performance, or

creating an intimidating, hostile or offensive work environment; or

3. the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant, customer, or word of the person complained of.
- b. Education or training-related sexual harassment is committed against one who is under the actual or constructive care, custody or supervision of the offender, or against one whose education, training, apprenticeship, internship or tutorship is directly or constructively entrusted to, or is provided by, the offender, when:
1. submission to or rejection of the act or series of acts as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade, the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration; or
 2. the act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or
 3. the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.
- c. The offense may also take place in the following instances:
1. in the premises of the workplace or office or of the school or training institution;
 2. in any place where the parties were found as a result of work or education or training responsibilities or relations;
 3. at work or education or training-related social functions;



4. while on official business outside the office or school or training institution or during work or school or training-related travel;
5. at official conferences, fora, symposia or training sessions; or
6. by telephone, cellular phone, fax machine or electronic mail.

V. Persons Liable for Sexual Harassment. Any government official or employee, regardless of sex, is liable for sexual harassment when he/she:

- a. directly participates in the execution of any act of sexual harassment as defined by these Rules;
- b. induces or directs another or others to commit sexual harassment as defined by these Rules;
- c. cooperates in the commission of sexual harassment by another through an act without which the sexual harassment would not have been accomplished;
- d. cooperates in the commission of sexual harassment by another through previous or simultaneous acts.

B. Violations of Republic Act No. 9485 or Anti-Red Tape Act of 2007.

I. Grave Offense:

Fixing and/or collusion with fixers in consideration of economic and/or other gain or advantage shall be penalized by Dismissal and perpetual disqualification from public service.

II. Light Offenses:

- a. Refusal to accept application and/or request within the prescribed period or any document being submitted by a client;
- b. Failure to act on an application and/or request or failure to refer back to the client a request which cannot be acted upon due to lack of requirements within the prescribed period;



- c. Failure to attend to clients who are within the premises of the office or agency concerned prior to the end of official working hours and during lunch break;
- d. Failure to render frontline services within the prescribed period on any application and/or request without due cause;
- e. Failure to give the client a written notice on the disapproval of an application or request; and
- f. Imposition of additional irrelevant requirements other than those listed in the first notice.
- g. The foregoing light offenses shall be penalized as follows:
 - First Offense – Thirty (30) days suspension without pay and mandatory attendance in Values Orientation Program;
 - Second Offense – Three months suspension without pay;
 - Third Offense – Dismissal and perpetual disqualification from public service

Section 52. *Penalty of Fine.* The following are the guidelines for the penalty of fine:

1. The disciplining authority may allow payment of fine in place of suspension if any of the following circumstances is present:
 - a. When the functions/nature of the office is impressed with national interest such as those involved in maintenance of peace and order, health and safety, and education;
 - b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the human resource complement of the office is insufficient to perform such function;
 - c. When the respondent committed the offense without utilizing or abusing the powers of his/her position or office; or
 - d. When the respondent has already retired or otherwise separated from government service and the penalty of suspension could not be served anymore, the fine may be sourced from the accumulated leave credits or whatever benefits due the respondent.



2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day salary fine; *Provided*, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.
3. The maximum period to pay the fine shall not exceed one (1) year from the time the decision/resolution becomes final and executory. The conversion of suspension into fine shall render the decision final and executory and, therefore, not subject of appeal or any other similar relief.
4. The failure of the respondent to pay the fine or part thereof shall cause the reversion to the original penalty of suspension. As such, respondent shall serve the original penalty of suspension imposed, irrespective of the amount already paid.
5. Fine may be paid in equal monthly installments subject to the following schedule of payment prescribed below:
 - a. Fine equivalent to one (1) month salary shall be paid within two (2) months;
 - b. Fine equivalent to two (2) months salary shall be paid within four (4) months;
 - c. Fine equivalent to three (3) months salary shall be paid within six (6) months;
 - d. Fine equivalent to four (4) months salary shall be paid within eight (8) months;
 - e. Fine equivalent to five (5) months salary shall be paid within ten (10) months; and
 - f. Fine equivalent to six (6) months salary shall be paid within twelve (12) months.
6. The fine shall be paid to the agency imposing the same, computed on the basis of respondent's salary at the time the decision becomes final and executory.

Section 53. *Mitigating and Aggravating Circumstances.* Except for offenses punishable by dismissal from the service, the following may be appreciated as either mitigating or aggravating circumstances in the determination of the penalties to be imposed:

- a. Physical illness;
- b. Malice;



- c. Time and place of offense;
- d. Taking undue advantage of official position;
- e. Taking undue advantage of subordinate;
- f. Undue disclosure of confidential information;
- g. Use of government property in the commission of the offense;
- h. Habituality;
- i. Offense is committed during office hours and within the premises of the office or building;
- j. Employment of fraudulent means to commit or conceal the offense;
- k. First offense;
- l. Education;
- m. Length of service; or
- n. Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the respondent, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice, may take and consider these circumstances *motu proprio*.

Section 54. Manner of Imposition. When applicable, the imposition of the penalty shall be made in accordance with the manner provided herein below:

- a. The ***minimum*** of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- b. The ***medium*** of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- c. The ***maximum*** of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied when there are more mitigating circumstances present; paragraph [b] shall be applied



when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances.

The following divisible penalties shall have their medium range of penalty, to wit:

- a) Penalty of suspension ranging from one (1) month and one (1) day to six (6) months shall have three (3) months as its medium penalty; and
- b) Penalty of suspension ranging from six (6) months and one (1) day to one (1) year shall have 9 months as its medium penalty.

Section 55. *Penalty for Multiple Offenses.* If the respondent is found guilty of two (2) or more different offenses, the penalty to be imposed should be that corresponding to the most serious offense and the rest shall be considered as aggravating circumstances.

In case the respondent is found guilty of two or more counts of the same offense, the penalty shall be imposed in the maximum regardless of the presence of any mitigating circumstance.

Section 56. *Duration and Effect of Administrative Penalties.* The following rules shall govern the imposition of administrative penalties:

- a. The penalty of dismissal shall result in the permanent separation of the respondent from the service, without prejudice to criminal or civil liability.
- b. The penalty of demotion shall result in diminution of salary corresponding to the next lower salary grade with the same salary step.
- c. The penalty of suspension shall result in the temporary cessation of work for a period not exceeding one (1) year.

Suspension of one day or more shall be considered a gap in the continuity of service. During the period of suspension, respondent shall not be entitled to all monetary benefits including leave credits.

- d. The penalty of fine shall be in an amount not exceeding six (6) months salary of respondent. The computation thereof shall be based on the salary rate of the respondent when the decision becomes executory. Fines shall be paid within a period not exceeding one (1) year reckoned also from the date when decision becomes final and executory.
- e. The penalty of reprimand is an official rebuke against a person's behavior which does not carry any accessory penalty or result in the temporary cessation of work. In the event the penalty of reprimand was imposed on appeal as a result of modification of the penalty of suspension or dismissal



from service, the respondent shall be entitled to the payment of back wages and other benefits which would have accrued during the period of the suspension or dismissal.

Section 57. *Administrative Disabilities Inherent in Certain Penalties.* The following rules shall govern in the imposition of accessory penalties:

- a. The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits.

Terminal leave benefits and personal contributions to Government Service Insurance System (GSIS), Retirement and Benefits Administration Service (RBAS) or other equivalent retirement benefits system shall not be subject to forfeiture.

- b. The penalty of demotion shall carry with it disqualification from promotion for one (1) year.
- c. The penalty of suspension shall carry with it disqualification from promotion corresponding to the period of suspension.
- d. The penalty of fine shall carry with it disqualification from promotion for the same period the respondent is fined.
- e. The penalty of reprimand shall not carry with it any accessory penalties.
- f. A warning or admonition shall not be considered a penalty.

Section 58. *Effects of Exoneration on Certain Penalties.* The following rules shall govern when the decision is for exoneration:

- a. In case the penalty imposed is fine, the same shall be refunded.
- b. In case of demotion, the respondent shall be entitled to restoration of former salary grade with the same salary step and payment of salary differentials during the period the demotion was imposed.
- c. In case the penalty imposed is suspension, the respondent shall immediately be reinstated to former post without loss of seniority rights and with payment of back wages and all benefits which would have accrued as if the respondent has not been illegally suspended.
- d. In case the penalty imposed is dismissal, the respondent shall immediately be reinstated without loss of seniority rights and with payment of back wages



and all benefits which would have accrued as if the respondent has not been illegally dismissed.

- e. The respondent who is exonerated on appeal shall be entitled to the leave credits for the period the respondent had been out of the service.

The grant of back wages and other benefits may be subject of settlement and/or compromise.

REMEDIES

Rule 11

SETTLEMENT IN ADMINISTRATIVE CASES

Section 59. *Applicability.* In cases of light offenses where the act is purely personal on the part of the private complainant and the person complained of and there is no apparent injury committed to the government, settlement of offenses may be considered. Provided that settlement can no longer be applied for the second offense of the same act committed by the person complained of.

Section 60. *Guidelines.* The following are the guidelines in the settlement of purely personal matters in administrative cases:

- a. Settlement shall be allowed only for administrative offenses where the act is purely personal between the private complainant and the person complained of and there is no apparent injury to the government;
- b. Upon filing of the complaint, the disciplining authority or its authorized representative motu proprio shall determine whether the offense can be the subject of settlement. In the affirmative, the person complained of shall be required to comment and indicate therein whether he/she is willing to submit the case for settlement;
- c. The person complained of may move for the settlement of the complaint anytime before the issuance of the formal charge.
- d. If the person complained of opts for settlement, the disciplining authority or authorized representative shall issue an order requiring the appearance of parties;
- e. If settlement succeeds, a Compromise Agreement shall be executed between the parties and attested by the disciplining authority or authorized representative;



- f. The Compromise Agreement shall be binding on the parties which cannot be impugned unless it is proven that there was duress or fraud in its execution on the part of any of the parties;
- g. A decision shall be issued by the disciplining authority based on the Compromise Agreement which may include, among others, the provisional dismissal of the complaint;
- h. In the event that the proceedings fail, the disciplining authority or authorized representative shall issue an order terminating the process and continue with the investigation of the case; and
- i. In case of non-compliance by the person complained of with the Compromise Agreement, the case may be reopened for investigation until its final determination.

Rule 12

MOTION FOR RECONSIDERATION IN DISCIPLINARY CASES

Section 61. *Filing.* The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen (15) days from receipt thereof unless otherwise provided by law. However, the private complainant may file a motion for reconsideration from the decision of CSC Regional Office.

A motion for extension of time to file a motion for reconsideration is not allowed.

Section 62. *When deemed filed.* A motion for reconsideration sent by registered mail or private courier service shall be deemed filed on the date stamped on the envelope or courier pack which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

Section 63. *Grounds.* The motion for reconsideration shall be based on any of the following:

- a. New evidence has been discovered which materially affects the decision rendered; or
- b. The decision is not supported by the evidence on record; or
- c. Errors of law or irregularities have been committed prejudicial to the interest of the movant.



Section 64. *Limitation.* Only one motion for reconsideration shall be entertained. If a second motion for reconsideration is filed notwithstanding its proscription under these Rules, the finality of action shall be reckoned from the denial of the first motion for reconsideration.

Section 65. *Effect of Filing.* The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

Rule 13 **APPEAL IN DISCIPLINARY CASES**

Section 66. *Filing.* Subject to Section 49 of these Rules, decisions of disciplining authorities, imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary, may be appealed to the Commission within a period of fifteen (15) days from receipt thereof. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and then finally to the Commission and pending appeal, the same shall be executory except when the penalty is dismissal from the service, in which case the same shall be executory only after confirmation by the Secretary concerned.

Section 67. *When deemed filed.* An appeal sent by registered mail or private courier service shall be deemed filed on the date stamped on the envelope or courier pack which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

An appeal, once perfected, cannot be withdrawn except upon motion duly approved by the appellate body.

Section 68. *Perfection of an Appeal or a Petition for Review.* To perfect an appeal or a petition for review, the appellant/petitioner shall submit the following documents:

- a. Memorandum containing the following:
 1. grounds relied upon for the appeal/petition for review;
 2. certified true copies of the assailed decision, resolution or order; and
 3. certified true copies of documents or evidence relevant to the case.

The Memorandum shall be filed with the appellate authority, copy furnished the disciplining authority. The latter shall submit the records of



the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days from receipt, to the appellate or higher authority.

- b. Proof of service of a copy of the memorandum to the disciplining office;
- c. Proof of payment of the required fee; and
- d. A statement or certificate of non-forum shopping.

If the appellant/petitioner fails to comply with any of the above requirements within the reglementary period, the Commission shall direct compliance within a period of not more than ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal/petition for review and shall cause its dismissal with prejudice to its refiling.

Section 69. *Effect of Filing.* Except for cases requiring confirmation of the Department Secretary concerned and cases decided by the CSC ROs, an appeal/petition to the Commission shall not stop the decision/resolution from being executory.

Section 70. *Effect of Finding of Violation of Due Process.* If on appeal, the Commission finds that the disciplining authority violated respondent-appellant's right to due process, the Commission shall dismiss the case against the respondent and order the immediate reinstatement of the respondent with payment of back wages and other benefits. However, the dismissal of the case shall be without prejudice on the part of the disciplining authority to re-file it in accordance with law.

Section 71. *Petition for Review of CSC RO Decisions.* Decisions/Resolutions rendered by CSC ROs may be elevated either by the complainant or the respondent to the Commission by way of a petition for review within fifteen (15) days from receipt thereof.

Section 72. *Petition for Review of Decisions of Agencies.* Except in cases involving sexual harassment, a Decision/Resolution of disciplining authority in an agency exonerating the respondent or dismissing a complaint for lack of *prima facie* case or issuance of a formal charge for a lower offense is not subject to appeal or petition for review before the Commission.

Section 73. *Petition for Review with the Court of Appeals.* A party may elevate a Decision/Resolution of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the Rules of Court.



Rule 14
PAYMENT OF BACK WAGES AND OTHER SIMILAR BENEFITS

Section 74. *Who are Entitled.* The following are entitled to back wages and other similar benefits:

- a. An illegally dismissed or suspended official or employee who is exonerated/reprimanded and ordered reinstated in the service; and
- b. A respondent placed under preventive suspension, whose order of suspension was declared by the Commission as invalid.

Section 75. *What Are Included.* Subject to the guidelines provided hereinafter and other existing laws, rules and regulations, the following benefits are included in the scope of back wages:

- a. Salaries from the time the official or employee was illegally dismissed /suspended up to the time of actual reinstatement;
- b. Representation and Transportation Allowance (RATA) as provided under existing rules;
- c. Personnel Economic Relief Allowance/Additional Compensation Allowance (PERA/ACA);
- d. Restoration of Leave Credits;
- e. Loyalty Award;
- f. Anniversary Bonus;
- g. 13th, 14th Month Pay and Cash Gift;
- h. Uniform/Clothing Allowance;
- i. Performance-based Bonus; and
- j. Other similar benefits given to regular employees by the agency

Section 76. *Guidelines.* The following are the guidelines on the payment of back wages and other similar benefits to an illegally dismissed / suspended employee:



- a. The payment of back wages should be computed based on the rate of salary grade/job grade/pay level/pay grade of the respondent at the time of dismissal or suspension including the increases in salary, allowances and other emoluments that may occur during the period the employee was prevented from rendering service.
- b. For entitlement to RATA, subject to existing rules and regulations, the requirement of actual performance of duty to an illegally dismissed or suspended respondent is dispensed with since it is unreasonable to expect or demand performance of his/her functions when the circumstances prevent one from doing so.
- c. The PERA/ACA shall be paid to civilian government personnel, whether occupying regular, contractual or casual positions, appointive or elective, whose positions are covered by RA No. 6758, as amended.
- d. The restoration of leave credits shall be subject to annual deductions of five (5) days forced leave/mandatory leave as required under the Omnibus Rules on Leave.
- e. For purposes of Loyalty award given to all officials/employees in the government who have rendered at least ten (10) years of continuous and satisfactory service in the government pursuant to CSC MC 6, s. 2002, the period under which the respondent was illegally dismissed or suspended should not be considered as a gap in the service. The same should be included in the computation of his/her length of service.
- f. Anniversary bonus is given during milestone years. A milestone year refers to the 15th anniversary and every fifth year thereafter. Respondents who have been illegally dismissed or suspended during the milestone years shall be entitled to the payment of anniversary bonus.
- g. The 13th /14th month pay plus Cash Gift under existing laws or as provided in the General Appropriations Act (GAA) shall be granted to each qualified official or employee which is equivalent to one (1) month basic salary.
- h. Uniform or clothing allowance refer to the amount granted per year to each qualified official or employee as provided in the GAA.



- i. Bonuses based on performance shall be given on the basis of the rating of the employee prior to one's illegal dismissal or suspension from the service.

An illegally dismissed or suspended official or employee or a respondent who is exonerated or reprimanded is entitled to the payment of the aforementioned benefits from the time of illegal termination up to actual reinstatement.

Section 77. Allowable Deductions. The payment of back wages shall be subject to withholding tax, GSIS Premium, Phil-Health and HDMF fund contributions, and other monthly dues/deductions, if there be any, which is imposed by the agency.

Payment of 13th /14th month pay, Cash Gift, Anniversary Bonus, and other additional bonus given by the agency which exceeds the ceiling tax exemption shall be subject to withholding tax.

RULE 15

REMOVAL OF ADMINISTRATIVE PENALTIES **OR DISABILITIES**

Section 78. Recommendation for Removal of Administrative Penalties or Disabilities; Requirements. In meritorious cases and upon recommendation of the Commission, the President may commute or remove administrative penalties or disabilities imposed upon an official or employee in disciplinary cases, subject to such terms and conditions as the President may impose in the interest of the service.

Subject to existing procedures, a petition for a favorable recommendation for the grant of removal of administrative penalties or disabilities may be filed by a dismissed official or employee with the Commission upon submission of the following:

- a. certified true copy of the decision or resolution in the disciplinary case;
- b. favorable recommendation by the disciplining authority or head of office from which he/she was dismissed;
- c. affidavit or certification from reputable members of the community where he/she resides that he/she is a good parent/family member and/or neighbor, law-abiding and active member of community and civic organizations;
- d. proof of non-pendency of an appeal/petition for review relative to one's disciplinary case before any court/tribunal; and
- e. proof of payment of filing fee.

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Section 79. Guidelines. The following are the guidelines for the grant of favorable recommendation for the removal of administrative penalties or disabilities:

- a. Apart from compliance with the requirements, the petitioner must demonstrate through specific and positive action and behavior that he/she has become a useful member of the community;
- b. A minimum of three (3) years should have lapsed, from the time of the finality of the decision dismissing the petitioners from the service, in order that the petitioners may be considered as to have truly undergone moral reformation;
- c. The petitioner seeking the removal of administrative penalties or disabilities must have recognized/accepted his/her guilt in his/her petition to show that he/she is repentant/remorseful of the consequences of his/her act, in addition to the above-mentioned requirements;
- d. In case where a petitioner is above sixty-five (65) years of age, the Commission may favorably recommend the removal of his/her administrative penalties or disabilities, provided that he/she complies with the requirements and submit proof of moral reformation; and
- e. In cases where the person is found guilty of depriving the government of money or property, restitution shall be required before the Commission can favorably recommend the removal of administrative penalties or disabilities.

Section 80. Conduct of Background Investigation and Submission of Recommendation. Upon receipt of a request sufficient in form and substance, the Commission may refer the same to the appropriate CSC RO for the conduct of background investigation and submission of recommendation within sixty (60) days from receipt of the directive.

Section 81. The Effects on the Removal of Administrative Penalties or Disabilities. Subject to existing laws and regulations, the grant of the request shall result in the restoration of the subject employee's privilege to be employed in the government service, unless the President specifically orders otherwise.

Restoration of civil service eligibility and the privilege to take civil service examinations shall not apply to those who were found guilty of any form of examination irregularity.



CONTEMPT OF THE COMMISSION

Rule 16 PROCEDURE FOR CONTEMPT

Section 82. Contumacious/Contemptuous Acts Punishable. Any person found guilty of disobedience of or resistance to a lawful writ, process, order, decision, resolution, ruling, summons, subpoena, command or injunction of the Commission may be punished for indirect contempt.

Section 83. How proceedings are commenced. Proceedings for indirect contempt may be initiated *motu proprio* by the Commission by an order requiring the respondent to show cause why he/she should not be punished for indirect contempt. A motion to cite for indirect contempt may also be filed with the Commission. In both cases, proceedings shall be conducted at the Office for Legal Affairs, Civil Service Commission.

The conduct of proceedings for indirect contempt cases shall follow, as far as applicable, the procedure required in the conduct of disciplinary investigation provided under these Rules.

Section 84. Hearing. Upon the day set for the hearing, the Commission shall proceed to investigate the indirect contempt case and consider such comment, answer, defense or testimony as the respondent may make or offer. Failure to attend the scheduled hearing and to give a satisfactory explanation in writing to the Commission will result in the waiver of the respondent to be present during the hearing.

Section 85. Penalty, if found guilty. If the respondent is adjudged guilty of indirect contempt committed against the Commission, he/she may be penalized by a fine of One Thousand Pesos (P1,000.00) per day for every act of indirect contempt and/or suspension for one (1) month up to a maximum period of six (6) months. The fine imposed shall be paid to the Commission and shall be the personal liability of the respondent.

The finding of guilt for indirect contempt shall not bar the filing of another indirect contempt case for the same cause if, after serving the first penalty of suspension or fine or both, the respondent continues to fail/refuse to comply with the Commission's Order.

NON-DISCIPLINARY CASES

Rule 17 INVALIDATION OR DISAPPROVAL OF APPOINTMENT

Section 86. Invalidation or Disapproval; Who May Appeal; Effect. Either the appointing authority or the appointee may assail the invalidation or disapproval of an

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appointment. Pending resolution of the appeal before the CSC, the appointee shall remain in his/her position with entitlement to salaries. In case an appointment is finally invalidated or disapproved, the appointee shall be entitled to restoration to his/her previous position, if applicable.

When an appointment is invalidated/disapproved on grounds that do not constitute a violation of civil service law, the appointee shall be considered a *de facto* official/employee for which he/she is entitled to payment of salaries from the government and the services are creditable government service. On the other hand, when an appointment is invalidated/disapproved for violation of pertinent laws such as publication requirement pursuant to Republic Act No. 7041⁴, among others, the services of the appointee shall not be credited as government service and the salaries of the appointee shall be borne by the appointing authority and/or the persons responsible for the commission of the violation of a rule, law.

Agencies may fill up a vacant position resulting from promotion only after the CSC has approved/validated the promotional appointment, except in meritorious cases as may be authorized by the Commission.

Section 87. *Evaluation of Qualification of Appointee.* For purposes of evaluation of the qualification of the appointee, his/her qualification shall be reckoned from the time of the issuance of the appointment.

Section 88. *Where and When to File.* Subject to the requirement of Rule 13 of these Rules, appointments invalidated or disapproved by the CSC FO may be appealed to the CSC RO while those invalidated or disapproved by the CSC RO may be appealed to the Commission within the fifteen (15)-day reglementary period.

To facilitate prompt actions on invalidated or disapproved appointments, motions for reconsideration filed with the CSC FO shall be treated as an appeal to the CSC RO and a motion for reconsideration at the CSC RO will be treated as a Petition for Review to the Commission and all the records thereof including the comments of the CSC FO or CSC RO shall, within ten (10) days from receipt of the latter, be forwarded to the CSC RO or the Commission as the case may be.

RULE 18 PROTEST AND REVOCATION OF APPOINTMENTS

Section 89. *Protest; Who May File.* Only a qualified next-in-rank official or employee may file a protest against an appointment made in favor of another who does not possess the minimum qualification requirements.

⁴ AN ACT REQUIRING REGULAR PUBLICATION OF EXISTING VACANT POSITIONS IN GOVERNMENT OFFICES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES



Section 90. *Where to File.* A qualified next-in-rank employee shall have the right to appeal initially to the head of agency, then to the CSC RO, and then to the Civil Service Commission Proper.

Section 91. *When to File.* Protest may be filed within fifteen (15) days from the announcement and/or posting of appointments subject of protest.

For this purpose, all appointments or promotions shall be duly announced and/or posted in bulletin boards or at conspicuous places in the Department or Agency within thirty (30) days or within a shorter period from the issuance of the appointment as provided in the agency-approved Merit Selection Plan (MSP).

Section 92. *Effect on the Appointment.* A protest shall not render an appointment ineffective or bar the approval/validation thereof, by the CSC FO, CSC RO or the Commission, as the case may be, but the approval/validation shall be subject to the final outcome of the protest.

An appointment may still be revoked by the appointing authority prior to the submission to the CSC FO even if the appointee has accepted the appointment and assumed office. A decision or resolution by the appointing authority granting the protest shall be subject to appeal by the appointee or to automatic review by the concerned CSC RO. The appointing authority shall within five (5) days from issuance of such decision or resolution transmit the records of case to the CSC RO for disposition.

The appointing authority, however, does not have the power to revoke an appointment which was already submitted to the CSC FO.

Section 93. *When Deemed Filed.* A protest is deemed filed, in case the same is sent by registered mail or private courier service, on the date stamped on the envelope or courier pack which shall be attached to the records of the case, and in case of personal delivery, on the date stamped by the agency or the Commission.

Section 94. *Effect of Withdrawal of Protest.* A protest or an appeal in this case may be withdrawn at any time as a matter of right. The withdrawal of the protest or appeal shall terminate the protest case.

Section 95. *Transmittal of Records.* In case the decision on protest is appealed to the Commission, the head of department or agency shall forward his/her comment and the records of the case within five (5) days from receipt of the copy of the protest. The records shall be systematically and chronologically arranged, paged and securely bound to prevent loss and shall include the following:

- a. Statement of duties or job description of the contested position;



- b. Duly accomplished and updated personal data sheets of the parties with certified statement of service records attached;
- c. Certified copy of the protested appointment; and
- d. Comparative assessment of the qualifications of the protestant and protestee.

Section 96. Dismissal of Protest. A protest shall be dismissed on any of the following grounds:

- a. The protestant is not qualified next-in-rank;
- b. The protest is not directed against a particular protestee but to "anyone who is appointed to the position" or directed to two or more protestees;
- c. No appointment has been issued; or
- d. The protest is filed outside of the fifteen (15) -day reglementary period.

Section 97. Finality of Decision. A Decision or Resolution denying a protest shall become final and executory after fifteen (15) days from receipt thereof and no motion for reconsideration, appeal or petition for review has been filed.

Section 98. Effect of Decision. In case the protest is finally decided by the CSC against the protestee, the approval/validation of his/her appointment shall be revoked and the appointment shall be considered disapproved/invalidated. The protestee shall be reverted to his/her former position, if applicable.

Section 99. Recall of Approval/Validation of Appointment; Who may File. The Commission, or any of its CSC RO or CSC FO, *motu proprio* or upon petition by any person, may initiate the recall of approval/validation of an appointment of an official or employee who does not meet the requisite qualification standards of the position or on the ground that the appointment was issued in violation of existing civil service laws, rules, and regulations.

Section 100. When and Where to File. The petition may be filed anytime, during a subsisting appointment, to the CSC RO which has jurisdiction over the appointee. In case the petition is filed with the CSC FO, the same shall be transmitted to the CSC RO concerned for decision.

Section 101. Effect on the Appointment. During the pendency of a petition to recall the approval/validation of an appointment, the appointee shall remain and continue to discharge the functions of the position.



Section 102. *Finality of Decision.* A Decision or Resolution on the petition to recall the approval of the appointment shall become final and executory after fifteen (15) days from receipt thereof and no motion for reconsideration or appeal or petition for review has been filed.

Section 103. *Effect of Decision.* When the petition to recall the approval/validation of an appointment is decided by the CSC against the appointee, the approval/validation of his/her appointment shall be revoked and the appointment shall be considered disapproved/invalidated. In case of a promotion from within the same agency, the appointee shall be reverted to his/her former position, if applicable.

Rule 19
CORRECTION OF PERSONAL INFORMATION IN
THE RECORDS OF THE COMMISSION

Section 104. *When and Where to File.* Request for correction of personal information shall be filed before retirement or on meritorious grounds, within one (1) year thereafter, with the CSC RO exercising jurisdiction, and which request shall be acted upon within fifteen (15) days from receipt. Copies of the Order or Resolution issued by the concerned CSC RO shall be submitted to the Integrated Records Management Office (IRMO) as the repository of all human resource records.

Section 105. *Required Documents.* The following documents shall be submitted together with the request:

- a. Original Certificate of Live Birth duly authenticated by the Local Civil Registrar of the municipality or city where the birth was registered or recorded or the Philippine Statistics Authority, or in its absence, a court order;
- b. Personal Affidavit of Discrepancy; and
- c. Photocopy of documents sought to be corrected.

A filing fee shall be paid and a receipt thereof shall be attached to the request.

Section 106. *Supporting Documents.* When the submitted Certificate of Live Birth is issued on the basis of late registration, original or duly authenticated supporting documents must be submitted, in addition to the requirements enumerated in the immediately preceding section, to warrant the correction or change of information in the records of the Commission, to wit:



- a. Baptismal certificate, unless it has been lost or destroyed during a war, fire, natural calamity or any other fortuitous event, in which case, a certification issued by the proper church authority must be submitted. If the requesting party was not issued any baptismal certificate or was not baptized, an affidavit attesting to such fact must be submitted.
- b. Other employment, personal or school records which support the entry reflected in the belatedly registered birth certificate and which entry is requested to be reflected in the records of the Commission as the true and correct entry.

Rule 20
DROPPING FROM THE ROLLS

Section 107. *Grounds and Procedure for Dropping from the Rolls.* Officers and employees who are absent without approved leave, have unsatisfactory or poor performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:

a. Absence Without Approved Leave

1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.

He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.

2. If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work order shall be served on the official or employee at his/her last known address on record. Failure on his/her part to report to work within the period stated in the order, which shall not be less than three (3) days, is a valid ground to drop him/her from the rolls.
3. If it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days, three (3) times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

In the determination of whether the absences incurred are substantial, circumstances that would affect the delivery of service shall be taken into consideration.



b. Unsatisfactory or Poor Performance

1. An employee who obtained Unsatisfactory rating for one rating period or exhibited poor performance within the first three (3) months of the rating period shall be provided appropriate developmental intervention by the Head of Office and supervisor (Division/Unit Head), in coordination with the HRM Office/Personnel Office, to address competency-related performance gaps.

If after advice and provision of developmental intervention, the employee still obtains Poor rating for the remaining months of the rating period or Unsatisfactory rating in the immediately succeeding rating period, he/she may be dropped from the rolls.

2. An officer or employee who is given two consecutive Unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his/her unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance may warrant his/her dropping from the rolls. Such notice shall be given not later than thirty (30) days from the end of the semester and shall contain sufficient information which shall enable the officer or employee to prepare an explanation within a reasonable period specified in the notice. This period shall not apply to probationary employees as defined under Section 4 (v) of this Rules.
3. An officer or employee, who for one evaluation period is rated Poor in performance, may be dropped from the rolls provided he/she has been informed in writing of the status of his/her performance within fifteen (15) days after the end of the 3rd month with sufficient warning that failure to improve his/her performance within the remaining period of the semester shall warrant his/her dropping from the rolls. Such notice shall also contain sufficient information which shall enable the officer or employee to prepare an explanation within a reasonable period specified in the notice.

c. Physical Unfitness

1. An officer or employee who is continuously absent for more than one (1) year by reason of illness may be declared physically unfit to perform his/her duties and may be consequently dropped from the rolls.
2. An officer or employee who is intermittently absent by reason of illness for at least two hundred sixty (260) working days during a twenty four (24)-month period may also be declared physically unfit by the head of office.

For this purpose, notice shall be given to the officer or employee concerned containing a brief statement of the nature of his/her incapacity to work.



d. Mental Disorder

1. An officer or employee who is behaving abnormally for an extended period, which may manifest continuing mental disorder shall be provided necessary human resource and psychological interventions. If after interventions, continued abnormal behavior/ mental disorder is manifested, as reported by his or her co-worker or immediate supervisor and confirmed by a licensed psychiatrist, the officer or employee may be dropped from the rolls.
2. If the officer or employee refuses to undergo the necessary human resource and/or psychological interventions, he or she may be dropped from the rolls based on the report of co-workers or immediate supervisor and after confirmation by a licensed psychiatrist.

Section 108. *Written Notice; Who Signs.* The written notice mentioned in the preceding paragraphs shall be signed by the highest ranking human resource management officer in the agency upon the recommendation of the person exercising immediate supervision over the officer or employee. However, the notice of separation shall be signed by the appropriate appointing authority or head of office.

Section 109. *Order of Separation through Dropping from the Rolls; Immediately Executory.* The agency shall not entertain motion for reconsideration from the order of separation through dropping from the rolls. The employee shall appeal directly to the Commission Proper within fifteen (15) days from receipt of the order. Pending appeal the order of separation is immediately executory.

Section 110. *Dropping From the Rolls; Non-disciplinary in Nature.* This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental disorder is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.

Rule 21

REMEDIES IN NON-DISCIPLINARY CASES

Section 111. *Remedies in non-disciplinary cases.* The aggrieved party in non-disciplinary cases may avail of the applicable remedies provided for under Rules 12 and 13 unless otherwise provided by law or these Rules.

All actions of CSC ROs or other offices within CSC may be brought to the Commission Proper by way of a petition for review.



Section 112. *Effects of Decisions of the Commission on Appeal or Petition for Review.* Where the Commission sets aside or reverses a decision, the effect shall be as follows:

- a. Dropping from the Rolls – the employee shall be reinstated immediately to his/her former post with payment of back wages and other monetary benefits;
- b. Illegal Termination - the employee shall be reinstated with payment of back wages and other monetary benefits;
- c. Disapproval, Invalidation, and Revocation of Appointments - the appointee shall remain in that position.
- d. Reassignment, Transfer, Detail, or Secondment – the employee shall be restored to former position; and
- e. Demotion– the employee shall be entitled to back wages and other similar benefits and restoration of former salary grade with the same salary step.

Rule 22

MISCELLANEOUS PROVISIONS

Section 113. *Deputation of Lawyers of Other Agencies.* The Commission may deputize lawyers of other agencies and similar officials to conduct preliminary and formal investigation and to make the necessary report and recommendation within the period specified in Sections 21 and 47.

Other agencies of the government may deputize lawyers of other agencies provided that prior understanding is executed in a Memorandum between the two agencies.

Section 114. *Execution of CSC RO Decisions.* The decisions of the CSC ROs shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration or a petition for review is seasonably filed with the Commission, in which case the execution of the decision shall be held in abeyance.

Section 115. *Execution of the Decisions of the Commission.* The decisions of the Commission shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.

For this purpose, the CSC ROs shall monitor and assist in the effective and immediate implementation of these decisions.

Section 116. *Effect of Pendency of Petition for Review/Certiorari with the Court.* The filing and pendency of a petition for review with the Court of Appeals or certiorari with



the Supreme Court shall not stop the execution of the decision of the Commission unless the Court issues a restraining order or an injunction.

Section 117. *Non-execution of Decision.* Any officer or employee who willfully refuses or fails to implement the executory resolution, decision, order or ruling of the Commission to the prejudice of the public service and the affected party, may be cited in indirect contempt of the Commission as defined in Rule 16 hereof and may be administratively charged with Conduct Prejudicial to the Best Interest of the Service or Neglect of Duty or be held criminally liable under Section 67 of Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

Section 118. *Computation of Period.* In computing any period of time prescribed by these Rules, the first day shall be excluded and the last day included unless it be a Saturday, a Sunday, or a legal holiday or a special non-working day, in which case the period shall run until the end of the next working day.

Copies of decisions and other communications shall be served to the counsel of record if one is represented by a counsel. However, a party even if represented by a counsel, is not precluded from securing or being served a copy of said decisions and other communications. The period to perfect a Motion for Reconsideration or an appeal shall be reckoned from the date of receipt of counsel or party, whichever comes earlier.

Section 119. *Presumptive Notice; Service of Order and service of processes.*

(a) There shall be presumptive Notice to a party of a Commission's Notice or Order on any of the following instances:

1. In cases under formal investigation, if such Notice or Order appears on the record to have been mailed at least fifty-five (55) days prior to the scheduled date of hearing if the addressee is from within the National Capital Region, or at least seventy-five (75) days if the addressee is from outside the National Capital Region, for cases before the Commission Proper.

In cases before the CSC ROs, if such Notice or Order appears on the record to have been mailed at least fifty-five (55) days prior to the scheduled date of hearing if the addressee is from within the geographical area of the Regional Office which exercises jurisdiction, or at seventy-five (75) days if the addressee is from outside the geographical area.

2. In cases where an Order was issued directing a party(ies) either to comply with the requirements to perfect their action; comment/answer on a pending action and/or transmit case records; file their respective position papers; and other analogous matters, after fifty-five (55) days from date of mailing, as appearing on the record if the addressee is from within the National Capital Region, or after seventy-five (75) days if the addressee is

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from outside the National Capital Region, for cases before the Commission Proper.

In cases before the CSC ROs, after fifty-five (55) days from date of mailing, as appearing on the record if the addressee is from within the geographical area of the Regional Office which exercises jurisdiction, or after seventy-five (75) days if the addressee is from outside the geographical area.

In the case of Notices or Orders mentioned in Item No. 2 hereof, after the lapse of a period of thirty (30) days from the date of the presumptive notice as appearing on the record of the case without receipt of any compliance from the concerned party, the Commission shall proceed to act upon such case accordingly. On the other hand, if there is compliance received on an earlier period, the Commission shall proceed to act upon such case as of the date of receipt of compliance.

- (b) A party, in order to ensure timely service, may opt to avail of private couriers for the service of pleadings, motions and other submissions. Proof of service in such case shall either be a sworn certification or affidavit of service from the courier specifically referring to the date of service and the corresponding tracking number for the mail matter.

Section 120. *Reconsideration from the Commission's action based on presumptive notice.* In the event that the Commission renders an action, decision or resolution based on presumptive notice to a party, said party may move for reconsideration thereof within fifteen (15) days from notice, subject to the following requirements:

1. In cases under Item 2 of the preceding section, by showing proof of actual receipt of Notice or Order which falls on a date after the lapse of fifty-five (55) days from the date of mailing as appearing in the case record if the addressee is from within the National Capital Region, or after seventy-five (75) days if the addressee is from outside the National Capital Region, for cases before the Commission Proper.
2. In cases before the CSC ROs, by showing proof of actual receipt of Notice or Order which falls on a date after the lapse of fifty-five (55) days from the date of mailing as appearing in the case record if the addressee is from within the geographical area of the Regional Office which exercises jurisdiction, or after seventy-five (75) days if the addressee is from outside the geographical area.

Section 121. *Fees and Other Charges.* Reasonable fees and other charges shall be provided in separate issuances that the Commission shall promulgate as it may deem fit.



RULE 23
EFFECTIVITY AND SEPARABILITY

Section 122. *Repealing Clause.* The Revised Rules on Administrative Cases in the Civil Service as prescribed in CSC Resolution No. 11-01502 dated November 08, 2011, CSC Resolution No. 01-0940 dated May 21, 2001 and all other memorandum circulars, resolutions, rules and regulations, inconsistent with these Rules are hereby repealed or modified accordingly.

Section 123. *Separability.* If any portion of these Rules is declared unconstitutional or invalid by competent authority, the other provisions not otherwise affected shall remain in full force and effect.

Section 124. *Transitory.* The provisions of the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of these Rules, provided it will not unduly prejudice substantive rights.

Section 125. *Effectivity.* These Rules shall take effect after fifteen (15) days from date of publication in the Official Gazette, or in a newspaper of general circulation.

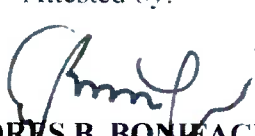
Quezon City.


ALICIA dela ROSA-BALA
Chairperson


ROBERT S. MARTINEZ
Commissioner


LEOPOLDO ROBERTO W. VALDEROSA, JR.
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office