



CENTRE FOR LAW  
AND DEMOCRACY

# Philippines

## Assessment of the Act Enabling the People's Constitutional Right of Access to Information, House Version

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## Introduction<sup>1</sup>

After many, many years of discussions and advocacy to this end, the Government of the Philippines finally appears to be moving forward seriously to adopt a law giving people the right to access information held by public authorities or a right to information law, in the form of the draft Act Enabling the People's Constitutional Right of Access to Information (draft ATI Act). The Centre for Law and Democracy (CLD) very much welcomes this development. To support the Philippines in adopting as strong a right to information law as possible, CLD has prepared this analysis of and recommendations regarding the draft ATI Act.<sup>2</sup>

CLD works internationally to promote those human rights which it considers to be foundational underpinnings of democracy, including the right to information. As part of this, we frequently produce analyses of existing or draft RTI legislation.<sup>3</sup> This analysis continues that effort. Another part of this work is our RTI Rating,<sup>4</sup> a globally recognised methodology for assessing the strength of legal frameworks for RTI which has been recognised and relied upon by actors such as UNESCO, the World Bank and the United States Millennium Challenge Corporation.<sup>5</sup> The RTI Rating relies on 61 discrete indicators, grouped into seven categories, to assess how strong the legal framework for RTI is in any jurisdiction. Every national RTI law is assessed on the RTI Rating.<sup>6</sup>

This analysis sets out CLD's assessment of the strengths and weaknesses of the draft ATI Act. As part of our assessment, CLD has prepared an RTI Rating of the draft ATI Act and a

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<sup>2</sup> Our analysis is based on the version of the draft Act which was introduced in the House of Representatives, specifically the version titled Admin Version for Submission to HOR, 18 November 2025, [https://docs.google.com/document/d/1Yxvtv6gUJqxVIB8GviNKGr9yx60t0\\_jP/edit](https://docs.google.com/document/d/1Yxvtv6gUJqxVIB8GviNKGr9yx60t0_jP/edit).

<sup>3</sup> These are all available on our website at <https://www.law-democracy.org/legal-work/legal-analyses/>. The most recent such analysis is our Submission on the International Financial Corporation's Access to Information Policy in October 2025, <https://www.law-democracy.org/submission-on-the-international-financial-corporations-access-to-information-policy/>.

<sup>4</sup> See <https://www.rti-rating.org>.

<sup>5</sup> For a formal statement about how the MCC uses our RTI Rating to assess countries' eligibility for development aid, see <https://www.mcc.gov/who-we-select/indicator/freedom-of-information-indicator>.

<sup>6</sup> These assessments are available at: <https://www.rti-rating.org/country-data/>.

summary of the results of this, set out alongside the RTI Rating results for the current Executive Order No. 2 of 2016,<sup>7</sup> are found in the table below.

Section	Max Points	Score - current	Score – draft Act	Percentage
1. Right of Access	6	5	5	83%
2. Scope	30	13	22	73%
3. Requesting Procedures	30	18	18	60%
4. Exceptions and Refusals	30	4	18	60%
5. Appeals	30	4	12	40%
6. Sanctions and Protections	8	1	5	63%
7. Promotional Measures	16	2	11	69%
<b>Total score</b>	<b>150</b>	<b>47</b>	<b>91</b>	<b>61%</b>

It is immediately obvious that the draft ATI Act represents a massive improvement over the current Executive Order, increasing the score from 47 to 91 points out of a possible 150. While the Philippines current sits in a dismal 136<sup>th</sup> place from among the 141 countries currently assessed on the RTI Rating, the draft ATI Act would put the country in 61<sup>st</sup> place, up 75 positions. At the same time, the overall percentage score of 61% shows a lot of room for improvement. This is particularly true in the Appeals category of the RTI Rating, the only one where the draft ATI Act scores below 50%, but there is also scope for progress in all of the seven categories of the RTI Rating.

This assessment largely follows the categories in the RTI Rating. However, an initial section focusing on general and technical comments on the draft ATI Act has been added, along with another one focusing on proactive disclosure, which is an issue which is not addressed in the RTI Rating.

## 1. General and Technical Comments on the Draft ATI Act

We recommend that the draft ATI Act be reviewed with the aim of addressing a few general issues in the way it was drafted. First, there are a few areas, elaborated on in more detail below, where key issues are not as clear as they should be. This includes, for example, the key question of whether the Commission actually has the power to issue decisions in relation

<sup>7</sup> Available at <https://www.rti-rating.org/wp-content/uploads/Philippines.pdf>.

to appeals. This is likely largely a drafting issue, with certain matters simply not having been set out as clearly as they could have been.

Second, in certain areas, the approach taken is unduly complicated and even duplicative, which is likely to lead to confusion and, ultimately, undue limitations on the right to information. A clear example of this is the inclusion of multiple terms regarding access to information and/or documents in section 17, the key provision on the right to make requests for information – including “information”, “official records”, “public records” and “documents and papers” – followed by the definition of a few of these terms in section 4.

There are a number of technical drafting errors in the draft Act. As an example of this, section 3 defines coverage of the Act based on the term “government offices”. However, throughout most of the rest of the draft Act, the term used is “government agencies”, although section 4(l), defining “requests”, refers to both agencies and offices. And inconsistent references are found throughout the draft Act. For example, section 13(d) refers to “branches of the government”, section 23 refers to “covered agencies” and section 27 refers to “public bodies”. Obviously these terms should be standardised throughout the law.

There are also a number of more technical issues, as follows:

- The definition of “open format” in section 4(f) includes the idea of information being made available without restrictions which would impede the reuse of that information, although that is not normally considered to be part of the definition of “open format”.
- Section 4(m) defines “sensitive personal information” but this term is never used again in the draft Act, rendering the definition unnecessary.
- Section 8 refers to the idea of vacancies among commissioners being “filled by the next in rank”, but there is logically no such person at the Commission (i.e. there is no one just below the commissioners in rank, given that the executive director cannot replace a commissioner).
- Section 13(f) lists, as one of the functions of the Commission, to provide a “vetting mechanism on the disclosure of information”. It is not clear what this means in practice.
- Section 35 makes it an offence when any foreign entity “deliberately produces or disseminates false information” in connection with any transaction with the Philippine government. This is not only entirely unrelated to the whole thrust and purpose of the draft Act but it is, as presently defined, not legitimate under



international law as a restriction on freedom of expression since it is not linked to a legitimate ground for such restrictions (such as national security or public order).

## Recommendations

- The draft ATI Act should be reviewed to ensure that its provisions are clear, not unduly complicated and certainly not duplicative. The technical drafting should also be reviewed to ensure that it is of high quality.
- The reference to restrictions which would impede the reuse of information should be removed from the definition of “open format” in section 4(f).
- Section 4(m), defining “sensitive personal information”, should be removed.
- The reference in section 8 to the idea of vacancies among Commissioners being “filled by the next in rank” should be removed.
- Section 13(f) should either be revised so that its meaning is clear or removed.
- Section 35 should be removed.

## 2. Right of Access and Scope

The Philippines benefits from a reasonably strong guarantee of the right to information, found in Article III, Section 7 of its 1987 Constitution, which has, moreover, been interpreted in a progressive manner by the courts. The guarantee of the right, found at section 17 of the draft ATI Act, is however limited in various ways, including that it covers only information “pertaining to official acts, transactions or decisions, or of public concern”. It would appear that this language has been included so as to align with similar language in the Constitution. This is a mistake. Constitutions set out minimum guarantees of rights, which laws must at least provide for. But, absent another, conflicting, constitutional provision, there is no reason whatsoever why laws cannot go beyond those minimum constitutional guarantees. International law is quite clear in this regard: the right to information applies to all information held by public authorities, regardless of what it pertains to. The Philippine right to information law should be cast broadly, in line with international law.

It is better practice for RTI laws to set out clearly the external benefits of the right to information – such as facilitating participation, helping to combat corruption and supporting government accountability – and then to require decision-makers to interpret the law, insofar as this is reasonable, so as best to give effect to those benefits. Section 2 of the draft ATI Act stipulates as State policy the promotion of “increased meaningful participation of the people

in government decision-making, and public accountability". This is useful, but it is not quite the same as recognising the direct contribution of RTI to those social values, while the list of values is also quite limited. Section 18 then places the burden on government agencies (as noted above, the term used for public authorities in the draft Act) "of showing by clear and convincing evidence that the information requested is exempted from the disclosure under this Act". This is again useful but falls short of a placing a more general obligation on government agencies to interpret the law so as best to give effect to its benefits.

The draft ATI Act does better in terms of scope than on most categories of the RTI Rating, earning 22 out of 30 points for a score of 73%. Many of the shortcomings here are due to lack of clarity rather than intentional limitations. In terms of people covered by the draft Act, there is only very limited coverage of foreigners, and these limits presumably have to be understood to encompass non-citizen residents as well as people living abroad. Pursuant to section 20, foreigners may make requests as long as these are "made in good faith and for legitimate purposes", and this right is subject to reciprocity (i.e. it applies only where other countries also recognise the right of Filipinos to make requests under their laws). Exceptions may be made for requests "involving academic research, news reporting, or other activities deemed beneficial to the Philippines". This is unfortunate and reflects a narrow outlook on the right to information, which should cover everyone, regardless of nationality or residence. If there is concern about these requests imposing an undue burden on government agencies, a special procedure for refusing them when they are very burdensome could be added into the law.

Otherwise, the draft ATI Act is unclear as to whether only individuals or also legal entities may make requests. Section 17 refers to "persons" being able to make requests, but this term is not defined in the draft Act. For its part, section 19(a) refers to any "person or requesting party" who wishes to make a request, suggesting legal entities are covered. And section 20, dealing with foreigners, again refers to "entities, and organizations" making requests.

The approach of the draft ATI Act in terms of coverage of information is both complicated and unduly restrictive. Section 17 provides for a right to access "any information, official records, public records, and documents and papers pertaining to official acts, transactions or decisions, or of public concern". From among this list, "information", "official records" and "public records" are each separately defined in section 4, containing the definitions. As already noted above, the limitation of the right in section 17 to "official acts, transactions or decisions" or information "of public concern" is unfortunate.



This is exacerbated by limitations built into each of the relevant definitions. Thus, “information” is defined as records which are held “pursuant to law, executive order, rules and regulations, ordinance or in connection with the performance or transaction of official business” of a government agency. “Official records” refers to information held “in an official capacity or pursuant to a public function or duty”. And “public records” includes only information “required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available”. The definition of “access to information”, in section 4, is also subject to various limitations, and the presence of this definition is sure to create confusion because its limitations are not the same as those found in section 17.

All of this is not only unnecessarily limited but it will also create additional work for those tasked with processing requests for information. They will need to go through a process of assessing whether the information sought is held pursuant to a law or the performance of official business, and then whether it pertains to official acts, transactions or decisions. Better practice is simply to define information very broadly to cover any recorded material which imparts meaning, and then to require government agencies to disclose the information they hold, unless it is exempt.

The definition of what qualifies as a government agency, the relevant term as used in section 17, is also somewhat confusing and unduly narrow. It includes all three branches of government, constitutional offices, local government units, State universities and colleges, government-owned or controlled corporations and other government instrumentalities. It also extends to “private individuals or entities engaged in transactions with government agencies that utilize public funds”.

It would appear that the intention here is to cast the scope of the law broadly. However, there are important gaps and/or areas which are unclear. It is, for example, not entirely clear whether the definition of government agency includes the Head of State and ministers. It is also unclear whether, outside of corporations, it covers bodies which are owned or controlled by different branches of government. Also unclear is whether oversight bodies, like the Right to Information Commission which the ATI Act would create, are covered, as they are not normally understood to be part of the executive and neither are they constitutional offices. In terms of private bodies, the way the use of public funds is captured is unduly complicated, although in the end it is probably broad in coverage. It would be simpler just to refer to bodies which receive public funding (and limit coverage to the extent of that funding). Missing entirely from the definition are bodies which undertake public functions, even if they do not



do this with public funding. An example of this would be a private school or hospital which operated on a purely commercial basis.

## Recommendations

- The main provision setting out the right to request and receive information should apply broadly, and simply, to all information held by government agencies. As part of this, the right should just apply to information and documents, with the former being defined simply as any recorded material which imparts meaning (and the other related definitions and references, such as to “official information” and “public records”, should be removed).
- Consideration should be given to providing more directly in the law for the benefits which flow from the right to information and then requiring its provisions to be interpreted so as best to give effect to those benefits.
- Everyone, whether a citizen or not and whether present in the Philippines or not, should have a right to request information, and this should cover both individuals and legal entities.
- The definition of government agencies covered by the law should be simplified and then expanded to make it clear that it covers:
  - The Head of State and ministers;
  - All bodies which are owned or controlled by other government agencies (not just corporations);
  - All bodies which are created by statute or the constitution (so as to capture all oversight bodies);
  - All bodies which receive public funding, to the extent of that funding;
  - And private bodies which undertaken public functions.

### 3. Proactive Disclosure

The issue of proactive disclosure is addressed in sections 26 and XX in the draft ATI Law (the latter appears to have been inserted later on, likely having been given XX as a number temporarily). Section 26 contains a list of 14 different types of information which are subject to proactive disclosure. It then provides for the Commission to update the list annually, but only by adding to it, and after consulting with a long list of stakeholders, to determine “proactive disclosures of government statistics and information in an open and machine-readable format, to improve people’s participation in governance”. All government agencies are, additionally, required to adopt and update periodically a Proactive Disclosure Plan, “that sets out the list, categories of information, including datasets, that are routinely requested

and published through the mechanisms provided under this Act". For its part, section XX calls for the Statements of Assets, Liabilities, and Net Worth (SALNs) of public officials to be made public.

Overall, this is a good system for proactive disclosure, including because it has built into it a mechanism for increasing the scope of such disclosures over time. Unfortunately, some of the phrases used in section 26 are unduly complicated and, ultimately, unclear. For example, the provision on consultation by the Commission appears to limit this to the goal of improving participation in governance, whereas proactive disclosure can serve a wide range of goals. There is no need for this qualifying language. Instead, the Commission should simply be required to consult with different stakeholders when considering expanding the list of categories of information which are subject to proactive disclosure.

Similarly, the purpose and content of the Proactive Disclosure Plan is simply not clear. It unnecessarily refers to both "information" and "datasets", since that latter are part of the former, and then to a list of information which is "routinely requested and published" pursuant to the Act. It is not clear whether the aim of this is to have information which is routinely requested be published by government agencies; this is a worthy goal but there is no need for a formal Plan to do this, as a continuously updated list on the website would serve the purpose. Or perhaps the aim of the Proactive Disclosure Plan is something else.

The proactive disclosure regime could also be improved by imposing obligations on government agencies to ensure that the information reaches different sectors of society, including those who may need it the most. Thus, information should not only be disclosed via websites but also, for example, via bulletin boards in local communities and through notifications about published information via social media posts.

## Recommendations

- The rule on the consultations to be carried out by the Commission should be simplified and just call on them to consult so as to learn what sorts of information different stakeholders wish to see added to the list of categories of information already being disclosed.
- The provisions on the Proactive Disclosure Plan should be amended and clarified.
- Consideration should be given to adding in a requirement for government agencies to disclose information proactively in a manner which ensures that those who most need the information are able to access it.



## 4. Requesting Procedures

The procedures for making and processing or responding to requests for information are critical to the proper operation of an RTI system. If the procedures are practical and user-friendly for both requesters and officials, this will be invaluable in making the system work smoothly. On the other hand, if the procedures are impractical or excessively burdensome, requesters will be discouraged from making requests and, potentially, officials will also be unduly burdened when responding to requests.

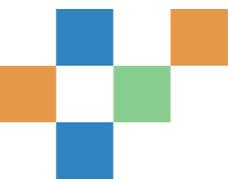
Furthermore, the essential mechanics of a strong requesting system are well established and reflected in many laws around the world, and generally not very controversial. Despite that, the draft ATI Act only scores 18 out of a possible 30 points in this category of the RTI Rating, or 60%.

A first issue here is that although sections 19(c) and (d) of the draft ATI Act set out clearly what applicants need to provide on a request, they fail to state explicitly that requesters may not be required to provide reasons for their requests. On the other hand, applicants are required to provide both their names and their ID numbers. While this may be necessary if the limitation on foreigners making requests is maintained, it is otherwise unnecessary. All that is required is a clear description of the information sought and an address for communicating with the applicant.

In terms of how to make a request, it is positive that an online platform for this is provided for and that requests may be made by mail or via electronic means. It would be preferable also to allow for requests to be delivered in person and, ideally, orally over the phone (while the platform should also be optimised for mobile phone use through a dedicated application).

Section 19(g) provides for applicants to be provided with a receipt upon lodging a request, while section 28 makes it clear that a failure to provide such a receipt within three working days shall be a deemed refusal of the request. This is not an ideal approach. First, the law should simply place a direct obligation on government agencies, or RTI officers, to provide receipts within the three working days. Second, it is not helpful to treat a failure to provide such a receipt as a rejection of the request. It is quite possible that the government agency is still working on the request and simply failed to provide a receipt. It should only be at the end of the time limits for responding to requests that a deemed refusal arises.

The draft ATI Act only refers to the idea of requests being transferred once, in section 23 on the RTI Manual. It therefore fails to impose any obligation on government agencies which



receive a request for information which is not held by them but by another government agency to transfer the request to the other government agency.

The regime governing forms of access is unfortunately not as clear as it should be. Section 14(d) provides that the Commission may order government agencies to provide access in a particular format, but only where that format is “necessary to facilitate access and is reasonably practicable”. Section 19(h) then provides that applicants may indicate a preferred form of access, provided that this is “reasonable, taking into consideration equipment normally available to the concerned government agency”. Finally, section 19(2) provides that the government agency may provide access in a different format than the one preferred by the applicant where the agency cannot provide the information in that format, or where this would be unduly burdensome or be detrimental to the preservation of the record. These provisions are not aligned in their meaning and the draft Act nowhere states clearly that government agencies need to provide access in the format preferred by the applicant unless the conditions in section 19(2) are met, even though that is the implicit meaning of that provision.

Overall, the draft ATI Law provides for a tight set of time limits for responding to requests, even if it is cast in different terms than are usually employed in this area. However, the combination of section 4(l), categorising requests into different levels of complexity, and section 21, means that all “highly technical requests” will have a time limit of 20 working days (apart from the general obligation to respond to requests “as soon as practicable”), even if responding to them more quickly does not in fact impose a burden on the government agency. It would be preferable to build into the definition of “highly technical requests” a condition that responding within the shorter period of seven working days would be unduly burdensome for the government agency. There is also an unfortunate reference in section 21 to the Commission prescribing, in the Implementing Rules and Regulations (IRR), “detailed timelines”. It is not clear what this means, given that the timelines in the draft ATI Act are already clear.

Section 21 of the draft ATI Act indicates that no fee shall be charged to Filipinos “except for the purpose of reimbursing the cost of reproducing and sending the information”. This strongly implies that no fee may be charged for making a request, but it would be preferable for this to be stated explicitly in the law.

Section 13(i) provides for the Commission to prescribe a schedule of fees, “when needed”, which must be “reasonable based on the principle of proactive disclosure”. As noted above, section 21 provides that no fee shall be charged to citizens apart from reimbursing the cost of

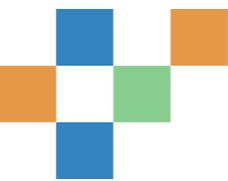
reproducing and sending information. And section 14(g) empowers the Commission to order fees to be reimbursed where there are delays in processing a request.

This is generally positive. It is not clear why the phrase “when needed” has been included in section 13(i) since it is clear that a schedule of fees will be needed. And the reference to fees being reasonable based on proactive disclosure does not appear to make sense. Better practice in this area is to require these fees to be set at prevailing market rates. In addition, better practice is to provide for a set number of pages, say 15-20, to be provided for free, taking into account that the cost of collecting the small fee for so few pages will normally exceed the value of the fee. Finally, better practice is to provide for fee waivers for impecunious applicants, something which is not mentioned in the draft ATI Act.

Better practice is for the law to create a right for those holding government information which is not subject to intellectual property rights which are vested in private actors to be able to reuse that information without any legal constraints, for example flowing from copyright or other intellectual property rights in that information held by public actors. There is some hinting at this in the draft ATI Act, for example in references to open and machine-readable formats (such as in sections 4(d) and (f) and 13(m)). However, the draft Act does not provide for a proper system for open reuse of information. And section 34(d) provides for criminal penalties for a number of both illegal uses and other “misuses” of information. This is not necessary in relation to illegal uses of information (since they are already illegal) and it is unhelpful in relation to the other deemed “misuses” of information (which are, among other things, vague).

## Recommendations

- The law should indicate explicitly that requesters do not need to provide reasons for their requests.
- Applicants should only be required to provide an address for communication and a sufficiently clear description of the information they are seeking when making a request, and not their name or ID number.
- The law should state clearly that government agencies need to provide receipts to applicants within three working days, rather than providing that a failure to do this is a deemed refusal of the request.
- The law should place a clear obligation on government agencies to transfer requests to other agencies when they receive a request for information they do not have but are aware of another agency which does hold the information.



- The law should state clearly that applicants may indicate a preferred form for receiving information and that government agencies should provide access in that form, unless certain limited conditions are met (i.e. those currently set out in section 19(2)).
- The definition of “highly technical requests” should incorporate a condition that responding within seven working days would be unduly burdensome for the government agency, and the reference to the Commission setting detailed timelines in the IRR should be removed from section 21.
- The law should indicate explicitly that no fee may be charged simply for making a request for information.
- The reference to “when needed” in section 13(i), relating to the adoption by the Commission of a schedule of fees, should be removed and, instead of linking fees to proactive disclosure, they should be required to be set at market rates.
- Consideration should be given to providing for 15 or 20 pages of photocopies to be provided for free and to incorporating a regime of fee waivers for impecunious applicants.
- Consideration should be given to adding an open reuse system into the law and to removing the part of section 34(d) which limits the use of information.

## 5. The Regime of Exceptions

The regime of exceptions lies at the heart of any right to information system, given that it defines the line between what information is accessible and what is not. If the regime is unduly narrowly, it will not manage to protect important secrecy interests. On the other hand, a far more common problem is regimes of exceptions which are too broad, which means that the main goals of the RTI law, namely to make government transparent, will not be achieved.

A strong regime of exceptions should have the following three-part test at its core. First, information may be withheld only if it falls within the scope of a precise list of interests set out in the law which may justify non-disclosure, such as public order, commercial confidentiality and so on. This list should be consistent with international standards. Second, information should be withheld only if disclosing it would pose a real risk of harm to one of those interests, the so-called “harm test”. Third, even where there is a risk of harm from disclosure, the information should still be released where the public interest served by this outweighs that harm, the so-called “public interest override”.

The draft ATI Act earns just 60% on this category of the RTI Rating, demonstrating important room for improvement. A significant problem is that the draft Act essentially preserves



secrecy provisions in other laws, with section 32(g) providing that access to information does not need to be granted when “the information is exempted from disclosure by the Constitution or law”. A far better approach here is for the right to information law to set overriding standards, in the form of the three-part test, for all secrecy provisions such that provisions in other laws which do not conform to it are void, to the extent of that inconsistency. This is justifiable on the basis that the Act, once adopted, is implementing a constitutional right and should thus override inconsistent laws.

Three of the exceptions in section 32 do not conform to international standards in relation to the interests which they protect, as follows:

- Section 32(b)(v) covers information the disclosure of which would “unjustifiably disclose investigative or prosecutorial techniques and procedures”. The notion of being unjustifiable in this context is not legitimate, as it might refer to a policy or even an instruction from a superior not to disclose something. Instead, the reference here should be to disclosures which would harm investigations or prosecutions.
- Section 32(c) covers information which “pertains to a testimony, report, document, or discussion obtained during an executive session of the Congress of the Philippines or any of its committees”. Executive sessions are those which are closed, ideally for good reasons. However, those reasons do not necessarily apply to all testimony and discussions, and certainly not to all reports and documents which are made available to such sessions. Put differently, this exception does not refer to any interest which needs to be protected, which is a key litmus test for a proper exception.
- Section 32(h) contains two different exceptions, the second of which covers, in respect of agencies which do not regulate financial institutions, information the premature disclosure of which would “likely impede the effective implementation of a proposed official action”. The notion of “a proposed official action” is simply too general to pass muster as an appropriate exception. Instead, this exception should be limited to cases where premature disclosure of a policy would frustrate the success of that policy.

Section 32(b)(iv) fails to incorporate a harm test covering, as it does, all information which is “furnished by a confidential source”. This should be recast as covering information provided by a confidential source, the disclosure of which would pose a risk of harm to that source.

It is also of concern that section 32(3) provides for the exceptions to be “reviewed and updated regularly” by the Solicitor General and the Department of Justice, although the exceptions elaborated in section 32(1) shall not be “diminished or removed”. The import of this review is, as a result, not clear; since it cannot diminish the existing exceptions, its only

function would appear to be to expand them or perhaps even add others. If so, this is not legitimate.

Better practice is for sunset clauses or overall time limits, for example of 15 to 20 years, to apply all exceptions which protect public interests (such as national security, public order and so on). The draft ATI Act fails to establish any sunset clauses. In case there is concern that information may remain sensitive even after the expiry of sunset clause, a special procedure could be established to extend that period (for example, the relevant minister could extend the period of secrecy on a case-by-case basis).

It is also better practice to require government agencies to consult with third parties where requests are made for information which has been provided by them. This allows them either to consent to disclosure of the information or to present arguments as to why the information should not be disclosed (which should be taken into account but should not be determinative of the issue, i.e. they should not have a veto over the release of information given their inherent interest in the information). The draft ATI Act fails to provide for such consultations.

Section 28 provides for notice to be provided to the applicant where a request is refused and for this notice to “clearly set forth the ground or grounds for denial and the circumstances on which the denial is based”, as well as the right of the applicant to lodge an appeal against the refusal. This is positive but best practice in this regard is to require, explicitly, the notice to refer to the provisions in the law which have been relied upon to justify the refusal (as well as reasons why the information falls within the scope of those exceptions).

## Recommendations

- Section 32(g) should be removed from the draft ATI Act and, instead, the law should provide that it overrides any secrecy provisions which fail to conform to its provisions, to the extent of the inconsistency.
- Sections 32(b)(v), (c) and (h) should either be removed entirely or revised so as to provide for legitimate exceptions.
- A proper harm test should be added to section 32(b)(iv).
- Section 32(3) should either be removed or clarified in a manner which does not allow it to expand upon the exceptions.
- Sunset clauses should be added to all of the exceptions which protect public interests.
- The law should provide for consultation with third parties whenever requests are made for information which was provided on a confidential basis by them or which involves their privacy,

so that they are given an opportunity either to consent or to object to the disclosure of the information.

- Section 28 should be amended to require government agencies to include in their refusal notifications the exact provisions of the law which have been relied upon when refusing a request for information.

## 6. Appeals

A robust system for appealing against failures to process requests in accordance with the rules is essential for the proper operation of a right to information regime. It is useful to provide for an internal appeal or review within the same government agency which originally dealt with a request, so as to provide it with a second opportunity to reconsider, via a higher-level official, its original decision and to sort out problems internally. This is provided for in section 29 of the draft ATI Act. However, this allocates 30 working days for this review which is simply too long given that all of the information needed to process the review will easily be accessible to the government agency concerned. Such a review should be completed at the very latest within 20 working days or ideally even a shorter period than that.

Ultimately, the possibility of an appeal to the courts is important given that these are complex legal matters and the more careful review available before the courts may sometimes be needed. This is provided for in section 43.

However, internal appeals are not independent and appeals to courts are expensive and time consuming. As such, it is crucially important for applicants to be able to lodge appeals with independent administrative oversight bodies. In the draft ATI Act, this is provided for in sections 29 and 30, with appeals to the RTI Commission (Commission).

It is essential that information oversight bodies such as the Commission be robustly independent, and that this independence is guaranteed both formally and structurally, in relation to both commissioners and the internal operations of the body. The draft ATI Act only earns one out of a possible six points in relation to the independence of the Commission in the RTI Rating (Indicators 38-40), and this does not take into account various weaknesses in terms of its internal or operational independence.

In terms of appointments, although the Commission is described as being “independent” (section 5), in fact all three Commissioners (including the Chairperson) are simply appointed



by the President. Apart from some rather vague qualifications (such as being “of good moral character, unquestionable integrity and known probity”, section 9) and coming from a list of different sectors (section 6), there appear to be no constraints on who the President might appoint. It would be preferable for more actors to be involved in the process of appointing Commissioners. There are different models for this, such as having both the executive and the legislature involved, providing for civil society nominations and affording the public an opportunity to comment on a shortlist of nominees.

Section 7 provides for tenure for Commissioners of seven years and that they “shall not be suspended or removed from office except for just cause as provided by law”. However, it would be preferable for the ATI Act to set out the specific grounds for such removals, as well as the procedure for applying them (for example as ratified by a two-thirds vote of the legislature).

The draft ATI Act fails to include any reference to how the budget of the Commission shall be set. This should ideally be voted on directly by the legislature, after a process which ensures a role for the Commission in developing the budget. The draft Act also fails to set out any reporting rules for the Commission. Here again, better practice is for the Commission to report to the legislature and not the executive.

Although section 10 is titled “Prohibitions and Disqualifications”, in fact it only lists activities Commissioners may not pursue during or after their tenure. Better practice in this area is to include prohibitions on individuals with strong political connections – for example as reflected in their having been elected to public office or being office bearers in political parties – from being appointed.

Beyond these concerns, there are also a number of other issues regarding the independence of the Commission. Although section 12 appears to grant the Commission the power to set its own organisational structure and to create “new divisions or units as it may deem necessary”, this is subject not only to the rules and regulations of the Department of Budget and Management (DBM), but also its “review”. In addition, the hiring of staff must be in accordance with “guidelines set by the Civil Service Commission (CSC)”. It is not inappropriate to provide for the general staffing rules of the civil service to apply to staff of information oversight bodies, for example as to vacations, pensions, levels of seniority, pay and so on. But these bodies should otherwise be entirely free, subject to their budgets, to set their own structures and staffing complements. These rules do not align with that.



Equally important, in terms of operational independence, is the fact that the Commission is expected to employ all of the current staff of the Freedom of Information–Program Management Office (FOI-PMO), currently under the Presidential Communications Office (PCO), who “shall be absorbed by the Commission”, while the hiring of any additional staff is possible only with the approval of the DBM (sections 44 and 45). It is of the essence to its independence that a body have control over the hiring of its own staff and that it not be required to absorb individuals who are presently part of the executive branch of government. Of course this is without prejudice to the ability of the Commission to offer positions to staff who presently work for the FOI-PMO should it wish to (subject to their deciding to accept those positions). And the government must also respect its own rules on security of tenure for staff in relation to the current staff of the FOI-PMO, if necessary reallocating them to different positions within the civil service.

The powers of the Commission to investigate matters are mostly set out in section 14. These include the power to require individuals to appear before it and to provide testimony under oath or to produce documents. These rules are a bit repetitive in the draft Act, being found in sections 14(a)-(c). In addition, the Commission does not have the power to inspect the premises of a government agency. This is important in cases where the Commission suspects that an agency is hiding information or perhaps even destroying records.

A very important shortcoming of the draft ATI Act is that it is, ultimately, unclear whether the Commission can actually hear and decide appeals. Section 29 provides for an applicant to file an “appeal” with the Commission in case they are not satisfied with the government agency’s internal review. The same section goes on to state: “The Commission shall establish its internal rules of procedures on cases filed before it to ensure the prompt, impartial, and effective resolution of disputes under this Act.” However, section 30 provides that, in case of an appeal, the Commission shall, “preferably” resolve the dispute “through arbitration or other forms of alternative dispute resolution in the Philippines”, in accordance with the rules in Republic Act. No. 9285 or the Alternative Dispute Resolution Act of 2004.<sup>8</sup> We have only studied these rules briefly, noting that they also incorporate other rules,<sup>9</sup> but, in other countries, information commissions normally try first to mediate disputes, given that the proper way forward is often patently clear (for example, if the government agency has failed to respect the rules on timeliness). If this fails to resolve the matter, the body then engages in

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<sup>8</sup> See [https://lawphil.net/statutes/repacts/ra2004/ra\\_9285\\_2004.html](https://lawphil.net/statutes/repacts/ra2004/ra_9285_2004.html).

<sup>9</sup> Such as Republic Act No. 876 or the Arbitration Law, for domestic arbitration pursuant to Chapter 5 of Act No. 9285. See [https://lawphil.net/statutes/repacts/ra1953/ra\\_876\\_1953.html](https://lawphil.net/statutes/repacts/ra1953/ra_876_1953.html).

a quasi-judicial decision-making process. Section 5 does refer to the Commission as a “quasi-judicial body” and (binding) arbitration is a quasi-judicial procedure, but Act No. 9285 also defines arbitration as a procedure whereby the arbitrators are selected with the agreement of the parties, which would clearly not be the case should the Commission decide on a matter. Ultimately, characterising the Commission’s role in deciding cases as “arbitration” and subjecting them to the rules for arbitrations does not seem helpful and may create confusion.

It is also unclear whether the Commission’s decisions are binding in nature. Section 14(j) refers to the power of the Commission to “require” government agencies to “abide by its orders” but it is not clear to us whether all arbitrations covered by Act No. 9285, including those run by the Commission, are intended to be binding. It would be preferable for the law to provide directly that the decisions of the Commission are binding and also to set out a procedure for enforcing those decisions (without needing to go to court for a decision to enforce them, which is expensive and time consuming). For example, in common law countries, it is common for commissions to register their decisions with courts and, if they are not appealed within the time limit for that, a failure to implement them automatically becomes a contempt of court.

Sections 14(d), (e) and (g) set out the powers of the Commission to order remedies for appellants. These include requiring government agencies to provide access to information in a specific format, but only where necessary to facilitate access, to publish information and to reimburse fees when the agency has not complied with the time limits for processing requests. This is positive and includes the main remedy, namely providing information to an applicant, but it is also somewhat limited, for example, not including the power to reduce fees (outside of late contexts) or even compensate applicants where they have suffered direct losses due to a failure to provide information.

The draft ATI Act is silent as to whether a fee may be charged for lodging an appeal with the Commission or a lawyer may be needed for this. Indeed, the draft Act fails to set out any procedures for appeals, although section 29 does call on the Commission to “establish its internal rules of procedures on cases filed before it to ensure the prompt, impartial, and effective resolution of disputes”. Some additional procedures for arbitrations may be set out in Act No. 9285. It would be preferable, however, for the ATI Act to set out at least a framework of procedures relating to appeals, including time limits for deciding them and the rights of parties to be heard.

Section 29 provides for internal reviews to apply in the context of denials of a request and then for appeals to the Commission to follow a decision on an internal review. A failure to



respond in time is considered a deemed denial of the request (section 28) or review (section 29). This is, however, a limited set of grounds for lodging appeals which does not, for example, cover allegations relating to charging excessive fees, a refusal to provide information in the preferred format or even categorisation of a request as “highly technical”. It would be preferable to allow for internal review applications to be lodged for any alleged failure to respect the rules relating to the processing of requests.

Section 33 places the burden of proving that information is covered by an exception on the government agency seeing to withhold the information, but the burden of establishing that there is an overriding public interest justifying disclosure on the applicant. Since this is placed in Chapter VII, on exceptions, and not in the parts of the draft ATI Act dealing with appeals, it is not entirely clear whether it applies on appeal. Also, it is preferable to place all of the burden of proof in such cases on government agencies even if, as a matter of practice, it may fall on the applicant to point out some of the public interests which would be served by disclosure of the information.

In practice, failures to meet the requirements of a right to information act as regards requests are often due to structural problems within government agencies, such as poor records management or a failure to appoint or to train properly a right to information officer (RIO). To avoid repeated failures in the processing of requests and the consequent appeals which these are likely to trigger, it makes sense to give the Commission the power to order government agencies to undertake structural measures to address these sorts of problems. In addition, it would be useful for the law to set out at least an indicative (non-exclusive) list of possible structural measures which the Commission could order government agencies to undertake.

## Recommendations

- The time for processing internal reviews should be shortened to a maximum of 20 working days and preferably even less than that.
- A number of measures are needed to increase the independence of the Commission. The process for appointments should involve more actors than just the President, including a role for civil society and the public. Clear conditions and procedures for removal of Commissioners should be set out in the ATI law, which should also set out prohibitions on individuals with political connections from being appointed. The law should also provide for a clear process for developing and approving the budget of the Commission, with the latter being done by the legislature, to which the Commission should also report. While the Commission’s staff may be subject to the



general labour standards relating to civil servants, the Department of Budget and Management (DBM) should play no role in the operations of the Commission, and the latter should not be required to absorb the staff presently working in the FOI-PMO.

- The Commission should be given the power to inspect government agencies, in addition to being able to compel witnesses to appear and give testimony and provide documents.
- The status of appeals before the Commission should be clarified and, ideally, these should not be styled as arbitrations. The Commission should be given the power to mediate disputes. It should also be made quite clear that decisions of the Commission on appeals are binding and a simple procedure for enforcing those decisions should be added into the law.
- When deciding an appeal, the Commission should be given the power to order appropriate remedies for the appellant, including compensation, where warranted.
- The law should set out clear procedures for appeals before the Commission which make it clear that these are free and do not require a lawyer.
- The grounds for lodging both internal reviews and appeals to the Commission should be broadened to include any alleged failure to respect the rules regarding the processing of requests for information.
- The burden of proof should be placed on the government agency for all elements of the three-part test, including the public interest override, and this should apply at the initial, review and appeal levels.
- The Commission should be given the power to order government agencies to undertake structural measures to address structural problems with implementation of the law and an indicative (non-exclusive) list of such measures should be added into the law.

## 7. Sanctions and Protections

It is important to provide for sanctions for those who flout the law, while also providing protections for those who release information in good faith. The draft ATI Act has a number of provisions setting out systems of sanctions for abuse of the law. According to section 14(h), the Commission can “investigate, hear and decide on cases involving any violation of this Act”, either of its own motion or upon receiving a complaint. It is, however, not clear what sort of sanctions it has the power to impose in these cases. The same section also provides for the Commission to “institute” relevant administrative or criminal proceedings. It is not clear what exactly “institute” means in this context, but it would appear odd for a body like the Commission to have the power actually to launch criminal proceedings (as opposed to just reporting them to the appropriate investigative or prosecutorial actors). And section 14(l) provides for the latter, i.e. for the Commission to recommend prosecutorial action against those who have violated section 21 of the Act, which refers to the right to privacy.



Section 34 sets out a number of criminal penalties, mainly relating to obstruction of access to information, although section 34(d), as noted above, unhelpfully penalises misuse of information. The specific acts covered by section 34 include falsely denying or concealing the existence of information, falsely claiming information is exempt, failing to submit documents as required by the Act, conspiring to unlawfully withhold information, and wilfully destroying or selling information to frustrate public access (in addition to misusing information). One concern with section 34, however, is that it sets minimum terms of imprisonment – of one year for the offences in section 34(1) but of five years for those found in section 34(3) – which is excessively harsh and potentially breaches other human rights standards.

Section 36 then sets out a number of administrative offences in relation to which the Commission may file an administrative case (likely aligning with the section 14(h) reference to the power of the Commission to “institute” administrative proceedings). These include wilfully denying or obstructing access, failing to act on a request in a timely manner and negligently claiming information is exempt. Section 37 sets out the penalties for this which range from suspension without pay for one month to dismissal from service (for a third offence).

Overall, this is a strong regime of sanctions although it should be clarified whether the section 14(h) reference is linked to the section 34 and 36 actions and, should the Commission decide that there has been a violation of the Act, whether it has the power to impose sanctions and, if so, which ones.

Better practice is also to provide for sanctions for government agencies which systematically fail to meet their obligations under RTI laws. It is often both unfair and ineffective simply to sanction an individual information officer, given that the problem is often systemic in nature within a government agency. As such, in these cases the solution also needs to be systemic. The draft ATI Act does not provide for such sanctions.

Section 15 provides that the Commission and its staff shall not be “subject to any action, claim or demand” for actions taken pursuant to the Act, unless they are done in bad faith or gross negligence. Section 16 then provides that the Commission, Commissioners and staff shall be protected against liability under the law for acts done in connection with their duties under the Act, unless done in bad faith, gross negligence or wilful breach of the Act. It is not clear why two separate provisions are needed here. In addition, while these provisions protect the Commission and its members and staff, no protection is provided to other officials who act in good faith under the act, such as RIOs and right to information decision makers (RDMS).

## Recommendations

- It should be clarified that the section 14(h) power of the Commission to “institute” proceedings refers to the criminal proceedings under section 34 and the administrative proceedings under section 35 (or, if something different is intended, that should be clarified). It should also be clarified whether the Commission can impose sanctions after finding a violation of the law and, if so, which sanctions.
- The minimum terms of imprisonment for breach of different parts of section 34 should be removed.
- In addition to sanctions for individuals, the law should provide for sanctions for government agencies which are systematically failing to meet their obligations under it.
- Consideration should be given to merging sections 15 and 16, while the protections they offer should be extended to any official acting in good faith pursuant to the law.

## 8. Promotional Measures

Section 22 of the draft ATI Act provides for each government agency, including local or regional offices, to appoint at least one RIO and one RDM holding “plantilla” or permanent positions, with the RDM holding a rank of “not lower than Division Chief or its equivalent”. The RIO is to “receive, acknowledge, and monitor all RTI requests and appeals”, while the RDM is to “serve as the agency’s primary authority in implementing this Act”. Both roles are to be elaborated upon in Implementing Rules and Regulations (IRR), to be adopted by the Commission in consultation with relevant government agencies and stakeholders (section 47). According to section 32(2), decisions on the applicability of exceptions shall rest with the head of office or any official designated by him or her.

This is a somewhat complicated set of arrangements. It is not clear why both an RIO and RDM are needed, especially when, despite the title of this position, it is not the RDM but the head of the agency which decides on the applicability of exceptions. The division of tasks between these two individuals is also unclear, with one monitoring requests and the other being responsible for implementing the Act (much of which also relates to requests). It is also distinctly unhelpful to have the head of the agency decide on the applicability of exceptions. As they go up the seniority ladder, it is common for individuals to become more political in their orientation (especially towards the top, where they interact closely with elected or



appointed officials such as ministers and secretaries of state), a feature which is generally negative in the context of access to information.

Better practice in this regard is to appoint a lead information officer who is of sufficient seniority to make decisions on requests and to allocate primary responsibility to that individual for receiving and processing requests. Larger government agencies may need additional information officers to support that person to handle the volume of requests they receive. Where necessary, the lead information officer may wish to consult with a more senior officer as to the applicability of an exception, but this should be at his or her discretion.

The draft ATI Act has strong provisions on integrating RTI into school curricula, in sections 13(n) and 40. Sections 13 and 39 both refer to the idea of training public officials to raise public awareness about the right to information, while not otherwise placing a direct obligation on either the Commission or government agencies to raise public awareness. This seems like an odd approach, with it being preferable simply to place direct obligations on the Commission and government agencies to do this. Section 23 also requires all government agencies to publish RTI Manuals, which contain useful information for would-be information applicants.

Section 39 places a general obligation on government agencies to “systematically record and maintain records of all acts done in official capacity to facilitate the public’s right to information” and to “identify and preserve official records that hold continuing historical, administrative, legal, evidentiary, informational, or research value”. These are useful provisions but they do not constitute a proper records management system. This would involve having a central body, such as the Commission, set binding minimum records management standards for government agencies, provide training to officials on those standards and then monitor the extent to which government agencies are respecting those standards in practice.

Better practice is to require government agencies to publish a list of the records they hold or at least the categories of records they hold. No such obligation appears in the list of categories of information subject to proactive publication found in section 26.

Pursuant to section 24, each government agency must submit annual reports to the Commission on the requests they have received and how they have processed them. This is helpful but more detail as to the content of these reports would be useful, and this should include any recommendations the government agency may have to improve the system, as well as a requirement for the Commission or concerned government agency to publish these reports. What is missing from the draft ATI Act is an obligation on the Commission to publish



a consolidated annual report containing both information about its own activities and an overview of the requests received and processed by all government agencies.

## Recommendations

- Consideration should be given to revising the internal system for processing requests and meeting other obligations under the law, with one lead information officer, where necessary with support, being allocated responsibility for these functions, instead of having RIOs, RDMs and heads of agencies involved in this process.
- Consideration should be given to replacing the obligation on the Commission and government agencies to train officials so as to promote public awareness with a direct obligation on them to raise public awareness.
- The current rules on records management should be replaced by a more structural approach towards this issue, as detailed above.
- Government agencies should be required to publish, proactively, a list of the records they hold or at least the categories of records they hold.
- Consideration should be given to elaborating in more detail on the content of the annual reports required to be prepared by government agencies, as well as to requiring the Commission or government agencies themselves to publish these reports.
- The Commission should be under an obligation to publish an annual report both on what it has done to implement the law and containing an overview of the receipt and processing of requests by all government agencies.

