

## FYI on FOI

Halfway into the administration of President Benigno Aquino III, there is still much uncertainty on whether the Freedom of Information (FOI) bill will be able to get through the legislative mill. This comes despite the President's platform centered on good governance and anti-corruption—the primary reason for his historical election to the presidency in 2010. Some quarters also claim that the people's support for his platform and administration was reaffirmed in the May 2013 elections, when a number of the President's partymates won key electoral posts.

Several versions of the FOI bill were filed in previous Congresses and numerous issues took center stage during most of the discussions. These concerns involve: (1) exemptions which were too broad, vague, or specific; (2) the proposed retroactivity clause; (3) the proposal to include information held by the private sector to the bill's coverage; and (4) the right to reply provision.

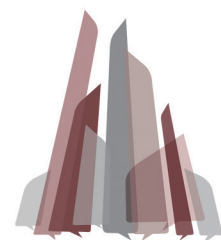
During the 14th Congress, the FOI bill was almost passed into law. However, the House failed to ratify the bicameral conference report due to a lack of quorum during the Congress' last session day.

In the 15th Congress, the House committee only managed to report out a consolidated version of the bill in the form of HB 6766; nevertheless, it remained pending on second reading. Meanwhile, the Senate approved on third reading their version of the bill: SB 3208, also known as the People's Ownership of Government Information (POGI) bill.

It must be noted that, at the Legislative Summit held on 29 September 2011, occurring in the middle of the 15th Congress, delegates from the House and the Senate included the FOI bill in their proposed common legislative agenda. Also, in 2011, the Executive department formed a technical working group (TWG) to craft and, eventually submit to Congress, its own version of the FOI bill. The TWG was headed by Budget Secretary Butch Abad, together with then Presidential Communications Development and Strategic Planning Office Secretary Ricky Carandang and Usec. Manolo Quezon.

The Malacañang version of the FOI bill considered the establishment of an independent Information Commission that shall ensure full compliance with and implementation of the law's provisions by government agencies. The new body shall likewise be empowered to hear and resolve complaints and appeals by concerned parties.

During that time, however, the FOI bill was not set as a as priority measure by the Legislative Executive Development Advisory Council (LEDAC) nor mentioned in the President's State of the Nation Address.



## **FOI in the 16th Congress**

Since most of the FOI bills in the House used either the bicameral conference report or the approved version in the previous Congress as a basis for refiling the measure, it was expected that consolidating the various bills would be swiftly done. The House Committee on Public Information, through its TWG, has already met to consolidate at least nineteen FOI bills. Committee and TWG Chairman Jorge Almonte is expected to finalize a reconciled version by mid-February.

Meanwhile, in the Senate, the Committee on Public Information and Mass Media reported out in plenary a consolidated bill (SB 1733) after conducting two hearings. It is now under the period of amendments, where senators may propose revisions to the bill coming from discussions during the period of interpellation. Committee Chair Grace Poe and Senate President Franklin Drilon have committed to pass the Senate version of the FOI bill by March 2014.

Sen. Miriam Defensor Santiago, in her interpellation of the measure, identified several points to consider in refining the FOI bill. These include the following:

- a. Whether the reference to official records and public records, as well as disclosure requirements are consistent with provisions found in other laws and issuances. An example is whether the definition of "information" in the FOI bill is synonymous with the definition used in the Data Privacy Act (RA 10173). Another would be ensuring consistency between the provisions on disclosure of public transactions in the FOI bill with that of the Government Procurement Reform Act (RA 9184)
- b. Whether the terms used to identify covered government entities are accurate and consistent with other laws, specifically Executive Order 292 or the Administrative Code
- c. Whether private entities acting as public service contractors should be covered as may be indicated in the coverage section of the bill
- d. Whether section 7(b)—on the disclosure of information once policies have been formulated and decisions have been made—is meant to limit Presidential communications privilege, which is guaranteed under the Constitution
- e. Whether section 7(b) also intends to remove the deliberative process privilege
- f. Whether the exemption from coverage of "drafts" of orders, resolutions, decisions, and audit reports will be considered as absolute or a comprehensive listing of laws, issuances, and regulations that will be affected will be formulated
- g. Whether the exemption from coverage of information obtained by Congress in an executive session refers to all kinds of information or if there would be qualifications for the kinds of information covered by the exemption

h. Whether the passage of the law (with reference to certain provisions in SB 1733) will either invalidate or recognize privileged information as stated in other laws or jurisprudence

i. Whether the procedure of access to information (1) is intended to apply across all agencies, considering that there are agencies with already existing procedures for access to information; (2) will be followed regardless of the nature of request; and (3) will be followed regardless of the nature of information sought to be examined or copied

**Private sector supports FOI**

Freedom of information is greatly supported by the private sector, noting that this, besides other good governance reforms, is crucial to promote sustainable and inclusive growth. MBC Chairman Ramon Del Rosario Jr., speaking at the hearing of the Senate Committee on Public Information on the FOI bill, cited the Aquino administration's transparency and accountability efforts as among the key reasons for the country's economic gains. This includes the above-7% GDP growth of the Philippine economy from the 3rd quarter of 2012 to the 3rd quarter of 2013 (prior to the downward revision of Q3 GDP), leveraging on the Philippines' 26-place jump since 2011 in the World Economic Forum's (WEF) Global Competitive Rankings. The Philippines now ranks 59th out of 148 economies from 85th out of 139 in 2010-2011.

Furthermore, such reforms were also reflected in the improved ranking of the country, according to Transparency International's Corruption Perceptions Index as seen in the table below.

**Philippines' ranking in the Corruption Perceptions Index**

2010 (178 countries and territories)	2011 (183 countries and territories)	2012 (176 countries and territories)	2013 (177 countries and territories)
134	129	105	94

Source: Transparency International

However, while there have been considerable gains from such reforms, MBC has stated in a statement that the passage of an FOI law is an indispensable element of the Aquino administration's "daang matuwid" mantra. MBC believes that the FOI law will institutionalize transparency and accountability in government, not only under this administration, but also in succeeding ones.<sup>1</sup> Clear policies and guidelines and easy access to such regulations significantly decreases vagueness in rules, discretion in regulators, and unnecessary losses to investors. Consequently this is seen to improve confidence in the country's business environment.

To illustrate the importance of the FOI bill to national competitiveness and attractiveness to investment, the 2013-2014 WEF Global Competitiveness Report has indicated the five most problematic factors to doing business in the Philippines: (1) inadequate supply of infrastructure, (2) corruption, (3) inefficient government bureaucracy, (4) tax regulations, and (5) restrictive labor practices.<sup>2</sup> Most of these areas of concern can be significantly addressed by an effective FOI law that will guarantee access to public information and will mandate full disclosure of government transactions.

With about two years remaining in the current administration's term, calls are mounting for a clearer commitment from government to prioritize the FOI bill's passage. Indeed, if the administration truly aims to effectively institutionalize reforms, the fate of the FOI bill in the 16th Congress will act as a good barometer of its promise to improve transparency in government.

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<sup>1</sup> *MBC Statement: MBC lauds the push for the passage of the freedom of information bill. 13 January 2012*  
<sup>2</sup> *World Economic Forum's Global Competitiveness Report 2013-2014*

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