

## DOKUMENTATION / DOCUMENTATION

### **Enhancing the Right to Know in Japan: Translation of and Commentary on Proposed Amendments to the Information Disclosure Law**

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#### A. COMMENTARY

##### I. INTRODUCTION

In May 2011, Japan's governing party, the Democratic Party of Japan (DPJ), introduced to the Diet a raft of amendments to the country's Information Disclosure Law,<sup>1</sup> together with nearly identical changes to its 'new public management' counterpart.<sup>2</sup> The amending legislation has sat in committee since this time, delayed both by the need to prioritise earthquake reconstruction measures and the inability of the DPJ Government to implement its legislative agenda more generally. Yet if passed, the amendments will constitute the first substantive revision to the law since it came into force more than ten years ago. During this time public consciousness of the Information Disclosure Law and the government's own information management processes have changed considerably.

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1 *Gyôsei kikan no hoyu suru jôhô no kôkai ni kan suru hôritsu* [Law Concerning Access to Information Held by Administrative Organs] (Law No. 42/1999).

2 *Dokuritsu gyôsei hôjin tô no hoyu suru jôhô no kôkai ni kan suru hôritsu* [Law Concerning Access to Information Held by Incorporated Administrative Agencies, etc.] (Law No. 140/2001), which applies to Japan's several hundred quasi-governmental incorporated agencies.

The proposed amendments include a number of changes put forward by pro-open government groups even before the law's enactment in 1999, including by the then-opposition DPJ. From this perspective, the proposed amendments should arguably be seen more as an implementation of long-held DPJ policy preferences rather than a fundamental root-and-branch reform of Japan's freedom of information system. Moreover, as shown below, several of the more significant pro-disclosure proposals for amendment have been watered down by way of compromise with the civil service.

The following sets out an English-language translation of the amended Information Disclosure Law as proposed, together with a commentary on the background to the amendment process and on the implications of some of the more significant of these changes.<sup>3</sup>

## II. BACKGROUND TO THE AMENDMENTS

The bill amending the Information Disclosure Law arose out of a 2010 report of the 'Administrative Transparency Study Team', an advisory committee set up by the DPJ soon after coming to power in 2009.<sup>4</sup> The establishment of the Study Team itself was only one part of a general 'Government Revitalisation' (*gyōsei sasshin*) drive by the DPJ, which included televised hearings scrutinising ministry budgets as well as the establishment of advisory committees to investigate other areas of administrative law reform, such as administrative appeals, decentralisation and civil service personnel management.

A number of the amendments proposed by the Study Team were far from novel. Indeed, the terms of reference for the Study Team were significantly restricted to the items set out in a discussion paper drafted by Yukio Edano, the minister then responsible for the Government Revitalisation programme.<sup>5</sup> The discussion paper itself dealt largely with the contents of a private member's bill put forward by the DPJ in 2005 to implement the fairly conservative recommendations of an advisory group established the previous year to report on perceived deficiencies in the law five years into its operation.

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3 The translation of the amended Information Disclosure Law is based on the original English translation available on the website of the Ministry for Internal Affairs and Communications ([http://www.soumu.go.jp/main\\_sosiki/gyoukan/kanri/low0404\\_2.htm](http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/low0404_2.htm)), the government ministry currently responsible for administration of the law. This translation was prepared by Professor Katsuya Uga, with whose kind permission I reproduce the translation below. Any errors in translation in this amended version are my own.

4 The Study Team's report – GYŌSEI TŌMEIKA KENTŌ CHĪMU [Administrative Transparency Study Team], *Gyōsei tōmeika kentō chīmu torimatome* [Report of the Administrative Transparency Study Team], (2010) – is available (in Japanese) at <http://www.cao.go.jp/sasshin/shokuin/joho-kokai/summary.html>, as are all other Study Team documents referred to in this article.

5 YUKIO EDANO, *Jōhō kōkai seido no kaisei no hōkō-sei ni tsuite* [On the Direction of Reform of the Information Disclosure System], ([paper, undated]).

In this sense the Study Team's hands were tied to mainly rehashing the recommendations of the previous advisory group some five years earlier.

The amendment bill therefore represents the somewhat inevitable culmination of a decade of discussions on tinkering at the edges of the existing law, rather than forming part of a comprehensive and cohesive review of Japan's information management legislation. Japan's public archive and administrative record-keeping laws were amalgamated into a new Public Documents Management Law in 2009,<sup>6</sup> before the establishment of the Study Team. While the amended Information Disclosure Law has been brought closer to the Public Documents Management Law in some respects, a number of inconsistencies remain, as discussed below. Similarly, a review of the third pillar of Japanese information management legislation, the Personal Information Protection Law,<sup>7</sup> was completed in 2011; however, this was conducted by an entirely separate committee under the auspices of the Consumer Commission, apparently without reference to the other two laws.

Moreover, while the amendments to the Information Disclosure Law seek to remedy identified weaknesses in the operation of the current provisions, they would not fundamentally alter the scope of the law or the institutions to which it applies. For example, despite the law purportedly applying to 'information held by administrative agencies', under its definitions provisions of the law would continue to apply only to the disclosure of 'documents' rather than information per se, closing off access to information where no document has been created, or where only raw data exists. The law would not be expanded to apply to the Diet or to the judiciary, nor to certain administrative organs currently excluded from the law, such as the Japan Fair Trade Commission. While the amendments partly bring the law in line with developments in local information disclosure ordinances,<sup>8</sup> they do not go as far as some of the more forward-thinking reforms

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6 *Kôbun-sho tô no kanri ni kan suru hôritsu* [Law Concerning the Management of Public Documents, etc.] (Law No. 66/2009). The new law not only deals with archiving, but also sets out positive obligations on agencies to create and maintain certain types of administrative documents. Given the restricted application of the Information Disclosure Law to 'documents' rather than information, the operation of the Public Documents Management Law is therefore intimately tied to the success of the Information Disclosure Law.

7 *Kojin jôhô no hogo ni kan suru hôritsu* [Law Concerning the Protection of Personal Information] (Law No. 57/2003).

8 The Information Disclosure Law applies mainly to national government agencies, in part due to the large number of local ordinances applicable to local government agencies, which were passed by reform-minded local governments in the 1980s and 1990s, well in advance of the passage of the law. Ongoing amendments to certain of these ordinances, such as the Kanagawa prefectural ordinance, continue to set the national standard. On the history of the freedom of information movement at the local level generally and the implementation of the Information Disclosure Law, see e.g., LAWRENCE REPETA, Local Government Disclosure Systems in Japan, in: National Bureau of Asian Research Executive Insight (16, 1999); LAWRENCE REPETA, The Birth of Freedom of Information Act in Japan: Kanagawa 1982, National Security Archive Working Paper (2003); JEFF KINGSTON, Information Disclosure in Japan, at: Japanese Studies Association of Australia biennial conference (Adelaide, 2005).

of these ordinances, such as the establishment of an information ombudsman. Nor do the amendments change the character or powers of the existing Information Disclosure and Personal Information Protection Review Board, the main appeals panel, in any way. Several of these issues, which were not dealt with in the DPJ's 2005 bill, were simply referred to by the Study Team's report as 'worthy of future consideration'.<sup>9</sup>

Yet notwithstanding these limitations, the very process of review by the Study Team was itself remarkable in that its terms of reference were based on a document drafted personally by an openly reformist government minister, rather than by the civil service. Moreover, the Study Team was for the first time chaired by a legal practitioner with relevant experience in the field, rather than a senior civil servant.<sup>10</sup> It is a common observation that the involvement of civil servants and other insiders in deliberative councils responsible for law reform in Japan has led to a 'bureaucratic capture' and neutralisation of the reform agenda.<sup>11</sup> While the Study Team's terms of reference were modest, minutes from its deliberation meetings show that administrative agencies consulted objected to nearly all of the proposals. It is true that some of the proposed amendments were diluted down from the original discussion paper in response to these objections, either by the Study Team itself or by the Cabinet subsequent to receiving the Study Team's report. However, it is also likely that a review along traditional lines would have led to an even more anodyne bill.

### III. PURPOSE PROVISION

The proposed amendments to the Information Disclosure Law start with the very first article of the law: the purpose provision.<sup>12</sup> The amended purpose provision would include an explicit reference to the public's 'right to know' about government conduct, in partial recognition of an increasingly acknowledged civil right grounded in the Japa-

9 In relation to the Diet and judiciary, for example, see ADMINISTRATIVE TRANSPARENCY STUDY TEAM, *supra* note 4, 14.

10 HIROSHI MIYAKE, *Gyōsei tōmeika kentō chiimu ni okeru jōhō kōkai-hō kaisei no ronten seiri* [Discussion Points on Amendment of the Information Disclosure Law within the Administrative Transparency Study Team], at: 11<sup>th</sup> Administrative Law Study Form Conference (Kwansai Gakuin University, 2011) 4. The practitioner was Hiroshi Miyake, a leading information disclosure advocate, who helpfully drafted and published a more frank and detailed record of the Study Team's deliberations than the final report: HIROSHI MIYAKE, *Jōhō kōkai seido no kaisei no hōkōsei ni tsuite ni kan suru ronten seiri* [Discussion Points on the Direction of Reform of the Information Disclosure System] (2010). Also on the Study Team was Yukiko Miki, also a lawyer specialising in information disclosure and the chair of Information Clearinghouse Japan, a major information disclosure advocacy NPO.

11 See e.g. GREGORY W. NOBLE, Reform and Continuity in Japan's Shingikai Deliberation Councils, in: Jennifer Amyx / Peter Drysdale (eds.), *Japanese Governance: Beyond Japan Inc.* (London and New York: RoutledgeCurzon, 2003) 113-133.

12 On the current wording of the purpose provision, see NARUFUMI KADOMATSU, Accountability of Administration in Japan after the Mid-1990s, in: ZJapanR/J.Japan.L.31 (2011) 5-20.

nese Constitution. Recognition of this right in the purpose provision was considered and deliberately excluded from the original draft of the Information Disclosure Law in 1999, in part because the Supreme Court, while having approved of a 'right to know' in the abstract, had not hitherto recognised it as extending to a positive right of access to government-held information.<sup>13</sup> However, in a watershed 2009 case dealing with disclosure of a secret agreement between Japan and the United States relating to the 1972 reversion of Okinawa to Japanese sovereignty, two justices of the Supreme Court held in a minority judgment that such a positive right does have a constitutional basis.<sup>14</sup> Recognition also reflects developments at the local level of government, where close to 40 prefectural ordinances make an explicit reference to a 'right to know'. Purpose provisions are not justiciable of themselves, but aid in the interpretation of the rest of the law. Recognising a constitutionally grounded 'right to know' could help to tip the scales in favour of disclosure in borderline cases.

In contrast with the Public Documents Management Law, the amended purpose provision under the Information Disclosure Law stops short of recognising that administrative documents are public property. Art. 1 of the Public Documents Management Law states that public documents (defined in the law to include documents created or obtained by officials of administrative agencies in the conduct of their duties) are 'an intellectual resource held in common by the people in support of the foundations of a robust democracy'. This inconsistency creates the perverse implication that administrative documents are public property upon their creation but cease to be so once disclosure is sought. On the other hand, in spite of lobbying by the then-opposition DPJ, the purpose provision of the Public Documents Management Law does not make reference to a 'right to know', further demonstrating the disjointed nature in which the two laws were reformed.

#### IV. EXEMPTIONS FROM DISCLOSURE

Art. 5 is the core provision of the Information Disclosure Law, and creates a positive obligation on the head of an agency to which a disclosure application is made to disclose any relevant administrative documents, unless one of six exemptions from disclosure applies. Five of the six exemptions would be modified by the proposed amendments to the law.

These modifications include a new exception to the privacy exemption (amended Art. 5(1)(c)) so as to require in-principle disclosure of the names of civil servants con-

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13 DAVID MOSES SCHULTZ, *Japan's Information Disclosure Law: Why a Law Full of Loopholes Is Better Than No Law at All*, in: *Law in Japan: An Annual* 27 (2001) 128-69. The right was found to be implied under Art. 21 of the Constitution, which guarantees freedom of speech and of the press.

14 Supreme Court, 15 January 2009 (Petty Bench) 63(1) Minshû 46, per Izumi and Miyakawa JJ.

cerned with a particular document, and the removal of an exemption (current Art. 5(2)(b)) which prevents disclosure of documents voluntarily submitted by corporations and sole traders to government agencies on condition of confidentiality. The latter exemption has been criticised by practitioners and academics alike as a loophole that frequently allows agencies to avoid disclosure of politically sensitive documents by informally requesting voluntary submission rather than using formal powers to compel production. It is thought that the remaining portion of Art. 5(2), which prevents disclosure of information relating to a corporation or sole trader where such disclosure may harm their rights, competitive standing or other legitimate interests, will be sufficient to protect legitimate business interests relevant to a voluntarily disclosed document.<sup>15</sup> In any event, a transitional provision would allow corporations that voluntarily submitted documents to agencies prior to the amended law coming into force to continue to rely on this exemption.

The amendments that caused perhaps the greatest consternation to the civil service relate to the exemptions for disclosure that could be injurious to national defence, diplomatic relations or public safety (Arts. 5(3) and (4)). Whereas currently the law exempts disclosure if the head of an agency has 'reasonable' grounds to deem that it would be contrary to the national or public interest, as amended exemption would instead apply where there are 'sufficient' grounds to so deem. In contrast with the other exemptions, Arts. 5(3) and (4) expressly require an exercise of administrative discretion, rather than being based on the existence of an objective fact. Removing the requirement of reasonableness would appear at first blush to enlarge this discretion. However, the change in wording was in fact motivated by a perception that the current wording itself grants too wide a discretion into which courts, without relevant security or diplomatic expertise, are hesitant to intrude when reviewing disclosure decisions. It is hoped that changing to a more ostensibly objective jurisdictional test would lead to greater readiness on the part of the courts to scrutinise claims for exemption under Arts. 5(3) and (4). Indeed, under the Minister's discussion paper it was proposed to do away with a subjective jurisdictional test altogether, as is the case in a number of local ordinances. However, the Study Team appears to have retreated from this position due to opposition in particular from national security agencies.<sup>16</sup>

It is questionable to what extent this drafting sleight of hand can be expected to improve the quality of judicial review of disclosure decisions. As Professor Katsuya Uga notes, the problem is less one of drafting, and more one of the developing burden of proof test applied in judicial challenges to Art. 5(3) and (4) claims.<sup>17</sup> As discretionary decisions, judicial challenges to determinations under Arts. 5(3) and 5(4) are subject to

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15 Administrative Transparency Study Team, *supra* note 4, 4.

16 MIYAKE (2010), *supra* note 10, 7-11.

17 KATSUYA UGA, *Jôhō Kōkai-hō kaisei no dôkô to wadai* [Developments in and Issues Raised by the Amendment of the Information Disclosure Law], in: *Kihō Jôhōkōkai Kojin Jjôhō Hogo* [Information Disclosure and Personal Information Protection Quarterly] 40 (2011) 75.

Art. 30 of the Administrative Case Litigation Law,<sup>18</sup> which permits discretionary decisions to be quashed only where the decision exceeds the bounds of the discretion granted or otherwise constitutes an abuse of the discretion. The Courts are increasingly applying a two-step test under which the burden of proof is initially placed on the defendant agency to show that the conditions of Arts. 5(3) and (4) are met, but then on the plaintiff, consistent with all other Art. 30 challenges, to show that the exercise of the discretion was *ultra vires*. As plaintiffs necessarily do not have access to the disputed documents, this is usually an impossibly high hurdle. Changes to the judicial review process under the proposed amendments, and in particular the ability to compel production of ‘Vaughn Indices’ (outlined below), may go some way to lowering the evidential hurdle. However, the Study Team arguably missed an opportunity to remedy this anomaly by recommending an explicit reversal of the burden of proof.

The pay-off for tightening these exemptions is a new ‘vexatious applicant’ provision, which would allow an agency to refuse disclosure where a request ‘constitutes an abuse of right or offends public policy’. This provision was not part of the Study Team’s recommendations, and was introduced to the bill at the Cabinet stage. Such provisions are not unusual in freedom of information laws internationally, but the exercise of such a discretion by the agency that prepared the relevant document rather than a neutral third party potentially leaves the door wide open for abuse. On the other hand, this provision would arguably do little more than provide a legislative basis for refusals that were already taking place in practice under general principles of law. Indeed, it is suggested that some form of vexatious applicant provision is required in order to prevent excessive use of the system due to the proposed reduction in fees.<sup>19</sup>

## V. FEES

Under the current provisions, the Information Disclosure Law requires fees to be paid by disclosure applicants both at the point of application and for the administration of applications. The amounts of those fees are set by Cabinet order. In accordance with the Minister’s discussion paper, the Study Team proposed that application fees should be abolished in principle and that administration fees should be lowered.<sup>20</sup>

Under the amended law, application fees would no longer apply, except for applications made by corporations or for commercial purposes. A number of agencies were opposed to the in-principle removal of application fees on the basis that it could encourage

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18 *Gyōsei jiken soshō-hō* (Law No. 139/1962).

19 SHIZUO FUJIWARA, *Jōhō kōkai-hō kaisei-an no gaiyō* [Overview of the Amendment Bill for the Information Disclosure Law], in: *Kihō Jōhōkōkai Kōjinjōhō Hōgo* [Information Disclosure and Personal Information Protection Quarterly] 41 (2011) 3.

20 ADMINISTRATIVE TRANSPARENCY STUDY TEAM, *supra* note 4, 8-9.

a deluge of meritless requests.<sup>21</sup> However, given that application fees are currently only 200 – 300 yen (approx. US\$ 2.50 – 4.00) per request, it is unlikely that these fees were ever a significant deterrent.<sup>22</sup> Rather, it is the quantum of reduction in administration fees that will determine the likelihood of an increase in applications. In contrast with application fees, there are no proposed amendments to effect a change in administration fees, and so this would presumably be done entirely by way of Cabinet order. It is therefore difficult as yet to foresee how significant the reduction in fees overall will be.

## VI. ADMINISTRATIVE APPEALS

The Information Disclosure Law makes provision for both substantive administrative review by the Information Disclosure and Personal Information Protection Review Board – a grievances panel which considers appeals by applicants and third parties dissatisfied with disclosure decisions and makes non-binding recommendations for reconsideration by the relevant agency head – and judicial review of the legality of disclosure decisions by the courts.

The amended law would not make any major changes to the existing administrative appeals arrangements, such as empowering the Review Board to override disclosure decisions, although this in part appears to be because the Study Team did not want to pre-empt the government's subsequent review into Japan's system of administrative appeals more generally.<sup>23</sup> The amendments would, however, plug a conspicuous gap in the current law by including a new Art. 18(2), which requires agency heads to refer complaints to the Review Board within 90 days of receipt. Referrals made after 90 days would need to be notified, with reasons for the delay, to the Prime Minister.<sup>24</sup> Under the current law there is no time limit on referring complaints to the Review Board, meaning that agency heads can technically obfuscate by delaying indefinitely (or at least until a mandamus action is brought). In 2010, 19% of referrals were made more than 90 days from a complaint, down from nearly 30% in 2009.<sup>25</sup> However, as discussed below, the

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21 YUKIKO MIKI, *Jôhō kōkai-hō kaisei no hôkô-sei* [On the Direction of Amendment to the Information Disclosure Law], in: *Jôhō kōkai Digest* [Information Disclosure Digest] 21 (2010) 10.

22 However, as agencies have discretion to determine what constitutes an 'application', it is theoretically open to agencies to determine that each document sought is an application of itself in order to raise fees.

23 Administrative Transparency Study Team, *supra* note 4, 10.

24 Interestingly, there is no explicit requirement to give reasons for the delay to the applicant, although these can be sought under Art. 9 of the Administrative Procedures Law – *Gyôsei tetsuzuki-hô* (Law No. 88/1993).

25 MINISTRY OF INTERNAL AFFAIRS AND COMMUNICATIONS, *Heisei 22-nendo ni okeru gyôsei kikan jôhō kōkai-hō no shikō no jôkyô ni tsuite* [On the Status of Implementation of the Administrative Organs Information Disclosure Law for 2010] (2011); ID, *Heisei 21-nendo ni okeru gyôsei kikan jôhō kōkai-hō no shikō no jôkyô ni tsuite* [On the Status of Implement-

Review Board's backlog acts as a much greater drag on the system than the speed with which referrals are made by agencies.

The most significant change in respect of administrative appeals would be the requirement under the new Art. 21 to refer to the Prime Minister for reconsideration any decisions against disclosure made subsequent to a Review Board recommendation. Reconsideration of such decisions by the Prime Minister is not intended to act as an additional layer of administrative review (hence referral to the Prime Minister would be required even where the Review Board recommended against disclosure), but rather a re-assessment from the perspective of Art. 7, which allows disclosure where the public interest in accessing a document overrides a qualifying exemption. After an initial 16 public interest disclosures during the Information Disclosure Law's first year of operation, this provision has become particularly under-utilised: only two public interest disclosures were made in total between 2003 and 2009.<sup>26</sup> From this perspective, it is not clear why only disclosure decisions that are appealed should be subject to prime ministerial review, and not all decisions against disclosure. However, some manner of limitation is arguably needed: Uga has calculated that the Prime Minister's office would likely need to deal with some 500 cases a year.<sup>27</sup>

## VII. CABINET OFFICE OVERSIGHT

The layer of prime ministerial review also reflects a proposed shift of responsibility for oversight of information disclosure matters from the Ministry of Internal Affairs and Communications to the Cabinet Office, as per the new Arts. 26-28. This is consistent with the new Public Documents Management Law, under which the Cabinet Office also has responsibility for document management policy. On the other hand, oversight of the Personal Information Protection Law is currently the responsibility of the Ministry of Internal Affairs and Communications, and the report into the review of that law published in July 2011 makes no suggestion for a transfer.<sup>28</sup> This would leave the Review

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ation of the Administrative Organs Information Disclosure Law for 2009] (2010) , both available online (in Japanese) at:

[http://www.soumu.go.jp/main\\_sosiki/gyoukan/kanri/jyohokokai/chousa.html](http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/jyohokokai/chousa.html)

26 SHIGEKI OKUTSU, *Seikatsu hogo kiroku no kôeki sairyô kaiji* [Public Interest Disclosure of Social Welfare Records], in: *Jôhō kôkai Digest* [Information Disclosure Digest] 23 (2011) 18.

27 UGA, *supra* note 17, 77.

28 EXPERT INVESTIGATION COMMITTEE INTO PERSONAL INFORMATION PROTECTION THE CONSUMER COMMISSION, *Kojin jôhō hogo senmon chōsa-kai hōkoku-sho: kojin jôhō hogo-hō oyobi sono un'yō ni kan suru omo na kentō wadai* [Report of the Expert Investigation Committee into Personal Information Protection: Main Discussion Points on the Personal Information Protection Law and Its Operation] (2011), available (in Japanese) at: <http://www.cao.go.jp/consumer/history/01/kabusoshiki/kojin/doc/houkokusho.pdf>. On the other hand, the Cabinet Office will be responsible for the new 'My Number' system, a uniform identification and information management system for taxation and social service

Board, which also handles appeals under the Personal Information Protection Law, responsible to two separate agencies.

The roles of the Prime Minister under the Public Document Management Law and the amended Information Disclosure Law are, moreover, inconsistent. Under the amended Information Disclosure Law the Prime Minister, like the Review Board, would be limited to making ‘recommendations’ with respect to disclosure in response to references from agency heads, although the Minister’s discussion paper had originally proposed a power to overrule disclosure decisions. This is because civil servants emphasised during the Study Team’s consultations that such a power would conflict with the principle of ‘division of authority’ (*buntan kanri gensoku*), under which relevant Cabinet ministers, and not the Prime Minister (who is head of the Cabinet only), are ultimately responsible to oversee the conduct of agencies under their control.<sup>29</sup> Yet by contrast, Art. 8 of the Public Documents Management Law requires agencies to seek the Prime Minister’s consent, rather than recommendation, for the destruction of certain public documents. It is unclear why the ‘division of authority’ was not of concern here.

The shift of responsibility to the Prime Minister and Cabinet Office under both laws is reflective of a more general recent trend towards investing the Cabinet Office and Cabinet Secretariat with responsibility for any politically contentious new reform or policy development, whether the Government Revitalisation programme or matters falling more squarely within the jurisdiction of the larger ministries, such as food safety or Japan’s demographic crisis. The perception is that both agencies, falling directly under the jurisdiction of the Prime Minister and Cabinet and without the entrenched bureaucratic culture of the traditional ministries, will be freer to more faithfully implement government-led reforms.<sup>30</sup> However, the Cabinet Office and Cabinet Secretariat are limited in their missions by staffing: both have only a small permanent staff, with the bulk of staff being made up of secondees from the various ministries. This both severely limits the on-going resources available to carry out their assigned responsibilities, and potentially reduces their nominal independence, as secondees inevitably return to their seconding ministry several years later. Therefore the capacity of the Cabinet Office to effectively oversee information policy or of the Cabinet Secretariat to advise the Prime Minister on large numbers of document destruction or public interest disclosure determinations is questionable.

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provision, including establishing the panel that will review breaches of privacy under this system only.

29 MIYAKE (2011), *supra* note 10, 9.

30 The Cabinet Office is an independent agency responsible directly to the Cabinet, while the Cabinet Secretariat forms the Prime Minister’s own personal staff. On the gradual shift of control over critical policy areas away from ‘traditional’ ministries and towards the Cabinet Office and Cabinet Secretariat, see TOMOHITO SHINODA, Japan’s Cabinet Secretariat and Its Emergence as Core Executive, in: *Asian Survey* 45/5 (2005) 800-21.

## VIII. JUDICIAL REVIEW

The proposed changes to judicial review of disclosure decisions are perhaps the most significant of all. Removing existing barriers to effective judicial review may well bring about a greater role for the Courts in ensuring accountability than is currently exercised.

First, the amended law would widen the number of courts that have jurisdiction over judicial challenges to disclosure decisions to include the plaintiff's local district court. Under the current law, jurisdiction extends only to those courts listed under Art. 12 of the Administrative Case Litigation Law (being either the defendant's local court – for national government agencies, invariably the Tokyo District Court), or the district court with jurisdiction over the seat of the plaintiff's general forum. What this convoluted formula means in practice is that applicants in, for example, Okinawa can only bring an action for judicial review in either the Tokyo or Fukuoka District Courts. This undoubtedly acts as a significant disincentive for applicants outside of the major cities to seek judicial review. While a positive development, expanded jurisdiction would create an anomaly in that jurisdiction for judicial review under the Information Disclosure Law would be wider than under many social security- or education-related laws.

The second major development is the proposed introduction of powers for the Court under the new Art. 23 to compel production of a 'Vaughn Index'<sup>31</sup> – setting out details of the documents which are the subject of the review and reasons for their non-disclosure – and under the new Art. 24 to view disputed documents *in camera*, without the presence of the plaintiff. These provisions would also apply by virtue of Art. 30 to judicial review of local government disclosure decisions under applicable ordinances. Both new powers are intended to aid the Court in scrutinising agency claims regarding the applicability of the exemption provisions under Art. 5, particularly in combination with the amendments to Arts. 5(3) and (4) referred to above. The inability to view documents that are the subject of judicial challenge has been cited as another reason for the inordinate deference of the Courts to administrative discretion.<sup>32</sup>

The historical reason for the absence of at least an *in camera* review power is a persisting view that such a power is inconsistent with Art. 82 of the Japanese Constitution, which requires public law cases to be conducted in open court. By contrast, the power to compel 'Vaughn Indices' and to conduct *in camera* review are already presently enjoyed by the Review Board, which as a non-judicial body is not constrained

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31 So called after the watershed US case, *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Note that Art. 23 makes reference back to the new Art. 9(3) (which requires full reasons in support of the application of an exemption provision under Art. 5 for decisions other than for full disclosure). This drafting may have the unintended consequence that Vaughn Indices can only be ordered for appeals against non- and partial disclosure decisions, and not for so-called 'reverse (*gyaku*) FOIA' appeals, whereby interested third parties challenge a decision in favour of disclosure. *In camera* review will therefore be of particular use in such 'reverse FOIA' appeals [FOIA = Freedom of Information Act.].

32 FUJIWARA, *supra* note 19, 7.

by the Constitution. However, the upshot over the past ten years has been a tendency for many applicants to make consecutive administrative and judicial appeals in order to obtain the Review Board's working documents and recommendation for submission as evidence in Court. This, no doubt compounded by the jurisdictional limitations on judicial review, has in turn led to a considerable backlog of references to the Review Board. Notwithstanding that administrative appeal is intended to be an efficient and cost-effective alternative to judicial review, in 2010 the Review Board took on average 270 days to reach a recommendation and nearly 333 days in 2009.<sup>33</sup> The expansion of judicial review powers would therefore hopefully help to reduce its workload.

The door to judicial *in camera* review was opened by the Supreme Court in the Okinawa secret agreement case, referred to above. This case overturned a lower court judgment in favour of disclosure in which the lower court had used an *in camera* procedure reserved for civil cases under the Civil Procedure Code;<sup>34</sup> however, significantly, the case was overturned on the basis that it was an improper application of the Civil Procedure Code, and not because of constitutional concerns. Izumi and Miyakawa JJ, while conversely confirming a Chapter III right to access government information, stated in *obiter dicta* that an *in camera* procedure under the Information Disclosure Law would not be unconstitutional and would in fact be welcomed. However, given this somewhat tenuous endorsement, the constitutionality of the proposed new Art. 24 is far from assured, and could well be challenged.

Moreover, the Court's power to conduct *in camera* review would not be absolute. As an apparent concession to concerns raised by security agencies, *in camera* review would only be possible where all parties consent; this consent may be withheld by the government defendant under proposed Art. 24(2) where review by the Court would pose a 'material obstacle' to national defence, diplomatic interests, or public safety and order. This exemption was not proposed by the Study Team, and there is no equivalent exemption for *in camera* review by the Review Board. Interestingly, the language used in Art. 24(2) differs from the corresponding exemptions under Art. 5(3) and (4), in particular in that there is no explicit reference to the relevant agency head's satisfaction of the requisite test. It is therefore not entirely clear whether the determination as to the existence of a 'material obstacle' would be made by the agency alone or to the satisfaction of the court, nor whether this determination would itself be reviewable. However, given that the evidential burden in Art. 5(3) and (4) cases remains the largest barrier to

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33 Cabinet Office, *Jôhō kôkai kojîn jôhō hogo shinsa-kai no heisei 22-nendo no chôsa shingî tô no jôkyô* [On the Status of Deliberations, etc., of the Information Disclosure and Personal Information Protection Review Board in 2010] (2011); Cabinet Office, *Jôhō kôkai kojîn jôhō hogo shinsa-kai no heisei 21-nendo no chôsa shingî tô no jôkyô* [On the Status of Deliberations, etc., of the Information Disclosure and Personal Information Protection Review Board in 2009] (2010), both available (in Japanese) at: <http://www8.cao.go.jp/jyouhou/>

34 *Minji soshô-hô* [Code of Civil Procedure] (Law No. 109/1996), Art. 223.

success for plaintiffs, this exemption if commonly exercised could neutralise any positive effects of the minor changes of wording in those provisions.

#### IX. PROACTIVE DISCLOSURE

The amended Information Disclosure Law specifies for the first time under new Art. 25 an obligation on agencies to pro-actively publish certain types of information so as to avoid the need for a large number of disclosure requests in the first place. This is a positive step, although arguably somewhat weakened by the requirement under Arts. 25(2) and (3) for agencies to only 'endeavour' to publish documents previously requested by two or more applicants and the government to 'endeavour' to improve the pro-active publication system. The effectiveness of this new article would therefore depend on the types of information specified by cabinet order as requiring mandatory publication under proposed Art. 25(1).

#### X. CONCLUDING COMMENTS

Eighteen months on from the bill's introduction to the Diet, it remains unclear when, if at all, these amendments to the Information Disclosure Law will be passed. Were they not to do so, it would not be the first time in recent years that a government-sponsored bill for administrative reform has failed to make it through the Diet. After the DPJ came to power in 2009, it allowed a Liberal Democratic Party (LDP) bill implementing a significant revision of Japan's administrative appeals system to expire,<sup>35</sup> preferring instead to appoint its own advisory committee from scratch. More recently, the Government has announced that it has abandoned attempting to pass several bills for civil service reform during the current session.<sup>36</sup>

Yet there are good reasons for pushing on with the amendments to the Information Disclosure Law, even in their current form. Recent incidents such as the Okinawa secret agreement case, in which the Ministry of Foreign Affairs firmly denied the existence of a signed agreement until it was proven by declassified US diplomatic documents, or the failure of disaster relief teams to keep minutes of meetings only months after the execution of the Public Documents Management Law,<sup>37</sup> demonstrate that the standards of accountability and transparency aspired to under the Information Disclosure Law's purpose provision have yet to be universally realised.

It is true that the amendments to the law fall short of several proposals in the Minister's discussion paper, and that they do little to improve the disjointed nature of

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35 Bills that have not been passed at the end of every Diet session are deemed to have expired, and so must be re-introduced at the beginning of the subsequent session.

36 'Administrative Reform Bills Likely to Languish', *The Japan Times*, 31 July 2012.

37 '10 Disaster Teams Failed to Take Minutes', *The Daily Yomiuri*, 28 January 2012.

information management regulation in Japan. Nevertheless, they represent an overall positive development. In particular, by imposing pro-active publication obligations, theoretically tightening the grounds for non-disclosure, moving determination of public interest disclosures to the more high-profile office of the Prime Minister (provided that it can be adequately resourced), and providing the Courts with a greater ability to act as a check on refusals to disclose, the amended law could go some way towards improving current levels of disclosure. At the same time, new, shorter deadlines and potentially relieving the workload of the Review Board could lead to a faster, more efficient system. Added to this the existing obligations on civil servants under the Public Documents Management Law to create and maintain documents (so avoiding the temptation to escape disclosure by not committing information to paper), and the goal of truly open government in Japan could be one step closer.

#### ABSTRACT

*Like political parties forming new governments after years in opposition in many other jurisdictions, the Democratic Party of Japan (DPJ) made reform of the country's Information Disclosure Law one of its first priorities upon taking power in 2009. The Law (detailed in previous issues of this publication) has now been in force for more than ten years, but critics (including the DPJ itself) have pointed out shortcomings in the Law even since its inception. Although now stalled for nearly 18 months, a bill currently before the Diet aims to remedy a number of these shortcomings.*

*This article provides a translation of the Information Disclosure Law as amended by the bill, together with a commentary on the background to the amendments and their likely effectiveness. It argues that the proposed amendments do not represent a fundamental rethinking of Japan's freedom of information framework, and that indeed a number of discrepancies remain between the Information Disclosure Law and other information laws that have been or are in the process of reform. Nevertheless, a number of the amendments could improve current levels of disclosure, and augment in particular the ability of the courts to review non-disclosure determinations.*

*It concludes that while the amendment bill itself has been compromised, if passed, it has the potential to bring Japan a step closer to the Law's goal of open government, which is sorely needed in light of recent scandals, such as the failure of the Atomic Energy Commission and other relief teams to keep minutes of their meetings in the wake of the March 2011 disaster.*

## ZUSAMMENFASSUNG

*Wie die Regierungen in vielen Ländern, die nach Jahren in der Opposition an die Macht kommen, hat auch die Demokratische Partei Japans (DJP) die Reform des Gesetzes über die Offenlegung von Informationen zu einer ihrer politischen Prioritäten erklärt, nachdem sie 2009 die Regierungsverantwortung übernommen hatte. Das Gesetz, über das in der ZJapanR bereits berichtet wurde, ist nunmehr seit über zehn Jahren in Kraft, aber Kritiker (darunter auch die DJP) haben von Anfang an Schwachpunkte bemängelt. Ein Gesetzesentwurf, der etliche der Schwachpunkte zu beheben versucht, liegt dem Parlament zwar vor, doch hat sich dieses seit über 18 Monaten damit nicht befasst.*

*Der Beitrag legt eine englische Übersetzung des Gesetzesentwurfes vor, die durch eine Kommentierung der Hintergründe der Änderungen und deren voraussichtlichen Wirkungen ergänzt wird. Der Verfasser kritisiert, dass die vorgeschlagenen Änderungen keine grundsätzliche Überarbeitung des gesetzlichen Rahmens für die Informationsfreiheit in Japan darstellen und dass Diskrepanzen zu anderen informationsbezogenen Gesetzen bestehen bleiben, die reformiert wurden oder sich im Stadium der Überarbeitung befinden. Ungeachtet dessen hat eine Reihe der novellierten Vorschriften das Potential, den gegenwärtigen Stand der Informationsfreiheit zu verbessern und insbesondere die Möglichkeit der Gerichte zu unterstützen, Entscheidungen zu überprüfen, in denen Informationen nicht offengelegt wurden.*

*Der Beitrag schließt mit der Beobachtung, dass der Entwurf zwar einen Kompromiss darstelle, dass er jedoch im Falle seiner Verabschiedung durchaus das Potential habe, Japan einen Schritt weiter in Richtung einer transparenten Regierung zu bringen. Angesichts der jüngsten Skandale wie etwa der Unterlassung der Aufsichtsbehörde für die Atomenergie, Protokolle ihrer Sitzungen in den Wochen nach der Katastrophe vom 11. März 2011 zu fertigen, ist dies für Japan eine Notwendigkeit.*

*(Übers. durch d. Red.)*

## B. TRANSLATION

**Law Concerning Access to Information Held by Administrative Organs  
(Proposed Amendments)***Chapter 1 General Provisions**Article 1 Purpose*

In accordance with the principle that sovereignty resides in the people, and by providing for the right to request the disclosure of administrative documents and for the disclosure of information in relation to the various operations of administrative organs, etc., the purpose of this law is to strive for greater disclosure of information held by administrative organs thereby securing the people's right to know, ensuring that the government is accountable to the people for its various operations, and to contribute to the promotion of monitoring of administration by the people, participation in administration by the people, and a fair, highly transparent and democratic administration ~~that is subject to the people's accurate understanding and criticism.~~

*Article 2 Definitions*

1. For the purposes of this law 'administrative organ' refers to the following organs.
  - (1) Organs within the Cabinet (excluding the Cabinet Office) or organs under the jurisdiction of the Cabinet that were established pursuant to law.
  - (2) The Cabinet Office, the Imperial Household Agency and organs established as provided for in Art. 49, paragraph 1 and 2 of the Cabinet Office Establishment Law (Law No. 89 of 1999). (Provided that the organ is one in which an organ designated by the Cabinet Order referred to in subparagraph (4) is established, the organ designated by the Cabinet Order is excluded.)
  - (3) Organs established as provided for in Art. 3, paragraph 2 of the National Government Organization Law (Law No. 120 of 1948). (Provided that the organ is one in which an organ designated by the Cabinet Order referred to in subparagraph (5) is established, the organ designated by the Cabinet Order is excluded.)
  - (4) Organs under Art. 39 and 55 of the Cabinet Office Establishment Law and under Art. 16, paragraph 2 of the Imperial Household Agency Law (Law No 70 of 1947), and extraordinary organs under Art. 40 and 56 (including the case applied mutatis mutandis in Art. 18, paragraph 1 of the Imperial Household Agency Law), that are designated by Cabinet Order.
  - (5) Facilities and other organs under Art. 8-2 of the National Government Organization Law, and extraordinary organs under Art. 8-3 of the same law, that are designated by Cabinet Order.
  - (6) The Board of Audit

2. For the purposes of this law ‘administrative document’ means a document, drawing, and electromagnetic record (meaning a record created in a form that cannot be recognized through one’s sense of perception such as in an electronic form or magnetic form; hereinafter the same), that, having been prepared or obtained by an employee of an administrative organ in the course of his or her duties, is held by the administrative organ concerned for organizational use by its employees. However, the following are excluded:

(1) Items published for the purpose of selling to many and unspecified persons, such as official gazettes, white papers, newspapers, magazines, and books.

(2) In the case of archives and other organs designated by Cabinet Order, as provided for by Cabinet Order, items that are specially managed as either historical or cultural materials, or as materials for academic research.

## *Chapter 2 Disclosure of Administrative Documents*

### *Article 3 The Right to Request Disclosure*

Any person, as provided for by this law, may request to the head of an administrative organ (provided that the organ is designated by the Cabinet Order of the preceding Art., paragraph 1, subparagraph (4) and (5), the person designated for each organ by Cabinet Order; hereinafter the same) the disclosure of administrative documents held by the administrative organ concerned.

### *Article 4 The Procedure for Requesting Disclosure*

1. A request for disclosure as provided for by the preceding Article (hereinafter referred to as a ‘disclosure request’) shall be submitted to the head of an administrative organ as a document (hereinafter referred to as a ‘disclosure application’) in which are entered the following items.

(1) The requester’s full name or title, along with a permanent address or place of residence, as well as the full name of a representative in the case of a corporation or other group.

(2) The titles of administrative documents or other particulars that will suffice to specify the administrative documents relevant to the disclosure request.

2. When the head of an administrative organ concludes that there is a deficiency in the form of the disclosure application, he or she may, fixing a suitable period of time, ask the person making the disclosure request (hereinafter referred to as ‘the requester’) to revise the request. In this case, the head of the administrative organ shall endeavor to put at the requester’s disposal information that will be helpful in the revision.

*Article 5 The Obligation to Disclose Administrative Documents*

When there is a disclosure request, excluding cases in which any of the information mentioned in each of the following subparagraphs (hereinafter referred to as ‘non-disclosure information’) is recorded in the administrative documents concerned with the disclosure request, the head of an administrative organ shall disclose said administrative documents to the requester. However, this shall not apply to cases where it is deemed that the said disclosure request constitutes an abuse of right or offends public policy.

(1) Information concerning an individual (excluding information concerning the business of an individual who carries on said business), where it is possible to identify a specific individual from a name, birth date or other description, etc., contained in the information concerned (including instances where through collation with other information it is possible to identify a specific individual), or when it is not possible to identify a specific individual, but by making the information public there is a risk that an individual's rights and interests will be harmed. However, the following are excluded:

(a) Information that is made public, or information that is scheduled to be made public, as provided for by law or by custom.

(b) Information recognized as necessary to be made public in order to protect a person's life, health, livelihood, or property.

(c) In the case that the said individual is a public official, etc. (national public employees as described in Art. 2, Section 1 of the National Public Service Law (Law No. 120 of 1947), executives and employees of the Specified Incorporated Administrative Agencies as described in Art. 2, para. 2 of the Law Concerning the General Rules of the Incorporated Administrative Agencies (Law No. 03 of 1999) and of the Japan Post excluded; executives and employees of the incorporated administrative agencies, etc. as described in Art. 2, para. 1 of the Law Concerning Access to Information Held by Incorporated Administrative Agencies (Law No. 140 of 2001); hereinafter referred to as the ‘the Incorporated Administrative Agencies, etc. Information Disclosure Law’); local public service personnel as described in Art. 2 of the Local Public Service Personnel Law (Law No. 261 of 1950); or executives and employees of the local incorporated administrative agencies as described in Art. 2, paragraph 1 of the Local Incorporated Administrative Agency Law (Law No. 118 of 2003) (hereinafter the same), when the said information is information that concerns the performance of his or her duties, from within the said information that portion which concerns the said public official, etc.'s office, *name* and the substance of the said performance of duties (or, in the case that there is a risk that making public the said name could interfere with the performance of the said public official, etc.'s duties or in the case that it is deemed necessary not to make public the said name in order to protect the rights and interests of the said public official, etc., the said public official, etc.'s office and the substance of the said performance of duties).

(d) In the case that the said individual expressed an opinion or provided an explanation to a meeting of public advisory group comprised of individuals with expert knowledge, or to another form of assembly, held under the auspices of a deliberative council or other panel within an administrative organ, or under the auspices of an administrative organ, when said information relates to the said opinion or explanation, from within the said information that

portion which concerns the said individual's name and the substance of the said opinion or explanation (or, in the cases that it is deemed necessary not to make public the said name in order to protect the rights and interests of the said individual, the said substance of the said opinion or explanation).

(2) Information concerning a corporation or other entity (excluding the State, the incorporated administrative agencies, etc., local public entities and the local incorporated administrative agencies; hereinafter referred to as a 'corporation, etc. '), or information concerning the business of an individual who carries on said business, where there is a risk that, by making such information public, the rights, competitive standing, or other legitimate interests of the said corporation, etc. or the said individual will be harmed as set forth below. Excluding, however, information recognized as necessary to be made public in order to protect a person's life, health, livelihood, or property.

~~(a) Where there is a risk that, by making such information public, the rights, competitive standing, or other legitimate interests of the corporation, etc. or the said individual will be harmed.~~

~~(b) Where upon the request of an administrative organ it was offered voluntarily on the condition that it not be made public, and where in light of the nature of the information and the circumstances, etc. at the time, such as the corporation, etc. or the individual not ordinarily making the information public, the attachment of said condition is considered to be rational.~~

(3) Information that, if made public, the head of an administrative organ with ~~reasonable grounds~~ sufficient grounds deems to pose a risk of harm to the security of the State, a risk of damage to trustful relations with another country or an international organization, or a risk of causing a disadvantage in negotiations with another country or an international organization.

(4) Information that, if made public, the head of an administrative organ with ~~reasonable grounds~~ sufficient grounds deems to pose a risk of causing a hindrance to the prevention, suppression or investigation of crimes, the maintenance of public prosecutions, the execution of sentencing, and other public security and public order maintenance matters.

(5) Information concerning deliberations, examinations, or consultations internal to or between either organs of the State, the incorporated administrative agencies, etc., local public entities or the local incorporated administrative agencies that, if made public, would risk unjustly harming the frank exchange of opinions or the neutrality of decision making, ~~risk unjustly causing confusion among the people,~~ or risk unjustly bringing advantage or disadvantage to specific individuals.

(6) Information that concerns the affairs or business conducted by an organ of the State, an incorporated administrative agency, etc., a local public entity or a local incorporated administrative agency that, if made public, by the nature of said affairs or business, would risk, such as the following mentioned risks, causing a hindrance to the proper performance of said affairs or business.

- (a) In relation to affairs concerned with audits, inspections, supervision, and testing, the risk of making difficult the grasping of accurate facts, along with the risk of facilitating illegal or unfair acts or making difficult the discovery of those acts.
- (b) In relation to affairs concerned with contracts, negotiations, or administrative appeals and litigation, the risk of unfairly harming the property interests or the position as a party of the State, an incorporated administrative agency, etc., a local party or a local incorporated administrative agency.
- (c) In relation to affairs concerned with research studies, the risk that their impartial and efficient execution will be unjustly obstructed.
- (d) In relation to affairs concerned with personnel management, the risk that the impartial and smooth maintenance of personnel matters will be hindered.
- (e) In relation to the business of an enterprise managed by the State or a local public entity, an incorporated administrative agency, etc., or a local incorporated administrative agency, the risk that legitimate interests arising from the management of the enterprise will be harmed.

#### *Article 6 Partial Disclosure*

1. Where non-disclosure information is recorded in a part of an administrative document concerned with a disclosure request, ~~when it is possible to easily divide and exclude the portion in which the non-disclosure information is recorded,~~ the head of the administrative organ shall disclose to the requester the portion other than the ~~excluded portion~~ in which the non-disclosure information is recorded. However, this shall not apply when it is ~~deemed that meaningful information is not recorded in the portion other than the excluded portion~~ difficult to divide and exclude the portion in which the non-disclosure information is recorded.

2. In the case that the information of subparagraph (1) of the preceding Article (limited to that which makes possible the identification of a specific individual) is recorded in an administrative document concerned with a disclosure request, and if by excluding from said information the portion of the description, etc., that makes possible the identification of a specific individual, such as a name or birth date, there is considered to be no risk of harm to an individual's rights and interests even though it is made public, then the portion other than the excluded portion shall be regarded as not being included in the information of the said subparagraph, and the preceding paragraph shall apply.

#### *Article 7 Discretionary Disclosure for Public Interest Reasons*

Even in the case that non-disclosure information is recorded in administrative documents concerned with a disclosure request, when it is deemed that there is a particular public interest necessity, the head of an administrative organ may disclose the administrative documents to the requester.

*Article 8 Information Concerning the Existence of Administrative Documents*

When non-disclosure information will be released by merely answering whether or not administrative documents concerned with a disclosure request exist or do not exist, the head of an administrative organ, without making clear the existence or non-existence of the documents, may refuse the disclosure request.

*Article 9 Measures Concerning Disclosure Requests*

1. When disclosing all or a part of the administrative documents concerned with a disclosure request, the head of the administrative organ shall make a decision to that effect, and notify the requester to that effect in writing as well as of matters determined by Cabinet Order relating to the implementation of disclosure.

2. When not disclosing any of the administrative documents concerned with a disclosure request (including when refusing the disclosure request in accordance with the preceding Article, as well as when administrative documents concerned with the request are not held), the head of the administrative organ shall make a decision to the effect of non-disclosure and notify the requester to that effect in writing.

3. Notifications made in accordance with the preceding two paragraphs (excluding when disclosing all the administrative documents concerned with a disclosure request) must record as specifically as possible the clauses of this law which form the basis of the said decision and the reasons for which it has been determined that the said clauses are applicable (or, in cases in which the basis of the said decision is that the items of Art. 5 are applicable, the clauses which form the basis of the said decision for each of the portions in which the non-disclosure information is recorded and the reasons for which it has been determined that the said clauses are applicable, or, in cases in which the basis of the said decision is that the administrative documents concerned with a disclosure request are no longer held, the reasons in relation to the said administrative documents that have been prepared, obtained or destroyed and those other administrative documents that are held).

*Article 10 Time Limit for Disclosure Decisions, Etc.*

1. ~~The preceding Article's decisions~~ Decisions under paragraph 1 and 2 of the preceding Article (hereinafter referred to as 'disclosure decisions, etc.') shall be made within ~~thirty~~ fourteen days after the day of the disclosure request (not including days set out in the items under Art. 1, paragraph 1 of the Law in Relation to Holidays of Administrative Organs (Law No. 91 of 1988)). However, in the case that a revision is requested as provided for in Art. 4, para. 2, the number of days required for the revision shall not be included within this time limit.

2. Notwithstanding the preceding paragraph, when there are justifiable grounds such as difficulties arising from the conduct of business, the head of the administrative organ may extend the time limit provided for in the same paragraph for up to thirty days. In this case, the head of the administrative organ shall without delay notify the requester in writing of the extension period along with the reason for the extension.

3. In the case that there has been no disclosure decision, etc. within the timeframe provided for in the first paragraph and when there has been no notification as provided for in the preceding paragraph, or in the case that there has been no disclosure decision, etc. within the timeframe of an extension period as provided for in the same paragraph, a requester, excluding in cases where a notification is received as provided for under the second sentence of paragraph 1 of the following Article, may deem that the head of an administrative organ has made a decision regarding the administrative documents concerned with a disclosure request under paragraph 2 of the preceding Article.

*Article 11 Exception to the Time Limit for Disclosure Decisions, Etc.*

1. In the case that there is a considerably large amount of administrative documents concerned with the disclosure request, and there is a risk that by making disclosure decisions, etc. for all of them within a timeframe of ~~sixty~~thirty days in addition to the period provided for in paragraph 1 of the preceding Article of the disclosure request the performance of duties will be considerably hindered, notwithstanding the provisions of that paragraph and paragraph 2 of the ~~preceding same~~ Article, it shall be sufficient if the head of the administrative organ makes disclosure decisions, etc. for a reasonable portion of the administrative documents concerned with the disclosure request within the said period of time, and if disclosure decisions, etc. are made for the remaining administrative documents within a reasonable period of time after pre-payment as provided for under Art. 16, para. 5. In this case, the head of the administrative organ shall within the period of time provided for in the first paragraph of the ~~same previous~~ Article notify the requester in writing of the following items:

- (1) The application of this ~~Article~~ paragraph and the reason for its application.
- (2) The time ~~period limit~~ deemed to be necessary from the date on which pre-payment occurs as provided for under Art. 16, para. 5 until the date ~~for on which~~ making disclosure decisions, etc. will be made for the remaining administrative documents.

2. With regard to the application of the provisions of Art. 9, para. 1 and para. 2 where the head of an administrative organ has made a disclosure decision, etc. about a substantial portion of the administrative documents concerned with a disclosure request as provided for under the previous paragraph, the wording ‘that effect in writing as well as of’ in Art. 9, para. 1 shall be deemed as ‘that effect in writing as well as of the estimated amount as provided for under Art. 16, para. 5 and other’, and the wording ‘the effect of non-disclosure’ shall be deemed as ‘the effect of non-disclosure as well as of the estimated amount as provided for under Art. 16, para. 5’.

3. In the case that there has been no disclosure decision, etc. within the timeframe provided for under the second sentence of the first paragraph, a requester may deem that the head of an administrative organ has made a decision regarding the remainder of the administrative documents concerned with a disclosure request in the same paragraph (in Art. 16 referred to simply as ‘remaining administrative documents’) under Art. 9, para. 2.

*Article 12 Transfer of a Case*

1. When there is a justifiable reason for the head of another administrative organ to make the disclosure decisions, etc., such as when administrative documents concerned with a disclosure request were prepared by another administrative organ, the head of an administrative organ may upon consulting with the head of the other administrative organ transfer the case to the head of the other administrative organ. In this case, the head of the administrative organ who transfers the case shall notify in writing the requester to the effect that the case was transferred.
2. When a case has been transferred as provided for in the preceding paragraph, the head of the administrative organ who has received the transfer shall make the disclosure decisions, etc. for the disclosure request. In this case, the acts prior to transfer by the head of the administrative organ who has transferred the case are considered to be those of the head of the administrative organ who has received the transfer.
3. In the case of the preceding paragraph, when the head of the administrative organ who has received the transfer makes an Art. 9, para. 1, decision (hereinafter referred to as a 'decision to disclose'), that administrative organ's head shall implement disclosure. In this case, the head of the administrative organ who has transferred the case shall cooperate as necessary in the implementation of disclosure.

*Article 12-2 Transfer of a Case to the Incorporated Administrative Agencies, etc.*

1. When there is a justifiable reason for one of the incorporated administrative agencies, etc. to make the disclosure decisions, etc., such as when corporate documents concerned with a disclosure request were prepared by one of the incorporated administrative agency, etc., the head of an administrative organ may upon consulting with the incorporated administrative agency, etc. transfer the case to the incorporated administrative agency, etc. In this case, the head of an administrative organ who transfers the case shall notify in writing the requester to the effect that the case was transferred.
2. When a case has been transferred as provided for in the preceding paragraph, the administrative documents are regarded as corporate documents as provided for in Art. 2, para. 2 of the Incorporated Administrative Agencies, etc. Information Disclosure Law, held by the incorporated administrative agency, etc. which has received the transfer; a disclosure request is regarded as a disclosure request as provided for in Art. 4, para. 1 of the Incorporated Administrative Agencies, etc. Information Disclosure Law submitted to the incorporated administrative agency, etc. which has received the transfer and the Incorporated Administrative Agencies, etc. Information Disclosure Law (*excluding Art. 17, para. 1*) shall apply. In this case, 'Art. 4, para. 2' in Art. 10, para. 1 of the Incorporate Administrative Agencies, etc. Information Disclosure Law is to be read as 'Art. 4, para. 2 of the Law Concerning Access to Information Held by Administrative Organs (Law No. 42 of 1999)' and ~~"The person who makes a disclosure request and the person"~~ is to be read as "The person" and ~~"respectively a fee for the disclosure request and a fee"~~ is to be read as "a fee".

3. When under paragraph 1 a case is transferred and the incorporated administrative agency, etc. which has received the transfer implements disclosure, the head of an administrative organ which has transferred the case shall cooperate as necessary in the implementation of disclosure.

*Article 13 Granting Third Persons an Opportunity to Submit a Written Opinion, Etc.*

1. When information regarding a person other than the State, an incorporated administrative agency, etc., a local public entity, a local incorporated administrative agency or the requester (hereinafter in this Article, Art. 19, and Art. 20 referred to as a 'third person') is recorded in the administrative documents concerned with a disclosure request, the head of the administrative organ, when undertaking disclosure decisions, etc., may communicate to the third person concerned with the information a representation of the administrative documents concerned with the disclosure request and other items determined by Cabinet Order, and may provide the opportunity to submit a written opinion.

2. In the event that either of the following subparagraphs apply, before making a decision to disclose, the head of the administrative organ shall communicate in writing to the third person concerned with the information a representation of the documents concerned with the disclosure request and other items determined by Cabinet Order, and shall provide the opportunity to submit a written opinion. However, this shall not apply in the case that the third person's whereabouts are unknown.

(1) Where, in the case that the intention is to disclose administrative documents in which information relating to a third person is recorded, it is deemed that said information will fall within the information provided for in Art. 5, subparagraph (1)(b), or within the proviso contained in subparagraph (2) of the same Art..

(2) Administrative documents within which information concerning a third person is recorded are to be disclosed under Art. 7.

3. In the case that the third party who was provided an opportunity to submit a written opinion as provided for by the preceding two paragraphs submits a written opinion indicating opposition to disclosure of the administrative documents concerned, the head of the administrative organ, when making a decision to disclose, shall place at least two weeks between the day of the decision to disclose and the day that disclosure will be implemented. In this case, upon making the decision to disclose the head of the administrative organ shall immediately notify in writing the third person who submitted the written opinion (in Art. 18, *para. 1* and Art. 19 referred to as an 'opposition written opinion') to the effect that the decision to disclose was made, the reason, and the date of implementation of disclosure.

*Article 14 Implementation of Disclosure*

1. The disclosure of administrative documents shall take place by inspection or by the provision of copies for documents or drawings, and for electromagnetic records by methods determined by Cabinet Order that take into consideration their classification and the state of development, etc. of information technology. However, when disclosure of an administrative document is to take place by the inspection method, if the head of the administrative organ considers that there is a risk that difficulties in the preservation of the administrative document will arise, or for other justifiable reasons, a copy of the document may be provided for inspection.
2. The person ~~who will~~ *about whom it has been decided may* obtain disclosure of administrative documents based upon a disclosure decision, as provided for by Cabinet Order, shall request the desired method of implementation of disclosure and other items determined by Cabinet Order to the head of the administrative organ who made the disclosure decision.
3. The request ~~as provided for by~~ *under* the preceding paragraph shall be made within thirty days after the notification provided for in Art. 9, para. 1. However, this shall not apply when there is a justifiable reason for being unable to make the request within this time limit.
4. The person who has obtained disclosure of administrative documents based upon a disclosure decision, within thirty days after first obtaining disclosure, may request to the head of the administrative organ to the effect of again obtaining disclosure. In this case the proviso in the preceding paragraph shall apply mutatis mutandis.

*Article 15 Coordination with Disclosure Implementation by Other Laws*

1. In the case that under the provisions of another law, administrative documents concerned with a disclosure request are to be disclosed to any person by a method the same as provided for in the text of the preceding Art., para. 1 (when the time limit for disclosure is provided for, limited to within that time limit), irrespective of the text of said paragraph, the head of the administrative organ shall not disclose those administrative documents by that same method. However, this shall not apply when within the other law's provisions there is a provision to the effect that in specific circumstances disclosure shall not take place.
2. When the disclosure method designated by provisions of the other law is public inspection, said public inspection shall be regarded as inspection in the text of the preceding Art., para. 1, and the preceding paragraph shall apply.

*Article 16 Fees*

1. ~~The person who makes a disclosure request, and the person who obtains the disclosure of administrative documents~~ *When any of the persons listed below makes a disclosure request*, as provided for by Cabinet Order, *the said person* shall pay ~~respectively~~ a fee for the disclosure request (*In paragraph 8 referred to as a 'disclosure request fee'.*) ~~and a fee~~

for the implementation of disclosure of an amount determined by Cabinet Order and within the limits of actual expenses.

(1) A company as provided for by Art. 2, item 1 of the Companies Act (Law No. 86 of 2005), a foreign company as provided for by item 2 of the same Article and other corporations similar thereto and provided for by Cabinet Order (in item 3 referred to as 'companies, etc. '), or their representative.

(2) An individual who carries on a business such that disclosure requests are made as an enterprise for the purpose of profit or for the purpose of the said enterprise (in the following item referred to as 'individual entrepreneurs'), or their representative.

(3) An executive or employee of a company, etc. or employee of an individual entrepreneur who makes a disclosure request as an enterprise or for the purpose of the said enterprise of a company, etc. or individual entrepreneur.

2. The person who will obtain disclosure of administrative documents, as provided for by Cabinet Order, shall pay a fee for the administration of disclosure (herein in this Article referred to as a 'disclosure administration fee') of an amount determined by Cabinet Order and within the limits of actual expenses.

23. In determining the amount of the disclosure administration fee of the preceding paragraph consideration shall be given to see that it is as affordable an amount as possible.

34. When it is deemed that there is economic hardship or other special reasons, as provided for by Cabinet Order, the head of an administrative organ may reduce or exempt the disclosure administration fee of paragraph 1.

5. In the case that the head of an administrative organ makes a disclosure decision, etc. about a substantial portion of the administrative documents concerned with a disclosure request as provided for under Art. 11, para. 1, the requester, as provided for by Cabinet Order, shall, within 30 days from the date of the notification of the said disclosure decision, etc. as provided for under Art. 9, para. 1 or para. 2, pre-pay an amount provided for by Cabinet Order within the limits of the disclosure administration fee payable in the case that all of the remaining administrative documents are to be disclosed (in the following paragraph and in paragraph 7 referred to as the 'estimated amount').

6. The person who paid the estimated amount as provided for under the preceding paragraph, where the said estimated amount is insufficient for the disclosure administration fee payable in respect of the remaining administrative documents (in the following paragraph referred to as the 'amount payable'), as provided for by Cabinet Order, shall pay the balance due.

7. Where the estimated amount pre-paid as provided for under para. 5 exceeds the amount payable, the amount in excess, as provided for by Cabinet Order, shall be refunded. However, in the case that the person about whom it has been decided may obtain disclosure of administrative documents based upon a disclosure decision about the remaining administrative documents has not made a request as provided for under Art. 14, para. 2 within the

timeframe provided for by para. 3 of the same Article, where the head of an administrative organ has sent notice to the effect that the said request should be made within 30 days from the date on which the said timeframe expired, and notwithstanding this the said person has, without just cause, not responded, this shall not apply.

8. The person who makes a disclosure request, and the person who obtains the disclosure of administrative documents, as provided for by Cabinet Order, shall pay respectively, in addition to the disclosure request fee and the disclosure administration fee, the costs required for sending, and may request that documents relating to a notification as provided for under Art. 9, para. 1 or para. 2 or a copy of the administrative documents may be sent.

#### *Article 17 Delegation of Authority and Functions*

As provided for by Cabinet Order (in the case of organs under Cabinet jurisdiction and the Board of Audit, orders of said organs), the head of an administrative organ may delegate to an employee of said administrative organ the authority and functions provided for in this Chapter.

### *Chapter 3 Appeals*

#### *Article 18 References to the Review Board*

1. When there is an appeal of a disclosure decision, etc. in accordance with the Administrative Complaint Investigation Law (Law No. 160 of 1962), the head of the administrative organ who is expected to make a ruling or decision on the appeal, excluding cases that fall within either of the following paragraphs, shall make a reference to the Information Disclosure Review Board (when the head of the administrative organ who is expected to make a ruling or decision on the appeal is head of the Board of Audit, a review board separately provided for by law).

(1) When the appeal is unlawful and is rejected.

(2) When upon a ruling or decision the disclosure decision, etc. (excluding decisions to the effect of disclosing all the administrative documents concerned with a disclosure request; hereinafter in this subparagraph and in Art. 20 the same) concerned with the appeal is revoked, or altered, and all the administrative documents concerned with the appeal are to be disclosed. However, this shall exclude cases in which an opposition written opinion regarding the disclosure decision, etc. has been submitted.

2. The head of an administrative organ who has made a reference as provided for under the preceding paragraph, in the case that the period from the date of the appeal to which the reference relates until the reference is made (in the case that a correction is ordered in accordance with Art. 21 of the Administrative Appeals Act (including cases in which Art. 48 of the same law applies mutatis mutandis), excluding the period necessary for the said correction; herein in this paragraph referred to as 'the period until reference is made') exceeds 90 days, shall record the period until reference is made and the reasons for which the period until reference is made exceeds 90 days in the report under Art. 27, para. 1.

*Article 19 Notification of Reference*

The head of an administrative organ who makes a reference according to the provisions of *para. 1* of the preceding Article shall notify the following listed persons to the effect that the reference was made.

- (1) The appellant and intervenor.
- (2) The requester (excluding cases in which the requester is the appellant or intervenor).
- (3) Third persons who have submitted an opposition written opinion about the disclosure decision, etc. that is concerned with the appeal (excluding cases in which the third person is the appellant or an intervenor).

*Article 20 Procedures in the Case that an Appeal from a Third Person is Dismissed, Etc.*

The provisions of Art. 13, para. 3, shall apply mutatis mutandis in a case in which the ruling or decision falls within either of the following subparagraphs.

- (1) A ruling or decision to reject or dismiss an appeal from a third person regarding a decision to disclose.
- (2) A ruling or decision altering the disclosure decision, etc. concerned with an appeal to the effect of disclosing administrative documents concerned with a disclosure decision, etc. (limited to cases in which an intervenor who is a third person has expressed an intention to oppose the disclosure of the administrative documents).

*Article 21 Exceptions, Etc. for the Jurisdiction of Lawsuits*

~~1.— In regard to lawsuits demanding the revocation of a disclosure decision, etc. or the revocation of a ruling or decision regarding the appeal of a disclosure decision, etc. (In the following paragraph and in paragraph 2 of the Additional Provisions referred to as an “information disclosure lawsuit.”), in addition to the court provided for by Article 12 of the Administrative Case Litigation Law (Law No. 139 of 1962), cases may also be brought before the district court (In the next paragraph referred to as a “specific jurisdiction court.”) that has jurisdiction over the seat of the high court that has jurisdiction over the seat of the plaintiff’s general forum.~~

~~2.— When a suit is brought before a specific jurisdiction court as provided for by the preceding paragraph, and in the case that an information disclosure lawsuit involving the same or the same type or otherwise similar administrative documents is pendent in another court, the specific jurisdiction court, having given consideration to the addresses or whereabouts of the parties, the addresses of witnesses who should be examined, and characteristics common to the points in contention or the evidence along with other matters, when it deems it appropriate, may in response to a petition or on its own authority transfer the whole lawsuit or a part of it to the other court or a court provided for by Article 12 of the Administrative Case Litigation Law.~~

#### Article 21 Recommendation of the Prime Minister

1. The head of an administrative organ who has made a reference as provided for under Art. 18, para. 1 (excluding the Board of Audit; the same shall apply to the following paragraph and to Art. 28), when making a ruling or decision in response to an appeal to which the said reference relates, must, excluding decisions to the effect of disclosing all the administrative documents concerned with a disclosure request, give notice of the substance of the determination or decision to the Prime Minister in advance.

2. The Prime Minister, when deeming it necessary in light of the substance of the findings of the Information Disclosure Review Board in response to the reference concerned with the notification as provided for under the preceding paragraph and of the purpose provided for under Art. 7, may make a recommendation to the said head of an administrative organ as to the ruling or decision in line with the said findings, the disclosure as provided for by the same Article, or any other necessary measure that should be taken, and may require a report on the measures taken as a result of the said recommendation.

### Chapter 4 Litigation

#### Article 22 Special Provisions for Jurisdiction and Transfer

1. Actions for the judicial review of an administrative disposition relating to a disclosure decision, etc. or a ruling or decision against an administrative appeal in relation to a disclosure decision, etc. (meaning an action for the judicial review of an administrative decision as provided for under Art. 3, para. 1 of the Administrative Case Litigation Law (Law No. 139 of 1962); the same shall apply to Art. 30) (herein referred to as an 'information disclosure action') may be filed in the district court (herein referred to as the 'specified district court') that has jurisdiction over the seat of the plaintiff's general forum, in addition to the court provided for by Art. 12, para. 1 to para. 4 of the same law.

2. In the case that an information disclosure action is filed in a specified district court as provided for under the preceding paragraph or in the case that an information disclosure action is filed as provided for under Art. 12, para. 4 of the Administrative Case Litigation Law in a specified court with jurisdiction as provided by the same paragraph, then notwithstanding the provisions of para. 5 of the same Article, where an information disclosure action is pending before another court in relation to the same or the same type or similar administrative documents, the said specified district court or said specified court with jurisdiction may, upon a motion or by its own authority, having regard to the residence or location of the parties, the residence of any witnesses to be examined, the commonality of the issues and evidence and any other circumstances, where it is deemed reasonable, transfer the whole or part of the action to the said other court or a court specified under para. 1 to para. 3 of the same Article.

Article 23 Special Provision for Dispositions for Explanation

In an information disclosure action, the court, where it is deemed necessary in order to clarify their relationship with the action, may make a disposition to the head of the administrative organ that made the disclosure decision, etc. concerned with the said information disclosure action, requiring the production and submission of materials which categorize and organize in a manner designated by the court the information recorded in the administrative documents concerned with the said information disclosure action, matters which must be recorded as provided for under Art. 9, para. 3 and such other matters as are deemed necessary.

Article 24 Examination of Administrative Documents after the Date for Oral Arguments

1. In an information disclosure action, the court, having regard to the substance of the facts, the status of the proceedings, whether or not materials have been submitted as provided for under the previous Article, the content of the said materials and any other circumstances, where it is deemed particularly necessary, may upon a motion and with the consent of the parties conduct an examination or inspection (herein referred to as an 'examination after the date for oral arguments') after the date for oral arguments without the attendance of the parties of the documents intended as the administrative documents to which the said information disclosure action relates (including the items provided for by the Civil Procedure Code (Law No. 109 of 1996) Art. 231).

2. Where a motion is made under the preceding paragraph, the respondent may not refuse consent under that paragraph except in the case that submitting to the court or producing the said administrative documents would cause a material obstacle to national defense, diplomatic interests or to the maintenance of public safety and order, or would otherwise harm a material national interest.

3. Where a court makes a decision to conduct an examination after the date for oral arguments, the respondent must submit to the court or produce the said administrative documents. In this case no person may request disclosure of the administrative documents that have been submitted or produced.

4. Notwithstanding the provisions of para. 1, the court, where it is deemed reasonable, may permit the respondent to attend the examination after the date for oral arguments in order to have them perform such acts as are necessary for the smooth administration of the examination after the date for oral arguments.

5. The court, after the examination after the date for oral arguments has ended, where it is deemed necessary, may require the respondent to produce the said administrative documents again.

Chapter 5 Provision of Information

Article 25

1. The head of an administrative agency, as prescribed by cabinet order, shall provide in a timely manner and in a form that is easy for the people to understand and by means that is easy for the people to access, all documents, graphics or electromagnetic records which record the following information which is held by the said administrative agency and is specified by cabinet order.

(1) Basic information relating to the organization and functions of the said administrative agency.

(2) Basic information relating to systems in relation to the jurisdiction of the said administrative agency.

(3) Information relating to the budget and accounts of the expenses and income in relation to the jurisdiction of the said administrative agency.

(4) Information relating to evaluations of the organization and functions of the said administrative agency and systems in relation to the jurisdiction of the said administrative agency, and audits of the accounts of the expenses and income in relation to the jurisdiction of the said administrative agency.

(5) Basic information relating to the following corporations under the administrative jurisdiction of the said administrative agency.

(a) Incorporated Administrative Agencies (being Incorporated Administrative Agencies as provided for by the Act on General Rules for Incorporated Administrative Agencies Art. 2 para. 1) and other corporations established by special law, as prescribed by cabinet order.

(b) In the case that the head of the said administrative agency has on the basis of law designated a corporation to carry out all or some of examination, inspection, test, registration or other administrative functions prescribed by law, those designated corporations as prescribed by cabinet order.

(c) Corporations prescribed by cabinet order that correspond with those corporations provided in (a) and (b).

2. The head of an administrative agency, where there has been a disclosure request for the same administrative documents by two or more individuals, in the case that it is decided to disclose the whole of the said administrative documents in response to all of those disclosure requests, and it can be expected that there will be further disclosure requests from other individuals for the said administrative documents, shall endeavor to provide those said administrative documents in a timely manner and by means that is easy for the people to access.

3. In addition to the items provided for under the preceding two paragraphs, the Government, in order to promote the general disclosure of documents held by it, shall endeavor to improve measures in relation to the disclosure of information held by administrative agencies.

#### Chapter 4 6 Supplementary Provisions

##### ~~Article 22~~ 26 *The Provision, Etc. of Information to Persons Who Intend to Request Disclosure*

1. So that it is possible for persons who intend to request disclosure easily as well as accurately, the heads of administrative organs shall provide information helpful in specifying the administrative documents held by the administrative organs and take other appropriate steps that take into account the convenience of the persons intending to request disclosure.
2. In order to secure the smooth application of this law, the Prime Minister of Public Management, Home Affairs, Posts and Telecommunications shall provide for general inquiry offices.

##### ~~Article 23~~ *Publication of the State of Enforcement*

- ~~1. The Minister of Public Management, Home Affairs, Posts and Telecommunications may request reports on the state of enforcement of this law from the heads of the administrative organs.~~
- ~~2. The Minister of Public Management, Home Affairs, Posts and Telecommunications shall annually collect, arrange, and publish a summary of the reports of the preceding paragraph.~~

##### ~~Article 24~~ *Enhancement of Measures for the Provision of Information Held by Administrative Organs*

~~In order to comprehensively promote disclosure of the information it holds, the government shall strive to enhance measures concerned with the provision of information held by administrative organs, making clear to the people through timely as well as appropriate methods the information that administrative organs hold.~~

##### ~~Article 27~~ *Reporting, etc. on the Status of Enforcement*

1. Heads of administrative organs shall report to the Prime Minister each year about the status of enforcement of this law.
2. The Prime Minister, each year, shall collate the reports referred to in the preceding paragraph and publish a summary (including with respect to reports in the case that the 90

day period has been exceeded as provided for by Art. 18, para. 2, for each reference, those items that must be recorded as provided for under the same paragraph).

Article 28 Recommendation of the Prime Minister

The Prime Minister, in the case that it is deemed particularly necessary for the implementation of this law, may make a recommendation to the head of an administrative organ for the improvement of disclosure of information, and may require a report on the measures taken as a result of the said recommendation.

Article-25 29 Information Disclosure by Local Public Entities

In keeping with the spirit of this law, local public entities shall strive to formulate and implement measures necessary for the establishment of information disclosure ordinances (meaning ordinances of the said local public entities prescribing the rights of local residents, etc. to request the disclosure of information held by local public entities or local Incorporated Administrative Agencies; the same shall apply in the following article) and other disclosure of the information that they hold.

Article 30 Application of the Provisions in Relation to Information Disclosure Actions

The provisions of Art. 23 and Art. 24 shall apply mutatis mutandis to procedures for actions for judicial review relating to dispositions under the provisions of information disclosure ordinances corresponding to disclosure decisions, etc. or rulings or decisions against administrative appeals in relation to such dispositions.

Article-26 31 Delegation to Cabinet Order

Apart from the provisions of this law, items necessary for implementation of this law shall be determined by Cabinet Order.

Additional Provisions [Note: these provisions are now redundant]

1. This law shall come into effect on a date to be provided for by Cabinet Order, but not more than two years from the date of promulgation. However, the provisions of the part of Art. 23, para. 1, concerning receiving of the consent of both Houses, Art. 40 through Art. 42, and the following paragraph, shall come into effect from the date of promulgation.
2. Approximately four years after this law comes into effect, the government shall examine the state of enforcement of this law along with the manner of jurisdiction for information disclosure lawsuits, and shall take necessary measures based upon those results.