OBJECTION TO THE WEAK TWG - FREEDOM OF INFORMATION BILL

Position Paper of The Makabayan Bloc in the House of Representatives
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A genuine freedom of information (FOI) law is what this country, embattled by graft and corruption, human rights violations and social injustices, needs. The country does not need a watered-down, weak and toothless freedom of information law which, while seemingly generous, actually makes it more difficult for the people to access government information. This is the reason why the Makabayan Bloc not only filed an FOI bill, but has also steadfastly expressed our support for the passage of a genuine and strong FOI law.

However, the Consolidated Bill recently approved by the Technical Working Group (TWG) headed by Rep. Jorge Almonte, chairperson of the House Committee on Public Information, to our mind, has been greatly weakened and practically made toothless by several serious and far-reaching exceptions that defeat the spirit and intent of the right to freedom of information.

While we respect the position of those who seek the speedy approval of the bill despite being a greatly watered-down and weakened version, we do not want to pass a law where the 'exceptions become the rule' and access to information becomes very difficult and worse, an exception.

We are constrained, therefore, to raise our objection over the weak, almost toothless TWG FOI bill and might withdraw co-authorship unless the exceptions enumerated and discussed below and which we view are very critical and/or have serious implications, will be deleted by the Committee.

We recognize that the right to information is not absolute. We concede that there are some legitimate exceptions to the right, which are specifically and limited to those information possessed by the government which if disclosed to the public will seriously jeopardize: (1) national security and diplomatic negotiation as qualified by the bill; (2) criminal investigations; (3) right to privacy of private individuals; and (4) legitimate commercial secrets.

Adding more to these limits or exceptions, such as the expanded and much-abused "executive privilege" of the President, the privilege invoked by former President Gloria Macapagal Arroyo on the NBN-ZTE scandal, will really defeat the right to information of the people.

In fact, we agree with the exception in Section 7(a), which disallows access to information that 1) "directly relates to national security or defense" and/or 2) "pertains to the foreign affairs of the Republic of the Philippines, when its revelation shall unduly weaken the negotiating position of the government in an ongoing bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations."

At its present form, the Consolidated Bill further expanded many exceptions, which we believe had the effect of compromising and greatly weakening the effectiveness of an FOI law by allowing for the withholding of information crucial to efforts to curb corruption and other government abuses.

Among these are the following:

(1) The Bill did not provide for a rule that allows unqualified access to public officials'

SALN. We believe that the SALN of all public officials must be accessible to the public at all times. The Consolidated Bill not only failed to state this rule but even recognized *limitations* and *restrictions* to public access to SALN under Section 5, thus

"SEC. 5. Access to Information. –

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Nothing herein contained shall allow private acts, transactions or records of public officials and private individuals to be the subject of mandatory disclosure under this Act: Provided, however, That income tax returns, and statement of assets, liabilities and networth (SALN) of public officials shall be released ***subject to existing laws, rules and regulations****: Provided, further, That* ***the limitations and prohibitions to make available to the public the SALN shall not apply when upon order of the Sandiganbayan, it has been established that there is probable cause related to the commission of an offence****." (Emphases supplied)*

There is no justifiable reason for restricting, limiting or prohibiting public access to the SALN of public officials. This provision betrays the people's demand for transparency among public officials. All SALNs must be made public, without limitations, and even published in the internet for anyone to access.

(2) Section 7 of the Consolidated Bill contains unjustifiable exceptions that will practically make it easier for government to withhold information and make it difficult for the media and the public to access information. Section 7 in effect actually makes denial of access the rule rather than the exception.

First, there is no apparent reason why **Section 7(b)** prevents the people and media from accessing the minutes and advice given and opinions expressed during decision-making or policy formulation by the executive branch even if these are not made during executive sessions.

The people fought hard against EO 464 and claims to executive privilege by Pres. Gloria Arroyo in the NBN-ZTE anomaly, when she refused to allow the public (and the Senate) access to records showing the various proposals, considerations and the stakeholders involved in the decision or change in then decision related to the said project.

We cannot allow an exception which will arm any future president with the same power to withhold crucial information on anomalous transactions by claiming that these records are "minutes of advice or opinions" of Cabinet members. Public officials are

expected to provide the best advice to the government and should therefore not be afraid of allowing public access to their positions, advice or opinions on issues that involve public interest.

It is our firm belief that policy-making must be public and participative, especially during the formulation of policy and not after decisions have been made. If the policy has already been formulated and decisions already made, the public is forced to undertake painstaking, difficult and expensive judicial process while the questioned decision is already being implemented.

Second, **Section 7 (c) (i) and (ii),** which prohibits access to information on "defense and police operations" is so overbroad that any police or military officer is given the power to defeat the FOI law by merely claiming that such access will "unduly compromise or interfere with any legitimate military or law enforcement operation". Information requested by the media on the likes of the Atimonan massacre, or human rights violations during military operations is easily withheld because of this exception. It is our belief that the military and police activities subject to this exception should only be limited to "LEGITIMATE, ONGOING, TACTICAL POLICE AND MILITARY OPERATIONS".

Third, withholding information under **Section 7(c) (iii)** on the vague ground that it may deprive a *"person of a right to a fair trial"* is not just absurd but will render information on corruption issues inaccessible to the public. This reasoning has been frequently used by public officials to withhold information to avoid a 'trial by publicity', such as withholding information on the donors of Gen. Purisima's 'White House'. The rights of the accused are already protected under various laws and there is no reason to claim that a legitimate, public document can endanger the rights of the accused if made available to the public.

Fourth, while government has the right to protect the identity of confidential sources, as provided under **Section 7 (c) (iv),** withholding information given by these sources will make it easy for public officials to deny access merely on the ground that an information came from a confidential source. While government may hide the identity of the likes of Benhur Luy, information he revealed on the SAROs or the identity of legislators involved in the pork barrel scam must not be withheld from the public. This exception will surely be abused by public officials.

Fifth, we believe that **Section 7 (c)(v)** which allows techniques and procedures for law enforcement investigations or prosecutions' as an exception to the FOI law, must be deleted for being superfluous in line with Section 7 (c) (i) and (ii) which protects information in ongoing legitimate *military or police operations*. This broad and vague exception will also be used by the police to refuse access to information to the media, for example, on the reported torture of political prisoners, suspected criminals and Army draftees during training.

Sixth, while we recognize that drafts of decisions by judicial bodies may be excluded from access under **Section 7 (d)** said exception must not include the "EXECUTIVE" bodies or agencies, consistent with our position that policy-making of the Executive Department must

be transparent and participative. A draft proposal/decision by the Executive privatizing government hospitals or schools or realigning budgetary items through DAP, for example, cannot be withheld from the public, especially from the affected sectors and stakeholders and divest the public from participating in the decision-making process.

Seventh, while we agree with **Section 7 (e)** on executive session, we wish to qualify that the executive session, even those held by the Executive, must only pertain to instances mentioned in Section 7 (a), such as "1) The information directly relates to national security or defense and its revelation may cause grave damage to the national security or internal and external defense of the State; or 2) The information requested pertains to the foreign affairs of the Republic of the Philippines, when its revelation shall unduly weaken the negotiating position of the government in an ongoing bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations of the Philippines with one or more states".

Finally, **Section 7 (j)** will practically allow public officials to withhold any kind of information from the people and the media on the ground that the information "is of a nature that its premature disclosure would, ... likely frustrate the effective implementation of a proposed official action." In fact, this alone could endanger the entire FOI law because of its wide-ranging implications. It will be easy for a government functionary to claim that the release of information may "frustrate the implementation" of a law or policy.

The people demand a genuine FOI law, and those who wish to thwart this are on the defensive in light of the corruption, anomalies, human rights abuses and injustices previously covered up due to information restrictions.

It is incumbent upon all of us who support a genuine FOI law to press on and demand the greatest possible opportunity for the people to access public documents. We need to rally the people to persist in their clamor for an effective FOI law.

We reiterate our objection to the TWG-consolidated FOI bill in its present form and demand that the assailed exceptions be deleted by the Committee.

We may opt to withdraw our co-authorship if essentially the same weak and almost toothless FOI bill is passed by the Committee so that we can fully ventilate our objections and actively move for the deletion of the said critical/serious exceptions in the plenary.

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