
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.**

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

14 Section 3. Title 44 of the Code of the Federated States of
15 Micronesia is hereby amended by inserting new section 102 under

1 chapter 1 thereof to read as follows:

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

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

10 (b) Right to access own personal information;

11 (c) Obligation to publish information;

12 (d) Promotion of open government;

13 (e) Limited scope of exemptions;

14 (f) Process to facilitate access;

15 (g) Excessive and unreasonable fees should not impede
16 access to public information; and

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

22 (i) To promote accuracy of information being
23 disclosed and to attain efficacy of the intent of this
24 act, handling of information shall be centralized to the
25 extent possible for consistency purposes and to minimize

1 any misinformation. The Division of Public Information
2 of the Office of the President plays a key role in this
3 regard.”

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

7 **“Section 103. Scope and objective.**

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

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

25 (c) Access to public information is guaranteed in

1 accordance with the principles of transparency, openness
2 and accountability in public service. Each application
3 to access public information shall be diligently
4 evaluated with a view towards ensuring that no person is
5 deprived of the right to public information, and that
6 any exception from access to public information is
7 construed reasonably within the limits set out in this
8 act.”

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

12 “Section 104. No person shall be discriminated against
13 with respect to access to public information on account
14 of sex, race, ancestry, national origin or social
15 status. The national government shall ensure that any
16 risks of discrimination are adequately addressed and
17 effectively minimized through the issuance of regulation
18 that gives effect to the objectives of this act.”

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

22 “Section 105. Unless the context otherwise requires,
23 the terms used in this act shall have the following
24 meanings:

25 (a) “Applicant” means a person who makes an

1 application or a request to access public information
2 defined in this act.

3 (b) "Division of Public Information" means the
4 Division of Public Information under the Office of the
5 President.

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

8 (d) "National agency" means any branch, department,
9 office, agency or instrumentality of the national
10 government of the Federated States of Micronesia
11 performing public functions, including public
12 corporations or legal entities, boards and commissions
13 created by act of the Congress of the Federated States
14 of Micronesia.

15 (e) "Person" means a natural or juridical person.
16 Unless restricted by its context, the term person refers
17 to a citizen of the Federated States of Micronesia or a
18 resident of any of the states of the Federated States of
19 Micronesia.

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

23 (1) information relating to the race, gender,
24 sex, marital status, national, ethnic or social origin,
25 color, sexual orientation, age, physical or mental

1 health, well-being, disability, religion, conscience,
2 belief, culture, language and birth of an individual;

3 (2) information relating to the education or the
4 medical, criminal or employment history of an individual
5 or information relating to financial transactions in
6 which the individual has been involved;

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

9 (4) the address, fingerprints or blood type of
10 an individual;

11 (5) the personal opinions, views or preferences
12 of an individual;

13 (6) correspondence sent by an individual that is
14 implicitly or explicitly of a private or confidential
15 nature or further correspondence that would reveal the
16 contents of the original correspondence;

17 (7) the views or opinions of another individual
18 about the individual; and

19 (8) the name of an individual where it appears
20 with other personal information relating to the
21 individual or where the disclosure of the name itself
22 would reveal information about the individual.

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

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

1 (2) in a case where the individual holds or held
2 office as a director, or occupies or occupied a position
3 as a member of the staff, of a national agency, the name
4 of the individual or information relating to the office
5 or position or its functions or the terms upon and
6 subject to which the individual holds or held that
7 office or occupies or occupied that position or anything
8 written or recorded in any form by the individual in the
9 course of and for the purpose of the performance of the
10 functions aforesaid;

11 (3) in a case where an individual is or was
12 providing a service for a national agency under a
13 contract for services with the agency, the name of the
14 individual or information relating to the service or the
15 terms of the contract or anything written or recorded in
16 any form by the individual in the course of and for the
17 purposes of the provision of the service; or

18 (4) the professional views or opinions of the
19 individual expressed in relation to official duties
20 concerning the national government or its agencies,
21 departments, and offices, or the performance of the
22 functions of the national government;

23 (h) "President" means the president of the Federated
24 States of Micronesia;

25 (i) "Public Information" means information regarding

1 the operation of the national government, the delivery
2 of public services, creation and enforcement of law and
3 regulation, formulation of national policies, conduct
4 and accountability of public officials and employees,
5 where such information is collected, developed or held
6 by a national agency as part of the official business of
7 the national government and in the performance of its
8 legal mandate as a national agency. Executive privilege
9 and other privileges recognized by FSM case law do not
10 fall under the definition of public information.”

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

14 **“Section 106. Right of access to information.**

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

17 (b) The procedures to facilitate access of public
18 information and any restriction on the access on the
19 basis of national security, confidentiality not
20 inconsistent with law, or other reasons deemed legally
21 acceptable or necessary, shall be set out in a
22 regulation.

23 (c) An application requesting access to public
24 information is not required that it must be supported by
25 any reason for as long as the application is not

1 patently malicious, or not clearly tainted with bad
2 faith, or not with malicious motive.

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

5 (e) Fees may be imposed and the fee schedule shall be
6 specified in a regulation to recover the cost of review
7 of application, reproduction or making copies of
8 document or information.

9 (f) An applicant is entitled to be informed whether
10 or not a national agency holds the information
11 requested. If the national agency concerned has the
12 information requested, then the application shall be
13 acted upon expeditiously. Right to access public
14 information under this act does not give any person the
15 authority to remove any document or information from the
16 national agency holding it."

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

20 **"Section 107. Appointment of Information Officers.**

21 (a) Every national agency shall, within six (6)
22 months from the effective date of this act, or within
23 six (6) months after being created by law whichever is
24 later, designate one or two new positions for employees
25 to be appointed as Information Officers to facilitate

1 the expeditious handling of application to access public
2 information and to assist in the review of application
3 requesting access to public information. The
4 Information Officers appointed shall cooperate with the
5 Division of Public Information, the latter being
6 responsible for managing, coordinating and facilitating
7 the processes that need to take place whenever an
8 application to access public information is made and
9 also the release of any public information subject of an
10 application. The highest management official of each
11 national agency shall make the appointment. For public
12 corporation, the chief executive officer, or its
13 equivalent position, shall make the appointment. Where
14 the appointed officers are unable to discharge their
15 functions, then a substitute shall be designated in a
16 timely manner.

17 (b) Information Officers shall, in addition to any
18 obligations specifically provided for under this Act, be
19 responsible for promoting an open, transparent and
20 responsible government, responsible and systematic
21 management of public records, and respect of the right
22 to information through timely processing and handling of
23 application requesting access to public information."

24 Section 9. Title 44 of the Code of the Federated States of
25 Micronesia is hereby amended by inserting new section 108 under

1 chapter 1 thereof to read as follows:

2 **"Section 108. Allocation of resources.** Every national
3 agency shall ensure the allocation of resources for the
4 provision of appropriate training for its officials on
5 the right to information and the effective
6 implementation of this act. There will be additional
7 staffing and corresponding provisions to support the
8 activities required under this Act including the
9 designation of new positions regularly budgeted for
10 every national agency."

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

14 **"Section 109. Publication of Information.**

15 A national agency shall, within six (6) months of the
16 effective date of this act or its coming into operation
17 as declared by the President, whichever is later, cause
18 to be published and widely disseminated in an accessible
19 form, an initial statement of its organization and
20 functions, including description of its structure,
21 functions and duties, list of the entities falling under
22 it including their location, opening hours, and subject
23 matters handled, directory of its officers and
24 employees, simple guide to its information-keeping
25 systems, and relevant details concerning any services it

1 provides to the public.”

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

5 “Section 110. Processing and granting a request to
6 access public information.

7 (a) In order to access public information under this
8 act, a person shall make a request in writing or through
9 electronic means to a national agency specifying the
10 particulars of the information desired and in sufficient
11 detail as to enable the national agency to identify,
12 with reasonable effort, whether or not the national
13 agency holds that information.

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

15 (1) whether the information requested is in
16 connection with any litigation between the applicant and
17 the national government;

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

20 (3) if the application is made on behalf of a
21 person, to submit proof of the capacity in which the
22 applicant is making the application, to the reasonable
23 satisfaction of the national agency concerned.

24 (c) An application that is complete shall be granted
25 expeditiously within a period of 30 calendar days from

1 its receipt.

2 (d) An official who receives an application to access
3 public information may forward that application to the
4 relevant Information Officer of another national agency
5 concerned in accordance with section 111 for purposes of
6 complying with this section.

7 (e) A person who is unable to make a written
8 application because of illiteracy, disability, or a lack
9 of access to postal services may make an oral request in
10 person, or by telephone or other electronic device, and
11 the official of the national agency who receives the
12 oral or electronic request shall, subject to the
13 provisions of regulation, reduce it to writing, include
14 his or her name and position within the national agency
15 and provide a copy thereof to the applicant.

16 (f) Before making a decision whether or not to grant
17 application to access public information, the national
18 agency concerned shall take into consideration any
19 representation or objection made by a third party under
20 section 122 or section 123 of this act."

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

24 "**Section 111. Transfer of request.**

25 (a) Where the information requested by an applicant

1 is held by another national agency, not the agency to
2 which an application is originally lodged, such
3 application may be transferred to the national agency
4 holding the information, if the person transferring the
5 request knows this fact. Notification of the transfer
6 shall be provided to the applicant as expeditiously as
7 possible. Notification to the applicant shall specify:

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

9 (2) the national agency to which the application
10 was transferred; and

11 (3) the contact person or contact information of
12 the national agency to which the application was
13 transferred.

14 (b) An application may be transferred to the Division
15 of Public Information.

16 (c) Where an application to access public information
17 is transferred under subsection (a) of this section, the
18 time limit set out in section 110 for responding to such
19 application shall begin to run from the date of the
20 transfer."

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

24 "Section 112. Deferral and denial of request.

25 (a) Grant of an application to access public

1 information may be deferred or denied completely in the
2 following situations:

3 (1) If withholding the publication of the
4 information within a particular period is required under
5 the provisions of any law, until the expiration of that
6 period;

7 (2) If the information was prepared for
8 presentation to the FSM Congress or to the FSM Supreme
9 Court or for the purpose of being made available to a
10 particular person or administrative office, until the
11 expiration of a reasonable period after its preparation
12 for it to be so presented or made available to the
13 person or administrative office;

14 (3) If the premature release of the record would
15 be contrary to the public interest, until the occurrence
16 of any event after which or the expiration of any period
17 beyond which, the release of information would not be
18 contrary to the public interest;

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

21 (5) Application is made to access information
22 that involves executive privilege or a private
23 conversation between the President and his cabinet
24 members or assistants.

25 (b) Where a national agency defers or denies access

1 to information in accordance with subsection (a) of this
2 section, it shall, within 30 days of its decision—

3 (1) Notify the applicant of that decision and
4 indicate to the applicant the period during which the
5 deferment will operate; and

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

10 (c) If an applicant makes representations pursuant to
11 paragraph (2) subsection (b) of this section, then the
12 national agency before which an application to access
13 information is pending, must, after due consideration of
14 those representations, grant the application if there
15 are reasonable grounds for believing that the applicant
16 will suffer substantial prejudice if access to
17 information is deferred or denied.”

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

21 **“Section 113. Partial grant of access.**

22 (a) Where the information for which an application is
23 made contains information that is exempt from access or
24 matters that are not relevant or that are prejudicial to
25 the public in general or to a private person in

1 particular, the national agency may grant access to a
2 copy of the record with the exempt or irrelevant matters
3 deleted from it.

4 (b) The national agency that granted partial access
5 to information under subsection (a) of this section may
6 consider giving a copy of redacted information or allow
7 the applicant viewing of the information during
8 reasonable office hours without any copy thereof being
9 provided.”

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

13 **“Section 114. Information that cannot be found or does**
14 **not exist.**

15 (a) If the information requested does not exist or
16 could not be found or retrieved despite diligent
17 efforts, then the national agency requested to provide
18 access to information shall notify the applicant of this
19 fact.

20 (b) If, after notice is given, the public information
21 in question is found, then notification shall be given
22 to the applicant and access to the requested information
23 shall be accorded to the applicant as expeditiously as
24 possible.”

25 Section 16. Title 44 of the Code of the Federated States of

1 Micronesia is hereby amended by inserting new section 115 under
2 chapter 1 thereof to read as follows:

3 **"Section 115. Repeat application.**

4 (a) Repeated request to access public information
5 previously provided to the applicant or to the principal
6 or the agent of the applicant may be denied.

7 Notification to the applicant stating that it is
8 repeated request shall be sufficient action taken on
9 such request.

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

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

16 **"Section 116. Time period and extension of time.**

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

21 (1) 30 working days after the date of receipt of
22 a complete application.

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

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

4 (b) Where an application to access public information
5 involves voluminous records or requires a search through
6 a large number of records, and where compliance within
7 30 calendar days would unreasonably interfere with the
8 day-to-day activities of the national agency,
9 notification shall be provided to the applicant
10 concerning this fact, and where the applicant agrees,
11 make every effort to assist the applicant with the
12 modification of the application where possible.

13 (c) A national agency may extend the period for
14 response under subsection (a) of this section to another
15 30 days or a longer period if the request is transferred
16 to another national agency to the Division of Public
17 Information.

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

22 (e) Failure to comply with the period for response
23 under subsection (a) of this section and any period of
24 extension under subsection (c) shall be deemed to be a
25 refusal of the application. Deemed refusal of an

1 application under this section is appealable pursuant to
2 section 135 of this act.”

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

6 **“Section 117. Action and acknowledgment of application.**

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

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

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

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

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

1 transferred to another national agency, the fact of such
2 transfer;

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

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

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

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

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

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

10 **“Section 118. Fees.**

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

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

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

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

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

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

1 applicant.”

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

5 **“Section 119.**

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

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

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

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

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

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

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

25 (6) an inspection of works; and

1 (7) the taking of samples of materials if
2 feasible and if consistent with protecting the integrity
3 of the information.

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

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

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

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

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

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

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

1 assistance as may be appropriate for inspection.”

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

5 “Section 120. Information held by a state or
6 municipality.

7 Information within state jurisdiction or under the
8 custody of a state agency or municipal bodies shall be
9 responsibility of the state government and municipality
10 concerned. The respective laws, regulation and
11 ordinances of the state government or municipality shall
12 govern the access to such information.”

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

16 “Section 121. Balance of interest.

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

24 (b) Factors favoring access to information in the
25 public interest include whether access to information

1 would achieve any of the following-

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

3 (2) prevention of the commission of offenses or
4 other unlawful acts;

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

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

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

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

14 (7) public health or safety; and

15 (8) environmental protection.

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

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

23 (2) access to information could violate treaty
24 obligation or undermine vital foreign policy or
25 diplomatic relations with other nation, or disadvantage

1 the position of the Federated States of Micronesia in
2 any ongoing or anticipated negotiation with any person,
3 foreign nation or entity;

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

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

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

14 **“Section 122. Confidential information of third party.**

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

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

25 (2) by the fastest means reasonably possible.

1 (b) The notification to a third party pursuant to
2 subsection (a) of this section must:

3 (1) state that an application to access public
4 information might constitute a record of personal
5 information or commercial and confidential information,
6 as the case may be;

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

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

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

14 (b) give written consent for the disclosure of
15 the record to the applicant.”

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

19 “Section 123. Representation and consent.

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

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

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

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

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

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

19 **"Section 124. Decision and notice.**

20 (a) If the decision on the application to access
21 public information is to grant the application, then
22 notice of this decision shall be provided expeditiously
23 to the applicant pursuant to section 117 and to the
24 third party referred to in section 122, and the decision
25 shall state to the aggrieved party the procedure for

1 lodging the appeal including:

2 (1) adequate reasons for granting the
3 application and the provisions of this act relied upon;
4 and

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

7 (b) The applicant shall be given access to
8 information pursuant to a decision by the national
9 agency granting access notwithstanding representations
10 by a third party, after the expiry of the applicable
11 period for appeal, unless the appeal is lodged within
12 that period.

13 (c) Where no third party is involved, a decision
14 granting an application to access public information
15 gives applicant immediate access to information upon
16 receipt of notification of the decision.

17 (d) If the application is refused, then notice of
18 this decision shall be provided expeditiously to the
19 applicant and to third party, if any, and the decision
20 shall state the procedure for lodging the appeal
21 including:

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

25 (2) that the third party may lodge an appeal in

1 accordance with section 135 of this title.”

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

5 **“Section 125. Personal information.**

6 Every person has a right to ascertain whether a national
7 agency has in its possession personal information of
8 such person, and the purpose of which such personal
9 information is held.”

10 Section 27. Title 44 of the Code of the Federated States of
11 Micronesia is hereby amended by inserting new section 126 under
12 chapter 1 thereof to read as follows:

13 **“Section 126. Request to access; amendment of personal**
14 **information.**

15 Any person may file a request to access personal
16 information in the same manner and procedure as provided
17 in section 106 and section 110. A person may also
18 request that personal information held be amended in
19 order to correct any error thereof. Nothing in this
20 section takes away the authority of the states to
21 regulate or control personal information pertaining to
22 civil registry.”

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

1 **"Section 127. Granting or refusing application to**
2 **access personal information.**

3 The provision of section 124 shall apply to making a
4 decision to either grant or refuse access to personal
5 information. In the event an amendment is granted with
6 respect to personal information, appropriate notation
7 shall be made in the records indicating the amendment
8 made."

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

12 **"Section 128. Privileged information.**

13 A national agency may refuse to give access to
14 information, where the information is covered by a legal
15 privilege recognized by case law of the Federated States
16 of Micronesia, unless the person entitled to the
17 privilege has waived it."

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

21 **"Section 129. Confidential or third-party information.**

22 (a) A national agency may refuse access to information
23 if:

24 (1) the information was obtained from a third
25 party and to communicate it would constitute an

1 actionable breach of confidence;

2 (2) the information was obtained in confidence
3 from a third party and:

4 (a) contains a trade secret;

5 (b) its communication would, or would be likely to,
6 seriously prejudice the commercial or financial
7 interests of that third party; or

8 (c) the information was obtained in confidence from
9 another country or international organization, and to
10 communicate it would, or would be likely to seriously
11 prejudice relations of the Federated States of
12 Micronesia with that country or international
13 organization.

14 (b) With respect to trade secrets, disclosure may be
15 allowed, in full or partially, if the public interest in
16 the disclosure outweighs the possible harm or injury to
17 the interests of a third party."

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

21 **"Section 130. Matters of defense and national security.**

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

1 national security arrangements and obligations of the
2 Federated States of Micronesia, or endanger the life,
3 health or safety of any individual.”

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

7 **“Section 131. Investigation, prosecution, tax and**
8 **immigration control.**

9 A national agency may refuse to indicate whether or not
10 it holds information, or refuse to grant access to
11 information, where to do so would, or would be likely to
12 cause serious prejudice to:

13 (a) the prevention or detection of crime;

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

15 (c) the administration of justice;

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

17 or

18 (e) the operation of immigration control.”

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

22 **“Section 132. Commerce and economic interests.**

23 (a) A national agency may refuse to indicate whether
24 or not it holds information, or refuse to grant access
25 to information, where to do so would, or would be likely

1 to, cause serious prejudice to the ability of the
2 national government to manage the economy of the
3 Federated States of Micronesia.

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

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

13 **“Section 133.**

14 (a) A national agency may refuse to indicate whether
15 or not it holds information, or refuse to grant access
16 to information, where to do so would, or would be likely
17 to:

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

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

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

25 Section 35. Title 44 of the Code of the Federated States of

1 Micronesia is hereby amended by inserting new section 134 under
2 chapter 1 thereof to read as follows:

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

6 (a) any historical, archaeological or anthropological
7 resources;

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

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

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

16 Section 36. Title 44 of the Code of the Federated States of
17 Micronesia is hereby amended by inserting new section 135 under
18 chapter 1 thereof to read as follows:

19 "Section 135. Appeal.

20 (a) A decision refusing, partially granting, or
21 granting with condition, an application to access
22 information is appealable to the highest management
23 official of a national agency. For the executive
24 branch, the highest management official is the President
25 of the Federated States of Micronesia; for the FSM

1 Congress, the Speaker of the FSM Congress; and for the
2 FSM Supreme Court, the Chief Justice of the Supreme
3 Court. For public corporation, the chief executive
4 officer, or its equivalent position, is considered as
5 the highest management official.

6 (b) The decision of the highest management official
7 shall be considered final as the agency action that is
8 appealable to the Supreme Court of the Federated States
9 of Micronesia by the aggrieved party.

10 (c) Failure to comply with the period for response to
11 an application to access information shall be deemed to
12 be a refusal of the application, unless it is corrected
13 by the national agency prior to an appeal being taken.”

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

17 **“Section 136. +.**

18 The period to appeal is 30 days from receipt of notice
19 of refusal or deemed refusal of the application. The
20 highest management official of a national agency shall
21 have 30 days from filing of appeal to render a decision
22 on the appeal.”

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

1 **"Section 137. Immunity.**

2 Every public official or employee of the national
3 government, acting reasonably and in good faith, shall
4 be immune from administrative, civil or criminal action
5 or liability, or any employment detriment, for any
6 action taken in the exercise or performance any power,
7 duty or responsibility under this act."

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

11 **"Section 138. Regulation.**

12 (a) The President shall issue regulation promulgated
13 according to title 17 of the Code of the Federated
14 States of Micronesia to implement this act. Regulation
15 shall provide for implementing details deemed necessary
16 by the President.

17 (b) Regulation shall include provisions setting out
18 suitable guidelines for determining and balancing of
19 public interest, considerations of public policy,
20 extension of period to lodge an appeal, conduct of
21 hearing, submission of written argument, and the
22 issuance of a final decision.

23 (c) Regulation promulgated shall include provisions
24 for adequate and effective remedies in cases of
25 deferment or denial of application to access public

