

Sangguniang[1] _____

Municipal/City Government of _____

ORDINANCE NO. _____

Series of 20__

ORDINANCE OPERATIONALIZING THE FREEDOM OF INFORMATION AND PROVIDING A MECHANISM FOR THE DISCLOSURE OF PUBLIC RECORDS IN the Province and/or xxx MUNICIPALITY/CITY, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

Note: Pls apply the word and the idea of “province” to all references to municipality since a governor’s support can be key to turning the respective mayors’ support for both ordinances

Authored by

WHEREAS, pursuant to Section 28, Article II of the 1987 Constitution, the State adopts and implements a policy of full public disclosure of all its transactions involving public interests subject to reasonable conditions prescribed by law;

WHEREAS, Section 7, Article III of the 1987 Constitution guarantees the right of the people to information on matters of public concern;

WHEREAS, on 23 July 2016, President Rodrigo R. Duterte issued Executive Order No. 2, “Operationalizing in the Executive Branch the People’s Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and providing Guidelines Therefore”;

WHEREAS, while the said Executive Order is limited in scope and merely provides guidance for local government units, the **Municipal/City** Government of _____ herein takes steps toward freedom of information in an effort to pursue good and transparent governance;

WHEREAS, recognizing that free public access to information is a necessary foundation in pursuing data- driven development;

WHEREAS, recognizing the importance of the people’s right to information, and guided by the President’s Executive Order, the **Municipal/City** Government of **xxx** deems it necessary to improve the local mechanism wherein the people’s right to information is upheld;

NOW, THEREFORE, BE IT ORDAINED BY THE SANGGUNIANG PANLUNGSOD THAT:

Section 1. Short Title. This Ordinance shall be known as the “**xxx** Right to Information Ordinance of **20xx**”

Section 2. Declaration of Policy. The **Municipality/City** of **xxx** recognizes and upholds public office as a public trust. As such, public officers and employees must all the time be accountable to the people. Through this Ordinance, the **municipality/city** adopts a policy of transparency, public disclosure, and open records as part of an effort to take effective measures toward the practice of good governance, achieve a higher level of public accountability and enable the empowerment of its citizens.

Section 3. Coverage. This Ordinance shall cover all offices under the municipal/city government of **xxx**.

Section 4. Definition of Terms. For the purposes of this Ordinance, the following terms shall be defined as follows:

- (1) “*Municipality/City*” or “*municipal/city government*” are used interchangeably in reference to the local government unit of the **Municipality/City** of **xxx** and all **municipal/city** offices, departments, instrumentalities, boards, and other bodies, and all **municipal/city** officials and employees, which fall within its legal authority.
- (2) “*Government office*” refers to any office, department, agency, instrumentality, board, or any other public body within the legal authority of the **municipal/city** government.
- (3) “*Information*” shall include all records, documents, papers, reports, letters, contracts, minutes, and transcripts of meetings, maps, books, photographs, data, research materials, films, sound and video recording, magnetic or other tapes, electronic data, computer stored data, any other like or similar data or materials recorded, stored, or archived in whatever format, whether offline or online, that are made, received, or kept in or under the control and custody of the city government pursuant to law, ordinance, executive order, procedure, or rules and regulations, or in connection with the performance or transaction of official business by any **municipal/city** government office.

(4) “*Custodian*” means the government office currently in physical possession of the public record. The custodian of a public record in the physical possession of persons or places outside the **municipal/city** government is the **municipal/city** government office owning that record. The records relating to the investment of public funds are the property of the government office responsible for the public funds. “Custodian” does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit that holds the records of another public body solely for storage.

(5) “*Official record*” shall refer to documents or pieces of information produced or received by a public officer or employee, or by the **municipal/city** government or any government official in an official capacity or pursuant to a public function or duty.

(6) “*Public record*” shall include all information, stored, or preserved in any medium under the custody of the **municipal/city** government. This shall include incomplete or partial record or any piece of information found therein. This shall also include, but is not limited to, official records as defined in this section.

(7) “*Website*” means a page or collection of pages that is readily and publicly accessible over the Internet. For the purposes of this Ordinance, the access and use of a website shall be unlimited and free of charge.

Section 5. Municipal/City Public[2] Information Officer (M/CPIO). The **Municipal/City** Mayor shall appoint a **Municipal/City Public** Information Officer within thirty (30) days upon effectivity of this ordinance. The said **Municipal/City Public** Information Officer (*can use initials already here, and wherever else in rest of the doc.*) shall fill the plantilla position of Information Officer V.

Provided, that if no person is qualified for the said position, a **Municipal/City Public** Information Officer shall be assigned to serve concurrently as Officer in Charge (OIC).

Provided, further, that the said **Municipal/City Public** Information Officer shall be a permanent employee of the **municipal/city** government and shall not have been a candidate in a national, **municipal/city**, or barangay election, whether regular or special, for a period of one (1) year immediately preceding the appointment.

Section 6. Deputy Public Information Officer. Each **municipal/city** government office shall designate a Deputy **Public** Information Officer who shall be responsible for coordinating with the **Municipal/City Public** Information Officer and shall be responsible for providing public records when their office is the custodian.

Provided, that Deputy Public Information Officer shall not have discretionary authority and shall only approve or deny requests for information based on the provisions of this Ordinance. *(Isn't the approval or denial already a discretionary act?)*

A Deputy Information Public Officer may also receive requests for information directly. In such a case where the requestor files a request directly with the Deputy Information Officer, said officer must notify the Municipal/City Public Information Officer within two (2) working days. *(Whether the Municipal/City Public Information Officer or his/her Deputy, the requestor should receive a written acknowledgment note/receipt that he/she has asked for such info as evidence if any delays occur.)*

Section 7. Duties of the Municipal/City Public Information Officer. The Municipal/City Public Information Officer shall, with the assistance of the Municipal/City Public Information Office and the Deputy Public Information Officer, perform the following duties:

- (1) Prepare a People's Right to Information Manual pursuant to Section 15 of this Ordinance;
- (2) Provide assistance to all municipal/city government offices in matters of public access to information and the processes as required by this Ordinance and other applicable laws, ordinances, executive orders, memoranda, and rules and regulations;
- (3) Provide assistance to requestors of information, as needed; *(Whether the M/CPIO or his/her Deputy, the requestor should receive a written acknowledgment note/receipt that he/she has asked for such info as evidence if any delays occur.)*
- (4) Receive requests for information and conduct an initial evaluation of the same;
- (5) Refer requests for information to the appropriate Deputy Public Information Officer; *(or handle it personally himself/herself, if possible, before referring it to the deputy)*
- (6) Record all incoming requests and actions taken by the municipal/city government through an Information Request Log *managed by the muni/city;*
- (7) Maintain a public email address by which requests for information may be sent, *(and which must be acknowledged as received within xx days);*
- (8) Designate a temporary Municipal/City Public Information Officer, in case of official leave.

Provided, that the **Municipal/City Public** Information Officer shall not have discretionary authority and shall only approve or deny requests for information based on the provisions of this Ordinance. *(same as above re discretion.)*

Just a note: Here is a simple formula given by an international academic: Monopolistic Power + Discretion - Transparency = Corruption.)

Section 8. Right to Access to Information. Every person has a right to and shall, on request, be given access to any information, official records, public records, and documents and papers pertaining to official acts, transactions or decisions, or of public concern under the control of the municipality/city regardless of the physical form or format in which they are contained.

This right shall include the right to publish or otherwise disseminate a public record or the information contained in a public record. The right to copy a public record shall include the right to take photographs, videos, or sound recordings, or to make physical copies through printing, photocopying, or other similar means.

(1) No party requesting for information shall be required to provide any personal information, except *(repeated in Sec 10, #2 (for his name, contact info, proof of identification) as is needed,* nor shall any person be required to make a personal appearance.

(2) No party shall be asked to explain the reason for their request or interest in the subject matter of the request. *(Contradicts Sec 10 #4 w/c states to give the reason.) Also, this is where “discretionary” comes in; who is to decide whether the request should be entertained or denied? So M/CPIO has to know the broad basis for the request, even if falsified; it may serve as evidence later on)*

(3) A government office shall not prevent the examination or replication of a public record by contracting with a non-governmental body to perform any of its duties or functions.

Section 9. Presumption of Freedom of Information. All official records, public records, and information shall be presumed open and accessible to the public, unless they are **included in the set of exceptions pursuant to Section XX.** Any ambiguity in this Ordinance shall be resolved in favor of freedom of information and transparency in governance. *(This is a clause that can be used by legal people to hide info. So best to state clearly what the exceptions are here.)*

Section 10. Procedure for Requests for Information. The following procedure shall govern the filing and processing of requests for access to information:

(1) Any person, as provided for in Section 8, may formally file a request for information with either the Municipal/City Public Information Officer (M/CPIO) or a

Deputy Information Officer of the custodian of the public record or information sought. A request may be submitted through a written letter, including through personal delivery, postal mail, or electronic mail. *Provided*, that the M/CPIO may provide an optional form that may be used instead of a letter.

(2) The request shall state the name and contact information of the requesting party, provide valid proof of his/her identification or authorization, reasonably describe the information requested, and the reason for, or purpose of, the request for information: *Provided*, that no request shall be denied or refused acceptance unless the reason for the request is contrary to law, existing rules and regulations or it is one of the exceptions. *(such as ???)*

(3) The public official receiving the request shall be designated the FOI Receiving Officer and shall provide reasonable assistance, free of charge, to enable all requesting parties and particularly those with special needs, to comply with the request requirements under this Section.

(4) The request shall be stamped by the M/CPIO or the concerned government office, indicating the date and time of receipt and the name, rank, title, and position of the FOI Receiving Officer with the corresponding signature, and a copy thereof furnished to the requesting party. Each government office shall establish a system to trace the status of all requests for information received by it *(as part of their database on this ordinance .)*

(5) The M/CPIO or the concerned government office shall respond to a request fully compliant with requirements hereof as soon as practicable but not exceeding fifteen (15) working days from the receipt thereof.

(6) The period to respond may be extended whenever the information requested requires extensive search of the government office's records facilities, examination of voluminous records, the occurrence of fortuitous cases or other analogous cases. The M/CPIO or the concerned government office shall notify the person making the request of the extension, setting forth the reasons for such extension. In no case shall the extension go beyond twenty (20) working days unless exceptional circumstances warrant a longer period.

(7) Once a decision is made to grant the request, the person making the request shall be notified of such decision and directed to pay any applicable fees, *(but not to exceed Pxxx); otherwise the underprivileged will be unable to exercise their right to FOI for lack of financial resources).*

Section 11. Fees. The acceptance and processing of requests for information shall be free of cost to the public. Access to websites and requests for copies in the form of digital or computer files to be retrieved in person, through email, or other similar means, shall be completely free of charge.

Provided, that the municipal/city government may charge for the recovery of costs for certification, printing, and photocopying rendered by the government office, the cost of which shall be determined by the Municipal/City Administrator.

A city government office may require that the assessed fee be paid to the Municipal/City Treasurer before copies are released.

Provided, further, that a city government office may exempt any requestor from payment of fees, upon stating the valid reason such a party should not pay the fee, *such as ...*).

Section 12. Information Disclosure Platform. The City shall, as soon as practicable, establish an online platform wherein any person can request for information through a website. The use of such platform shall be free of charge. The platform shall provide for a mechanism for anonymous requests.

Section 13. Exceptions. The city/municipality shall only deny a request for information if a public record is deemed confidential under one or more of the following categories.

- (1) Personal medical records, unless the release is necessary to protect the life and health of the subject of the information or another person, and the data subject is not legally or physically able to express his/her consent prior to the processing;
- (2) Personal information of students, including grades and disciplinary records, but not including information on public scholarships and benefits that the student may have received from the municipal/city government;
- (3) Information falling under intellectual property rights and trade secrets pursuant to existing laws;
- (4) Communications related to litigation during the pendency of legal proceedings, including communications falling under attorney-client privilege;
- (5) Law enforcement records when the release would jeopardize an ongoing investigation or pose an imminent danger to an individual or public safety;
- (6) Security and emergency plans and procedures concerning public buildings, activities, and participants;

(7) Identity and personal information of any person who furnishes information of violations of law;

(8) Personal contact information not used for official business and home addresses;

(9) Other information considered confidential pursuant to national law or jurisprudence

Provided, that the subject of such public records or information may waive their rights to *confidentiality*, and allow for the release of the same.

Section 14. Protection of Privacy. While providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of the individual, pursuant to the Data Privacy Act of 2012 (Republic Act No. 10173), as follows:

(1) Each government office shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject matter of the request and its disclosure is permissible under this ordinance or existing law, rules, or regulations;

(2) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information, which unduly exposes the individual, whose personal information is requested, to vilification, harassment, or any other wrongful acts.

(3) Any employee, official or director of a government office who has access, authorized or unauthorized, to personal information in the custody of the office, must not disclose that information except when authorized under this ordinance or pursuant to existing laws, rules, or regulation.

Section 15. Availability of SALN. Subject to the provisions contained in Sections 13 and 14 of this Ordinance, all public officials of the Municipal/City Government of _____ are reminded of their obligation to file and make available for scrutiny their Statements of Assets, Liabilities and Net Worth (SALN) in accordance with existing laws, rules and regulations, and the spirit and letter of this ordinance.

Section 16. Remedies in Case of Denial of Request for Information. A denial for any Request for Information may be appealed to the Municipal/City Mayor.

(1) The appeal must be made in writing within thirty (30) calendar days from the receipt of the notice of denial or from the lapse of the relevant period to respond to the request.

(2) The appeal shall be decided by the Mayor within ten (10) working days from the filing of said written appeal. Failure of the Mayor to decide within the aforesated period shall be deemed a denial of the request. *(Unclear, appeal is denied if Mayor doesn't act on it after 10 days; what if Mayor has more pressing matters, or doesn't do his job? Is appeal left to die? A Court becomes the next step to release info? Judges take forever to decide.)*

(3) Upon exhaustion of the administrative remedies provided for in this Ordinance, the appropriate case may be filed in the proper court in accordance with the Rules of Court.

Section 17. Proactive Disclosure of Public Records. The municipal/city government shall continue to post all documents, as required, pursuant to Department of the Interior and Local Government Memorandum Circular 2010-83 (Full Disclosure of Budget and Finances, and Bids and Public Offerings), to wit:

- (1) Annual Budget Report;
- (2) Annual Procurement Plan or Procurement List;
- (3) Special Education Fund Income and Expenditure Estimates;
- (4) Statement of Debt Services;
- (5) Annual Gender and Development Fund Utilization;
- (6) Statement of Receipts and Expenditures;
- (7) Quarterly Statement of Cash Flow;
- (8) Items to Bid;
- (9) Report of Special Education Fund Utilization;
- (10) Bid Results on Civil Works, Goods and Services, and Consulting
- (11) Abstract of Bids as Calculated;
- (12) Component of the Internal Revenue Allotment Utilization;
- (13) Supplemental Procurement Plan, if any;
- (14) Local Disaster Risk Reduction and Management Fund Utilization.

Provided, these documents shall be made available on the municipal/city website.

Provided, further, the M/CPIO is mandated within sixty days (60) upon the approval of this Ordinance to publish the following information in the official website of the city:

- (1) Name, location, and official contact information, including email addresses, of the Municipal/City Public Information Officer and all the Deputy Public Information Officer;
- (2) Procedure for filing and processing of the Request for Information;
- (3) Remedies available and procedure for the same in case of denial
- (4) A list of administrative and disciplinary sanctions provided for city officials in violation of this Ordinance;
- (5) Standard forms for the submission of requests;
- (6) Applicable fees;
- (7) Inventory of exceptions as provided for in Section 13; and
- (8) A complete copy of the text of this Ordinance.

Section 18. Method of Automatic Disclosure. In addition to posting requirements as required under the preceding section and all other applicable laws, memorandums, circulars, and other regulations, the records listed in the immediately preceding section shall be posted on the "FULL DISCLOSURE POLICY" section of the official municipal/city website. There shall be a clearly discernible hyperlink on the home page and the main menu leading to the said section.

Provided, that the municipal/city government, or any of its offices, are not limited to the aforementioned locations for posting, and shall post the said public records in other conspicuous places, both physically and through the Internet, including social media, as it has the capacity to do so.

Section 19. Machine readable data. The municipality/city will make every effort to systematically disclose machine readable and inter-operable data, and to code or tag data disclosures and other data files so that the information can be compared with other publicly available data.

Section 20. Penalties. Failure of any government official or employee to comply with the provisions of this Ordinance shall be a ground for the following penalties:

1st Offense:	Reprimand;
2nd Offense:	Suspension of five (5) to thirty (30) days; and
3rd Offense:	Dismissal from the service.

Provided, that subsequent acts related to the same Request for Information may constitute a second and third offense.

Section 21. Separability Clause. If any section or part of this Ordinance is held unconstitutional or invalid, all other sections or provisions not otherwise affected shall remain in full force and effect.

Section 22. Repealing Clause. All ordinances, executive orders, administrative orders, or other rules and regulations contrary to or inconsistent with the provisions of this Ordinance are hereby repealed or amended accordingly.

Section 23. Effectivity. This Ordinance shall take effect fifteen (15) days after publication.

APPROVED, this _____ day of _____ at _____.