

ORDINANCE NO. 2021-014
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AN ORDINANCE OPERATIONALIZING FREEDOM OF INFORMATION IN THE CITY
GOVERNMENT OF NAGA, INTEGRATING A COMPLAINTS MECHANISM UNIT AND
PROVIDING GUIDELINES THEREFOR:-

Authored by: Hon. Jessie R. Albeus, DMD

Explanatory Notes

One of the keys to the City Government's attainment in being recognized as a Center of Good Governance counts on its hard work in being transparent to the public including the speedy releasing of its transactions and policies for Nagueños peruse and using technology to add endeavours for the public by pioneering the Citizens Charter and an advocate of participative governance in partnership with the Naga City People's Council (NCPC).

To quote then Rep. Maria Leonor G. Robredo and Rep. Henedina R. Abad in their House Bill No. 3237 entitled An Act to strengthen the rights of Citizens to information held by the Government, the Freedom of Information Bill will serve this purpose: It will lay the groundwork for producing information for public consumption. It will allow our people to gain access to data from official acts and decisions to government fiscal transactions without sacrificing government's legitimate rights to protect certain types of information such as those affecting national security." And so, with this City Ordinance.

"This is what we seek to achieve: for Nagueños to have a mechanism on how to request for information and file any complaint. And one of the ways is for the City Government to be transparent in its dealings - either in fiscal transactions or policies - government should be open to provide the public with information that will allow them to participate and contribute in governance.

In compliance with the Presidential Communications Operations Office (PCOO) and the Department of Interior and Local Government (DILG) issued a Joint Memorandum Circular dated 9 October 2018 reiterating EO 2 to the local government units: Joint Memorandum Circular (JMC) 2018-01 or reiteration of Executive Order No. 2, Series of 2016 that encourages LGUs to enact an Ordinance in support of Freedom of Information (FOI) and operationalize the same in the LGU level the constitutional provisions on public disclosure of state transactions involving public interest and the right of the people to information on matters of public concern. *The very main purpose of the Joint Memorandum circular is to encourage provinces, cities and municipalities to enact an ordinance in support of the FOI.*

Being consistent with the Mission-Vision of the City by 2030, that the City Government of Naga shall be recognized model of good governance and responsible citizenry - driven by a shared development, direction crafted, implemented and continually improved in an inclusive manners, sustained by a citizenry that asserts their rights and accepts their roles and responsibilities in nation building.

On this note, the immediate passage of this Ordinance is sincerely sought to augment the City's efforts in creating a more

transparent and accountable government, to empower Nagueños and it is in their empowerment that governance towards a progressive society can be achieved with the Naga City People's Council (NCPC).

Thus, this Ordinance:

AN ORDINANCE OPERATIONALIZING FREEDOM OF INFORMATION IN THE CITY GOVERNMENT OF NAGA, INTEGRATING A COMPLAINTS MECHANISM UNIT AND PROVIDING GUIDELINES THEREFOR:-

WHEREAS, on 23 July 2016, President Rodrigo R. Duterte issued Executive Order No. 2 entitled "Operationalizing in the Executive Branch the People's Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor";

WHEREAS, the said Executive Order is limited in scope to government offices under the Executive Branch, and merely encourages local government units to observe and be guided accordingly;

WHEREAS, the PCOO-DILG Joint Memorandum Circular (JMC) 2018-01 or reiteration of Executive Order No. 2, S. 2016: encourages LGUs to enact an Ordinance in support of Freedom of Information and operationalize the same in the LGU level the constitutional provisions on public disclosure of state transactions involving public interest and the right of the people to information on matters of public concern.

WHEREAS, recognizing the importance of the people's right to government information, and guided by the President's Executive Order, the City Government of Naga deems it necessary to provide a local mechanism for its offices where the people's right to information is respected and upheld, subject to exceptions provided by law and jurisprudence;

WHEREAS, Republic Act (RA) No. 11292 or the Seal of Good Local Governance (SGLG) Act, Department of the Interior and the Local Government (DILG)-SGLG will be "an award, incentive, honor and recognition-based program for all LGUs, and is a continuing commitment for LGUs to continually progress and improve their performance.", as this will encourage local governments to perform better and efficiently deliver basic services to their constituents.

NOW, THEREFORE, Be it ordained that:

SECTION 1. Title. This ordinance shall be known as the **"FOI Ordinance of the City Government of Naga."**

SECTION 2. Definition of Terms. For the purpose of this Ordinance, the following terms shall mean:

- (a) **"Information"** shall mean any records, documents, papers, reports, letters, contracts, minutes and transcripts of official meetings, maps, books, photographs, data, research materials, films, sound and video recording, magnetic or other tapes, electronic data, computer stored

data, any other like or similar data or materials recorded, stored or archived in whatever format, whether offline or online, which are made, received, or kept in or under the control and custody of any government office under the City Government of Naga pursuant to law, ordinance, executive order, and rules and regulations or in connection with the performance or transaction of official business by any government office under the City Government of Naga.

(b) **"Official record"** shall refer to information produced or received by a public officer or employee, or by a government office in an official capacity or pursuant to a public function or duty.

b.1. Local Government Records - records that refers to accounts in any form, in whole or in part, created or received, whether before or after the effectivity of this Ordinance by LGU-Naga in the conduct of its affairs.

b.2. Local Government Records containing data that are important from economic, social, political, legal, national security, scientific, cultural, technological or other aspects, which are indispensable for the research of historical past, for becoming acquainted with and understanding it, and/or for the continuous fulfillment of public duties and the realization of citizens' rights, which are not or only partially available from other sources.

b.3. Local Government Records - records that refers to information, whether in its original form or otherwise, including documents, signatures, seals, texts, images, sounds, speeches, or data compiled, recorded, or stored, as the case may be.

b.4. Local Government Records that refers to records containing information essential for: emergency operation during a disaster, the resumption and/or continuation of operations; the re-establishment of the legal, financial, and/or functional status of the organization; and the determination of the rights and obligations of individuals and corporate bodies with respect to the organization.

(c) **"Public record"** shall include information required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available by a government office.

c.1. Public Records refers to papers, periodicals, books or other items, articles or materials, whether in the form of electronic, audio-visual or print, which by their nature and characteristics have enduring

value, that have been selected for permanent preservation;

c.2. Public Records those that were presented to or belonging to the Sangguniang Panlungsod or any of its Committees.

c.3. Public Records refers to information, whether in its original form or otherwise, including documents, signatures, seals, texts, images, sounds, speeches, or data compiled, recorded, or stored, as the case may be.

c.4. Public Records refers to documents of informational matter produced for public distribution or access regardless of format, medium, source or copyright, originating in or produced with the imprint of, by the authority of or at the total or partial expense of LGU-Naga.

C.5. Public Records or documents that are: Rules of Court (Sec. 19, Rule 132)

(c.5.a) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals and public officers; and

(c.5.b) documents acknowledge before a notary public except last wills and testaments;

SECTION 3. Coverage. This order shall cover all Offices under the City Government of Naga.

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SECTION 4. Access to Information. Every Filipino resident of Naga shall have access to information, official records, public records and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, in the custody of the City Government of Naga in general or any of its Offices in particular. Such information, official records, public records and documents/papers shall be a legal responsibility of government, protect the rights of citizens and provide citizens with a means of monitoring government programs and measuring the performance of public officials. *[Signature]*

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The information, official records, public records and documents/papers specifically those that reflects the historical development of the government and of the citizens are valuable materials too that a ready access to vital records must be systematically managed.

SECTION 5. Mandatory Disclosure of Information, (a) in fulfillment of Article 11, Section 17 of the Constitution and (b) subject to the provisions contained in Sections 4 and 5 of this Ordinance, all public Officials of the City Government of Naga have the obligation to file, provide and make available for scrutiny their

Statements of Assets, Liabilities and Net Worth (SALN) in accordance with existing laws, rules and regulations, and in the spirit and letter of this Ordinance.

SECTION 6. Application and Interpretation. There shall be a legal presumption in favor of access to information, public records and official records. No request for information shall be denied unless it clearly falls under any of the exceptions in the inventory of FOI exceptions.

The determination of the applicability of any of the exceptions to the request shall be the responsibility of the Head of the Office, which is in custody or control of the information, public record or official record, or the responsible Officer duly designated by him in writing.

In making such determination, the Head of the Office or his designated Officer shall exercise reasonable diligence to ensure that no exception shall be used or availed of to deny any request for information or access to public records, or official records if the denial is intended primarily and purposely to cover up a crime, wrongdoing, graft or corruption.

SECTION 7. Protection of Privacy. While providing access to information, public records, and official records, responsible officials shall afford full protection to the right to privacy of the individual, pursuant to the Data Privacy Act of 2012 (Republic Act No. 10173), as follows:

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- (a) Each government office shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject matter of the request and its disclosure is permissible under this ordinance or existing law, rules or regulations;
 - (b) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information, which unduly exposes the individual, whose personal information is requested, to vilification, harassment or any other wrongful acts;
 - (c) Any employee, official or director of a government office who has access, authorized or unauthorized, to personal information in the custody of the office, must not disclose that information except when authorized under this ordinance or pursuant to existing laws, rules or regulation.
- [Signature]*

[Signature]

SECTION 8. Procedure of Access. The Office of the City Administrator shall be designated as the FOI Coordinating Office and integrating Complaints Mechanism Unit in the City of Naga (and be included as one of the City's Citizens Charter -Frontline Services) and each Office/Department under the City Government of Naga, will designate a Deputy Information/Receiving Officer who will coordinate with the Office of the City Administrator and provide the requested records from their Office. The following procedure shall govern the

filing and processing of request for access to information OR to simply gain insight to all or portion of information and records in the Official safekeeping and possession of the City Government of Naga:

For the Legislative Branch of the City, the Office of the Vice Mayor shall be the coordinating Office.

- (a) Any person who requests access to information shall submit a written request to the Office of the City Administrator and will accomplish the FOI Request Form. The Office of the City Administrator will forward the same request to the government Office/Department concerned or endorse the person requesting. The request shall state the name and contact information of the requesting party, provide valid proof of his identification or authorization, reasonably describe the information requested, and the reason for, or purpose of, the request for information: *Provided*, that no request shall be denied or refused acceptance unless the reason for the request is contrary to law, existing rules and regulations or it is one of the exceptions.
- (b) A person who is unable, because of illiteracy or due to being a person with disability, to make a written request for information may make an oral request and the public official who receives the oral request shall reduce it to writing and include his name and position within the government agency and give a copy thereof to the person who made the request.
- (c) The request shall be stamped at the Office of the City Administrator and at the concerned government Office/Department through the Deputy Information/Receiving Officer, indicating the date and time of receipt and the name, rank, title and position of the Deputy Information/Receiving Officer with the corresponding signature and a copy thereof furnished to the requesting party. Each government Office/Department shall establish a system to trace the status of all requests for information received by it.
- (d) The Office of the City Administrator with coordination to the concerned government Office/Department shall respond to a request fully compliant with requirements of sub-section (a) hereof as soon as practicable but not exceeding five (5) working days from the receipt thereof.
- (e) The period to respond may be extended whenever the information requested requires extensive search of the government office's records facilities, examination of voluminous records, the occurrence of fortuitous cases or other analogous cases. The Office of the City Administrator shall notify the person making the request of the extension, setting forth the reasons for such extension. In no case shall the extension go beyond five (5) working days unless exceptional circumstances warrant a longer period.

- (f) Once a decision is made to grant the request, the person making the request shall be notified of such decision and directed to pay any applicable fees.
- (g) With the integration of the Complaints Mechanism Unit at the Office of the City Administrator, Complaints to any Employee/Official/Service in the City of Naga shall be filed and be addressed and coursed through by the Office of the City of the Administrator. This initiative will enable the Office of the City Administrator to guarantee that every Nagueño is deserving of the commitment that "public service is a public trust" in the City of Naga.

SECTION 9. Overseeing Implementation. Implementing Section 3.6 (*Policy Content and Guidelines*) of the Joint Memorandum Circular No. 2018-01 dated October 9, 2018, the City Government of Naga will enroll in the Presidential Communications Operations Office (PCOO)-Freedom of Information-Project Management Office - Electronic FOI Platform to ensure that the public will have ease, convenience and more accessibility in requesting for information. Thus, PCOO will train FOI focal persons on using the said platform. Requests for information maybe standard (paper-based) or electronic form.

SECTION 10. Fees.

- (a) Government Offices shall not charge any fee for accepting requests for access to information. Likewise, there shall be no charge for obtaining information in digital format (i.e. PDF, JPEG, etc.). However, the following schedule of fees is imposed for printing, photocopying, and certification services rendered by a government office:

Certification of Official Records - P50.00/page for the 1st copy and P5.00/page for succeeding copies.

Printing - P5.00/page

Photocopying

Long - P3.00/page

Short - P2.00/page

- (b) The fee shall be paid to the City Treasurer's Office at the time of the request, whether written or verbal. The Official Receipt number, the amount of the total fees, and the date of payment shall be indicated at the bottom of the Certification of Official Records.
- (c) The Office of the City Administrator or the concerned government Office/Department may exempt any requesting party from payment of fees, upon request stating the valid reason why such party should not pay the fee.

SECTION 11. Exceptions. Freedom of information (FOI) shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing law, or jurisprudence.

The Office of the Executive Secretary issued a Memorandum dated 24 November 2016 with the Subject Inventory of Exceptions to Executive Order No. 2, Series of 2016, to wit:

- 1.) Privileged information relating to national security, defense or international relations;
- 2.) Information concerning law enforcement and protection of public and personal safety (confidential information of the Naga City Police Office (NCPO), Public Safety Office (PSO) and other local government agencies related to acts of terrorism, drugs, human trafficking, firearms smuggling and the likes);
- 3.) Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes or the accused;
- 4.) Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards or officers, in relation to the performance of their functions or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
- 5.) Prejudicial premature disclosure;
- 6.) Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
- 7.) Matters considered confidential under banking and finance laws and other amendatory laws.

Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

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SECTION 12. Notice of Denial. If the Office of the City Administrator upon advise, information or coordination with the concerned government Office/Department decides to deny the request, in whole or in part, it shall as soon as practicable, in any case within fifteen (15) working days from the receipt of the request notify the requesting party the denial in writing. The notice shall clearly set forth the ground or grounds for denial and the circumstances on which the denial is based. Failure to notify the requesting party of the action taken on the request within the period herein stipulated shall be deemed a denial of the request for access to information.

Moreover, right to information will obviously be denied if the application is:

- 1.) Fictitious Identity or not legitimate
- 2.) Pure curiosity
- 3.) Evident Improper motive
- 4.) For Commercial purpose
- 5.) Contrary to laws, morals, good customs or public policy

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SECTION 13. Remedies in Cases of Denial of Request for Access to Information.

- (a) Denial of any request for access to information may be appealed to the Office of the Mayor, following the procedure mentioned in Section 9 of this Ordinance: Provided, that the written appeal must be filed by the same person making the request within three (3) working days from the notice of denial or from the lapse of the relevant period to respond to the request.
- (b) The appeal shall be decided by the Office of the Mayor within five (5) working days from the filing of said written appeal. Failure of the Office of the Mayor to decide within the afore-stated period shall be deemed a denial of the appeal.
- (c) In cases of legislative records pertaining to Section 2, c.2. - the appeal must be requested from the Office of the City Vice Mayor within three (3) working days.
- (d) Upon exhaustion of administrative appeal remedies, the requesting party may file the appropriate case in the proper courts in accordance with the Rules of Court.

SECTION 14. Keeping of Records. Subject to existing laws, rules, and regulations, government Offices/Department shall create and/or maintain accurate and reasonably complete records of important information in appropriate formats, and implement a records management system that facilitates easy identification, retrieval and communication of information to the public.

In the case of the Sangguniang Panlungsod (SP), all legislative records including any of its Committees shall be collected, controlled, kept, preserved, be made available and be released only by the SP Secretary to the Sangguniang Panlungsod duly noted, approved and authorized by the City Vice-Mayor.

Therefore, every record, ONCE created and transmitted or distributed or used MUST be maintained, retained and systematically documented for future use and other dispositions.

SECTION 15. Penalties. Failure of any government Officer to comply with the provisions of this Ordinance shall be a ground for the following penalties:

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

However, mere denial will not be a ground for liability. A mere denial in **good faith** of a request made pursuant to the provisions of this Ordinance shall not constitute grounds for the above penalties.

SECTION 16. FOI Office and Complaints Mechanism Unit. The Office of the City Administrator is designated to be the FOI Office and Complaints Mechanism Unit tasked to oversee the implementation of this Ordinance. The Office of the City Administrator is further

directed to formulate the implementing rules and regulations (IRR), which shall include, among others the following provisions:

- (a) The name, location, and contact information of FOI receiving officer in every Office under the City Government of Naga;
- (b) The procedure for the filing and processing of the request;
- (c) The standard forms for the submission of requests;
- (d) The process for the disposition of requests;
- (e) The procedure for the administrative appeal of any denial;

FOR COMPLAINTS involving any City Hall Employee, the same shall be forwarded to the Naga City Permanent Action Team (NCPAT) per LGU-Naga Executive Order No. 2018 -007 issued by Mayor John G. Bongat on April 20, 2018.

SECTION 17. Monitoring. Implementing Section 6 of the Joint Memorandum Circular (JMC) No. 2018-01 dated October 9, 2018, the FOI Ordinance of the City Government of Naga shall be monitored through the Local Governance Performance Management System (LGPMs) of DILG's Bureau of Local Government Supervision.

SECTION 18. Separability Clause. If any section or part of this Ordinance is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force or effect.

SECTION 19. Repealing Clause. All other Ordinances, orders, issuances, rules and regulations, which are inconsistent with the provisions of this Ordinance are hereby repealed, amended or modified accordingly.

SECTION 20. Effectivity. This ordinance shall take effect fifteen (15) days after publication.


ENACTED: February 16, 2021

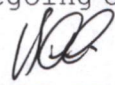
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WE HEREBY CERTIFY to the correctness of the foregoing Ordinance.


CECILIA B. VELUZ-DE ASIS
City Vice Mayor &
Presiding Officer


GIL A. DE LA TORRE
Secretary to the
Sangguniang Panlungsod

APPROVED:


NELSON S. LEGACION
City Mayor 3/1/2021 