

SUMMARY OF FREEDOM OF INFORMATION BILL

Section 101 – Legislative intent.

This section sets out the general intent of the bill, which is to enhance transparency in public service, establish a culture of openness and accountability in government, and encourage the disclosure of public information.

Section 102 – Principles and approaches.

This section states the basic principles behind the bill, namely: maximum disclosure of information, right to access own personal information, obligation to publish information, promotion of open government, limited exemption from disclosure, process to facilitate disclosure and protection given to officials and employees of the national government who are required to disclose public information upon request, through the legal procedures set out in this act. To promote accuracy of information being disclosed and to attain efficacy of the intent of this act, handling of information shall be centralized to the extent possible for consistency purposes and to minimize any misinformation. The Division of Public Information of the Office of the President plays a key role in this regard.

Section 103 – Scope and objectives.

This section provides the scope of disclosure of public information. Subsection (a) states that the right to access information is granted to citizens and persons defined in this act. Subsection (b) provides that citizens and persons are accorded the right to consultation and information and to be aware of government decisions affecting them subject to certain exceptions such as matters of national security and diplomatic relation with foreign nations.

Section 104 – Nondiscrimination.

This section prohibits discrimination.

Section 105 – Definition of terms.

The terms defined are Applicant, Division of Public Information, Information Officer, National Agency, Person, Personal Information, President, and Public Information.

Section 106 – Right of access to information.

This section establishes the general rule that every person has the right to access public information. It also provides that the procedures for access of information will be set out in a regulation. There will be forms and fees applicable. An applicant is entitled to be informed of the status of the application, and any application shall be acted upon expeditiously.

Section 107 – Appointment of Information Officers.

This section requires that within 6 months from the passage of this act or from the creation of a national agency, such agency shall designate one or two employees as Information Officers to handle application, requesting access to information. The highest management official will be responsible for making the appointment.

Section 108 – Allocation of resources.

This section mandates each national agency to allocate resources for the training of officials on the right to information.

Section 109 – Publication of information.

This section requires that each national agency shall publish information about its organization and functions, including its structure, functions and duties, list of entities under it, office location and applicable business hours.

Section 110 – Processing and granting a request to access public information.

This section sets out the minimum requirements for an application to access public information. The requirements include the particulars of the information being requested and the contact details of the requester. The application needs to indicate whether the information requested is in connection with litigation. This section also requires that before making any decision, the national agency concerned shall consider any representation or objection by a third party.

Section 111 – Transfer of request.

This section provides that a request for information could be transferred to another national agency that has the information if the national agency originally requested does not possess the relevant information.

Section 112 – Deferral or denial of request.

This section provides that an application may be deferred or denied on certain grounds. Among the permissible grounds for deferral or denial are withholding of information by provision of law, information prepared for presentation to congress until such time that presentation is made, public interest is against premature release of record, ongoing criminal investigation, and an executive privilege.

The applicant shall be notified of the decision to defer or deny within 30 days of the decision. The applicant aggrieved by the decision may request for a reconsideration of deferment or denial within 14 days of receipt of notice.

Section 113 – Partial grant of access.

This section provides for partial grant of access to public information if such information contains information that are exempt from access, or irrelevant or prejudicial to the public or a private person. In this case, the applicant may be given copy of a redacted information or may be allowed to view the information without giving a copy thereof.

Section 114 – Information that cannot be found or does not exist.

This section requires that a notification be given to the applicant in case the information requested cannot be found or does not exist. If later the information requested is found, then the applicant shall be notified and accorded access.

Section 115 – Repeat application.

This section provides that repeated request to access public information may be denied. This is intended to discourage or prevent vexatious or abusive requests.

Section 116 – Extension of time.

This section provides possible extension of time to process requests. The original period to process request is 30 days. This period could be extended up to another 30 days. In case the information requested is voluminous, the period could be modified. If a request to access information involves safeguard of life or liberty of a person, then the period to respond is within 48 hours. Failure to observe

the timeline or any extension will be considered as deemed refusal of application subject to a legal remedy of an appeal.

Section 117 – Action and acknowledgment of application.

This section provides that a national agency receiving an application for information shall acknowledge it within 5 working days and indicate the date of receipt as well as the information officer responsible for its handling.

This section also provides that the action taken on the request shall be communicated to the applicant, including whether the application is granted in full or in part, extension of time, details of the information, if the information is not held by the agency then such fact must be communicated, and whether the request was transferred to another national agency.

A person aggrieved by the decision may appeal to the highest management official. For the Executive, this official is the FSM President. For the FSM Congress and the Supreme Court, their respective rules and official practices shall govern the application to access information.

Section 118 – Fees.

This section provides that reasonable amount of fees may be collected upon application made. The fees shall be set out in a regulation. If the timeline required to take action is not observed or if the application is withdrawn, then the fee shall be refunded upon demand by the applicant.

Section 119 –

This section provides that access to information shall be in a form that is preferred by the applicant if this form is consistent with protecting the integrity of the information. If this form is unreasonable, detrimental to preservation of the information, or would infringe copyright, then the national agency shall inform the applicant and offer to assist using another form. If the offer to assist is refused, then the application will be rejected.

Where the applicant is sensorily disabled, then the national agency shall provide reasonable assistance as well.

Section 120 –

This section provides that information held by a state or municipality shall be the responsibilities of the state or municipality concerned. Their laws and ordinance will govern access.

Section 121 – Balance of interest.

This section provides that a national agency shall not refuse to indicate that it has the information requested or reject the application altogether unless the harm to be protected outweighs the public interest supporting the disclosure of information.

Factors favoring the disclosure include the promotion of the objective of this act, which is set out in section 103, prevention of the commission of a crime or other unlawful acts, prevention of miscarriage of justice and abuse of authority, enhancing public discussion and debate, accountability of public funds, public health and safety, and environmental protection.

Factors to be considered in deciding whether access is contrary to the public interest include, whether access to document causes prejudice to the public service or loss of confidence in the FSM Government,

violation of a treaty or undermining a vital foreign policy or diplomatic relation with other nations, or if access is likely to create misinterpretation or misinformation to the detriment of public service, national interest and security, and the application of the executive privilege.

Section 122 – Confidential information or third party.

This section provides that if an application to access information involves personal, commercial or confidential information of a third party, then the national agency shall take all reasonable steps to notify the third party concerned within 21 days after the receipt of the application. The notification gives the third party 21 days to make written representations or give written consent to the disclosure.

Section 123 – Representation and consent.

This section provides that a third party accorded a notification under section 122 may either provide a written representation to the information officer as to why the application should be refused, or give written consent to the disclosure.

A third party that has learned of the application from other sources may also provide a representation or consent as stated above.

Failure to provide a representation will be considered as waiver of the opportunity to raise an objection.

Section 124 – Decision and notice.

This section provides that if the application is granted, then it shall be communicated expeditiously to the applicant per section 117 and to the third party as referenced in section 122, and the decision shall also state to the aggrieved party the procedure for lodging an appeal. The period to appeal is 30 days from receipt of notice.

If the decision that involves a third party is one that grants an application, then access to information shall be given after the expiration of the period to appeal. But if no third party is involved, then access to information shall be immediately effective upon receipt of notification.

If the application is refused, then notice of this decision shall be provided expeditiously as well.

Section 125 – Personal information.

This section provides that every person has a right to ascertain whether a national agency has in its possession personal information of such person and the purpose of which information is held.

Section 126 – Request to access personal information; amendment of personal information.

This section provides that request to access personal information shall follow the same procedure as provided in sections 106 and 110 with respect to public information.

Section 127 – Granting and refusing application to access personal information.

This section provides that the provision of section 124 with respect to decision of the application and notice to the applicant shall also apply with respect to application to access personal information.

Section 128 – Privileged information.

This section provides that a national agency may refuse to give access where the information requested is covered by a legal privilege recognized by case law of the Federated States of Micronesia unless there is waiver of the privilege.

Section 129 – Confidential or third party information.

This section provides that access to information applied for may be refused if it constitutes actionable breach of confidence, or if the information was obtained in confidence from a third party and contains a trade secret or if its communication would seriously prejudice the commercial or financial interest of that third party, or if the information was obtained from another country or an international organization and to communicate it would seriously prejudice FSM relations with that country or international organization.

With respect to trade secrets, full or partial disclosure may be allowed if the public interest in the disclosure outweighs the possible harm or injury to the interest of a third party.

Section 130 – Matters of defense and national security.

This section provides that a national agency may refuse to disclose information where to do so would cause serious prejudice to the national defense or the national security arrangements or obligations of the FSM or endanger the life, health or safety of any individual.

Section 131 – Investigation, prosecution, tax and immigration control.

This section provides that a national agency may refuse to indicate whether it has information or to allow access to information if such access would cause serious prejudice to the prevention or detection of crime, apprehension or prosecution of an offender, administration or justice, assessment or collection of tax or duty, or operation of immigration control.

Section 132 – Commerce and economic interests.

This section provides that a national agency may refuse to indicate whether it has information or to allow access to information if such access would cause serious prejudice to the ability of the national government to manage the economy of the FSM, or if would cause serious prejudice to the legitimate commercial or financial interests of the FSM.

Section 133 –

This section provides that a national agency may refuse to indicate whether it has information or to allow access to information if such access would cause serious prejudice to the effective formulation or development of government policy, or seriously frustrate success of a policy by premature disclosure of policy.

Section 134 –

This section provides that certain information be exempt from disclosure, as follows: any historical, archaeological or anthropological resources, national monument and protected national heritage, endangered species of plant or animal, and other endangered living resource.

Section 135 – Appeal.

This section provides for an appeal mechanism. A decision refusing, partially granting, or granting with condition, an application to access information is appealable to the highest management official of a national agency. For the executive branch, the highest management official is the President of the Federated States of Micronesia; for the FSM Congress, the Speaker of the FSM Congress; and for the FSM Supreme Court, the Chief Justice of the Supreme Court. For public corporation, the chief executive officer, or its equivalent position, is considered as the highest management official. A decision of the

highest management official is considered a final decision of an agency that is appealable to the FSM Supreme Court.

Section 136 – Period to appeal.

Period to appeal is 30 days from receipt of notice of refusal or deemed refusal of an application. The highest management official has 30 days from filing of the appeal to render a decision.

Section 137 – Immunity.

This section provides that every public official or employee of the national government, acting reasonably and in good faith, shall be immune from administrative, civil or criminal action or liability, or any employment detriment, for any action taken in the exercise or performance any power, duty or responsibility under this act.

Section 138 – Regulation.

The President shall issue regulation promulgated according to title 17 of the FSM Code. Regulation shall provide for the implementing details deemed necessary by the President, including suitable guidelines for determining and balancing of public interest, considerations of public policy, extension of period to lodge an appeal, conduct of hearing, submission of written argument, and the issuance of a final decision.

Regulation shall also include provisions for adequate and effective remedies in cases of deferment or denial of application to access public information, and review on the effectiveness of the implementation of this act and its regulation. The review shall be conducted within two years of this act becoming a public law, and then every four years thereafter.

A BILL FOR AN ACT

To enact a Freedom of Information Act for the Federated States of Micronesia, to define public information, to establish basic principles that govern the disclosure of public information including the principles of transparency, openness and accountability in public service, to create a legal obligation to disclose public information upon request, to establish suitable procedures for the disclosure of public information, to provide remedies for violation of this act, to utilize the reserved title 44 of the Code of the Federated States of Micronesia (Annotated) by creating a new chapter 1 thereof entitled "Freedom of Information" that sets out the Freedom of Information Act of 2020, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 44 of the Code of the Federated States of
2 Micronesia is hereby amended by inserting new chapter 1 thereof
3 entitled: "Freedom of information".

4 Section 2. Title 44 of the Code of the Federated States of
5 Micronesia is hereby amended by inserting new section 101 under
6 chapter 1 thereof to read as follows:

7 "Section 101. Legislative intent. It is the intent of
8 Congress to enact the Freedom of Information Act in order to
9 enhance transparency in public service, establish a culture
10 of openness and accountability in government, and encourage
11 disclosure of public information towards contributing to a
12 healthy and meaningful public discourse."

13 Section 3. Title 44 of the Code of the Federated States of
14 Micronesia is hereby amended by inserting new section 102 under
15 chapter 1 thereof to read as follows:

1 "Section 102. The following principles and approaches shall
2 guide the implementation of this act:

3 (a) Maximum disclosure. Information held by public
4 bodies is presumed to be subject to disclosure except for
5 information involving national security and such information
6 that is in the national interest of the Federated States of
7 Micronesia to withhold for the time being.

8 (b) Right to access own personal information;

9 (c) Obligation to publish information;

10 (d) Promotion of open government;

11 (e) Limited scope of exemptions;

12 (f) Process to facilitate access;

13 (g) Excessive and unreasonable fees should not impede
14 access to public information; and

15 (h) Public servants and employees, and civilians who
16 are required by law to disclose information shall be accorded
17 adequate protection and immunity by law in order to reinforce
18 freedom of information in a manner that does not undermine
19 the intent of this act.

20 (i) To promote accuracy of information being disclosed
21 and to attain efficacy of the intent of this act, handling of
22 information shall be centralized to the extent possible for
23 consistency purposes and to minimize any misinformation. The
24 Division of Public Information of the Office of the President
25 plays a key role in this regard."

1 Section 4. Title 44 of the Code of the Federated States
2 of Micronesia is hereby amended by inserting new section 103
3 under chapter 1 thereof to read as follows:

4 "Section 103. Scope and objective.

5 (a) The objective of this act is to accord citizens and
6 persons under the act the right to access public information
7 on matters of public importance including information
8 concerning public governance, delivery of public services,
9 and public accountability of public officials entrusted with
10 government offices and duties.

11 (b) It is also the aim of this act to grant to citizens
12 and persons under the act the right to consultation and
13 information and to be aware of government decisions that
14 affect them or that are concerning public interest in
15 general, so long as such decisions do not involve information
16 directly relating to national security, sensitive information
17 concerning diplomatic relations of the Federated States of
18 Micronesia with other nations, criminal investigation and law
19 enforcement matters, private information and other
20 information that are protected by regulation.

21 (c) Access to public information is guaranteed in
22 accordance with the principles of transparency, openness and
23 accountability in public service. Each application to access
24 public information shall be diligently evaluated with a view
25 towards ensuring that no person is deprived of the right to

1 public information, and that any exception from access to
 2 public information is construed reasonably within the limits
 3 set out in this act."

4 Section 5. Title 44 of the Code of the Federated States of
 5 Micronesia is hereby amended by inserting new section 104 under
 6 chapter 1 thereof to read as follows:

7 "Section 104. No person shall be discriminated against with
 8 respect to access to public information on account of sex,
 9 race, ancestry, national origin or social status. The
 10 national government shall ensure that any risks of
 11 discrimination are adequately addressed and effectively
 12 minimized through the issuance of regulation that gives
 13 effect to the objectives of this act."

14 Section 6. Title 44 of the Code of the Federated States of
 15 Micronesia is hereby amended by inserting new section 105 under
 16 chapter 1 thereof to read as follows:

17 "Section 105. Unless the context otherwise requires, the
 18 terms used in this act shall have the following meanings:

19 (a) "Applicant" means a person who makes an application
 20 or a request to access public information defined in this
 21 act.

22 (b) "Division of Public Information" means the Division
 23 of Public Information under the Office of the President.

24 (c) "Information Officer" is the information officer so
 25 appointed under section 7(a) of this act.

1 (d) "National agency" means any branch, department,
2 office, agency or instrumentality of the national government
3 of the Federated States of Micronesia performing public
4 functions, including public corporations or legal entities,
5 boards and commissions created by act of the Congress of the
6 Federated States of Micronesia.

7 (e) "Person" means a natural or juridical person.
8 Unless restricted by its context, the term person refers to a
9 citizen of the Federated States of Micronesia or a resident
10 of any of the states of the Federated States of Micronesia.

11 (f) "Personal information" means information about an
12 identifiable individual, whether living or deceased, and
13 includes, but is not limited to:

14 (1) information relating to the race, gender, sex,
15 marital status, national, ethnic or social origin,
16 color, sexual orientation, age, physical or mental
17 health, well-being, disability, religion, conscience,
18 belief, culture, language and birth of an individual;

19 (2) information relating to the education or the
20 medical, criminal or employment history of an individual
21 or information relating to financial transactions in
22 which the individual has been involved;

23 (3) any identifying number, symbol or other
24 particular assigned to an individual;

25 (4) the address, fingerprints or blood type of an

1 individual;

2 (5) the personal opinions, views or preferences of
3 an individual;

4 (6) correspondence sent by an individual that is
5 implicitly or explicitly of a private or confidential
6 nature or further correspondence that would reveal the
7 contents of the original correspondence;

8 (7) the views or opinions of another individual
9 about the individual; and

10 (8) the name of an individual where it appears with
11 other personal information relating to the individual or
12 where the disclosure of the name itself would reveal
13 information about the individual.

14 (g) The term personal information does not include—

15 (1) information about an individual who has been
16 dead for more than 10 years;

17 (2) in a case where the individual holds or held
18 office as a director, or occupies or occupied a position
19 as a member of the staff, of a national agency, the name
20 of the individual or information relating to the office
21 or position or its functions or the terms upon and
22 subject to which the individual holds or held that
23 office or occupies or occupied that position or anything
24 written or recorded in any form by the individual in the
25 course of and for the purpose of the performance of the

1 functions aforesaid;

2 (3) in a case where an individual is or was
 3 providing a service for a national agency under a
 4 contract for services with the agency, the name of the
 5 individual or information relating to the service or the
 6 terms of the contract or anything written or recorded in
 7 any form by the individual in the course of and for the
 8 purposes of the provision of the service; or

9 (4) the professional views or opinions of the
 10 individual expressed in relation to official duties
 11 concerning the national government or its agencies,
 12 departments, and offices, or the performance of the
 13 functions of the national government;

14 (h) "President" means the president of the Federated
 15 States of Micronesia;

16 (i) "Public Information" means information regarding the
 17 operation of the national government, the delivery of public
 18 services, creation and enforcement of law and regulation,
 19 formulation of national policies, conduct and accountability
 20 of public officials and employees, where such information is
 21 collected, developed or held by a national agency as part of
 22 the official business of the national government and in the
 23 performance of its legal mandate as a national agency.
 24 Executive privilege and other privileges recognized by FSM
 25 case law do not fall under the definition of public

1 information."

2 Section 7. Title 44 of the Code of the Federated States of
3 Micronesia is hereby amended by inserting new section 106 under
4 chapter 1 thereof to read as follows:

5 "Section 106. Right of access to information.

6 (a) Every person shall have the right to access public
7 information from a national agency.

8 (b) The procedures to facilitate access of public
9 information and any restriction on the access on the basis of
10 national security, confidentiality not inconsistent with law,
11 or other reasons deemed legally acceptable or necessary,
12 shall be set out in a regulation.

13 (c) An application requesting access to public
14 information is not required that it must be supported by any
15 reason for as long as the application is not patently
16 malicious, or not clearly tainted with bad faith, or not with
17 malicious motive.

18 (d) Forms shall be developed and required with respect
19 to application to access public information.

20 (e) Fees may be imposed and the fee schedule shall be
21 specified in a regulation to recover the cost of review of
22 application, reproduction or making copies of document or
23 information.

24 (f) An applicant is entitled to be informed whether or
25 not a national agency holds the information requested. If the

1 national agency concerned has the information requested, then
2 the application shall be acted upon expeditiously. Right to
3 access public information under this act does not give any
4 person the authority to remove any document or information
5 from the national agency holding it."

6 Section 8. Title 44 of the Code of the Federated States of
7 Micronesia is hereby amended by inserting new section 107 under
8 chapter 1 thereof to read as follows:

9 "Section 107. Appointment of Information Officers.

10 (a) Every national agency shall, within six (6) months
11 from the effective date of this act, or within six (6) months
12 after being created by law whichever is later, designate one
13 or two new positions for employees to be appointed as
14 Information Officers to facilitate the expeditious handling
15 of application to access public information and to assist in
16 the review of application requesting access to public
17 information. The Information Officers appointed shall
18 cooperate with the Division of Public Information, the latter
19 being responsible for managing, coordinating and facilitating
20 the processes that need to take place whenever an application
21 to access public information is made and also the release of
22 any public information subject of an application. The
23 highest management official of each national agency shall
24 make the appointment. For public corporation, the chief
25 executive officer, or its equivalent position, shall make the

1 appointment. Where the appointed officers are unable to
2 discharge their functions, then a substitute shall be
3 designated in a timely manner.

4 (b) Information Officers shall, in addition to any
5 obligations specifically provided for under this Act, be
6 responsible for promoting an open, transparent and
7 responsible government, responsible and systematic management
8 of public records, and respect of the right to information
9 through timely processing and handling of application
10 requesting access to public information."

11 Section 9. Title 44 of the Code of the Federated States of
12 Micronesia is hereby amended by inserting new section 108 under
13 chapter 1 thereof to read as follows:

14 "Section 108. Allocation of resources. Every national agency
15 shall ensure the allocation of resources for the provision of
16 appropriate training for its officials on the right to
17 information and the effective implementation of this act.
18 There will be additional staffing and corresponding
19 provisions to support the activities required under this Act
20 including the designation of new positions regularly budgeted
21 for every national agency."

22 Section 10. Title 44 of the Code of the Federated States of
23 Micronesia is hereby amended by inserting new section 109 under
24 chapter 1 thereof to read as follows:

25 "Section 109. Publication of Information. A national agency

1 shall, within six (6) months of the effective date of this
2 act or its coming into operation as declared by the
3 President, whichever is later, cause to be published and
4 widely disseminated in an accessible form, an initial
5 statement of its organization and functions, including
6 description of its structure, functions and duties, list of
7 the entities falling under it including their location,
8 opening hours, and subject matters handled, directory of its
9 officers and employees, simple guide to its information-
10 keeping systems, and relevant details concerning any services
11 it provides to the public."

12 Section 11. Title 44 of the Code of the Federated States of
13 Micronesia is hereby amended by inserting new section 110 under
14 chapter 1 thereof to read as follows:

15 "Section 110. Processing and granting a request to access
16 public information.

17 (a) In order to access public information under this
18 act, a person shall make a request in writing or through
19 electronic means to a national agency specifying the
20 particulars of the information desired and in sufficient
21 detail as to enable the national agency to identify, with
22 reasonable effort, whether or not the national agency holds
23 that information.

24 (b) The application shall state, at a minimum-

25 (1) whether the information requested is in

1 connection with any litigation between the applicant and
2 the national government;

3 (2) postal address, email address, telephone number
4 or other contact details of the applicant; and

5 (3) if the application is made on behalf of a
6 person, to submit proof of the capacity in which the
7 applicant is making the application, to the reasonable
8 satisfaction of the national agency concerned.

9 (c) An application that is complete shall be granted
10 expeditiously within a period of 30 calendar days from its
11 receipt.

12 (d) An official who receives an application to access
13 public information may forward that application to the
14 relevant Information Officer of another national agency
15 concerned in accordance with section 111 for purposes of
16 complying with this section.

17 (e) A person who is unable to make a written application
18 because of illiteracy, disability, or a lack of access to
19 postal services may make an oral request in person, or by
20 telephone or other electronic device, and the official of the
21 national agency who receives the oral or electronic request
22 shall, subject to the provisions of regulation, reduce it to
23 writing, include his or her name and position within the
24 national agency and provide a copy thereof to the applicant.

25 (f) Before making a decision whether or not to grant

1 application to access public information, the national agency
2 concerned shall take into consideration any representation or
3 objection made by a third party under section 122 or section
4 123 of this act."

5 Section 12. Title 44 of the Code of the Federated States of
6 Micronesia is hereby amended by inserting new section 111 under
7 chapter 1 thereof to read as follows:

8 "Section 111. Transfer of request.

9 (a) Where the information requested by an applicant is
10 held by another national agency, not the agency to which an
11 application is originally lodged, such application may be
12 transferred to the national agency holding the information,
13 if the person transferring the request knows this fact.
14 Notification of the transfer shall be provided to the
15 applicant as expeditiously as possible. Notification to the
16 applicant shall specify-

17 (1) the date on which the transfer was done;

18 (2) the national agency to which the application
19 was transferred; and

20 (3) the contact person or contact information of
21 the national agency to which the application was
22 transferred.

23 (b) An application may be transferred to the Division of
24 Public Information.

25 (c) Where an application to access public information is

1 transferred under subsection (a) of this section, the time
2 limit set out in section 110 for responding to such
3 application shall begin to run from the date of the
4 transfer."

5 Section 13. Title 44 of the Code of the Federated States of
6 Micronesia is hereby amended by inserting new section 112 under
7 chapter 1 thereof to read as follows:

8 "Section 112. Deferral and denial of request.

9 (a) Grant of an application to access public information
10 may be deferred or denied completely in the following
11 situations:

12 (1) If withholding the publication of the
13 information within a particular period is required under
14 the provisions of any law, until the expiration of that
15 period;

16 (2) If the information was prepared for
17 presentation to the FSM Congress or to the FSM Supreme
18 Court or for the purpose of being made available to a
19 particular person or administrative office, until the
20 expiration of a reasonable period after its preparation
21 for it to be so presented or made available to the
22 person or administrative office;

23 (3) If the premature release of the record would be
24 contrary to the public interest, until the occurrence of
25 any event after which or the expiration of any period

1 beyond which, the release of information would not be
2 contrary to the public interest;

3 (4) Information requested involves an ongoing
4 criminal investigation; or

5 (5) Application is made to access information that
6 involves executive privilege or a private conversation
7 between the President and his cabinet members or
8 assistants.

9 (b) Where a national agency defers or denies access to
10 information in accordance with subsection (a) of this
11 section, it shall, within 30 days of its decision--

12 (1) Notify the applicant of that decision and
13 indicate to the applicant the period during which the
14 deferment will operate; and

15 (2) Notify the applicant that he or she may, within
16 14 days from receipt of notice, make representations to
17 the national agency as to why the denial or deferment
18 must be reconsidered.

19 (c) If an applicant makes representations pursuant to
20 paragraph (2) subsection (b) of this section, then the
21 national agency before which an application to access
22 information is pending, must, after due consideration of
23 those representations, grant the application if there are
24 reasonable grounds for believing that the applicant will
25 suffer substantial prejudice if access to information is

1 deferred or denied."

2 Section 14. Title 44 of the Code of the Federated States of
3 Micronesia is hereby amended by inserting new section 113 under
4 chapter 1 thereof to read as follows:

5 "Section 113. Partial grant of access.

6 (a) Where the information for which an application is
7 made contains information that is exempt from access or
8 matters that are not relevant or that are prejudicial to the
9 public in general or to a private person in particular, the
10 national agency may grant access to a copy of the record with
11 the exempt or irrelevant matters deleted from it.

12 (b) The national agency that granted partial access to
13 information under subsection (a) of this section may consider
14 giving a copy of redacted information or allow the applicant
15 viewing of the information during reasonable office hours
16 without any copy thereof being provided."

17 Section 15. Title 44 of the Code of the Federated States of
18 Micronesia is hereby amended by inserting new section 114 under
19 chapter 1 thereof to read as follows:

20 "Section 114. Information that cannot be found or does not
21 exist.

22 (a) If the information requested does not exist or could
23 not be found or retrieved despite diligent efforts, then the
24 national agency requested to provide access to information
25 shall notify the applicant of this fact.

1 (b) If, after notice is given, the public information in
 2 question is found, then notification shall be given to the
 3 applicant and access to the requested information shall be
 4 accorded to the applicant as expeditiously as possible."

5 Section 16. Title 44 of the Code of the Federated States of
 6 Micronesia is hereby amended by inserting new section 115 under
 7 chapter 1 thereof to read as follows:

8 "Section 115. Repeat application.

9 (a) Repeated request to access public information
 10 previously provided to the applicant or to the principal or
 11 the agent of the applicant may be denied. Notification to
 12 the applicant stating that it is repeated request shall be
 13 sufficient action taken on such request.

14 (b) Repetitive request that has no explanation or
 15 justification may be considered to be abusive or harassment
 16 and shall be subject to immediate rejection."

17 Section 17. Title 44 of the Code of the Federated States of
 18 Micronesia is hereby amended by inserting new section 116 under
 19 chapter 1 thereof to read as follows:

20 "Section 116. Time period and extension of time.

21 (a) A national agency requested to give access to public
 22 information under this act shall take action on such request
 23 as expeditiously as possible, but not later than the
 24 following:

25 (1) 30 working days after the date of receipt of a

1 complete application.

2 (2) in the case of an application that has been
3 transferred to another national agency, 20 working days
4 after the date of transfer.

5 (3) Where an application for information is
6 transferred according to section 111, such transfer must
7 be made 10 days from receipt of the application.

8 (b) Where an application to access public information
9 involves voluminous records or requires a search through a
10 large number of records, and where compliance within 30
11 calendar days would unreasonably interfere with the day-to-
12 day activities of the national agency, notification shall be
13 provided to the applicant concerning this fact, and where the
14 applicant agrees, make every effort to assist the applicant
15 with the modification of the application where possible.

16 (c) A national agency may extend the period for response
17 under subsection (a) of this section to another 30 days or a
18 longer period if the request is transferred to another
19 national agency to the Division of Public Information.

20 (d) Where an application to access public information
21 relates to information, which reasonably appears to be
22 necessary to safeguard the life or liberty of a person, a
23 response must be provided within 48 hours.

24 (e) Failure to comply with the period for response under
25 subsection (a) of this section and any period of extension

1 under subsection (c) shall be deemed to be a refusal of the
2 application. Deemed refusal of an application under this
3 section is appealable pursuant to section 135 of this act."

4 Section 18. Title 44 of the Code of the Federated States of
5 Micronesia is hereby amended by inserting new section 117 under
6 chapter 1 thereof to read as follows:

7 "Section 117. Action and acknowledgment of application.

8 (a) A national agency, which receives an application for
9 information shall provide the applicant, within 5 working
10 days, an acknowledgment of the application stating the date
11 on which the application was received and the Information
12 Officer of the national agency responsible for handling the
13 request.

14 (b) The response containing the decision of a national
15 agency to an application to access public information must be
16 by notice in writing by the head of national agency and
17 state-

18 (1) whether the request has been granted in full or
19 has been granted in part;

20 (2) the form in which the information will be
21 communicated and, if appropriate, details of when and
22 where the information can be accessed;

23 (3) in relation to any part of the request which
24 relates to information that is not held by the national
25 agency being requested, the fact that the body does not

1 hold the information and, if the request has been
2 transferred to another national agency, the fact of such
3 transfer;

4 (4) in relation to an extension of time, the fact
5 of such an extension and the reasons for it;

6 (5) in relation to any part of the request which is
7 not granted, the fact of such refusal, the exemption on
8 which the refusal is based and the reasons why the
9 exemption applies;

10 (6) in relation to any refusal to indicate whether
11 or not the national agency holds the relevant
12 information, the fact of such refusal, the exemption on
13 which the refusal is based and the reasons why the
14 exemption applies; and

15 (c) Any person aggrieved by a decision by the national
16 agency may lodge an appeal from such decision with the
17 highest management official of the national agency concerned.
18 With respect to a national agency within the executive
19 branch, the President of the Federated States of Micronesia
20 is considered as the highest management official. Procedures
21 and the details of the appeal shall be set out by regulation
22 referred to in section 138. The regulation shall provide for
23 the appeal procedures including conduct of hearing,
24 submission of written argument, and period to render
25 decision.

1 (d) Decisions and procedures concerning application to
2 access public information lodged with the Congress and the
3 Supreme Court of the Federated States of Micronesia shall be
4 governed by their respective rules of procedures and official
5 practices adopted by the respective branches of government."

6 Section 19. Title 44 of the Code of the Federated States of
7 Micronesia is hereby amended by inserting new section 118 under
8 chapter 1 thereof to read as follows:

9 "Section 118. Fees.

10 (a) Subject to regulation, reasonable amount of fees may
11 be collected upon application made to access information.
12 Access to information could be denied in the absence of proof
13 of payment.

14 (b) Fee is not required upon application in respect of
15 the following information-

16 (1) Public law and regulation of the national
17 government; and

18 (2) Such other information as may be provided by
19 regulation.

20 (c) Where a national agency fails to comply with the
21 time limits, and extension, set out in section 116, the fee
22 shall be refunded upon demand by the applicant.

23 (d) Where an application to access information is
24 withdrawn, the fee shall be refunded upon demand by the
25 applicant."

1 Section 20. Title 44 of the Code of the Federated States of
2 Micronesia is hereby amended by inserting new section 119 under
3 chapter 1 thereof to read as follows:

4 "Section 119.

5 (a) Where an applicant requires that access to public
6 information be granted in any of the forms set out in
7 subsection (b) of this section, a national agency shall,
8 subject to subsection (c) hereof, provide access in
9 accordance with that preference.

10 (b) An applicant may indicate the following preferences
11 as to the desired form of access-

12 (1) a true copy of the information in permanent or
13 other form;

14 (2) an opportunity to inspect the information,
15 where necessary, using equipment normally available to
16 the national agency;

17 (3) an opportunity to copy the information, using
18 the applicant's own equipment;

19 (4) a written transcript of the words contained in
20 audio or visual information, if such transcript is
21 feasible;

22 (5) a transcript of the information from shorthand
23 or other codified form;

24 (6) an inspection of works; and

25 (7) the taking of samples of materials if feasible

1 and if consistent with protecting the integrity of the
2 information.

3 (c) Where a national agency is of the view that granting
4 access to information in the form indicated by the applicant
5 would-

6 (1) unreasonably interfere with its effective
7 operation; or

8 (2) would be detrimental to the preservation of the
9 information; or

10 (3) would involve an infringement of the copyright
11 of a person other than the National Government, the
12 national agency shall:

13 (a) so inform the applicant, offer to assist
14 the applicant to identify another form in which the
15 information may be provided, and upon the
16 applicant's approval, proceed to make every effort
17 to so assist the applicant; or

18 (b) reject the application if the offer of
19 assistance is refused.

20 (4) Where access to information or part thereof is
21 required to be provided under this act and the applicant is
22 sensorily disabled, the relevant national agency shall
23 provide reasonable assistance to enable access to the
24 information including providing such assistance as may be
25 appropriate for inspection."

1 Section 21. Title 44 of the Code of the Federated States of
2 Micronesia is hereby amended by inserting new section 120 under
3 chapter 1 thereof to read as follows:

4 "Section 120. Information held by a state or municipality.
5 Information within state jurisdiction or under the custody of
6 a state agency or municipal bodies shall be responsibility of
7 the state government and municipality concerned. The
8 respective laws, regulation and ordinances of the state
9 government or municipality shall govern the access to such
10 information."

11 Section 22. Title 44 of the Code of the Federated States of
12 Micronesia is hereby amended by inserting new section 121 under
13 chapter 1 thereof to read as follows:

14 "Section 121. Balance of interest.

15 (a) A national agency shall not refuse to indicate
16 whether or not it holds information, or refuse to grant an
17 application to access public information, unless the harm to
18 be protected by withholding such indication or by refusing
19 access to information outweighs the public interest
20 supporting the disclosure of public information.

21 (b) Factors favoring access to information in the public
22 interest include whether access to information would achieve
23 any of the following-

24 (1) promotion of the objective of this act;

25 (2) prevention of the commission of offenses or

other unlawful acts;

(3) prevention of a miscarriage of justice, abuse of authority or neglect in the performance of an official duty;

(4) enhancing open discussion and public debate on matters of public importance;

(5) oversight and accountability on the use of public funds;

(6) promotion of public participation in the political process and government decision-making;

(7) public health or safety; and

(8) environmental protection.

(c) Factors which may be given due consideration in deciding whether access to information would, on balance, be contrary to the public interest, include-

(1) access to the document could result in prejudice to the public service, or cause a loss of confidence in the Government of the Federated States of Micronesia;

(2) access to information could violate treaty obligation or undermine vital foreign policy or diplomatic relations with other nation, or disadvantage the position of the Federated States of Micronesia in any ongoing or anticipated negotiation with any person, foreign nation or entity;

(3) access to the information may very likely
create misinterpretation or misinformation to the
detriment of public service, national interest, security
or safety; and

(4) The application of executive privilege with
respect to any official communication between the
President and his cabinet members and their assistants."

Section 23. Title 44 of the Code of the Federated States of
Micronesia is hereby amended by inserting new section 122 under
chapter 1 thereof to read as follows:

"Section 122. Confidential information of third party.

(a) A national agency must, when considering a
application to access information that might be a record of
personal information of another person or commercial and
confidential information of a third party, take all
reasonable steps to notify the third party, to whom the
record relates, of the application. The national agency must
inform a third party of the application-

(1) as soon as reasonably possible, but in any
event, within 21 days after that application is received
or transferred; and

(2) by the fastest means reasonably possible.

(b) The notification to a third party pursuant to
subsection (a) of this section must-

(1) state that an application to access public

information might constitute a record of personal
information or commercial and confidential information,
as the case may be;

(2) furnish the name of the applicant for the
information; and

(3) state that the third party may, within 21 days
after being so informed—

(a) make written representations to the
official of the national agency as to why the
application to access public information should be
refused; or

(b) give written consent for the disclosure of
the record to the applicant."

Section 24. Title 44 of the Code of the Federated States of
Micronesia is hereby amended by inserting new section 123 under
chapter 1 thereof to read as follows:

"Section 123. Representation and consent.

(a) A third party that is notified pursuant to section
122 of an application to access public information may,
within 21 days after being so notified—

(1) make written representations to the information
officer concerned why the application should be refused;
or

(2) give written consent for the disclosure of the
record to the applicant concerned.

1 (b) A third party that obtains knowledge about an
2 application to access public information other than being
3 informed under section 122 may react or take action in the
4 same manner as provided in subsection (a) of this section.

5 (c) Failure to make representation despite written
6 notification provided under section 122 shall constitute
7 waiver on the part of third party of the right or opportunity
8 to raise any objection to the application to access
9 information. Appeal to the highest management official as
10 provided in section 135 is not available in case of deemed
11 waiver to raise objection referred to in this subsection."

12 Section 25. Title 44 of the Code of the Federated States of
13 Micronesia is hereby amended by inserting new section 124 under
14 chapter 1 thereof to read as follows:

15 "Section 124. Decision and notice.

16 (a) If the decision on the application to access public
17 information is to grant the application, then notice of this
18 decision shall be provided expeditiously to the applicant
19 pursuant to section 117 and to the third party referred to in
20 section 122, and the decision shall state to the aggrieved
21 party the procedure for lodging the appeal including--

22 (1) adequate reasons for granting the application
23 and the provisions of this act relied upon; and

24 (2) that the third party may lodge an appeal from
25 the decision within 30 days from receipt of notice.

1 (b) The applicant shall be given access to information
2 pursuant to a decision by the national agency granting access
3 notwithstanding representations by a third party, after the
4 expiry of the applicable period for appeal, unless the appeal
5 is lodged within that period.

6 (c) Where no third party is involved, a decision
7 granting an application to access public information gives
8 applicant immediate access to information upon receipt of
9 notification of the decision.

10 (d) If the application is refused, then notice of this
11 decision shall be provided expeditiously to the applicant and
12 to third party, if any, and the decision shall state the
13 procedure for lodging the appeal including—

14 (1) adequate reasons for granting the application
15 and the provisions of this act relied upon; and

16 (2) that the third party may lodge an appeal in
17 accordance with section 135 of this title."

18 Section 26. Title 44 of the Code of the Federated States of
19 Micronesia is hereby amended by inserting new section 125 under
20 chapter 1 thereof to read as follows:

21 "Section 125. Personal information. Every person has a
22 right to ascertain whether a national agency has in its
23 possession personal information of such person, and the
24 purpose of which such personal information is held."

25 Section 27. Title 44 of the Code of the Federated States of

1 Micronesia is hereby amended by inserting new section 126 under
2 chapter 1 thereof to read as follows:

3 "Section 126. Request to access; amendment of personal
4 information. Any person may file a request to access
5 personal information in the same manner and procedure as
6 provided in section 106 and section 110. A person may also
7 request that personal information held be amended in order to
8 correct any error thereof. Nothing in this section takes
9 away the authority of the states to regulate or control
10 personal information pertaining to civil registry."

11 Section 28. Title 44 of the Code of the Federated States of
12 Micronesia is hereby amended by inserting new section 127 under
13 chapter 1 thereof to read as follows:

14 "Section 127. Granting or refusing application to access
15 personal information. The provision of section 124 shall
16 apply to making a decision to either grant or refuse access
17 to personal information. In the event an amendment is
18 granted with respect to personal information, appropriate
19 notation shall be made in the records indicating the
20 amendment made."

21 Section 29. Title 44 of the Code of the Federated States of
22 Micronesia is hereby amended by inserting new section 128 under
23 chapter 1 thereof to read as follows:

24 "Section 128. Privileged information. A national agency may
25 refuse to give access to information, where the information

1 is covered by a legal privilege recognized by case law of the
 2 Federated States of Micronesia, unless the person entitled to
 3 the privilege has waived it."

4 Section 30. Title 44 of the Code of the Federated States of
 5 Micronesia is hereby amended by inserting new section 129 under
 6 chapter 1 thereof to read as follows:

7 "Section 129. Confidential or third-party information.

8 (a) A national agency may refuse access to information
 9 if-

10 (1) the information was obtained from a third party
 11 and to communicate it would constitute an actionable
 12 breach of confidence;

13 (2) the information was obtained in confidence from
 14 a third party and-

15 (a) contains a trade secret;

16 (b) its communication would, or would be
 17 likely to, seriously prejudice the commercial or
 18 financial interests of that third party; or

19 (c) the information was obtained in confidence
 20 from another country or international organization,
 21 and to communicate it would, or would be likely to
 22 seriously prejudice relations of the Federated
 23 States of Micronesia with that country or
 24 international organization.

25 (b) With respect to trade secrets, disclosure may be

1 allowed, in full or partially, if the public interest in the
2 disclosure outweighs the possible harm or injury to the
3 interests of a third party."

4 Section 31. Title 44 of the Code of the Federated States of
5 Micronesia is hereby amended by inserting new section 130 under
6 chapter 1 thereof to read as follows:

7 "Section 130. Matters of defense and national security. A
8 national agency may refuse to indicate whether or not it
9 holds information, or refuse to grant access to information,
10 where to do so would, or would be likely to, cause serious
11 prejudice to national defense or national security
12 arrangements and obligations of the Federated States of
13 Micronesia, or endanger the life, health or safety of any
14 individual."

15 Section 32. Title 44 of the Code of the Federated States of
16 Micronesia is hereby amended by inserting new section 131 under
17 chapter 1 thereof to read as follows:

18 "Section 131. Investigation, prosecution, tax and immigration
19 control.

20 A national agency may refuse to indicate whether or not it
21 holds information, or refuse to grant access to information,
22 where to do so would, or would be likely to cause serious
23 prejudice to:

24 (a) the prevention or detection of crime;

25 (b) the apprehension or prosecution of an offender;

(c) the administration of justice;

(d) the assessment or collection of any tax or
duty; or

(e) the operation of immigration control."

Section 33. Title 44 of the Code of the Federated States of
Micronesia is hereby amended by inserting new section 132 under
chapter 1 thereof to read as follows:

"Section 132. Commerce and economic interests.

(a) A national agency may refuse to indicate whether or
not it holds information, or refuse to grant access to
information, where to do so would, or would be likely to,
cause serious prejudice to the ability of the national
government to manage the economy of the Federated States of
Micronesia.

(b) A national agency may refuse to indicate whether or
not it holds information, or refuse to grant access to
information, where to do so would, or would be likely to,
cause serious prejudice to the legitimate commercial or
financial interests of the Federated States of Micronesia."

Section 34. Title 44 of the Code of the Federated States of
Micronesia is hereby amended by inserting new section 133 under
chapter 1 thereof to read as follows:

"Section 133. (a) A national agency may refuse to indicate
whether or not it holds information, or refuse to grant
access to information, where to do so would, or would be

likely to-

(1) cause serious prejudice to the effective
formulation or development of government policy; or

(2) seriously frustrate the success of a policy, by
premature disclosure of such policy.

(b) Subsection (a) of this section does not apply to
facts, analyses of facts, technical data or statistical
information."

Section 35. Title 44 of the Code of the Federated States of
Micronesia is hereby amended by inserting new section 134 under
chapter 1 thereof to read as follows:

"Section 134. An information is exempt from disclosure if its
disclosure could damage, destroy or interfere with the
conservation of-

(a) any historical, archaeological or
anthropological resources;

(b) anything declared to be a national monument,
designated as protected national heritage or otherwise
protected under any relevant laws of the Federated
States of Micronesia;

(c) any species of plant or animal life so
designated or which is endangered, threatened or
otherwise vulnerable; or

(d) any other rare or endangered living resource."

Section 36. Title 44 of the Code of the Federated States of

1 Micronesia is hereby amended by inserting new section 135 under
2 chapter 1 thereof to read as follows:

3 "Section 135. Appeal.

4 (a) A decision refusing, partially granting, or granting
5 with condition, an application to access information is
6 appealable to the highest management official of a national
7 agency. For the executive branch, the highest management
8 official is the President of the Federated States of
9 Micronesia; for the FSM Congress, the Speaker of the FSM
10 Congress; and for the FSM Supreme Court, the Chief Justice of
11 the Supreme Court. For public corporation, the chief
12 executive officer, or its equivalent position, is considered
13 as the highest management official.

14 (b) The decision of the highest management official
15 shall be considered final as the agency action that is
16 appealable to the Supreme Court of the Federated States of
17 Micronesia by the aggrieved party.

18 (c) Failure to comply with the period for response to an
19 application to access information shall be deemed to be a
20 refusal of the application, unless it is corrected by the
21 national agency prior to an appeal being taken."

22 Section 37. Title 44 of the Code of the Federated States of
23 Micronesia is hereby amended by inserting new section 136 under
24 chapter 1 thereof to read as follows:

25 "Section 136. Period to appeal. The period to appeal is 30

1 days from receipt of notice of refusal or deemed refusal of
2 the application. The highest management official of a
3 national agency shall have 30 days from filing of appeal to
4 render a decision on the appeal."

5 Section 38. Title 44 of the Code of the Federated States of
6 Micronesia is hereby amended by inserting new section 137 under
7 chapter 1 thereof to read as follows:

8 "Section 137. Immunity. Every public official or employee of
9 the national government, acting reasonably and in good faith,
10 shall be immune from administrative, civil or criminal action
11 or liability, or any employment detriment, for any action
12 taken in the exercise or performance any power, duty or
13 responsibility under this act."

14 Section 39. Title 44 of the Code of the Federated States of
15 Micronesia is hereby amended by inserting new section 138 under
16 chapter 1 thereof to read as follows:

17 "Section 138. Regulation.

18 (a) The President shall issue regulation promulgated
19 according to title 17 of the Code of the Federated States of
20 Micronesia to implement this act. Regulation shall provide
21 for implementing details deemed necessary by the President.

22 (b) Regulation shall include provisions setting out
23 suitable guidelines for determining and balancing of public
24 interest, considerations of public policy, extension of
25 period to lodge an appeal, conduct of hearing, submission of

1 written argument, and the issuance of a final decision.

2 (c) Regulation promulgated shall include provisions for
3 adequate and effective remedies in cases of deferment or
4 denial of application to access public information.

5 (d) Regulation shall include provisions for the review
6 on the effectiveness of the implementation of this act and
7 its regulation. The review shall be conducted within two
8 years of this act becoming a public law, and then every four
9 years thereafter."

10 Section 40. Effective date. This act shall become
11 effective six months following either approval by the President
12 of the Federated States of Micronesia or its becoming law
13 without such approval.

14

15 Date: _____

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Floor Leader Florencio S. Harper

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(by request)

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