

The Freedom of Information Act
A Legacy of the 14th Congress to the Filipino People in Pursuit of
Democracy, Development and Good Governance
(Sponsorship Speech on House Bill 3732)
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“The days of the secret laws and unpublished decrees are over. This is once again an open society, with all the acts of the government subject to public scrutiny and available always to public cognizance. This has to be so if our country is to remain democratic, with sovereignty residing in the people and all government authority emanating from them”

- Justice Isagani Cruz
Potente

Tañada vs. Tuvera (No. L-63915, 29 December 1986)

Mr. Speaker, distinguished colleagues in the House of Representatives:

The paragraph I just read came from a Supreme Court decision written by Justice Isagani Cruz on the case filed by my grandfather, the late Senator Lorenzo M. Tañada, together with Abraham F. Sarmiento and the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI) against Jun C. Tuvera, then serving as Executive Assistant to President Ferdinand Marcos, among others.

The trigger behind the filing of the case was the numerous Letters of Instructions and Presidential Decrees that remained unpublished during the Marcos era from which arrests and other anti-people impositions of the State were made to appear legal. These measures were literally done behind our peoples’ backs and being used against us. The Supreme Court asserted that the prior publication of laws before they become effective cannot be dispensed with.

These days, publication of laws before they become effective is a mere matter of course. But during the dark days of Martial Law, such was the struggle that we had to endure just to gain, little by little, some semblance of democracy which we all cherish, uphold, continue to defend and nurture.

Today, Mr. Speaker, my dear Colleagues, I proudly stand before you today with high hopes that we shall be adding on and enhancing our democratic ideals and further empowering our people.

On behalf of the Committee on Public Information, I have the honor to sponsor and be the one tasked to defend before this august chamber *House Bill No. 3732* entitled “*AN ACT IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON MATTERS OF PUBLIC CONCERN GUARANTEED UNDER SECTION TWENTY-EIGHT, ARTICLE II AND SECTION SEVEN, ARTICLE III OF THE 1987 CONSTITUTION AND FOR OTHER PURPOSES*”. This bill is in substitution of House Bills 194, 997, 1665, 2021, 2059, 2176, 2223, 2293 and 3116 that were referred to the committee for deliberation.

I am indeed humbled when the good Chair of the Committee on Public Information seconded to me the task of not only chairing the technical working group of this bill. I was likewise humbled when my authored bill was made template for this measure.

Mr. Speaker, it is our constitutional duty to approve this bill and to work for its passage into law. Our present constitution has secured for the Filipino people, in Section 7 of the Bill of Rights, their right to be informed on matters of public concern. It reads:

“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.”

While our Supreme Court has confirmed that this provision is self-executing, it is far from complete. Its effective implementation has for the past two decades suffered from the lack of the necessary substantive and procedural details that only legislature can provide. Specifically:

One, there is no uniform, simple and speedy procedure for securing access to information. The closest to a statutory procedure that we have provided is a small section in Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), Section 5 (e), which lists among the duties of public officials the obligation to make all documents accessible to the public within reasonable working hours. But our public officials, instead of applying this plain provision, apply instead Section 5 (a) of the same law, which directs them to act promptly on letters and requests within fifteen days from receipt thereof. Thus requests for information are often met with a letter within fifteen days acknowledging receipt thereof, and stating that the request is being considered. If one does not follow up on the request, often the acknowledgement letter will be the end of it.

Two, the specification of the coverage of the guarantee, particularly the general rule on what information may be exempted, needs legislation. I note that the constitutional provision states that access to information shall be afforded our citizens subject to such limitations as may be provided by law. Not having done this, we have conceded to the Supreme Court the task of outlining the limitations of the right to information through jurisprudence.

Three, precisely for the lack of definite procedure as well as the absence of a definite scope, there is at present no effective basis for imposing administrative or penal sanctions for violations of the right.

In addition to Section 7 of Article III, Section 28 of Article II likewise urgently needs legislation. The provision states: "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." The Supreme Court, in the recent case of Chavez v. NHA (G.R. No. 164527) decided last August 15, 2007, noted that while Section 7 of the Bill of Rights contemplates a duty upon government to permit access to information upon request, the declaration of policy under Section 28, in contrast, contemplates a duty on the part of government agencies to bring into public view all the steps and negotiations leading to the consummation of transactions involving public interest and the contents of the perfected contract, without need of demand from anyone. The court notes, however, and I quote:

"It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act.""

The result of the past legislative inaction is the wanton violation of the right of the Filipino people to information of great public interest and concern. Let me cite a few examples. Recall how it had to take external pressure for the Melo report on extrajudicial killings to be finally disclosed to the public. Recall as well how the public, and Congress itself, had been denied information on the matters being negotiated in the JPEPA. The **PCIJ**, in the wake of the ZTE controversy, did a study on official development assistance and requested various government agencies for key documents. After writing 46 letters and making 190 follow-up phone calls involving 23 information requests to 15 government agencies, the result was a dismal 8 or 35% of the 23 information requests either denied or not acted upon. The requests denied or not acted upon

include: Northrail project documents, Northrail – Southrail linkage and Southrail project documents, President’s Bridges Program documents, loan agreements, and evaluation reports and ICC data and documents on various ODA projects.

Mr. Speaker, distinguished colleagues, this 14th Congress now has the opportunity to provide corrective action through the passage of this bill that the Committee on Public Information presents to you today. This bill has the following essential features:

1. It provides an expansive scope in terms of government agencies as well as information covered.
2. It enumerates only a narrow list of exceptions, the limits of which is circumscribed by clearly stating the serious public harm that we wish to avoid through the withholding of the said information.
3. To further counterbalance the exceptions, we provide citizens an opportunity and right to override a recognized exception when there is greater public interest in the disclosure.
4. We provide a clear, uniform and speedy procedure for access to information.
5. We put in place a provision implementing the automatic disclosure of transactions of public concern as required by Section 28, Article II of the constitution.
6. We proscribe against excessive costs of access to information.
7. We put in place a system of accessible and speedy remedies that a citizen who has been denied access to information may resort to.
8. We institute mechanisms to promote a culture of openness within government, and to enhance not only the physical accessibility of information, but its understandability by the general public as well.
9. We introduce clear administrative, criminal and civil liability for violation of the right to information.

Mr. Speaker, distinguished colleagues, in discharging our constitutional duty, we do so not in mechanistic compliance but rather with the very clear purpose of securing the public interest and the public good.

The right to information is an important enabling ingredient of democracy. It is a precondition to the exercise of other democratic rights, including the freedom of speech, of expression, and of the press. It forms the basis for the exercise of the right to petition government for redress of grievances. It also underlies other constitutionally protected democratic values such as people’s participation in government.

The right to information is a vital cog to good governance and

government accountability. It is a vital safeguard against corruption. While secrecy in government makes corruption flourish, in contrast transparency exposes corrupt officials as well as corrupt practices. The right to information also secures for us better policies. It enhances the capacity of the public to provide timely feedback to government, thereby promoting more responsive government planning. It promotes constructive and informed debate between and among government and stakeholders, and builds consensus around policy objectives and design.

Thus the right to information provides fuel to development. Development requires better and more responsive policies, which the right to information can effectively evolve. Development also requires that we decisively address corruption, which the right to information can facilitate. As noted by the Speaker in a recent statement, "(G)raft and corruption is sapping the public coffers of the needed resources to fight poverty," and that "economic growth could even leap by ten-fold and its benefits channeled to depressed areas if public funds are not diverted by corruption". These are precisely the challenges that the bill before us responds to.

Let me note that while it is with the 14th Congress that now lies the distinct opportunity and challenge to bring forth a very important piece of legislation, we also stand upon the shoulders of several Congresses before us. This is not the first time that freedom of information bills have been deliberated in the Committee on Public Information, and we have benefited from their work. I also note the substantive contribution of government and non-government resource persons in the committee hearings. I acknowledge particularly the inputs from the Access to Information Network, that have provided us insights in both the present state of the law on access to information, and the elements we need to put in place for an effective and potent piece of legislation. I also acknowledge the hard work put in by the committee secretariat in assisting the members of the Committee in discharging their legislative work. It has been a cumulative process. And precisely by being cumulative, we have the best consolidated version before us today, for which we can all be proud of.

Mr. Speaker, distinguished colleagues, your Committee on Public Information hereby proposes the passage of the Freedom of Information Act of 2008. Together with our committee Chairman, Rep. Bienvenido Abante, Jr., as well as the other authors of the bill, I earnestly urge the immediate approval of House Bill 3732. Let this be the legacy of the 14th Congress to the Filipino people – a shining legislation in pursuit of democracy, good governance, and national development.

Thank you.