

Annex E

Exceptions to Right to Access to Information

For the guidance of all government offices and instrumentalities covered by EO No.2 (s. 2016) and the general public, the following are the exceptions to the right of access to information, as a recognized by the Constitution, existing laws, or jurisprudence: ¹

1. Information covered by Executive privilege;
2. Privileged information relating to national security, defense or international relations;
3. Information concerning law enforcement and protection of public and personal safety;
4. Information deemed confidential for the protection of privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
5. Information, documents or records known by reason of official capacity and our deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
6. Prejudicial premature disclosure;
7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulation, are treated as confidential or privilege;
8. Matters considered confidential under banking and finance laws, and their amendatory laws; and
9. Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

For the implementation of the exceptions to the right of access to information, the following provide the salient details and legal bases that define the extent and application of the exception.

1. Information covered by Executive privilege;
 - a. Presidential conversation, correspondences, and discussions in closed-door Cabinet meetings;² and

¹ These exception only apply to government bodies within the control and supervision of Education department. H.L. No. 105, 11th July 2016

- a. Matters covered by deliberative privilege, namely:
 - i. Advisory opinions, recommendation and deliberations comprising part of a process by which governmental decisions and policies are formulated; intra-agency or inter-agency recommendations or communication 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 or executive officials;³ and
 - i. Information, record or document comprising drafts of decisions, orders, rulings, policy decisions, memoranda etc.;⁴
2. Privileged information relating to national security, defense or international relations:
 - a. Information, record, or document that must be kept secret in the interest of national defense or security;⁵
 - b. Diplomatic negotiations and other information required to kept secret in the conduct of foreign affairs;⁶ and
 - c. Patent applications, the publication of which would prejudice national security and interest;⁷
3. Information concerning law enforcement and protection of public and personal safety:
 - a. Investigation records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of such records or information would –
 - i. interfere with the enforcement proceedings;
 - ii. deprive a person of a right to a fair trial or an impartial adjudication;

² This exception may only be invoked by the President and his close advisors. The extent of the privilege is defined by applicable jurisprudence: *Senate v. Ermitta*, G.R No. 169777, 20 April 2006, 488 SCRA 1; *Neri v. Senate Committee on accountability of Public Officers and Investigation*, G.R No. 180643, 4 September 2008, 564 SCRA 152; *Akbayan v. Aquino*, G.R No. 170516, 16 July 2008, 558 SCRA 468; and *Chavez v. PCGG*, G.R No. 130716, 9 December 1998, 299 SCRA 744.

³ *Akbayan v. Aquino*, *supra*; *Chavez v. NHA*, G.R. No. 164527, 15 August 2017; and *Chavez v. PCGG*, *supra*. The privilege of invoking this exception ends when the executive agency adopts a definite proposition (*Department of Foreign Affairs v. BCA International Corp.* G.R. No. 210858, 20 July 2016).

⁴ Section 3(d) Rule IV, *Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees* (Rules of CCESPOE). Drafts of decisions, orders, rulings, policy decisions, memoranda, and the like, such as resolutions prepared by the investigating prosecutor prior to approval for promulgation and release to parties [*Revised Manual for Prosecutors of the Department of Justice (DOJ)*] are also covered under this category of exceptions.

⁵ *Almonte v. Vasquez*, G.R. No. 95367, 23 May 1995, 244 SCRA 286; *Chavez v. PCGG*, *supra*; *Legaspi v. Civil Service Commission*, L-72119, 29 May 1987, 150 SCRA 530; *Chavez v. NHA*, *supra*; *Neri v. Senate*, *supra*; *Chavez v. Public Estates Authority*, G.R No. 133250, 9 July 2002, 384 SCRA 152; and Section 3(a), Rule IV, Rules on CCESPOE. This exception generally includes matters classified under Memorandum Circular (MC) No. 78, as amended by MC No. 196 as “Top Secret,” “Secret,” “Confidential,” and “Restricted.”

⁶ *Akbayan v. Aquino*, *supra*; Section 3(a) Rule on CCESPOE. This privilege may be invoked by the Department of Foreign Affairs and other government bodies involved in diplomatic negotiations.

- iii. disclose the identity of a confidential source and in case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; or
 - iv. unjustifiably disclose investigate techniques and procedures;⁸
- b. Informer's privilege or the privilege of the Government not to disclose the identity of a person or persons who furnish information of violations of law to officers charged with the enforcement of law;⁹
 - c. When disclosure of information would put the life and safety of an individual in imminent danger;¹⁰
 - d. Any information given by informants leading to the recovery of carnapped vehicles and apprehension of the person with carnapping;¹¹
 - e. All proceedings involving application for admission into the Witness Protection Program and the action taken thereon;¹²
4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused.
These includes:
- a. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;¹³ personal information or records,¹⁴ including sensitive personal information birth records,¹⁵ school records,¹⁶ or medical or health records;¹⁷

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

- (1) about an individual's rare, ethnic origin, marital status, age, color, and religious philosophical or political affiliations;
- (2) about an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension of revocation, and tax returns; and
- (4) specifically established by an executive order or an act of Congress to be kept classified.

⁷ The applicability of this exception is determined by the Director General of the Intellectual Property Office and subject to the approval of the Secretary of the Department of Trade and Industry. Section 44.3 of the *Intellectual Property Code* (RA No. 10372).

⁸ Section 3(f), Rule IV, Rules on CCESPOE; *Chavez v. PCGG, supra*. May be invoked by law enforcement agencies.

⁹ *Akbayan v. Aquino, supra*; and section 51, *Human Security Act of 2007* (RA No. 9372). May be invoked by law enforcement agencies

¹⁰ Section 3 (b), Rule IV, Rules on CCESPOE

¹¹ Section 19, *New Anti Carnapping Act of 2016* (RA No. 10883.) May be invoked by law enforcement agencies.

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 individual¹⁹ 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.²⁰

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;²¹

- b. source of any news report or information appearing in newspapers, magazines, or periodicals of general circulation obtained in confidence;²² and
- c. records of proceedings and processes deemed confidential by law for the privacy and/or protection of certain individuals, such as children, including those pertaining to the following:
 - (1) records of child and family cases;²³
 - (2) children in conflict with the law from initial contact until final disposition of the case;²⁴
 - (3) a child who is a victim of any offense under the *Anti-Child Pornography Act of 2009*, including the name and personal circumstances of the child or the child immediate family, or any other information tending to establish child's identity;²⁵
 - (4) a child witness, who is a victim of a crime, an accused of a crime, or a witness to a crime, including the name, address, telephone number, school or other identifying information of a child or an immediate family of the child;²⁶

¹³ Section 3(e), Rule IV, Rules on CCESPOE.

¹⁴ Sections 8 and 15, *Data Privacy Act of 2012* (RA No. 10173); *Personal information* refers to any information whether recorded in a material form or not, from which the 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 an individual [Section 3(g), *Data Privacy Act of 2012*]; Article 26, Civil Code. May be invoked by National Privacy Commission and government personal information controllers.

¹⁵ Article 7, *the Child and Youth Welfare Code* [Presidential Decree (PD) No. 603].

¹⁶ Section 9 (4), *Education Act of 1982*, [Batas Pambansa (BP) Big. 232].

¹⁷ Medical and health records are considered as sensitive personal information pursuant to Section 3 (1)(2), *Data Privacy Act of 2012*; See also Department of Health-Department of Science and Technology (DOST)-Philippine Health Insurance Corporation Joint Administrative Order No. 2016-

0002 (Privacy Guidelines for the Implementation of the Philippine Health Information Exchange).

¹⁸ Section 3(1), *Data Privacy Act 2012*.

¹⁹ Article 26(2), *Civil Code*.

²⁰ Section 11, *Data Privacy Act of 2012*.

- (5) cases involving violence against women and their children, including the name, address, telephone number, school, business, address, employer, or other identifying information of a victim or an immediate family member;²⁷
 - (6) trafficked persons, including their names and personal circumstances, or any other information tending to establish the identity of a trafficked person;²⁸
 - (7) names of victims of child's abuse, exploitation or discrimination;²⁹
 - (8) disclosure which would result in undue and sensationalized publicity of any case involving a child conflict with the law, child abuse, or violation of anti-trafficking of persons;³⁰
 - (9) records, documents and communications of proceedings involving domestic and inter-country adoptions, including the identity of the child, natural parents and adoptive parents;³¹
 - (10) names of students who committed acts of bullying or retaliation;³²
 - (11) first time minor (drug) offenders under suspended sentence who comply with applicable rules and regulations of the Dangerous Drugs Board and who are subsequently discharged; judicial and medical records of drug dependents who were rehabilitated and discharged from treatment and rehabilitation centers under the compulsory submission program, or was charged for violation of Section 15 (use of dangerous drugs) of the *Comprehensive Dangerous Drugs Act of 2002*, as amended; and³³
 - (12) identity, status and medical records of individuals with Human Immunodeficiency Virus (HIV), as well as results of HIV as well as results of HIV/Acquired Immune Deficiency Syndrome (AIDS) testing;³⁴
5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers such as but not limited to the following:
- a. Trade secrets, intellectual property, business, commercial, financial and other proprietary information;³⁵

²¹ Section 4, Data Privacy Act of 2012.

²² An Act to Exempt the Publisher, Editor or Reporter of any Publication from Revealing the Source of Published News or Information Obtained in Confidence (RA No. 53), as amended by RA No. 1477. May be invoked by government newspapers.

²³ Section 12, Family Courts Act of 1997 (RA No. 8369).

²⁴ Section 43, Juvenile Justice and Welfare Act of 2006 (RA No. 9344).

²⁵ Section 13 Anti-Child Pornography Act of 2009 (RA No. 9775).

²⁶ Section 31, A.M.No. 00-4-07-SC, Re: Proposed Rule on Examination of a Child Witness.

²⁷ Section 44, Anti-Violence Against Women and their Children Act of 2004 (RA No. 9262). And *People v. Cabalquinto*, GR. No. 167693, 19 September 2006.

²⁸ Section 7, Anti-Trafficking in Person Act of 2003 (RA No. 9208), as amended by RA No. 10364.

²⁹ Section 29, Special Protection of Children Against Abuse, Exploitation and Discrimination Act (RA No. 7610).

³⁰ Section 14, Juvenile Justice and Welfare Act of 2006; Section 7, Anti-Trafficking in Persons Act of 2003, as amended; and Section 29, Special Protection for Children Against Abuse, Exploitation and Discrimination Act.

³¹ Section 15, Domestic Adoption Act of 1998 (RA No. 8552) and Section 43, IRR of RA No. 8552; Sections 6 and 16(b), Inter-Country Adoption Act of 1995 (RA No. 8043) and Sections 53, 54 and 55 of IRR of RA No. 8043.

³² Section 3(h), Anti-Bullying Act (RA No. 10627).

³³ Sections 60, 64 and 67, Comprehensive Dangerous Drugs Act of 2002 (RA No. 9165).

³⁴ Sections 2(b), 18, 30, and 32, Philippine AIDS Prevention and Control Act of 1998 (RA No. 8504).

- b. Data furnished to statistical Inquiries, surveys and censuses of the Philippine Statistics Authority (PSA);³⁶
- c. Records and reports submitted to the Social Security System by the employer or member;³⁷
- d. Information gathered from HIV/AIDS contact tracing and all other related health intelligence activities;³⁸
- e. Confidential information submitted to the Philippine Competition Commission prohibited from disclosure by law, including the identity of the person who provided the information under condition of anonymity;³⁹
- f. Applications and supporting documents filed pursuant to the *Omnibus Investment Code* of 1987;⁴⁰
- g. Documents submitted through the Government electronic Procurement System;⁴¹
- h. Information obtained from accessing any electronic key, electronic data message, or electronic document, book, register, correspondence, information or other material pursuant to any powers conferred under the *Electronic Commerce* of 2000;⁴²
- i. Any confidential information supplied by the contractors in mineral agreements, and financial or technical assistance agreements pursuant to the *Philippine Mining Act* of 1995 and its Implementing Rules and Regulations (IRR), during the term of the project to which it relates;⁴³
- j. Information received by the Department of The Tourism (DOT) in relation to the accreditation of accommodation establishments (such as hotels and resort) and travel and tour agencies;⁴⁴
- k. The fact that a covered transaction report to the Anti-money Laundering Council (AMLC) has been made, the contents thereof, or any information in relation thereto;⁴⁵
- l. Information submitted to the Tariff Commission which is by nature confidential or submitted on a confidential basis;⁴⁶
- m. Certain information and reports submitted to the Insurance Commissioner pursuant to the Insurance Code;⁴⁷
- n. Information on registered cultural properties owned by private individuals;⁴⁸

³⁶ Section 26, *Philippine Statistical Act* of 2013 (RA No. 10625); and Section 4, *Commonwealth Act* No. 591. May be invoked only by the PSA

³⁷ Section 24(c), *Social Security Act* of 1997 (RA No. 1161, as amended by RA No. 8282).

³⁸ Section 29, *Philippine AIDS Prevention and Control Act* of 1998 (RA No. 8504).

³⁹ Section 34, *Philippine Competition Act* (PCA), RA No.10667 and Section 13, Rule 4 of the IRR of PCA. This exception can be invoked by the Philippine Competition Commission subject to well- defined limitations under the PCA.

⁴⁰ Section 81, EO No.226 (s.1987), as amended.

⁴¹ Section 9, *Government Procurement Reform Act* (RA No. 9184).

⁴² Section 32, *Electronic Commerce* of 2000 (RA No. 8792).

⁴³ Section 94(f), *Philippine Mining Act* of 1995(RA No. 7942).

⁴⁴ Section 1, Rule IX, DOT MC No.2010-02 (Rules and Regulations to Govern the Accreditation of

- o. Data submitted by a higher education institution to the Commission on Higher Education (CHED);⁴⁹ and
- p. Any secret, valuable or proprietary information of a confidential character known to a public officer, or secrets of private individuals;⁵⁰
6. Information which a premature disclosure would:
 - a. 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
 - b. Be likely or significantly frustrate implementation of a proposed official action, except such as 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.⁵¹
7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged, including but not limited to the following;
8. Mediation and domestic or international arbitration proceedings, including records, evidence and arbitral awards, pursuant to the *Alternative Dispute Resolution Act of 2004*;⁵²
9. Matters involved in an Investor-State mediation;⁵³
10. Information and statements made and conciliation proceedings under the *Labor Code*;⁵⁴
11. Arbitration proceedings before the Construction Industry Arbitration Commission (CIAC);⁵⁵
12. 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;⁵⁶
13. Information related to investigations which are deemed confidential under the *Securities Regulations Code*;⁵⁷
14. All Proceedings prior to the issuance of cease and desist order against pre-need companies by the insurance commission;⁵⁸
15. Information related to the assignment of the cases to the reviewing prosecutors or the undersecretaries in case involving violations of the *Comprehensive Dangerous Drugs Act of 2002*;⁵⁹
16. Investigation report and supervision history of a probationer;
17. Those matters classified as confidential under the *Human Security Act of 2007*;⁶⁰

⁴⁵ Section 9(c), *Anti-Money Laundering Act* of 2001, as amended. May be invoked by AMLC, government banks and its officers and employees.

⁴⁶ Section 10, *Safeguard Measures Act*.

⁴⁷ Section 297 in relation with Section 295 and Section 356, *The Insurance Code* (as amended by RA No. 10607).

⁴⁸ Section 14, *National Cultural Heritage Act of 2009* (RA No. 10066).

⁴⁹ CHED Memorandum Order No. 015-13, 28 May 2013.

⁵⁰ Articles 229 and 230, *Revised Penal Code*; Section 3(k), *Anti-Graft and Corrupt Practices Act* (RA No. 3019); Section 7(c), *Code of Conduct and Ethical Standards for Public Officials and Employees* (RA No. 6713); Section 7 (c), *Exchange of Information on Tax Matters Act* 2009 (RA No. 10021); and Section 6.2, *Securities Regulation Code* (RA No. 8799).

⁵¹ Section 3(9), Rule IV, Rules on CCESPOE

⁵² Section 9, 23 and 33, *Alternative Dispute Resolution (ADR) Act of 2004* (RA No. 9285); and DOJ Circular No. 98 (s. 2009) or the IRR of the ADR Act.

⁵³ Article 10, International bar Association Rules for Investor-State Mediation.

⁵⁴ Article 237, Labor code.

⁵⁵ Section 7.1, Rule 7 CIAC Revised of Procedure Governing Construction Arbitration.

⁵⁶ Section 142, Corporation Code. May invoked by the SEC and any other *official* authorized by law to make such examination.

⁵⁷ Section 13.4, 15.4 29.2 (b), and 64.2 of the *Securities Regulation Code*.

⁵⁸ Section 53 (b) (1) of the *Pre-Need Code of the Philippines*. The same is applicable to...

- a. Preliminary Investigation proceedings before the committee on decorum and investigation of government agencies;⁶²
 - b. 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;⁶³
18. Matters considered confidential under banking and finance laws and their amendatory laws, such as:
- a) RA No. 1405 (*Law on Secrecy of bank Deposits*);
 - b) RA No. 6462 (*Foreign Currency Deposit Act of The Philippines*) and relevant regulations;
 - c) RA No. 8791 (The General Banking Law of 2000);
 - d) RA No.9160 (Anti-Money Laundering Act of 2001); and
 - e) RA No. 9571 (Credit Information System Act);
19. Other exceptions to the right to information under laws, jurisprudence, rules and regulations, such as:
- a. Those who deemed confidential pursuant to treaties, executive agreements, other international agreements, or international proceedings, such as:
 - (1) When the disclosure would prejudice legitimate commercial interest or competitive position of investor-states pursuant to investment agreements;⁶⁴
 - (2) Those deemed confidential or protected information pursuant to United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (UNCITRAL Transparency Rules),⁶⁵ and
 - (3) Refugee proceedings and documents under the 1951 *Convention Relating to the Status of Refugees*, as implemented by DOJ Circular No. 58 (s.2012);
 - b. Testimony from a government official, unless pursuant to a court or legal order;⁶⁶
 - c. When the purpose for the request of the Statement of Assets, Liabilities and Net Worth is any of the following;
 - (1) any purpose contrary to morals or public policy; or
 - (2) any commercial purpose other than by news and communication media for dissemination to the general public;⁶⁷
 - d. Lists, abstracts, summaries, of information requested when such lists, abstracts or summaries are not part of the duties of the government office requested;⁶⁸
 - e. Those information and proceeding deemed confidential under rules and regulation issued by relevant government agencies or as decided by the court;⁶⁹
 - f. Requested information pertains to comments and disclosures on pending cases in judicial proceeding;⁷⁰ and
 - g. Attorney-client privilege existing between government lawyers and their client;⁷¹

⁶² Section 14, Civil Service Commission Resolution No. 01-0940.

⁶³ Section 18, Rule 139-8 and Section 24, Rule 130 of the Rules of Court; and Section 11 of the Rule on DNA Evidence, A.M> No. 06-11-5-SC

⁶⁴ Examples; Article 20 (2), ASEAN Comprehensive Investment Agreement under the Framework Agreement on the Comprehensive Economic Cooperation between the ASEAN and the Republic of India; and Article 15 (2) of the Agreement on Investment under the Framework Agreement on the Comprehensive Economic Cooperation among the Government of the Member Countries of the ASEAN and the Republic of Korea.

⁶⁵ Article 7, UNCITRAL Transparency Rules.

⁶⁶ *Senate v. Neri*, supra; *Senate v. Ermita* supra

⁶⁷ Section 8(D), *Code of Conduct and Ethical Standards for Public Officials and Employees*.

⁶⁸ *Belgica v. Ochoa*, G.R No. 208566, 19 November 2013; and *Valmonte v. Belmonte Jr.*, G.R No. 74930, 13 February 1989, 252 Phil. 264

⁶⁹ Examples: 2012 Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses and the Provision of CHR Assistance; Government Service Insurance System's Rules of Procedure of the Committee on Claims; National Labor Relations Commission Resolution No. 01-02, Amending Certain Provisions of the New Rules on Procedure for the Resolution of Labor Disputes.