



REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
**BUREAU OF CUSTOMS**

**INTERNAL ADMINISTRATION GROUP**  
CENTRAL RECORDS MANAGEMENT DIVISION

December 10, 2019

**The Director**

Office of the National Administrative Register (ONAR)  
UP Law Center Diliman, Quezon City


Sir/Ma'am:

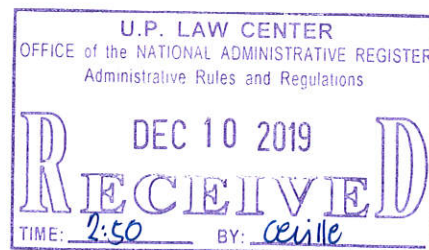
Transmitted are three certified true copies and soft copy (word format in compact disc rewritable) of the following Customs Memorandum Order and Customs Administrative Order, to wit:

**CMO 52-2019: AMENDMENTS TO CMO NO. 39-2019 DATED 31 JULY 2019 ON THE PROCESSING OF GOODS DECLARATION FROM LODGEMENT TO ISSUANCE OF FINAL ASSESSMENT NOTICE.**

**CMO 53-2019: FREEDOM OF INFORMATION MANUAL.**

Very truly yours,

for:   
GLADYS C. CABUGAWAN  
Chief, CRMD

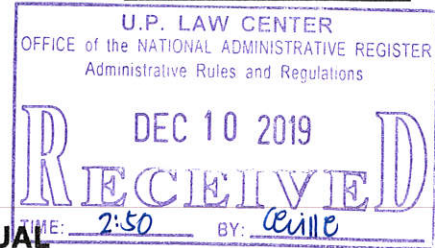




REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
BUREAU OF CUSTOMS  
MANILA 1099

Date 03 DEC 2019,

**CUSTOMS MEMORANDUM ORDER (CMO)**  
NO. 53 - 2019



**SUBJECT: FREEDOM OF INFORMATION MANUAL**


**Introduction.** This Freedom of Information (FOI) Manual implements Executive Order No. 02, series of 2016 "Operationalizing in the Executive Branch the People's Constitutional Right to Information and a State Policies of Full Public Disclosure and transparency in the Public Service and Providing Guidelines Therefore", Memorandum from the Executive Secretary dated November 24, 2016 "Inventory of Exceptions to Executive Order 2 (S. 2016)", Sections 111 and 112, Chapter 2, Title 1; Sections 1500 and 1502, Chapter 2, Title 6; and other related provisions of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA) in relation to Articles II and III of the 1987 Constitution, RA No. 10173, otherwise known as the Data Privacy Act of 2012, RA No. 10667, otherwise known as the Philippine Competition Act, and other pertinent laws, rules and regulations.

**Section 1. Scope.** This Order covers any online or written request for information in accordance with the state policies of full public disclosure and transparency in the public service.

**Section 2. Objectives.**

- 2.1. To reinforce and give further effect to the right of the public to access to non-confidential, unpublished information held by the Bureau;
- 2.2. To provide guidelines and procedures for manual and online requests for information from the Bureau; and
- 2.3. To establish an ICT-enabled monitoring and control system for online requests of information.

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**Section 3. Definition of Terms.** For purposes of this Manual, the following terms are defined accordingly:

- 3.1. Administrative FOI Appeal** — shall refer to an independent review of the initial determination made in response to a FOI request. Requesting parties who are dissatisfied with the response made on their initial request have a right to appeal that initial determination to an office within the agency, which will then conduct to an independent review.
- 3.2. Bureau** — shall refer to the Bureau of Customs.<sup>2</sup>
- 3.3. Confidential Business Information** — shall refer to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures.<sup>3</sup>
- 3.4. Confidential Matter** — shall refer to information and material (matter) the unauthorized disclosure of which, while not endangering the national security, would be prejudicial to the interest or prestige of the nation or any government activity, or would cause administrative embarrassment or unwarranted injury to an individual or would be of advantage to a foreign nation.<sup>4</sup>
- 3.5. Executive Privilege** — shall refer to information the confidential nature of which is crucial to the fulfillment of the unique role and responsibilities of the executive branch, or in those instances where exemption from disclosure is necessary to the discharge of highly important executive responsibilities. The doctrine of executive privilege is thus premised on the fact that certain information must, as a matter of necessity, be kept confidential in pursuit of the public interest. The privilege being, by definition, an exemption from the obligation to disclose information, the necessity must be of such high degree as to outweigh the public interest in enforcing that obligation in a particular case.<sup>5</sup>
- 3.6. FOI Request** — shall refer to a written request submitted to Bureau personally or by email at [piad@customs.gov.ph](mailto:piad@customs.gov.ph) asking for record on any topic. A FOI request can generally be made by any Filipino to any government office.

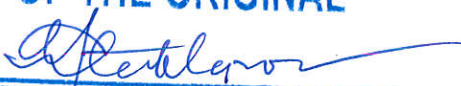
<sup>2</sup> CMTA, Title 1, Chapter 2, Section 102 (i).

<sup>3</sup> Republic Act No. 10667 otherwise known as "Philippine Competition Act", Chapter 1, Section 4 (e).

<sup>4</sup> Office of the President of the Philippines, Memorandum Circular No. 78, s. 1964, Section IV.

<sup>5</sup> Senate v. Ermita, G.R. No. 169777, 20 April 2006.

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- 3.7. Freedom of Information** — shall refer to the recognition by the executive branch of the right of the people to information on matters of public concern, and adopting and implementing a policy of full public disclosure of all its transactions involving public interest, subject to the procedures and limitations provided Executive Order No.2 This right is indispensable to the exercise of the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making.
- 3.8. Frequently Requested Information** — shall refer to the information released in response to an FOI request that the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.
- 3.9. Information** — shall refer to any records, documents, papers, reports, letters, contracts, minutes and transcripts of official meetings, maps, books, photographs, data, research materials, films, and video recording,, magnetic or other tapes, electronics data, computer stored data, any other like or similar data or materials recorded, stored or archived in whatever format, whether offline or online, which are made, received, or kept in or under the control and custody of any government office pursuant to law, executive order, and rules and regulations or in connection with the performance or transaction of official business by any government office.<sup>6</sup>
- 3.10. Information for Disclosure** — shall refer to Information promoting the awareness and understanding of policies, programs, activities, rules or revisions affecting the public, government agencies, and the community and economy. It also includes information encouraging familiarity with the general operations, thrusts, and programs of the government. In line with the concept of proactive disclosure and open data, these types of information can already be posted to government websites, such as *data.gov.ph*, without need for written requests from the public.
- 3.11. Multi-Track Processing** — shall refer to a system that divides incoming FOI requests according to their complexity so that simple requests requiring relatively minimal review are placed in one processing track and more complex requests are placed in one or more other tracks. Requests granted expedited processing are

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<sup>6</sup> Executive Order No. 02 s. 2016, otherwise known as "Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies of Full Public Disclosure and Transparency in the Public Service and Providing Guidelines", Section 1 (a)

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placed in yet another track. Requests in each track are processed on a first in/first out basis.

- 3.12. Non-Confidential Information** — shall refer to matters which are not included in the enumeration in Section 8 of this Order.
- 3.13. Official Record/s** — shall refer to information produced or received by the Bureau or any of its employee in an official capacity or pursuant to public function or duty.
- 3.14. Open Data** — shall refer to publicly available data structured in a way that enables the data to be fully discoverable and usable by end users.
- 3.15. Pending Request or Pending Appeal** — shall refer to an FOI request or administrative appeal for which the Bureau has not yet taken final action in all respects. It captures anything that is open at a given time including requests that are well within the statutory response time.
- 3.16. Perfected Request** — shall refer to a FOI request, which reasonably describes the records, sought and is made in accordance with the Bureau's regulations.
- 3.17. Personal Information** — shall refer to any information, whether recorded in a material form or not, from which identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify and individual.<sup>7</sup>
- 3.18. Proactive Disclosure** — shall refer to information made publicly available by the Bureau without waiting for a specific FOI request. Government agencies now post on their websites a vast amount of material concerning their functions and mission.
- 3.19. Processed Request or Processed Appeal** — shall refer to the number of requests or appeals where the Bureau has completed its work and sent a final response to the requester.
- 3.20. Public Records** — shall include information required by laws, executive orders, rules, or regulations to be entered, kept, and made publicly available by the government office.
- 3.21. Public Service Contractor** — shall refer to a private entity that has dealing, contract, or a transaction of whatever form or kind with

<sup>7</sup> RA 10173 otherwise known as "Data Privacy Act of 2012", Section 3 (g).

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the government or government agency or office that utilizes public fund. However for the purpose of this Order, the term includes accredited service providers or information processors.

**3.22. Received Request or Received Appeal** — shall refer to a FOI request or administrative appeal that the Bureau has received within a fiscal year.

**3.23. Referral** — shall refer when a government office locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

**3.24. Requesting Party** — shall refer to persons exercising the right of access to information by requesting any information, official record or public record from the Bureau.<sup>8</sup>

**3.25. Sensitive Personal Information** — as defined in the Data Privacy Act of 2012, shall refer to personal information:

**3.25.1.** About an individual race, ethnic origin, marital status, age, color, and religious philosophical or political affiliations;

**3.25.2.** About an individual health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have committed by such person, the disposal of such proceedings or the sentence of any court in such proceedings;

**3.25.3.** Issued by government agencies peculiar to an individual which include, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and

**3.25.4.** Specifically established by an executive order or an act of Congress to be kept classified.

**3.26. Simple Request** — shall refer to an FOI request that an agency anticipates will involve a small volume of material or which will be able to be processed relatively quickly.

**3.27. Trade Secret** — shall refer to a plan or process, tool, mechanism or compound known only to its owner and those of his employees

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<sup>8</sup> PPA Freedom of Information Agency Manual.

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to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.<sup>9</sup>

#### **Section 4. General Provisions.**

**4.1.** Pursuant to the mandate of the Constitution and the Laws of the Republic of the Philippines, the Bureau is committed to the following principles:

**4.1.1.** To adopt and implement a policy of full public disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by law;

**4.1.2.** To guarantee the right of the people to information on matters of public concern;

**4.1.3.** To recognize the fundamental role of free and open exchange of information in a democracy, meant to enhance transparency and accountability in government official acts, transactions, or decisions;

**4.1.4.** To protect the fundamental human right of privacy, of communication while ensuring free flow of information to promote innovation and growth; and

**4.1.5.** To ensure that personal information in information and communications system in the government and in the private sector are secured and protected.

#### **4.2. FOI Online Portals.**

**4.2.1.** The public may access the **data.gov.ph**, an Open Data website that serves as the government's comprehensive portal for all public government data that is searchable, understandable, and accessible.

**4.2.2.** The public may also access the **eFOI.gov.ph**, a website that serves as the government's comprehensive FOI website for all information on the FOI. Among many other features, eFOI.gov.ph provides a central resource for the public to understand FOI, to locate records that are already available online, and to learn how to make a request for information that is not yet publicly available. It also promotes agency accountability for the administration of the FOI by

<sup>9</sup> cf. Air Philippines Corp v. Pennswell, Inc., G.R. No. 172835, December 13, 2007

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graphically displaying the detailed statistics contained in Annual FOI Reports, so that they can be compared by agency and over time.

**4.3. FOI Contact and Receiving Office.** The FOI contact for the Bureau shall be the Public Information and Assistance Division (PIAD) Office located at the Office of the Commissioner Building, Gate 3, South Harbor, Port Area, Manila and can be contacted at telephone number 8705-6000 or at **piad@customs.gov.ph**. The PIAD shall likewise be the primary contact for the Bureau where the requesting party can call and ask questions about the FOI process or the pending FOI request.

**4.4. Proactive Disclosure.** The Bureau in order to make the Bureau's public records searchable, understandable, and accessible, shall adopt an integrated system of sharing and dissemination wherein it shall utilize its official website, **customs.gov.ph** and other means of communication to achieve its goal of full-public disclosure subject to reasonable conditions prescribed by law.

## **Section 5. Composition.**

**5.1.** The Deputy Commissioner for Internal Administration Group (IAG) shall act as the FOI Decision Maker (FDM), and shall have overall responsibility for the initial decision on FOI requests, (i.e. to decide whether to release all the records, partially release the records or deny access) subject to review as provided in this Manual.

**5.2. FOI Receiving Officer.** There shall be an FOI Receiving Officer (FRO) designated at the PIAD.

The functions of the FRO shall include but not limited to:

**5.2.1.** Receive on behalf of the Bureau all requests for information and forward the same to the appropriate office that has custody of the records;

**5.2.2.** Monitor all FOI requests and appeals;

**5.2.3.** Provide assistance to the FDM;

**5.2.4.** Provide assistance and support to the public and staff with regard to FOI;

**5.2.5.** Compile statistical information related to FOI as required; and

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**5.2.6.** Conduct initial evaluation of the request and advise the requesting party whether the request will be forwarded to the FDM for further evaluation, or promptly deny the request either because the request form is incomplete, or the information requested has already been disclosed, or it can be directly found on the Bureau's official website or on data.gov.ph.

**5.3. FOI Decision Maker.** The FDM shall conduct an evaluation of the request for information and has the authority to grant the request, or deny it based on any of the grounds for denial stated in this manual.

**5.4. Referral to the Data Protection Officer.** In case of doubt as to the interpretation of this manual for requests involving personal or sensitive personal information, the FDM may refer the matter to the Bureau's Data Protection Officer whose recommendation will be subject to the FDM's approval.

**5.5. Chief of Central Appeals and Review Committee.** There shall be a Central Appeals and Review Committee (Review Committee) composed of three (3) officials with a rank not lower than the Director or its equivalent designated by the Commissioner to review and analyze the grant or denial of a request for information of the FDM. The FDM who issued the denial shall not be part of the Review Committee.

**Section 6. Protection of Privacy and Confidentiality.** While providing for access to information, the Bureau shall afford full protection to a person's right to privacy and confidentiality of matters affecting national interest.

**6.1.** The Bureau shall ensure that all non-confidential, unpublished information shall, for legitimate use, be available to the public in an expeditious manner.

**6.2.** Except in the context of judicial proceedings, any disclosure of confidential information shall not be made except upon the written consent of the party concerned.

**6.3.** The Bureau shall ensure that sensitive personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject matter or relevant to the subject-matter of the request and its disclosure is permitted under the existing laws.

**6.4.** The Bureau shall protect personal information in its custody or under its control by making reasonable security arrangements against

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unauthorized access, leaks or premature disclosure which unduly exposes the individual whose personal information is requested to vilification, harassment or any other wrongful acts.

- 6.5. Subject to existing laws, rules and regulations, the CRMD, utilizing ICT-enabled system, shall create and maintain accurate and reasonably complete customs records and information in appropriate formats, and implement a records management system that facilitates easy identification, retrieval and communication of information to the public.
- 6.6. The FRO, FDM, or any employee or official who has access, whether authorized or unauthorized, to personal information in the custody of the Bureau, shall not disclose that information except as authorized by existing laws.

**Section 7. Standard Procedure (See Annex A for flowchart).**


**7.1. Receipt of Request for Information.**

- 7.1.1. The FRO shall receive the request for information from the requesting party and shall check if the following requirements have been complied with:
  - a. The request must be in writing;
  - b. The request shall state the name and contact information of the requesting party, as well as provide valid proof of identification and/or authorization; and
  - c. The request shall reasonably describe the information requested, and the reason for, or purpose of, the request for information. (**See Annex B**)

The following are sufficient proof of authorization:

- a. In case the principal is a juridical entity, the requesting party must be able to present a Secretary's Certificate or Board Resolution authorizing the requesting party to make the request;
- b. In case the principal is a private person, the requesting party must be able to present an authorization letter, a general power of attorney, or a letter of consent;
- c. In case of a firm hired or retained by a private person, aside from a letter of consent or authorization letter,

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the requesting party must also be able to present a contract of service, or a retainership agreement; or

- d. If the request is made pursuant to a pending case or on-going investigation, the requesting party must be able to present a verification or certification of participation in the pending case or on-going investigation.

The request may be made through electronic mail (e-mail), provided that the requesting party shall attach a scanned copy of the FOI application request form along with scanned copy of a duly recognized government-issued proof of identity with photo.

- 7.1.2. In case the requesting party is unable to make a written request, because of illiteracy or due to being a differently-abled person, he or she may make an oral request, and the FRO shall reduce it in writing.
- 7.1.3. The request shall be stamped "Received" by the FRO, indicating the date and time of the receipt of the written request, and the name, rank, title and position of the FRO or the public officer who actually received it. The request shall be signed by the FRO and a copy thereof shall be produced and given to the requesting party. In case of e-mail requests, the same shall be acknowledged by e-mail indicating the date and time of the receipt of the request, and the name, rank, title and position of the FRO or the public officer who actually received it. The same shall also be printed for record-keeping purposes. The FRO shall input the details of the request on the Request Tracking System and allocate a reference number.
- 7.1.4. The FRO or his/her duly authorized employee shall ensure that the FOI Request Form is correctly filled up and may request for additional information to facilitate the Bureau in complying with the request. The FRO or the duly authorized employee may not refuse to accept the FOI request unless for reasons provided in this Manual.
- 7.1.5. Period to Respond: The Bureau must respond to requests promptly, within seven (7) working days from the date of receipt of the complete request for information in case of complex issues. However, if the request involves a simple request, the Bureau must respond within three (3) working days from the date of receipt of the complete request for

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information. A working day is any day other than a Saturday, Sunday, or a day which is declared a national public holiday in the Philippines. In computing for the period, Art. 13 of the Civil Code shall be observed.

The date of receipt shall be:

- a. The date when the request is physically delivered to the Bureau;
- b. The date when the request is received by mail by the Bureau; or
- c. The date when the request is electronically received by the Bureau, provided that, when the request has been emailed to a Bureau's employee who is absent and this has generated an 'out of office' message with instructions on how to re-direct the message to another contact, then it shall be the date when the request is electronically delivered to that contact.

Provided, that in cases where the request was electronically made to an absent/unavailable FRO and this has generated a message with instructions on how to re-direct the message to another contact, the date of receipt will be the day the request is electronically received by that contact.

The period may be extended whenever the request requires extensive search of the records facilities of the Bureau, examination of voluminous records, or in case of the occurrence of fortuitous events or other analogous cases. The FDM shall inform the FRO, and the FRO shall notify the requesting party of the extension, setting forth the reasons for such extension. In no case shall the extension exceed twenty (20) working days, unless exceptional circumstances warrant a longer period.

**7.2. Initial Evaluation.** After receipt of the request for information, the FRO shall evaluate the contents of the request by applying the Multi-Track Processing and the subsequent provisions.

**7.2.1. Requested information is not in the custody of Bureau.** If the requested information is not in the custody of the Bureau, following referral and discussions with the FDM, the FRO shall undertake the following steps:

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- a. If the records requested refer to another department, agency, bureau, or office, the request will be immediately transferred to such appropriate department through the most expeditious manner and the transferring office must inform the requesting party that the information should not be held within the 7 working day limit. The 7 working day requirements for the receiving office commences the day after it received the request.
- b. If the records refer to an office not within the coverage of E.O No. 2, the requesting party shall be advised accordingly and will be provided with the contact details of that office, if known.


**7.2.2. Requested information is already posted and available on-line.** Should the information being requested is already posted and publicly available in the Bureau's website, data.gov.ph or foi.gov.ph, the FRO shall inform the requesting party of the said fact, and immediately provide them with the website link where the information is posted.

**7.2.3. Requested information is substantially similar or identical to the previous request:** Should the requested information be substantially similar or identical to a previous request by the same requester, the request shall be denied. However, the FRO shall inform the applicant of the reason for such denial within the 7-day period prescribed by this Manual.

**7.3. Transmittal of Request by the FRO to the FDM.** After receipt of the request for information, the FRO shall evaluate the information being requested to the FDM within one (1) working day from receipt of the written request. The FRO shall record the date, time and name of the FDM who received the request in a record book with the corresponding signature of acknowledgement of receipt of the request.

**7.4. Role of FDM in processing the request.** Upon receipt of the request for information from the FRO, the FDM shall assess and clarify the request if necessary. He shall refer the request to the appropriate officer of the Bureau who shall make all necessary steps to locate and retrieve the information requested and submit the same to the FDM within three (3) working days. The FDM will review the information requested to ensure it is responsive to the FOI request and that the disclosed information is compliant with all relevant laws and regulations. Afterwards, the FDM shall submit the complete information requested to the FRO within six (6) working

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days upon receipt of such request by the FRO from the requesting party.

If the request involves a simple request, the FDM shall refer the request to the appropriate officer of the Bureau who shall make all necessary steps to locate and retrieve the information requested and submit the same to the FDM within one (1) working day.

The FRO shall note the date and time of receipt of the information from the FDM and report to the Commissioner, in case the submission is beyond the 6-day period.

If the FDM needs further details to identify or locate the information, he shall, through the FRO, seek clarification from the requesting party as provided in this Manual. The clarification shall stop the running of the 7-day period and will commence the day after it receives the required clarification from the requesting party.

If the FDM needs further that a record contains information of interest to another office, the FDM shall consult with the agency concerned on the "disclosability" of the records before making any final determination.

The FDM may deny the FOI request on any of the grounds for denial stated in this manual.

**7.5. Approval or Denial of the Request.** The FDM may either approve or deny the request for information. The action may either be:

**7.5.1.** Full Denial by the Bureau to release any records in response to a FOI request, because, for example, the requested information is exempt from disclosure in its entirety or no records responsive to the request could be located.

**7.5.2.** Full Grant or approval by the Bureau to disclose all records in full in response to a FOI request.

**7.5.3.** Partial Grant/Partial Denial by the Bureau to disclose portions of the records in response to a FOI request, but must deny other portions of the request.

In case where the FDM is on official leave, or is otherwise incapable of fulfilling his duties, the Commissioner may delegate such authority to another official.

In case of approval, the FRO shall ensure that all records that have been retrieved and considered be checked for possible exemptions, prior to actual release.

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Should the request be approved, but compliance thereto necessitates that reproduction and photocopying of documents, the FRO shall notify the requesting party within the prescribed period that the request was granted and the requesting party is directed to pay the applicable fees, if any. No notice is required if there are no applicable charges.

In case of denial of the request wholly or partially, the FRO shall, within the prescribed period, notify the requesting party of the denial in writing. The notice shall clearly set forth the ground or grounds for denial and the circumstances on which the denial is based. Failure to notify the requesting party of the action taken on the request within the period herein provided shall be deemed a denial of the request to information. All denied FOI request shall pass through the Office of the Commissioner or to his designated official for his information.

**7.6. Role for FRO to transmit the information to the requesting party.** Upon receipt of the requested information from the FDM, the FRO shall collate and ensure that the information is complete. He shall attach a cover/transmittal letter signed by the Commissioner or the designated official, and ensure the transmittal of such to the requesting party.

The FRO shall notify the requesting party of the availability of the requested documents/information which may be transmitted by any way the FRO deems suitable and/or expedient. The requesting party may also pick-up the requested materials in the PIAD Office.

**Section 8. Grounds for Denial.** Access to information shall be allowed except when the information falls under any of the exceptions enshrined in the Constitution, existing laws or jurisprudence,<sup>22</sup> including but are not limited to the following:

**8.1.** Information covered by Executive Privilege;


**8.1.1.** Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings; and

**8.1.2.** Matters covered by deliberative process privilege, namely:

**a.** Advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated; intra-agency or inter-agency recommendations or communications

<sup>22</sup> EO 2 s. 2016, Section 4, Par. 1.

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during the stage when common assertions are still in the process of being formulated or are in the exploratory stage or information pertaining to the decision-making of executive officials; and

- b.** Information, record or document comprising drafts of decisions, orders, rulings, policy decisions, memoranda, etc.

**8.2.** Privileged information, confidential matters relating to national security, defense or international relations;

**8.2.1.** Information, record, or document that must be kept secret in the interest of national defense or security;

**8.2.2.** Diplomatic negotiations and other information required to be kept secret in the conduct of foreign affairs; and

**8.2.3.** Patent applications, the publication of which would prejudice national security and interests.

**8.3.** Information concerning law enforcement and protection of public and personal safety;

**8.3.1.** Investigation records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of such records or information would –

**a.** Interfere with enforcement proceedings;

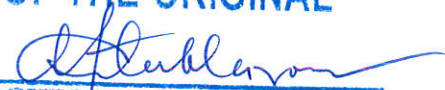
**b.** Deprive a person of a right to a fair trial or an impartial adjudication;

**c.** Disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; or

**d.** Unjustifiably disclose investigative techniques and procedures.

**8.3.2.** Informer's privilege or the privilege of the Government not to disclose the identity of a person or persons who

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furnish information of violations of law to officers charged with the enforcement of law;

- 8.3.3.** When disclosure of information would put the life and safety of an individual in imminent danger;
  - 8.3.4.** Any information given by informants leading to the recovery of carnapped vehicles and apprehension of the persons charged with carnapping; and
  - 8.3.5.** All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;
- 8.4.** Information deemed confidential for the protection of the privacy of persons and certain individuals as minors, victims of crimes, or the accused. These include:<sup>23</sup>
- 8.4.1.** Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, personal information or records, including sensitive personal information, birth records, school records, or medical or health records;


Sensitive personal information as defined under the *Data Privacy Act of 2012* refers to personal information:

- a.** About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
- b.** About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- c.** Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and

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<sup>23</sup> cf. Memorandum from the Executive Secretary "Inventory of Exceptions to Executive Order 2 (S. 2016)", November 24, 2016.

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- d. Specifically established by an executive order or an act of Congress to be kept classified.

However, personal information may be disclosed to the extent that the requested information is shown to be a matter of public concern or interest, shall not meddle with or disturb the private life or family relations of the individual and is not prohibited by any law or regulation. Any disclosure of personal information shall be in accordance with the principles of transparency, legitimate purpose and proportionality.

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

**8.4.2.** Source of any news report or information appearing in newspapers, magazines or periodicals of general circulation obtained in confidence; and

**8.4.3.** Records of proceedings and processes deemed confidential by law for the privacy and/or protection of certain individuals, such as children, victims of crime, witnesses to a crime or rehabilitated drug offenders, including those pertaining to the following:

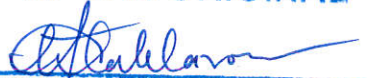
- a. Records of child and family cases;
- b. Children in conflict with the law from initial contact until final disposition of the case;
- c. A child who is a victim of any offense under the Anti-Child Pornography Act of 2009, including the name and personal circumstances of the child, or the child's immediate family, or any other information tending to establish the child's identity;

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- d. A child witness, who is a victim of a crime, an accused of a crime, or a witness to a crime, including the name, address, telephone number, school, or other identifying information of a child or an immediate family of the child;
- e. Cases involving violence against women and their children, including the name, address, telephone number, school, business, address, employer, or other identifying information of a victim or an immediate family member;
- f. Trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of the trafficked person;
- g. Names of victims of child abuse, exploitation or discrimination;
- h. Disclosure which would result in undue and sensationalized publicity of any case involving a child in conflict with the law, child abuse, or violation of anti-trafficking of persons;
- i. Records, documents and communications of proceedings involving domestic and inter-country adoptions, including the identity of the child, natural parents and adoptive parents;
- j. Names of students who committed acts of bullying or retaliation;
- k. First time minor drug offenders under suspended sentence who comply with applicable rules and regulations of the Dangerous Drugs Board and who are subsequently discharged; judicial and medical records of drug dependents under the voluntary submission program; and records of a drug dependents under the voluntary submission program; and records of a drug dependent who was rehabilitated and discharged from treatment and rehabilitation centers under the compulsory submission program, or who was charged for violation of Section 15 (use of dangerous drugs) of the Comprehensive Dangerous Drugs Act of 2002, as amended; and

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- I. Identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing;
- 8.5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative regulatory or quasi-judicial powers;
    - 8.5.1. Trade secrets, intellectual property, business, commercial, financial and other proprietary information;
    - 8.5.2. Data furnished to statistical inquiries, surveys and censuses of the Philippine Statistics Authority (PSA);
    - 8.5.3. Records and reports submitted to the Social Security System by the employer or member;
    - 8.5.4. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;
    - 8.5.5. Confidential information submitted to the Philippine Competition Commission prohibited from disclosure by law, including the identity of the person who provided the information under the condition of anonymity;
    - 8.5.6. Applications and supporting documents filed pursuant to the Omnibus Investments Code of 1987;
    - 8.5.7. Documents submitted through the Government Electronic Procurement System;
    - 8.5.8. Information obtained from accessing any electronic key, electronic data message, or electronic document, book, register, correspondence, information or other material pursuant to any powers conferred under the Electronic Commerce Act of 2000;
    - 8.5.9. Any confidential information supplied by the contractors in mineral agreements, and financial or technical assistance agreements pursuant to the Philippine Mining Act of 1995 and its Implementing Rules and Regulations (IRR), during the term of the project to which it relates;

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- 8.5.10.** Information received by the Department of Tourism (DOT) in relation to the accreditation of accommodation establishments (such as hotels and resorts) and travel and tour agencies;
  - 8.5.11.** The fact that a covered transaction report to the Anti-Money Laundering Council (AMLC) has been made, the contents thereof, or any information in relation thereto;
  - 8.5.12.** Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;
  - 8.5.13.** Certain information and reports submitted to the Insurance Commissioner pursuant to the Insurance Code;
  - 8.5.14.** Information on registered cultural properties owned by private individuals;
  - 8.5.15.** Data submitted by a higher education institution to the Commission on Higher Education (CHED); and
  - 8.5.16.** Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals.
- 8.6.** Information of which a premature disclosure would:
- 8.6.1.** In the case of a department, office or agency which agency regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities, or significantly endanger the stability of any financial institution; or
  - 8.6.2.** Be likely or significantly frustrate implementation of a proposed official action, except such department, office or agency has already disclosed to the public the content or nature of its proposed action, or where the department, office or agency is required by law to make such disclosure on its own initiative prior to taking final official action on such proposal.
- 8.7.** Records of proceedings or information from proceeding which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged, including but not limited to the following:
- 8.7.1.** Mediation and domestic or international arbitration proceedings, including records, evidence and the arbitral


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awards, pursuant to the *Alternative Dispute Resolution Act of 2004*;

- 8.7.2.** Matters involved in an Investor-State mediation;
- 8.7.3.** Information and statements made at conciliation proceedings under the Labor Code;
- 8.7.4.** Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);
- 8.7.5.** Results of examinations made by the Securities and Exchange Commission (SEC) on the operations, books and records of any corporation, and all interrogatories propounded by it and the answers thereto;
- 8.7.6.** Information related to investigations which are deemed confidential under the Securities Regulations Code;
- 8.7.7.** All proceedings prior to the issuance of a cease and desist order against pre-need companies by the Insurance Commission;
- 8.7.8.** Information related to the assignment of the cases to the reviewing prosecutors or the undersecretaries in cases involving violations of the Comprehensive Dangerous Drugs Act of 2002;
- 8.7.9.** Investigation report and the supervision history of a probationer;
- 8.7.10.** Those matters classified as confidential under the Human Security Act of 2007;
- 8.7.11.** Preliminary investigation proceedings before the committee on decorum and investigation of government agencies; and
- 8.7.12.** Those information deemed confidential or privileged pursuant to pertinent rules and regulations issued by the Supreme Court, such as information on disbarment proceedings, DNA profiles and results, or those ordered by courts to be kept confidential;

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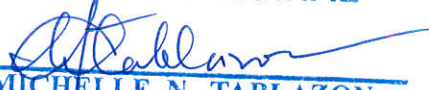
- 8.8.** Matters considered confidential under banking and finance laws, and their amendatory laws<sup>24</sup>; and
- 8.8.1.** RA No. 1405 (*Law on Secrecy of Bank Deposits*);
  - 8.8.2.** RA No. 6426 (*Foreign Currency Deposit Act of the Philippines*) and relevant regulations;
  - 8.8.3.** RA No. 8791 (*The General Banking Law of 2000*);
  - 8.8.4.** RA No. 9160 (*Anti-Money Laundering Act of 2001*); and
  - 8.8.5.** RA No. 9510 (*Credit Information System Act*);
- 8.9.** Trade Secrets, intellectual property, commercial, financial and other proprietary information.<sup>25</sup>
- 8.10.** Confidential Business Information, unless, 1) the notifying entity consents to the disclosure, or 2) the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency;<sup>26</sup>
- 8.11.** Sensitive Personal Information, unless, 1) the data subject has given his or her consent, 2) the processing of personal information is necessary and is related to the fulfillment of a contract with the data subject or in order to take steps at the request of the data subject prior to entering into a contract, 3) the processing is necessary for compliance with a legal obligation to which the personal information controller is subject, 4) the processing is necessary to protect vitally important interests of the data subject, including life and health, 5) the processing is necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate, 6) The processing is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by

<sup>24</sup> Office of the President of the Philippines, Memorandum from the Executive Secretary "Inventory of Exceptions to Executive Order 2 (S. 2016)", November 24, 2016, p.2; cf. Republic Act 1405 otherwise known as "Bank Secrecy Law".

<sup>25</sup> cf. Office of the President of the Philippines, Memorandum from the Executive Secretary "Inventory of Exceptions to Executive Order 2 (S. 2016)", November 24, 2016, p.6.

<sup>26</sup> Republic Act No. 10667, otherwise known as "Philippine Competition Act".

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fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution.<sup>27</sup>

**8.12.** Other exceptions to the right to information under laws, jurisprudence, rules and regulations,<sup>28</sup> such as:

**8.12.1.** Those deemed confidential pursuant to treaties, executive agreements, other international agreements, or international proceedings, such as:

- a. When the disclosure would prejudice legitimate commercial interest or competitive position of investor-states pursuant to investment agreements;
- b. Those deemed confidential or protected information pursuant to United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (UNCITRAL Transparency Rules); and
- c. Refugee proceedings and documents under the *1951 Convention Relating to the Status of Refugees*, as implemented by DOJ Circular NO. 58 (s. 2012);

**8.12.2.** Testimony from a government official, unless pursuant to a court or legal order;

**8.12.3.** When the purpose for the request of Statement of Assets, Liabilities and Net Worth is any of the following:

- a. Any purpose contrary to morals or public policy; or
- b. Any commercial purpose other than by news and communications media for dissemination to the general public;

**8.12.4.** Lists, abstracts, summaries of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;

<sup>27</sup> Republic Act No. 10173, otherwise known as "Data Privacy Act of 2012".

<sup>28</sup> Office of the President of the Philippines, Memorandum from the Executive Secretary "Inventory of Exceptions to Executive Order 2 (S. 2016)", November 24, 2016, p.2.

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- 8.12.5. Those information and proceedings deemed confidential under rules and regulations issued by relevant government agencies or as decided by the courts;
- 8.12.6. Requested information pertains to comments and disclosures on pending cases in judicial proceedings; and
- 8.12.7. Attorney-client privilege existing between government lawyers and their client.

**Section 9. Remedies in Case of Denial.** A person whose request for access to information has been denied may avail himself of the remedy set forth below:

- 9.1. **Administrative FOI Appeal to the Bureau's Central Appeals and Review Committee.** The written appeal must be filed by the same requesting party within fifteen (15) calendar days from the notice of denial or from the lapse of the period to respond to the request.
  - 9.1.1. Appeal of the FDM decision shall be made by filing a written appeal to the Commissioner within fifteen (15) calendar days from the notice of denial.
  - 9.1.2. The Commissioner shall make a final decision on the appeal, based on the recommendation of the Review Committee. Failure to decide within thirty (30) working day period shall be deemed a denial of the appeal.
  - 9.1.3. The denial of the appeal by the Commissioner or the lapse of the period to respond to the request may be appealed further to the Office of the President under Administrative Order No. 22, s. 2011.
- 9.2. Upon exhaustion of Administrative FOI Appeal remedies, the requesting party may file the appropriate judicial action in accordance with the Rules of Court.

**Section 10. Request Tracking System.** The Bureau shall establish a system to trace the status of all request for information received by it, which may be paper-based, on-line or both. In case of manual replies, see **Annexes C-C5**.

**Section 11. Fees.**

- 11.1. **No Request Fee.** The Bureau shall not charge any fee for accepting requests for access to information.

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**11.2. Reasonable Cost of Reproduction and Copying of the information.** The FRO shall immediately notify the requesting party in case there shall be a reproduction and copying fee in order to provide the information. Such fee shall be the actual amount spent by the Bureau in providing the information to the requesting party. The schedule of fees shall be posted by the Bureau.

**11.3. Exemption from Fees.** The Bureau may exempt any requesting party from payment of fees, upon request stating the valid reason why such requesting party shall not pay the fee.

## **Section 12. Administrative Liability.**

**12.1. Non-compliance with FOI.** Failure to comply with the provisions of this Manual shall be a ground for the following administrative penalties:

**12.1.1.** 1<sup>st</sup> Offense – Reprimand;

**12.1.2.** 2<sup>nd</sup> Offense- Suspension of one (1) to thirty (30) days; and

**12.1.3.** 3<sup>rd</sup> Offense- Dismissal from the service.


The penalties provided for in this Order shall be without prejudice to other criminal, administrative or civil liability that may arise pursuant to the provisions of applicable law violated.

**12.2. Procedure.** The Revised Rules on Administrative Cases in the Civil Service shall be applicable in the disposition of cases under this Manual.

**Section 13. Public Service Contractor.** All requests for information made to the Public Service Contractor, including but not limited to information which relates to the official function and mandate of the Bureau within their custody, shall be forwarded to the Bureau for processing in accordance with this Order. Public Service Contractors are not allowed to disclose any information obtained in relation to their contract with the Bureau.

**Section 14. Annual FOI Report.** The Bureau shall file with an Annual FOI report with the Presidential Communications Operations Office (PCOO) detailing the administration of the FOI. Annual FOI Reports contain detailed statistics on the number of FOI requests and appeals received, Processed Requests and Processed Appeals, and requests which remain pending with the Bureau including Frequently Requested Information. The Deputy Commissioner for IAG shall prepare the report for consideration of the Commissioner.

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**Section 15. Periodic Review.** Unless otherwise provided, this FOI manual shall be reviewed every three (3) years and be amended or revised, if necessary.

**Section 16. Repealing Clause.** This FOI manual specifically amends or repeals previously issued CAOs and CMOs which are inconsistent with the provisions herein stated.

**Section 17. Separability Clause.** If any part of this FOI manual is declared unconstitutional or contrary to existing laws, the other parts not so declared and shall remain in full force and effect.

**Section 18. Effectivity.** This FOI manual shall take effect on 13 DEC 2019.

The Office of the National Administrative Register (ONAR) of the UP Law Center shall be provided three (3) certified copies of this CMO.



**REY LEONARDO B. GUERRERO**

Commissioner  
DEC 03 2019



BOC-02-00992

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