

Policies on Information Access and Transparency

(An Analysis of Philippine Laws and Issuances, Agency Guidelines, and Bills on Information Access)
Asian Institute of Journalism and Communication (AIJC)

SUMMARY

The right to access information is the right to seek, receive, and impart information and ideas. In the Philippines, people's right to information and transparency in government are guaranteed by the Bill of Rights enshrined in the Philippine Constitution of 1987. A study on Policies on Information Access and Transparency conducted by the Asian Institute of Journalism and Communication (AIJC) for UNESCO made an inventory and analysis of national policies on access to information and transparency formulated and implemented by government primarily since democracy was restored in 1986. Information policies were contained in four groups of policy documents:

- Laws and rules on writs
- Other issuances (executive or administrative orders, memorandum or administrative circulars);
- Agency guidelines, rules, and circulars; and
- Bills in process to become laws at the Philippine Congress.

The study sought to answer the following **specific questions**:

1. What laws/issuances and agency rules/guidelines on information access are being enforced in the Philippines at present?
2. How do they promote Article 19 of the Universal Declaration of Human Rights and the nine principles of a Freedom of Information regime?
3. Which of the nine principles do these policies reflect?
4. What measures can we recommend to a) help government improve public access to information, and b) empower the people to enjoy their right to information as mandated by law?

Three research tasks were involved: 1) collection of policy documents and supplementary interview; 2) subject analysis of the policy documents; and 3) analysis of FOI features of the policy documents.

Policy documents were collected from **29 agencies and offices** of the Executive, Judicial and Legislative branches of government and supplementary interviews requested of officers mainly responsible for facilitating public access to information. The documents were analyzed in terms of subject and freedom of information features using the nine principles of freedom of information set forth by Article 19: **maximum disclosure, obligation to publish, promotion of open government, limited scope of exceptions, process to facilitate access, costs, open meetings, disclosure taking precedence, and protection for whistleblowers.**

One hundred and eighty-two (**182**) **policy documents** were analyzed to get a picture of information access in the country: 11 laws and rules on writs, 20 other issuances, 92 agency/office guidelines and rules, and 59 information-related bills filed with the 13th and 14th Congresses.

Laws and other issuances. Thirty-one (**31**) **acts, rules on writs, and other issuances** were analyzed. Republic Acts (RAs) passed by the Philippine Congress primarily in the last 30 years provided for enhancing public access to information and protecting people against different kinds of dangers, one providing for surveillance of suspected terrorists (Anti-Terror Law). Improving public service through a code of conduct for public officials and employees and improvement of government systems and reporting also were covered. Policy documents from the Supreme Court —rules on the Writ of *Amparo* and Writ of *Habeas Data* the Court promulgated recently—provided for the protection of people's life, liberty, and privacy specifically from abuses (or negligence) of individuals in government or private persons or entities.

Subjects of Executive Orders (EOs) were primarily measures to enhance public information on access and transparency of government, improve information management processes, improve access through automation and information technology, and executive

privilege. Administrative Orders (AOs) and Memorandum Circulars (MCs) also sought to improve information management in government offices through information technology, service guides and workflow charts, as well as to secure classified matter. Meanwhile an Administrative Circular by the Supreme Court sought to develop the Court's information disclosure policy.

In terms of Freedom of Information features, all of the Republic Acts (laws) and Rules on Writs (100%) reflected the principles on obligation to publish, promotion of open government, and disclosure taking precedence, which could ensure that a law either promoting or hindering information access takes precedence over all previous laws that may have provisions to the contrary. Almost all laws (91%) provided for maximum disclosure and processes to facilitate access, although one law declared as classified documents related to the gathering of information materials on a suspected terrorist organization—a provision that may impinge on individual human rights in general. Less than half (45.5%) had provisions for limited scope of exceptions, including the two Rules on Writs by the Supreme Court. Clear exceptions were provided also by the Anti-Terror Law. More than a quarter (27%) provided for protection of whistleblowers and other witnesses. Less than a fifth (18%) provided for costs, and one (9%) provided for open meetings.

Majority of the Executive and Administrative Orders, Memorandum and Administrative Circulars had provisions for obligation to publish (90%). But obligation to publish was provided for negatively, since almost three quarters (61%) of these did not provide for time for publication but that these orders and circulars were to be "effective immediately." Other principles reflected by the provisions of most orders and circulars were maximum disclosure (90%) and promotion of open government (90%), although a few (22%) also reflected the latter negatively. More than three quarters (80%) provided for processes to facilitate access, albeit negatively in one memorandum circular. Less than half (40%) listed exceptions, although the exceptions were not always limited in scope. About a third (35%) provided for disclosure taking precedence. Costs were almost not reflected (5%) and protection of whistleblowers and open meetings not, at all.

Results of the study show that the Philippines has a large number of laws and issuances on access to information that provide for many of the features of a Freedom of Information regime. But there has been a difference between the intentions and ideals set forth in the laws and other issuances and the reality that information seekers and custodians face. Access to information and transparency continue to be a burning issue, fueled by the differences in national leaders' approaches and subsequent differences in the degrees of freedom of information the people have enjoyed under each one.

Agency guidelines, rules, and circulars. Ninety-two (92) policy documents were identified as relevant to information access. The documents ranged from agency policy statements to department circulars/memoranda to administrative/department orders and advisories. In subject and general intent, they could be classified into:

- agency policy statements or agendas;
- rules, guidelines, and instructions;
- descriptions of new organizations/structures;
- technical/services information; and
- information systems/ICT information.

Agency policy statements/agendas made up of only 7% of the policy documents from the agencies/offices. These were collected from the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of Social Welfare and Development. Majority of the policy documents from agencies/offices (43%) were guidelines, rules, and directives. Technical or services information covered specific topics important to the agency's work, or directly dealt on services to the public (20%). Some policy documents were laws and issuances (13%) pertinent to the agencies. Another 13% dealt with information systems and ICT, whereas descriptions of new structures and process were covered by only 4% of the documents. This may indicate the agencies' current focus on developing capacity in ICT-based systems rather than on physical structures and organizations.

Most agency policy documents satisfied the principles of processes to facilitate access (96%) and promotion of open government (93%). They mainly provided for implementation, stating requirements and steps. General statements linked them to higher-level undertakings covered by laws and issuances. About a third (35%) reflected the principle on obligation to publish. Only 17% listed any exceptions; majority did not. Provisions on maximum disclosure were in 15% of the policy documents. Costs were not provided except by 5% of the documents, although at the implementation level costs are critical. No documents provided for three of the nine principles: disclosure taking precedence, open meetings, and protection of whistleblowers.

Access to information in most agencies may not be very different from those in the environment sector, which TAI-Philippines assessed as lacking in understanding of the public's right to know, having inadequate and not easily accessible data and storage systems, and lacking in clear and narrow standards for deciding what can be made available to the public, resulting in broad discretions on access to information. TAI-Philippines reported that the government is not making adequate effort to facilitate access to environment information and not achieving adequate effectiveness, that in most cases government appeared to lack the commitment and systems to provide information that are accessible and comprehensible, and in cases where it had a crucial stake, it withheld information outright or gave it minimally.

Bills. The **59 bills** studied dealt on six subjects: right to information (71%); development/improvement of facilities, structures and systems for public information (22%); journalists' protection and welfare (15%); protection against reprisal, personal data theft, and economic espionage (14%); media coverage (restricting identification of criminals as Muslim or Christian (12%), and right to reply (2%).

In the current (14th) Congress, members of the **House of Representatives** filed a total of **nine bills** related to access to information while the **Senate members filed five**. These were the ones analyzed for their Freedom of Information features in this study.

All the bills from the House of Representative analyzed (100%) had provisions for maximum disclosure, promotion of open government, and processes to facilitate access. They provided for structures and systems, for improving information management, and procedures for requesting and complying with requests for information. Almost all (88%) provided for publication of information and limited scope of exceptions that included (a) threat to national security; (b) internal/external defense or law enforcement, (c) protection of privacy; and (d) exemption by other laws. More than three quarters (78%) had a repeal clause, guaranteeing precedence of the law on information access over others. None provided for open meetings or protection of whistleblowers.

All the bills from the Senate (100%) had provisions for maximum disclosure, obligation to publish, promotion of open government, processes to facilitate access, costs, and disclosure taking precedence. Except for one, all the bills (80%) defined their scope of exceptions, differing only in number rather than type of information to be exempted. While no bill provided for the protection of whistleblowers, 40% provided for 'protected parties' and protection especially for members of the press. The only bill (20%) that had provision for open meetings mentioned dialogue between agency officials and the public.

With increasing awareness and understanding of the people's right to information, Philippine legislators are preparing and filing information access-related bills that satisfy more of the requirements for a Freedom of Information regime as reflected in the 9 Principles of promulgated by ARTICLE 19. Legislators are getting assistance from non-government entities who are equally interested in promoting freedom of information and transparency in the country such as ATIN and its partner institutions. With their help, legislators are turning out bills that make conscious effort to provide for the shortcomings of existing laws and issuances and safeguard against abuses that their implementation have been prone to.

Conclusions and Recommendations

A number of laws, issuances, and agency guidelines and rules provide access to information and transparency. To some extent **they satisfy the 9 principles of Freedom**

of Information, providing for **maximum disclosure of information, an open government**, and the **processes that facilitate access**, and almost always are **guaranteed to take precedence over other laws**. Most information-related laws provide for adequate means to inform the public through publications and other means of information dissemination, but most of the issuances, particularly those by the Office of the President, provide only for the announcement of their “immediate effectivity.” Many of the exceptions are not specific enough, thus leaving interpretation to personal judgment. Costs of information access, too, are not specified in many documents, and the concepts of protection for whistleblowers and open meetings are narrowly provided for or not at all.

Despite these deficiencies, the laws and issuances in force should have been adequate to provide for a reasonably liberal information environment. Ordinary people would be reasonably knowledgeable about where and how to get information, and would be able to use it in the various aspects of their lives. Access to information, or the lack of it, would not have been an issue against the government in a reasonably liberal information environment.

Findings of this research seems to confirm the assertions of previous investigations that **liberal information environment has not been realized because**

- access to information and transparency is being pursued through many specific laws and portions of laws with other primary purposes;
- Constitutional right to information is not being pursued with enough commitment to guarantee effectiveness;
- many established laws and issuances have provisions and mechanisms that work against public access;
- government officials and employees and the public both lack understanding and appreciation of the right to information and their respective responsibilities to make it a reality.

Gaps identified. Results of the study indicated a number of gaps in current efforts toward promoting access to information through legislation. Laws and other issuances are

inadequate on the aspects listed below, and therefore provisions should be formulated to address them in upcoming bills:

- Development of the country's resources for public domain information should be legislated. This should be provided for even as we intensify efforts to protect intellectual property rights.
- The right to reply is potentially controversial because of its repercussions on media freedom. There is a lack of legislative ideas on how to implement freedom of speech in the spirit of fairness to all concerned.
- Information about information available from government is required by the country's growing number of knowledge workers and other users. Publication and other methods of disseminating these should be made a policy for all government agencies and offices so that all who need information—not just the mass media, academe, and other knowledgeable users—are adequately served.
- Costs remain an intimidating factor in accessing public information, especially for the poor. Policies to democratize costs of information should be put in place.
- The complementarity of the right to information and the right to privacy are not fully understood; it is generally assumed that to safeguard people's security, privacy of individuals must be minimized. Legislation is lacking on measures to a) prepare citizens and organizations against cybercrime by increasing their understanding of these crimes and other violations of the right to privacy; b) deter potential criminals from committing such crimes.

Recommendations. The enactment of a new Freedom of Information Act should lay the groundwork for establishing a Freedom of Information regime. The gaps identified above should be bridged with pertinent policies and measures. But beyond enactment of a Freedom of Information law, **the following have to be done** to establish and sustain a Freedom of Information regime in the Philippines:

- Precedence of Freedom of Information Act over all laws must be ensured and safeguarded, so that all laws with provisions inimical to information access are repealed.

- Public awareness of the right to information should be promoted through campaigns and other interventions. Education on the right to know should be made available to citizens in all sectors via different modes and channels.
- Capacity building on information-related competencies including understanding of the access to information mandate of the government should be implemented among officials and employees of service agencies.
- The discourse on Freedom of Information should be kept alive and should expand the meaning of press freedom to include the people's right to know as well as their freedom to express themselves.
- Frequent dialogue should be held between officials of government and various concerned sectors for them to "arrive at a consensus on rules of engagement."
- In the light of increasing incidences of breach of security, identity theft or fraud, and abuses in security investigations abetted by advances in technology, privacy legislation must be prioritized next to information access. Specific rules have to be established to help people understand and demand protection of their right to privacy in the midst of borderless international information flows and mind-boggling data processing and utilization activities.