

## **LIST OF EXCEPTIONS**

*(Refer to Memorandum from The Executive Secretary Dated 24 November 2016)*

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.

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 discussion in closed-door Cabinet meetings; 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 or are in the exploratory stage; or information pertaining to the decision-making of executive officials; and
    - ii. information, record or documents comprising drafts of decisions, orders, rulings, policy decisions, memoranda, etc.
2. Privilege information relating to national security, defense or international relations:
  - a. Information, records or document that must be kept secret in the interest of national defense or security;

- b. Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs; and
  - c. Patent applications, the publication of which would prejudice national security and interests;
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 of 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:
  - b. Informer's privilege or the privilege of the Government not to disclose the identity of a person of person who furnish information of violation of law to officers charged with the enforcement of law;
  - c. When disclose of information would put the life and safety of an individual in imminent danger;
  - d. Any information given by informants leading to the recovery of carnapped vehicles and apprehension to the persons charged with carnapping; and
  - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;
4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minor, victims of crimes, or the accused.  
These include:
- a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, personal information or records, including sensitive personal information, birth records, school records, or medical or health records;

Sensitive personal information as defined under the Data Privacy Act of 2012 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 of 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 of family relations of the individual and it is not prohibited by any law or regulation, Any disclosure of personal information shall in accordance with the principles of transparency, legitimate purpose and proportionality.

Disclosure of personal information about any individual who is or was an officer or employee of a government institution shall be allowed, provided that such information relates to the position or functions of the individual, including: (1) the fact that the individual is or was an officer or employee of the government institution; (2) the title, business address and office telephone number of the individual; (3) the classification, salary range and responsibilities of the position held by the individual; and (4) the name of the individual on a document prepared by the individual in the course of employment with the government;

- b. Source of any news report of information appearing in newspapers, magazines of periodical of general circulation obtained in confidence, 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 crime of rehabilitated drug offenders, including those pertaining to the following:
  - (1) records of child and family cases;
  - (2) children in conflict with the law from initial contact until final disposition of the case;
  - (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;
  - (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 of an immediate family of the child;
  - (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, employer, or other identifying information of a victim of an immediate family member,
  - (6) Trafficked persons, including their names and personal circumstances, or Any other information tending to establish the identity of the trafficked person;
  - (7) Names of victims of child abuse, exploitation of discrimination;
  - (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;
  - (9) records, documents and communications of proceedings involving domestic and inter-country adoptions, including the identity of the child, natural parents and adoptive parents;
  - (10) names of students who committed acts of bullying or retaliation;
  - (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; and

- (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;

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;
  - b. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics authority (PSA);
  - c. Records and reports submitted to the Social security System by the employer or member;
  - d. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;
  - 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;
  - f. Applications and supporting documents filed pursuant to the Omnibus investments Code of 1987;
  - g. Documents submitted through the Government Electronic Procurement System;
  - 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*;
  - 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;
  - 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;

- 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;
  - l. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;
  - m. Certain information and reports submitted to the Insurance Commissioner pursuant to the Insurance Code;
  - n. Information on registered cultural properties owned by private individuals
  - o. Data submitted by a higher education institution to the Commission on Higher Education (CHED); and
  - p. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;
6. Information of which a premature disclosure would:
- a. In 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.
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:
- a. Mediation and domestic or international arbitration proceedings, including records, evidence and the arbitral awards, pursuant to the *Alternative Dispute Resolution Act of 2004*;
  - b. Matters involved in an Investor-State mediation;
  - c. Information and statements made at conciliation proceedings under the *Labor Code*;
  - d. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);
  - 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;
  - f. Information related to investigations which are deemed confidential under the *Securities Regulations Code*;
  - g. All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;
  - 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*;
  - i. Investigation report and the supervision history of a probationer;
  - j. Those matters classified as confidential under the *Human Security Act of 2007*;
  - k. Preliminary investigation proceedings before the committee on decorum and investigation of government agencies; 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;
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;
    - 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); and
    - 3. Refugee proceedings and documents under the 1951 Convention Relating to the Status of Refugees, as implemented by DOJ Circular No. 58;
  - b. Testimony from a government official, unless pursuant to a court or legal order;
  - c. When the purpose for the request of Statement of Assets, Liabilities and Net Worth is any of the following:
    - a. any purpose contrary to morals or public policy; or
    - b. any commercial purpose other than by news and communications media for dissemination to the general public;
  - d. Lists, abstracts, summaries of information requested when such lists, abstract or summaries are not part of the duties of the government office requested;
  - e. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;
  - f. Requested information pertains to comments and disclosures on pending cases in judicial proceedings; and
  - g. Attorney-client privilege existing between government lawyers and their client.