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A BILL FOR AN ACT

To further amend title 17 of the Code of the Federated States of Micronesia, as amended by Public Law No. 5-34, by adding a new chapter 2 concerning freedom of information, and for other purposes.

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

1 Section 1. Title 17 of the Code of the Federated States of  
2 Micronesia is hereby further amended by adding a new section 201 of  
3 chapter 2 to read as follows:

4 "Section 201. Definitions. For the purpose of this  
5 chapter:

6 (1) 'Adjudication' means agency process for the  
7 formulation of an order;

8 (2) 'Agency' means each office, department, agency,  
9 board, authority, commission and corporation of the  
10 National Government of the Federated States of Micronesia,  
11 but does not include the Congress or the Supreme Court;

12 (3) 'Agency action' includes the whole or a part of  
13 an agency rule, order, license, sanction, relief, or the  
14 equivalent or denial thereof, or failure to act;

15 (4) 'Agency proceeding' means an agency process as  
16 defined by subsections (1), (7), and (13) of this  
17 section;

18 (5) 'Ex parte communication' means an oral or  
19 written communication not on the public record with  
20 respect to which reasonable prior notice to all parties  
21 is not given, but it shall not include requests for status  
22 reports on any matter or proceeding covered by this  
23 chapter;

24 (6) 'License' includes the whole or a part of an  
25 agency permit, certificate, approval, registration,

1 charter, membership, statutory exemption or other form  
2 of permission;

3 (7) 'Licensing' includes agency process respecting  
4 the grant, renewal, denial, revocation, suspension,  
5 annulment, withdrawal, limitation, amendment, modifi-  
6 cation, or conditioning of a license;

7 (8) 'Order' means the whole or a part of a final  
8 disposition, whether affirmative, negative, injunctive,  
9 or declaratory in form, of an agency in a matter other  
10 than rule making but including licensing;

11 (9) 'Party' includes a person or agency named or  
12 admitted as a party, or properly seeking and entitled  
13 as of right to be admitted as a party, in an agency  
14 proceeding, and a person or agency admitted by an  
15 agency as a party for limited purposes;

16 (10) 'Person' includes an individual, partnership,  
17 corporation, association, or public or private organi-  
18 zation other than an agency;

19 (11) 'Relief' includes the whole or a part of an  
20 agency:

21 (a) Grant of money, assistance, license,  
22 authority, exemption, exception, privilege, or remedy;

23 (b) Recognition of a claim, right, immunity,  
24 privilege, exemption, or exception; or

25 (c) Taking of other action on the application

1           or petition of, and beneficial to, a person;

2           (12) 'Rule' means the whole or a part of an agency  
 3           statement of general or particular applicability and  
 4           future effect designed to implement, interpret, or  
 5           prescribe law or policy or describing the organization,  
 6           procedure, or practice requirements of an agency and  
 7           includes the approval or prescription for the future  
 8           of rates, wages, corporate or financial structures or  
 9           reorganizations thereof, prices, facilities, appliances,  
 10          services or allowances therefor or of valuations, costs,  
 11          or accounting, or practices bearing on any of the fore-  
 12          going;

13          (13) 'Rule making' means agency process for  
 14          formulating, amending, or repealing a rule; and

15          (14) 'Sanction' includes the whole or a part of  
 16          an agency:

17                 (a) Prohibition, requirement, limitation, or  
 18                 other condition affecting the freedom of a person;

19                 (b) Withholding of relief;

20                 (c) Imposition of penalty or fine;

21                 (d) Destruction, taking, seizure, or with-  
 22                 holding of property;

23                 (e) Assessment of damages, reimbursement,  
 24                 restitution, compensation, costs, charges, or fees;

25                 (f) Requirement, revocation, or suspension of

1           a license; or

2                           (g) Taking other compulsory or restrictive  
3           action."

4           Section 2. Title 17 of the Code of the Federated States of  
5 Micronesia is hereby further amended by adding a new section 202 of  
6 chapter 2 to read as follows:

7           "Section 202. Public information; Agency rules, opinions,  
8           orders, records, and proceedings.

9                           (1) Each agency shall make available to the public  
10           information as follows:

11                           (a) Each agency shall separately state and  
12           annually publish for the guidance of the public:

13                           (i) Descriptions of its central and field  
14           organization and the established places at which, the  
15           employees (and in the case of a uniformed service, the  
16           members) from whom, and the methods whereby, the public  
17           may obtain information, make submissions or requests, or  
18           obtain decisions;

19                           (ii) Statements of the general course and  
20           method by which its functions are channeled and deter-  
21           mined, including the nature and requirements of all  
22           formal and informal procedures available;

23                           (iii) Rules of procedure, descriptions of forms  
24           available or the places at which forms may be obtained,  
25           and instructions as to the scope and contents of all

1 papers, reports, or examinations;

2 (iv) Substantive rules of general appli-  
3 cability adopted as authorized by law, and statements of  
4 general policy or interpretations of general appli-  
5 cability formulated and adopted by the agency; and

6 (v) Each amendment, revision, or repeal  
7 of the foregoing.

8 Except to the extent that a person has actual and timely  
9 notice of the terms thereof, a person may not in any  
10 manner be required to resort to, or be adversely affected  
11 by, a matter required to be published and not so published.

12 For the purpose of this paragraph, matter reasonably  
13 available to the class of persons affected thereby  
14 is deemed published.

15 (b) Each agency, in accordance with published  
16 rules, shall make available for public inspection and  
17 copying the following: final opinions, including con-  
18 curring and dissenting opinions, as well as orders, made  
19 in the adjudication of cases; those statements of policy  
20 and interpretations which have been adopted by the agency  
21 and are not published; and administrative staff manuals  
22 and instructions to staff that affect a member of the public.

23 This requirement does not extend to materials which are  
24 promptly published and copies offered for sale. To the  
25 extent required to prevent a clearly unwarranted

1 invasion of personal privacy, an agency may delete  
2 identifying details when it makes available or publishes  
3 an opinion, statement of policy, interpretation, or staff  
4 manual or instruction. However, in each case the  
5 justification for the deletion shall be explained fully  
6 in writing. Each agency shall also maintain and make  
7 available for public inspection and copying current  
8 indexes providing identifying information for the public  
9 as to any matter issued, adopted, or promulgated after  
10 the effective date of this act, and required by this  
11 paragraph to be made available or published. Each  
12 agency shall promptly publish, quarterly or more fre-  
13 quently, and distribute (by sale or otherwise) copies  
14 of each index or supplements thereto unless it  
15 determines by published order that the publication  
16 would be unnecessary and impracticable, in which case  
17 the agency shall nonetheless provide copies of such  
18 index on request at a cost not to exceed the direct  
19 cost of duplication. A final order, opinion, statement  
20 of policy, interpretation, or staff manual or instruction  
21 that affects a member of the public may be relied on,  
22 used, or cited as precedent by an agency against a party  
23 other than an agency only if it has been indexed and  
24 either made available or published as provided by this  
25 paragraph, or the party has actual and timely notice of

1           the terms thereof.

2                   (c) Except with respect to the records made  
3           available under paragraphs (a) and (b) of this subsection,  
4           each agency, upon any request for records which reasonably  
5           describes such records and is made in accordance with  
6           published rules stating the time, place, fees (if any),  
7           and procedures to be followed, shall make the records  
8           promptly available to any person.

9                   (d)(i) In order to carry out the provisions  
10          of this section, each agency shall promulgate regulations,  
11          in accordance with chapter 1 of title 17 of the Code of  
12          the Federated States of Micronesia, specifying a uniform  
13          schedule of fees applicable to all constituent units of  
14          such agency. Such fees shall be limited to reasonable  
15          standard charges for document search and duplication  
16          and provide for recovery of only the direct costs of such  
17          search and duplication. Documents shall be furnished  
18          without charge or at a reduced charge where the agency  
19          determines that waiver or reduction of the fee is in  
20          the public interest because furnishing the information  
21          can be considered as primarily benefiting the general  
22          public.

23                   (ii) On complaint, the Trial Division of  
24          the Supreme Court of the Federated States of Micronesia in  
25          the State in which the complainant resides, or has his

1 principal place of business, or in which the agency records  
 2 are situated, or in Palikir, Pohnpei has jurisdiction to  
 3 enjoin the agency from withholding agency records and to  
 4 order the production of any agency records improperly  
 5 withheld from the complainant. In such a case the court  
 6 shall determine the matter de novo, and may examine  
 7 the contents of such agency records in camera to deter-  
 8 mine whether such records or any part thereof shall be  
 9 withheld under any of the exemptions set forth in sub-  
 10 section (2) of this section, and the burden is on the  
 11 agency to sustain its action.

12 (iii) Notwithstanding any other provision  
 13 of law, the defendant shall serve an answer or otherwise  
 14 plead to any complaint made under this subsection within  
 15 30 days after service upon the defendant of the pleading  
 16 in which such complaint is made, unless the court  
 17 otherwise directs for good cause shown.

18 (iv) Except as to cases the court considers  
 19 of greater importance, proceedings before the district  
 20 court, as authorized by this subsection, and appeals  
 21 therefrom, take precedence on the docket over all cases  
 22 and shall be assigned for hearing and trial or for  
 23 argument at the earliest practicable date and expedited  
 24 in every way.

25 (v) The court may assess against the



1 Federated States of Micronesia reasonable attorney fees and  
2 other litigation costs reasonably incurred in any case  
3 under this section in which the complainant has  
4 substantially prevailed.

5 (vi) Whenever the court orders the  
6 production of any agency records improperly withheld  
7 from the complainant and assesses against the Federated  
8 States of Micronesia reasonable attorney fees and other  
9 litigation costs, and the court additionally issues a  
10 written finding that the circumstances surrounding the  
11 withholding raise questions whether agency personnel acted  
12 arbitrarily or capriciously with respect to the with-  
13 holding, the Attorney General shall promptly initiate a  
14 proceeding to determine whether disciplinary action is  
15 warranted against the officer or employee who was  
16 primarily responsible for the withholding. The Attorney  
17 General, after investigation and consideration of the  
18 evidence submitted, shall submit his findings and  
19 recommendations to the administrative authority of the  
20 agency concerned and shall send copies of the findings  
21 and recommendations to the officer or employee or his  
22 representative. The administrative authority shall take  
23 the corrective action that the Attorney General  
24 recommends. If the court orders the production of  
25 records improperly withheld from the complainant by the

1 Office of the Attorney General and assesses against  
2 the Federated States of Micronesia reasonable attorney  
3 fees and other litigation costs, and the court additionally  
4 issues a written finding that the circumstances  
5 surrounding the withholding raise questions whether Office  
6 of the Attorney General personnel acted arbitrarily  
7 and capriciously with respect to the withholding,  
8 the President shall promptly appoint a special counsel  
9 who shall have the same powers and responsibilities with  
10 respect to the Office of the Attorney General that the  
11 Office of the Attorney General has with respect to other  
12 agencies in these circumstances.

13 (vii) In the event of noncompliance with the  
14 order of the court, the district court may punish for  
15 contempt the responsible employee, and in the case of a  
16 uniformed service, the responsible member.

17 (e) Each agency having more than one member  
18 which makes decisions by vote of agency members shall  
19 maintain and make available for public inspection a  
20 record of the final votes of each member in every agency  
21 proceeding.

22 (f)(1) Each agency, upon any request for records  
23 made under subsections (1)(a), (b), or (c) of this section  
24 shall determine within 10 days (excepting Saturdays, Sun-  
25 days, and legal public holidays) after the receipt of any

1 such request whether to comply with such request and shall  
2 immediately notify the person making such request of such  
3 determination and the reasons therefore, and of the right  
4 of such person to appeal to the head of the agency any  
5 adverse determination; and make a determination with  
6 respect to any appeal within 20 days (excepting Saturdays,  
7 Sundays, and legal public holidays) after the receipt  
8 of such appeal. If on appeal the denial of the request  
9 for records is in whole or in part upheld, the agency  
10 shall notify the person making such request of the  
11 provisions for judicial review of that determination  
12 under subsection (1)(d) of this section.

13 (ii) In unusual circumstances as specified  
14 in this subparagraph, the time limits prescribed in  
15 subsection (1)(f) of this section may be extended by  
16 written notice to the person making such request setting  
17 forth the reasons for such extension and the date on  
18 which a determination is expected to be dispatched.  
19 No such notice shall specify a date that would result  
20 in an extension for more than 10 working days. As  
21 used in this subparagraph, 'unusual circumstances'  
22 means, but only to the extent reasonably necessary to  
23 the proper processing of the particular request the need  
24 to search for and collect the requested records from  
25 field facilities or other establishments that are

1 separate from the office processing the request; the  
2 need to search for, collect, and appropriately examine  
3 a voluminous amount of separate and distinct records  
4 which are demanded in a single request; or the need for  
5 consultation, which shall be conducted with all  
6 practicable speed, with another agency having a  
7 substantial interest in the determination of the request  
8 or among two or more components of the agency having  
9 substantial subject-matter interest therein.

10 (iii) Any person making a request to any  
11 agency for records under subsections (1)(a), (b), or  
12 (c) of this section shall be deemed to have exhausted his  
13 administrative remedies with respect to such request if  
14 the agency fails to comply with the applicable time limit  
15 provisions of this paragraph. If the Government can show  
16 exceptional circumstances exist and that the agency is  
17 exercising due diligence in responding to the request,  
18 the court may retain jurisdiction and allow the agency  
19 additional time to complete its review of the records.  
20 Upon any determination by an agency to comply with a  
21 request for records, the records shall be made promptly  
22 available to such person making such request. Any  
23 notification of denial of any request for records under  
24 this subsection shall set forth the names and titles or  
25 positions of each person responsible for the denial of

1 such request.

2 (2) This section does not apply to matters that are:

3 (a) Specifically authorized under criteria  
4 established by an executive order to be kept secret in  
5 the interest of national defense or foreign policy and  
6 are in fact properly classified pursuant to such  
7 executive order;

8 (b) Related solely to the internal personnel  
9 rules and practices of an agency;

10 (c) Specifically exempted from disclosure  
11 by statute; PROVIDED that such statute requires that the  
12 matters be withheld from the public in such a manner  
13 as to leave no discretion on the issue, or establishes  
14 particular criteria for withholding or refers to  
15 particular types of matters to be withheld;

16 (d) Trade secrets and commercial or financial  
17 information obtained from a person and privileged or  
18 confidential;

19 (e) Inter-agency or intra-agency memorandums  
20 or letters which would not be available by law to a  
21 party other than an agency in litigation with the agency;

22 (f) Personnel and medical files and similar  
23 files the disclosure of which would constitute a clearly  
24 unwarranted invasion of personal privacy;

25 (g) Investigatory records compiled for law

1 enforcement purposes, but only to the extent that the  
2 production of such records would:

3 (i) Interfere with enforcement proceedings;  
4 (ii) Deprive a person of a right to a fair  
5 trial or an impartial adjudication;

6 (iii) Constitute an unwarranted invasion  
7 of personal privacy;

8 (iv) Disclose the identity of a confidential  
9 source and, in the case of a record compiled by a criminal  
10 law enforcement authority in the course of a criminal  
11 investigation, or by an agency conducting a lawful  
12 national security intelligence investigation, confidential  
13 information furnished only by the confidential source;

14 (v) Disclose investigative techniques and  
15 procedures; or

16 (vi) Endanger the life or physical safety  
17 of law enforcement personnel;

18 (h) Contained in or related to examination,  
19 operating, or condition reports prepared by, on behalf  
20 of, or for the use of an agency responsible for the  
21 regulation or supervision of financial institutions; or

22 (i) Geological or geophysical information and  
23 data, including maps, concerning wells.

24 Any reasonably segregable portion of a record shall be  
25 provided to any person requesting such record

1 after deletion of the portions which are exempt  
2 under this subsection.

3 (3) This section does not authorize withholding of  
4 information or limit the availability of records to the  
5 public, except as specifically stated in this section.  
6 This section is not authority to withhold information  
7 from Congress.

8 (4) On or before March 1 of each calendar year,  
9 each agency shall submit a report covering the preceding  
10 calendar year to the Speaker of the Congress of the  
11 Federated States of Micronesia for referral to the  
12 appropriate committees of the Congress. The report shall  
13 include:

14 (a) The number of determinations made by such  
15 agency not to comply with requests for records made to such  
16 agency under subsection (1) of this section and the reasons  
17 for each such determination;

18 (b) The number of appeals made by persons  
19 under subsection (1)(f) of this section, the result of  
20 such appeals, and the reason for the action upon each  
21 appeal that results in a denial of information;

22 (c) The names and titles or positions of each  
23 person responsible for the denial of records requested  
24 under this section, and the number of instances of  
25 participation for each;

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(d) The results of each proceeding conducted pursuant to subsection (1)(d)(vi) of this section, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by such agency regarding this section;

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(g) Such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (1)(d)(v), (vi), and (vii) of this section.

Such report shall also include a description of the efforts undertaken by the Office of the Attorney General to encourage agency compliance with this section."

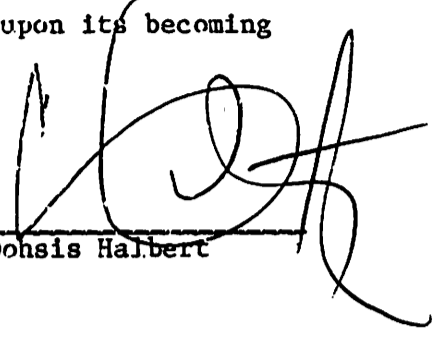


1 Section 3. This act shall become law upon approval by the  
2 President of the Federated States of Micronesia or upon its becoming  
3 law without such approval.

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Date: ✓

Introduced by:

  
Dohsis Halbert