

__ day ____ of ____ 2011

Ulaanbaatar city

THE LAW OF MONGOLIA ON INFORMATION TRANSPARENCY AND FREEDOM OF INFORMATION

CHAPTER ONE

Preamble

Section One. The purpose of the law

1.1. The objective of the law is to regulate relations in regard to ensuring the transparency of state functioning and to guaranteeing the right and freedom of citizens and legal entities to seek and receive information.

Section Two. About the Law on Information Transparency and Freedom of information

2.1. The Law on Information Transparency and Freedom of Information consists of the Constitution of Mongolia,¹ the Law on State Secret², The Law on State Secret List,³ the Law on Personal Secret⁴, this law and any other laws and regulations passed in accordance with this law.

2.2. If the present law conflicts with any treaty obligations of Mongolia, the treaty obligations shall prevail.

Section Three. The regulatory scope of the law

3.1. This law pertains to the central government and local government bodies funded by the state budget:

3.1.1. The Secretariat of the State Great Khural (Parliament);

3.1.2. The Office of the President;

3.1.3. The Cabinet Secretariat;

¹ The Constitution of Mongolia, published in the official legal gazette "State Newsletter" compilation number 1 of 1992.

² The Law on State Secret, published in the official legal gazette "State Newsletter" compilation number 7 of 1995.

³ The Law on State Secret List, published in the official legal gazette "State Newsletter" compilation number 7 of 1995.

⁴ The Law on Personal Secret, published in the official legal gazette "State Newsletter" compilation number 7 of 1995.

3.1.4. The Secretariat of the National Security Council (with the exception of the Cabinet);

3.1.5. State administration central and local bodies;

3.1.6. Judiciary and state prosecutor's offices (at all levels);

3.1.7. Bodies and institutions arising from the functioning of the State Great Khural (Parliament) with the exception of the Cabinet;

3.1.8. Local government and elected offices' secretariats, legal entities funded through local government property partially or entirely;

3.1.9. Legal entities funded through state property partially or entirely;

3.1.10. Non-governmental organizations fulfilling certain functions of the executive branch in accordance with the sub-section 1 of section 19 of the Law of Mongolia on the Government⁵; and

3.1.11. The Mongolian National Broadcaster Television and Radio.

3.2. This law does not apply in matters related to ensuring of transparent functioning of the defense forces, border protection or internal troops and the intelligence institutions.

3.3. The Law on Organization Secret⁶ does not apply to matters related to ensuring of transparency in state bodies' functioning.

Section Four. Definition of terms

4.1. The terms used in the present law shall have the following meaning:

4.1.1. a "citizen" is a citizen of Mongolia as well as a foreign citizen or a stateless person residing in Mongolia lawfully;

4.1.2. an "electronic document" is any electronic data that may be generated, transmitted, received and stored through the use of computer, computer software and other similar technologies;

4.1.3. a "digital signature" is a digital data that is a part of the electronic data, generated with a personal digital signature generator that converts and crypts electronic data to protect it from being forged or modified;

⁵ The Law on the Government of Mongolia, published in the official legal gazette "State Newsletter" compilation number 3 of 1993.

⁶ The Law on Organization Secret, published in the official legal gazette "State Newsletter" compilation number 7 of 1995.

4.1.4. "maintenance" is renewal of the given information no less than once in fourteen days;

4.1.5. "update" is renewal of the given information within three days after a change is made to the information, whether partially or entirely;

4.1.6. "avail information in an easily accessible manner" means that there is a full possibility for people to access that information;

4.1.7. "expenditure for information release" is the expenditure incurred in photocopying, copying, postage and other expenses related to releasing of information citizens and legal entities;

4.1.8. a "repeated violation" is the violation of the Law on Information Transparency and Freedom of Information three and more times; and

4.1.9. a "serious violation" is the violation of the citizens' right to information manifesting through illegal concealment, forgery of, correction in, and destruction of documents and information that has lead or may lead to significant losses by the state, citizens, economic entities and other bodies.

Section Five. Principles to be upheld in ensuring information transparency and the right to and freedom of information

5.1. The following principles shall be upheld when ensuring information transparency and right to and freedom of information:

5.1.1. Rule of law;

5.1.2. Respect for the citizen's and legal entities' lawful interests;

5.1.3. Unified methodology;

5.1.4. Independence;

5.1.5. Correctness of the information.

CHAPTER TWO

Information transparency

Section Six. Transparency of information

6.1. Transparency of information shall be divided in the following categories:

6.1.1. Functional transparency;

6.1.2. Human resources transparency;

6.1.3. Budget and accounting transparency; and

6.1.4. Transparency in procurement of goods and services with the state and local government property monies.

Section Seven. Functional transparency

7.1. Unless otherwise specified in the laws, the bodies listed in the section 3.1 of the present law shall undertake following measures to ensure functional transparency:

7.1.1. The mission, strategic objectives, priority areas and measures undertaken by the organization to achieve these objectives and priorities, results arising from these measures and organigrams shall be made available in an easily accessible manner on the organization's website and or information board, and maintained and updated regularly;

7.1.2. The service and communications official's surname and name, title, terms of reference, visitor schedule, contact numbers shall be made available in an easily accessible manner on the website and/or information board of the organization and maintained and updated regularly;

7.1.3. A list of documents required to receive services shall be made available in an easily accessible manner on the website and/or information board of the organization and maintained and updated regularly;

7.1.4. Laws, regulations and other similar acts guiding the functions of the body shall be made available in an easily accessible manner on the website and/or information board of the organization and maintained and updated regularly;

7.1.5. Any policy documents that are under development and/or resolutions affecting or establishing public norms shall be made available in an easily accessible manner on the website and/or information board of the organization in its draft form for no less than 30 days to facilitate feedback and opinion from state bodies, non-governmental organizations, experts, academics and citizens with the view of reflecting them in the draft if found to be grounded;

7.1.6. Undertake any organizational measures to improve the service methodology and forms;

7.1.7. When a non-governmental organization fulfills certain functions of the executive branch in accordance with the sub-section 1 of section 19 of the Law of Mongolia on the Government, the given non-governmental organization's name, address,

website address and organizational functions shall be made available in an easily accessible manner on the website and/or information board of the organization;

7.1.8. When a state body is in charge of licensing and/or other similar special permit authorization to economic entities, such permits and licenses shall be made available in an easily accessible manner on the website and/or information board of the organization, clearly bearing the name of the license or special permit holder, address, organizational functions, dates between which the license and/or special permit is valid, and such information shall be updated regularly;

7.1.9. Information on the implementation and progress of projects and programmes funded through foreign loans and grants within the sector or at the central level shall be made available in an easily accessible manner on the website and/or information board of the organization and maintained and updated regularly; and

7.1.10. Any other information specified in the laws.

Section Eight. Transparency of the human resources policy

8.1. Unless otherwise specified in the laws, bodies listed in the section 3.1 of the present law shall undertake the following measures to ensure the transparency of its human resources policy:

8.1.1. Job vacancies shall be announced in an easily accessible manner on the website and/or information board of the organization, updated regularly and announced in an open manner through other public media forms;

8.1.2. Salaries of all job positions, including benefits, subsidies and bonuses shall be calculated and made available in an easily accessible manner on the website and/or information board of the organization and updated regularly;

8.1.3. Civil servants' ethics rules shall be made available in an easily accessible manner on the website and/or information board of the organization and updated regularly;

8.1.4. Evaluation and monitoring regulations and procedures of the human resources strategy and its implementation shall be made available in an easily accessible manner on the website and/or information board of the organization and updated regularly;

8.1.5. The report on measures undertaken to ensure the transparency of the human resources management shall be made available in an easily accessible manner on the website and/or information board of the organization;

8.1.6. The report on measures undertaken to ensure performance evaluation of employees is fair and correct shall be made available in an easily accessible manner on the website and/or information board of the organization; and

8.1.7. Any other information specified in the laws.

Section Nine. Budget transparency

9.1. Unless otherwise specified in the laws, bodies listed in the section 3.1 of the present law shall undertake the following measures to ensure budget transparency:

9.1.1. The budget of the current year as well as the annual financial report of the previous year and the proposed budget for the following year shall be made available in an easily accessible manner on the website and/or information board of the organization as well as in the Budget Transparency Website of Mongolia within the timeframes specified below to ensure information access to citizens and legal entities:

9.1.1.1. The budget of the current year shall be published within 10 January of the current year;

9.1.1.2. The financial report of the previous year shall be published within 1 April of the current year;

9.1.1.3. The proposed budget of the following year shall be published within 15 August of the current year.

9.1.2. The annual financial report shall be made available in an easily accessible manner on the website and/or information board of the organization within 1 April of the current year to enable the budget monitoring by citizens and civil society organizations;

9.1.3. The audit review of the financial report shall be made available in its entirety in an easily accessible manner on the website and/or information board of the organization within 1 April of the current year;

9.1.4. Any changes and modifications made to the budget of the current year shall be made available in an easily accessible manner on the website and/or information board of the organization within 14 working days from the date when changes were made;

9.1.5. Only fees specified in the law shall be levied from customers, and the fee structure shall be made available in an easily accessible manner on the website and/or information board of the organization and updated regularly; and

9.1.6. Any other information specified in the laws.

9.2. The state administrative body in charge of state property shall make available the following information in addition to the information specified in sections 7, 8, 9.1, and 10 in national daily publications and other media as well as on its website and information board in an easily accessible manner:

9.2.1. A list of concession items and changes made to such a list shall be made available within 14 working days since such a list is approved;

9.2.2. The concession contracts and changes made to such contracts shall be made available within 14 working days since such contracts are effective;

9.2.3. In case a concession contract is made, any information not related to the owner of the concession and their organization, such as information on such a contract, item of the concession and conditions of services shall be made available within 14 working days since such contracts are made.

9.3. The state administrative bodies in charge of social insurance shall make available on their websites the list of persons entitled to pension, supplement, subsidy and other payments from the state social insurance fund, specifying their surnames and names in an easily accessible manner in addition to the information specified in the sections 7, 8, 9.1 and 10 and maintain and shall update this list regularly.

Section Ten. Transparency in the procurement of goods and services with the state and local government property monies

10.1. Unless otherwise specified in the laws, the bodies specified in the section 3.1 of the present law shall undertake the following measures to ensure the transparency in the procurement of goods and services and other items with the state and local government funds:

10.1.1. The principles of transparency, fairness, efficiency, economy and accountability shall be upheld in the procurement policy and such policy shall be made available in an easily accessible manner on the website of the organization, and made public through other means;

10.1.2. Bid documents, bid invitations and regulations concerning bid selection processes shall be made available in an easily accessible manner on the website and/or information board of the organization and shall be updated regularly; such notices shall also be published in the media as per the section 21 of the Law on the Procurement of Goods and Services with the State and Local Government Property Monies⁷;

10.1.3. A review committee shall include no less than two representatives (who have declared themselves to be devoid of conflict of interests) from the professional associations and information about such shall be made available in an easily accessible manner on the website of the organization and made public through other means;

10.1.4. Criteria for the selection of bidders as well as of criteria under which a contractor was selected shall be made available in accordance with the relevant legal

⁷ The Law on the Procurement of Goods and Services with the State and Local Government Property Monies, published in the official gazette "State Newsletter" compilation number 5 of 2005.

regulations in an easily accessible manner on the website of the organization and shall be updated regularly;

10.1.5. Brief information on successful or unsuccessful bidders as well as the detailed reasons, conditions and legal grounds for selections shall be made available on the website of the organization and updated regularly;

10.1.6. Report on the procured goods and services shall be made available on the website of the organization and updated regularly;

10.1.7. Any violations uncovered during the bid selection process shall be informed in a timely manner to relevant bodies and organizations;

10.1.8. The procurement audit and reports, conclusions and other monitoring reports shall be made available in an easily accessible manner on the website and/or information board of the organization and updated regularly; and

10.1.9. Any other information specified in the laws.

CHAPTER THREE

Right to, and freedom of, information

Section Eleven. Right to, and freedom of, information

11.1. A citizen and a legal entity shall be entitled to receive the following information not related to the human rights and freedoms, national security, and lawful interests of organizations prohibited to be released to the public under the laws from the state bodies listed in the section 3.1 of the present law:

11.1.1. All information and documents, and information pertaining to the organization's contracts and agreements in possession of the organization;

11.1.2. All information pertaining to the goods and items in possession of the organization;

11.1.3. Any other information pertaining to the functioning of the organization.

11.2. When applying for information under the section 11.1 of the present law, a written application shall be made. A citizen or a legal entity shall not be required to disclose the reasons for which the information is sought.

11.3. The request shall fulfill the following criteria:

11.3.1. In case a citizen is making such a request, the request shall contain his/her surname and name, residential address or electronic mail address, his/her national identity card and/or other similar document number and a signature of the citizen making such a request. (In case a person is unable to sign the request himself/herself due to reasons that are to be respected, the request may be signed by a third party on behalf of the person making a request. When a request is made by a group of citizens jointly, all such parties shall sign the request or a person/entity representing all parties shall sign the request on behalf of concerned persons and shall attach a document to the request, certifying the representation);

11.3.2. When a request is made by a legal entity, the request shall contain the name of the legal entity, address or electronic mail address, state registration number, and a signature of the person legally representing the legal entity.

Section Twelve. Review of the request

12.1. The official who received the information request shall review the request in accordance with the following criteria:

12.1.1. Whether the request made fulfils the criteria specified in the section 11.3 of the present law. (The official shall verify the correctness of the information supplied in the request through checking the national identity and/or other similar document number);

12.1.2. Whether the requested information is in possession of the concerned body in receipt of such a request. If not, the official shall transfer the information request to the body that is in possession of the requested information within 2 days and shall inform the citizen or the legal entity which has made such a request;

12.1.3. Whether there are grounds specified in the section 17 of the present law.

12.2. The information request shall be returned to the citizen or the legal entity on the following grounds in addition to the grounds specified in the section 17 of the present law:

12.2.1. The request does not fulfill the criteria specified in the section 11.3 of the present law;

12.2.2. The information requested is not in possession of the concerned body in receipt of such a request, and there is no possibility to transfer the information request to the body that is in possession of such information.

12.3. When returning the information request, reasons for such a return shall be made clear.

Section Thirteen. Release of information

13.1. The bodies listed in the section 3.1 of the present law shall bear the duty of releasing information not pertaining to the body's information prohibited by law from being released to the public.

13.2. Information can be released verbally, in writing or electronically. A citizen or a legal entity may physically examine the information.

13.3. Unless otherwise specified in the laws, the information requested by citizens or legal entities shall be released within 7 working days. When a request for information is made by a number of citizens jointly, such information shall be released to their representative citizen.

13.4. If considered absolutely necessary, the period specified in the section 13.3 may be extended by seven days.

Section Fourteen. Receipt and release of information electronically

14.1. A citizen or a legal entity may request information electronically. In this case, the citizen or a legal entity shall generate an electronic document and sign it digitally and shall specify his/her national identity and/or other similar card number in the request that is being sent to the electronic mail address of the body.

14.2. When releasing information to citizens and legal entities in an electronic format, the official who has the authority to represent the concerned body, shall create a digital document and sign it digitally, and transmit the document to the information seeker through electronic mail.

14.3. When releasing information electronically, the rules specified in the sections 11 to 13 shall be upheld.

Section Fifteen. Service fees

15.1. When a citizen or a legal entity request information, certain service fees shall apply.

15.2. The management of the body shall structure and approve the service fees for the release of information in accordance with the expenditure made in relation to releasing the information. Service fee calculation methodology, payment of such fees, discount or waiver of such fees shall be regulated by the Government of Mongolia.

15.3. The service fees specified in the section 15.1 of the present law shall not be levied twice with other service fees.

Section Sixteen. Complaints, procedures to review and resolve complaints

16.1. A citizen or a legal entity that considers its lawful right to information infringed by the commission or omission of the official, body, and organization shall have a right to complain to the upper level instances within the body or organization, the National Human Rights Commission of Mongolia, or to the court.

16.2. Procedures of complaints review and resolution shall be governed by the following laws:

16.2.1. If such a complaint is filed to the upper level management or upper level instance of the body or organization, the complaint shall be reviewed under the Law on Resolving Complaints Made by Citizens Against the Civil Servants and State Body⁸, the Law on Administrative Procedures⁹, the Law on Civil Procedures¹⁰;

16.2.2. If such a complaint is filed to the National Human Rights Commission of Mongolia, the complaint shall be reviewed under the Law on the National Human Rights Commission¹¹;

16.2.3. If such a complaint is filed to the courts, the complaint shall be reviewed under the Law on Administrative Procedures and the Law on Civil Procedures.

CHAPTER FOUR

On prohibition of release of certain information to citizens and legal entities

Section Seventeen. Special circumstances

17.1. The information release shall be prohibited in the following circumstances:

17.1.1. If there are well-grounded reasons to believe that the public release of the concerned information shall negatively affect Mongolia's reputation;

17.1.2. If there are well-grounded reasons to believe that the public release of the concerned information shall be detrimental to the national security of Mongolia and the public interests;

17.1.3. If the concerned information is related to matters under review by the Bank of Mongol, the Financial Regulatory Commission, state central administrative bodies in charge of regulating competition and professional inspection;

⁸ The Law on Resolving Complaints Made by Citizens Against the Civil Servants and State Body, published in the official legal gazette "State Newsletter" compilation number 1 of 1992.

⁹ The Law on Administrative Procedures, published in the official legal gazette "State Newsletter" compilation number 3 of 2003.

¹⁰ The Law on Civil Procedures in the official legal gazette "State Newsletter" compilation number 8 of 2002.

¹¹ The Law on the National Human Rights Commission of Mongolia, published in the official legal gazette "State Newsletter" compilation number 48 of 2000.

17.1.4. If the concerned information relates to the state, organization and person's secret under review at the first instance report filing, investigation, and prosecution;

17.1.5. If the concerned information relates to the ratification of the international treaty process;

17.1.6. Any other information specified in the laws.

Section Eighteen. Intellectual property protection

18.1. It shall be prohibited to release information related to the intellectual property without the owner's permission to others.

Section Nineteen. Protection of personal secrets

19.1 .Unless otherwise specified in the laws, it shall be prohibited to release information beyond the surname, name, age, sex, profession, education, job position, work address, work phone number of the concerned person without their written permission.

Section Twenty. Protection of organization secrets

20.1. It shall be prohibited to release any secret information, technology solution, research and development documents, equipment and hardware information related to maintaining of the comparative advantage in the context of fair market competition, and/or information related to the specificities of the economic entity, and the release of which may lead to the infringement on the lawful interests of the entity, unless and otherwise such release is authorized in writing by the executive management and/or persons delegated the representation powers of the executive management.

CHAPTER FIVE

Measures to ensure the implementation of the law and monitoring of the law implementation

Section Twenty One. Full authority of the state administrative body in charge of information and information technology matters

21.1. The state administrative body in charge of information and information technology matters shall exercise the following full powers in the matters related to ensuring of the information transparency and freedom of information:

21.1.1. Develop the common regulation in relation to the data digitization, generation, dissemination and utilization of databases, guaranteeing its uninterrupted functioning, data storage and protection as specified in the sections 7, 8.1, 9 and 10 of the present law;

21.1.2. Provide technical and methodological assistance and guidance on the data digitization, generation, dissemination and utilization of databases, guaranteeing its uninterrupted functioning, data storage and protection through conducting trainings among state bodies and organizations;

21.1.3. Any other powers vested in the state administrative body through the laws.

21.2. The regulation specified in the section 21.1.1 of the present law shall be approved by the Government of Mongolia.

Section Twenty Two. Logs

22.1. The bodies and organizations mentioned in the section 3.1 of the present law shall keep the logs in order to ensure the monitoring of the proper implementation of the law on Information Transparency and Freedom of Information. The logs shall contain the following matters:

22.1.1. Information seeker (both citizens and legal entities)'s name and address;

22.1.2. Information request receipt, review, release/return dates; and

22.1.3. Others.

Section Twenty Three. Monitoring of the implementation of the Law on Information Transparency and Freedom of Information

23.1. The legal monitoring of the implementation of the Law on Information Transparency and Freedom of Information within the scope of the law shall be exercised by organizations and officials specified in the section 16.1 of the present law.

23.2. The results-based contracts with budget treasurers shall reflect the necessity to ensure the information transparency and shall have information transparency as one of the evaluation criteria points.

CHAPTER THREE

Miscellaneous

Section Twenty Four. Penalties to be imposed on culprits found to be in violation of the Law on Information Transparency and Freedom of Information

24.1. Judges shall impose the following penalties on the culprits violating the Law on Information Transparency and Freedom of Information, taking into consideration the nature of violations:

24.1.1. To impose a fine amounting to the equivalent of 3-6 times of the minimum wages on the official found to have omitted the release of the information not prohibited for public release within the specified by the law timeframe; to impose a fine amounting to the equivalent of 5-10 times of the minimum wages on the legal entity found to have omitted the release of information not prohibited to the public within the specified by the law timeframe;

24.1.2. To impose a fine amounting to the equivalent of 4-6 times of the minimum wages on the official found to have violated the sections 7, 8, 9 and 10 of the present law; to impose a fine amounting to the equivalent of 10-15 times of the minimum wages on the legal entity found to have violated the sections 7, 8, 9 and 10 of the present law;

24.1.3. To impose a fine amounting to the equivalent of 5-10 times of the minimum wages on the official found to have violated the section 17 of the present law;

24.1.4. To impose a fine amounting to the equivalent of 5-8 times of the minimum wages on the official found to have violated the sections 18 to 20 of the present law, to impose a fine amounting to the equivalent of 10-15 times of the minimum wages on the legal entity found to have violated the sections 18 to 20 of the present law;

24.1.5. To impose a fine amounting to the equivalent of 3-5 times of the minimum wages on the official found to have violated the section 22 of the present law, to impose a fine amounting to the equivalent of 5-10 times of the minimum wages on the legal entity found to have violated the section 22 of the present law;

24.1.6. To impose a fine amounting to the equivalent of 4-6 times of the minimum wages on the official found to have tampered illegally with the content of the information; to impose a fine amounting to the equivalent of 10-15 times of the minimum wages on the legal entity found to have tampered illegally with the content of the information;

24.1.7. To impose a fine amounting to the equivalent of 3-5 times of the minimum wages on the official found to have disregarded the lawful compliance demands from bodies or officials authorized to monitor the implementation of the Law on Information Transparency and Freedom of Information; to impose a fine amounting to the equivalent of 5-10 times of the minimum wages on the legal entity found to have disregarded the lawful compliance demands from bodies or officials authorized to monitor the implementation of the Law on Information Transparency and Freedom of Information.

24.2. A [certified] civil servant found to have repeatedly violated or violated seriously the rights of citizens and legal entities to information shall be discharged from the civil

service by the relevant authority under the reasons contained in the section 25.1.1 of the Law on Civil Service¹².

24.3. Officials found to have conspired to conceal violations of the Law on the Information Transparency and Freedom of Information by officials or legal entities, illegal activities of officials, corruption, and unauthorized release of legally protected state, organization and personal secrets shall be penalized as per the laws.

Section Twenty Five. Coming into force

25.1. This law shall come into force from __ day __ of _____ 2011.

SIGNATURE

¹² The Law on Civil Service, published in the official legal gazette "State Newsletter" compilation number 28 of 2002.