

FREEDOM OF INFORMATION BILL (HB 3732)

A Presentation to CHAT

14 July 2009

Right to Information

- Section 7 of the Bill of Rights of the 1987 Constitution 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 limitations as may be provided by law.”



Duty to Disclose

- Article II (Declaration of Principles and State Policies), Section 28 also states:

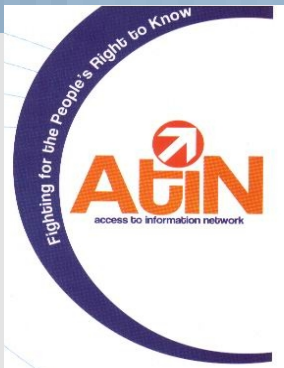
“Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”



Problems relating to providing access to information to the public

- Absence of a uniform, simple and speedy access procedure.
- Release of info remains discretionary.
- There is still untested, if not insufficient, basis for sanctions in cases of violation of the right to information.
- The remedy to compel disclosure, primarily judicial, remains inaccessible to the general public.
- Government's record-keeping system is in a very poor state.
- There is a very low level of bureaucratic commitment to openness.
- The cost of access to certain information is excessive.





House Bill 3732

Salient Features

Salient Features of HB 3732

- An expansive scope in terms of government agencies as well as information covered
- Express legislative determination that all information in the possession or control of any government agency is of public interest
- A clear, uniform and speedy procedure for access to information, including quick and certain period of compliance, and the manner of making, and responding to, requests. (*Sec. 9. Procedure of Access*)
- A proscription against excessive costs of access to information



Salient Features of HB 3732

- A system of accessible and speedy remedies that a citizen who has been denied access to information may resort to
- A mandate 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.
 - (a) Duty to Publish Information
 - (b) Keeping of Records
 - (c) Accessibility of Language and Form
 - (d) Improving Capability



Salient Features of HB 3732

- Presumption - There shall be a **legal presumption in favor of access to information**. Accordingly, **the government shall have the burden of proof** of showing by clear and convincing evidence that the information requested should not be disclosed.
- Mandatory disclosure: all government agencies shall post all the steps, negotiations and key government positions pertaining to definite propositions of the government, as well as the contents of the contract, agreement or treaty in the following transactions involving public interest.



Salient Features of HB 3732

- Clear administrative, criminal and civil liability for violation of the right to information.



EXCEPTIONS

- Narrowly and clearly defined
- A specific harm to the public interest is identified
- Public interest override for exceptions



EXCEPTIONS: Sec. 8

- Subject to the qualifications set forth in Section 7: *Provided*, That the information is specifically designated and described, and the facts and reasons for preserving the confidentiality are precisely and specifically recited, and: *Provided, further*, That such information shall be available to either House of Congress at all times, access to information may be denied when:



EXCEPTIONS

- (a) The revelation of the information **will create a clear and present danger of war, invasion or any external threat to the State** as determined by the Office of the President and/or the Secretary of the Department of National Defense: *Provided*, That the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for such determination;



EXCEPTIONS

(b) The information pertains to the foreign affairs of the Republic of the Philippines, **when its revelation would unduly weaken the negotiating position of the government in an ongoing bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations of the Philippines with one or more states with which it intends to keep friendly relations**, except that such information must always be accessible to either House of Congress;



EXCEPTIONS

(c) The information pertains to internal and external defense and law enforcement, **when the revelation thereof would render a legitimate military operation ineffective, unduly compromise the prevention, detection or suppression of a criminal activity, or endanger the life or physical safety of confidential or protected sources or witnesses, law enforcement and military personnel or their immediate families.**



EXCEPTIONS

(cont'd)

(c) Information relating to the details of the administration, budget and expenditure, and management of the defense and law enforcement agencies shall always be accessible to the public;



EXCEPTIONS

(d) The information pertains to the personal information of a third party natural person, unless it forms part of a public record, or the third party is or was an official of a government agency and the information relates to his or her public function;



EXCEPTIONS

(e) The information pertains to trade, industrial, financial or commercial secrets of a *third party natural or juridical person*, obtained in confidence by a government agency **whenever the revelation thereof would seriously prejudice the interests of the third party in trade, industrial, financial or commercial competition**, unless the third party has consented to the disclosure of the information;



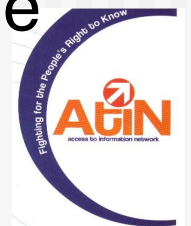
EXCEPTIONS

(f) The information is privileged from production in legal proceedings by law or by the Rules of Court, unless the person entitled to the privilege has waived it;

(g) The information is exempted by statutes of Congress, in addition to those provided in this section;

(h) The information is obtained by any committee of either House of Congress in executive session; and

(i) Drafts of decisions of any executive, administrative, judicial or quasi-judicial body in the exercise of their adjudicatory functions are being requested.



EXCEPTIONS

- *Sec. 7 Qualifications* - Even if the information falls under the exceptions set forth in the succeeding section, access to information shall not be denied if:
 - a) The information may be reasonably severed from the body of the information which would be subject to exceptions; or
 - b) The public interest in the disclosure outweighs the harm to the interest sought to be protected by the exceptions.



Status of Legislation

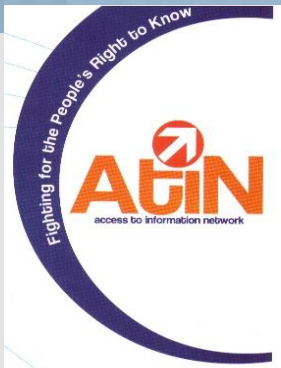
- HB3732 passed by HOR
- Senate:
 - Two committee hearings (May 27)
 - Several TWG meeting (Feb 24)
 - Committee Report finalized (May 27)
 - Submission to majority floor leader



One Big Push

- Mobilize in case of any obstacle in the legislative process:
 - Letter writing
 - Make it an election issue
 - Attend legislative hearings/plenary discussions
 - Mass action
 - Media campaign
 - Etc.





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