



FREEDOM OF INFORMATION MANUAL

NOVEMBER 28, 2019
ENERGY REGULATORY COMMISSION
Pacific Center Building, San Miguel Avenue, Pasig City

I. GENERAL PROVISIONS

A. Background and Purpose

On 23 July 2016, President Rodrigo R. Duterte issued Executive Order No. 2, otherwise known as the Freedom of Information (FOI) E.O., which seeks to operationalize the Constitutional provisions on full public disclosure of all State transactions involving public interests¹ and the right of the people to information of public concern.²

Section 8 of the FOI E.O. directed all government agencies under the Executive Branch to formulate their respective FOI manuals which shall contain the following information:

1. the location and contact information of the head, regional, provincial, and field offices, and other established places where the public can obtain information or submit requests;
2. the person or office responsible for receiving requests for information;
3. the procedure for the filing and processing of requests;
4. the procedure for the administrative appeal of any denial of access to information;
5. the standard forms to be used; and
6. the schedule of applicable fees.

In compliance with said directive, this FOI Manual was formulated by the Energy Regulatory Commission (ERC) in November 2016, and updated three (3) years later in 2019, classifying the information, document or record in the custody of the various Services/Offices and officers in the ERC, identifying what information may be disclosed to the requesting party, outlining the procedure being followed when handling such requests, and streamlining the process to ensure that all requests for information are efficiently handled.

This FOI Manual shall also serve as a guide to assist the public in determining the requirements and procedure being followed by the ERC in dealing with requests for information (“FOI request”) received pursuant to E.O. No. 2.

¹ Article II, Section 28, 1987 Constitution.

² Article III, Section 7, Ibid.

B. Coverage

This FOI Manual shall cover all FOI requests filed with the ERC, including its Visayas Area Operations Division (VAOD) and Mindanao Area Operations Division (MAOD).

C. Protection of Privacy

While providing access to information, the ERC shall afford full protection on a person's right to privacy as provided under the law. For this purpose, the ERC shall:

1. ensure that personal information, particularly sensitive personal information, in its custody or under its control is disclosed only as permitted by existing laws; and
2. protect personal information in its custody or under its control by making reasonable security arrangements against unauthorized access, leaks or premature access.

Any official or employee who has access, whether authorized or unauthorized, to personal information in the custody of the Services/Offices in the ERC, shall not disclose that information except as authorized by law and following this FOI Manual and other applicable rules and guidelines of the ERC.

II. DEFINITION OF TERMS

- a) **ADMINISTRATIVE FOI APPEAL** refers to an independent review of the initial determination made in response to an FOI request. Requesting parties who are dissatisfied with the action taken by the FOI Decision Maker on an FOI request have a right to appeal that initial determination to the FOI Appeals Authority, which shall conduct an independent review of said appeal.
- b) **EXCEPTIONS TO FOI** refers to those class of privileged information that are outside the scope of the constitutional right to information and which should not be released and disclosed to the public, as provided in the Constitution, laws or jurisprudence. These exceptions are those enumerated in the *List of Exceptions*

provided in the FOI E.O., its related issuances, and further expanded in Annex “A” of this FOI Manual.

- c) **FOI APPEALS AUTHORITY** refers to the Commission *en banc*, or its duly authorized representative/s, which decides appeals from the action of the FOI Decision Maker, and has authority to affirm, reverse or modify such action.
- d) **FOI DECISION MAKER (FDM)** refers to the office or person who evaluates the recommendation of the FOI Evaluating Office on FOI requests and has authority to approve or deny such requests.
- e) **FOI RECEIVING OFFICE (FRO)** refers to the office which receives FOI requests and preliminarily assesses their compliance with the requirements provided under this FOI Manual.
- f) **FOI REQUEST** refers to a written request submitted to the ERC personally, by mail, or electronically asking for information, document or record.
- g) **FOI EVALUATING OFFICE (FEO)** refers to the office with the responsibility of evaluating and reviewing FOI requests and preparing recommendations to the FDM.
- h) **INFORMATION** shall mean any resolution, decision, order, minutes of meeting, transcript of stenographic notes, photographs, audio recordings, or other data archived in whatever format, whether offline or online, which are made, received, or kept in or under the control and custody of the Commission, a particular Service/Office, officer or employee.
- i) **FULLY COMPLIANT FOI REQUESTS** refers to an FOI request which fully complies with the requirements set forth under this FOI Manual.
- j) **PERSONAL INFORMATION** shall include any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information, would directly and certainly identify an individual.

k) PUBLIC RECORDS shall include information required by laws, executive orders, rules, or regulations to be entered, kept, and made publicly available by a government office.

l) SENSITIVE PERSONAL INFORMATION includes information enumerated under paragraph (l), Section 3 of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, as follows:

(1) About an individual race, ethnic origin, marital status, age, color, and religious philosophical or political affiliations;

(2) About an individual health, education, genetic or sexual life of a person, or to any proceedings for any offense committed or alleged to have committed by such person, the disposal of such proceedings or the sentence of any court in such proceedings;

(3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and

(4) Specifically established by an executive order or an act of Congress to be kept classified.

III. RESPONSIBILITIES OF THE FOI RECEIVING OFFICE, RECEIVING OFFICER, EVALUATING OFFICE, DECISION MAKER, AND FOI APPEALS AUTHORITY

A. FOI RECEIVING OFFICE (FRO)

All FOI requests pertaining to the ERC should be filed with and/or submitted to the ERC FRO. For FOI requests received by the ERC through its Visayas and Mindanao Area Operations Divisions, said requests shall be immediately transmitted to the ERC FRO for appropriate action.

The Head of the FRO shall designate an FRO Officer/s (FROO) to assist in the proper discharge of the functions of the FRO. The contact details of the FRO and FROO are as follows:

Name of FOI Receiving Office (FRO):	Office of the General Counsel and Secretariat of the Commission
Name of Head of Office:	Atty. Heiddi Venecia R. Barrozo
FOI Receiving Officer/s (FROO):	Ms. Ma. Lucila Giron (ERC Main Office) Mr. Rodney Misleng (ERC Visayas Area Operations Division) Ms. Evelyn Baula (ERC Mindanao Area Operations Division)
Address:	<u>ERC Main Office</u> 18 th Floor, Pacific Center Building No. 33 San Miguel Avenue, Ortigas Center, Pasig City 1605 <u>ERC Visayas Area Operations Division</u> St. Mary's Drive Banilad, Cebu City 6000 <u>ERC Mindanao Area Operations Divisions</u> Mintrade Building Monteverde Avenue cor. Sales Street Davao City 8000
Contact Nos.:	<u>Main Office</u> (02) 8689-5372 (02) 8689-5-ERC <u>VAOD</u> 0906-289-3099 <u>MAOD</u> (082) 224-1575
Email addresses:	records@erc.gov.ph / records.erc@gmail.com <i>*FOI requests can also be lodged through the ERC FOI portal.</i>

The FRO shall exercise the following functions:

1. Serve as the initial point of contact to the public on FOI requests in the ERC;
2. Receive all FOI requests on behalf of the ERC;
3. Conduct an initial evaluation of FOI requests and make a determination on (a) whether these are fully compliant FOI requests, or (b) the requested information, document or record was already made public by the Commission by posting in the ERC official website;
4. Deny or refuse to accept FOI requests based on the results of its initial evaluation;
5. Undertake preliminary determination of the appropriate FEO which has custody of the requested information and forward the request to such office;
6. Forward a fully compliant FOI request to the appropriate FEO for evaluation and notify the party requesting the information, document or record of such action;
7. Monitor all FOI requests and appeals;
8. Compile statistical information on FOI requests and actions taken thereon;
9. Prepare the necessary FOI report; and
10. Provide such other assistance to the FDM and FEO.

The names and contact details of the FRO and FROO shall be posted in the ERC official website and in the bulletin board of the ERC's main office, VAOD and MAOD.

B. FOI EVALUATING OFFICE (FEO)

The FEO shall have custody of all the FOI Requests received by the FRO and forwarded to it by the FRO after initial evaluation. It shall perform the following functions:

1. Review the merits of the FOI Request;
2. Determine whether it has possession of the requested information;
3. Evaluate whether the requested information falls under any of the exceptions to the FOI, as provided in Annex "A" of this FOI Manual;
4. Determine whether grounds for denial of the request exist;

5. Coordinate with different Services/Offices, or if necessary, with other government agencies, prior to taking action on the request; and
6. Prepare necessary recommendation on the FOI request to the FDM such as grant, denial, partial denial, redaction of the information, referral to other government agencies, or such other actions as may be necessary.

C. FOI DECISION MAKER (FDM)

The Head of the FEO (Service Director) shall serve as the FDM. The FDM shall perform the following functions:

1. Evaluate the recommendations of the FEO on any FOI request and take action thereon; and
2. Grant, deny, partially grant or partially deny the request, order the redaction of certain information prior to release, refer the request to other Services/Offices or other government agencies, or undertake such other actions as may be appropriate.

As a rule, the FDM shall grant an FOI request where the matter/s referred to in the FOI request pertains to public records or decisions, orders, resolutions or other information already published by the Commission in its official website. The FDM may deny it in any of the following instances:

- a) the FOI request fails to substantially comply with the requirements under this Manual such as the requirement on specificity of purpose of the FOI request;
- b) the ERC does not have official custody of the document or other information identified in the FOI request;
- c) the information requested falls under the list of exceptions identified in the FOI E.O. as reiterated in Annex "A" of this Manual;
- d) the document or information requested contains sensitive personal information protected by the Data Privacy Act of 2012; or
- e) the FOI request covers an identical or substantially similar request previously denied by the ERC.

For FOI requests received by the VAOD or MAOD, the Chairperson and CEO may designate a responsible officer who may act as FDM for

documents or information pertaining to said offices. Said officer, as FDM, shall report to the Commission all FOI actions acted upon within a reasonable period, as may be determined by the Commission.

D. FOI Appeals Authority

The Commission *en banc*, or its duly authorized representative/s, shall act as the FOI Appeals Authority. It has the power to review on appeal decisions of the FDM and take final action on any FOI request submitted to the ERC.

IV. PROCEDURE

A. FILING AND CONTENTS OF THE FOI REQUEST

1. The FOI request should be in writing using the FOI Request Form (FRF) (Annex “C”) and filed with the FRO.
2. It should contain the following:
 - i. Details of the requesting party such as name, contact information, affiliation, company or organization;
 - ii. Reasonable description of the information requested;
 - iii. Specific reason for, or purpose of, the request for information. For this purpose, a general averment such as “for information”, “for research”, “for legal purposes” or other similarly worded purpose shall not be considered to have met the requirement of specificity;
 - iv. Whether a photocopy or certified true copy of the subject information/ document is requested;
 - v. Preferred mode of communication and receipt of the response;
 - vi. Proof of identification (government issued ID with photo); and
 - vii. Proof of authority, if made through a representative.
3. The FOI request may be submitted through electronic mail (e-mail) or through the official online portal, provided that the requesting party shall attach a scanned copy of the FOI Request Form (FRF) with the supporting documents.

4. In case the requesting party is unable to make a written request because of illiteracy or disability, the FROO shall provide reasonable assistance to the requesting party in transforming the oral request in writing. Reasonable assistance does not include reproduction costs of the FOI request and supporting documents.

B. RECEIPT OF AND INITIAL ACTION ON THE FOI REQUEST

1. The FRO shall receive the FOI request and indicate in the receiving copy the date and time of receipt thereof. If made via registered mail, the date of actual receipt of the FOI request shall be considered as the date of receipt of said request. If sent via e-mail or other official online portal, the date it was actually electronically received shall be the date of receipt of the FOI request.
2. FOI requests received after 5:00 p.m. shall be considered received the following working day. A working day is any day other than Saturday, Sunday, or a day which is declared a national public holiday in the Philippines.
3. Where the FRO has requested the requesting party to submit further details to identify and locate the requested information, the date when the necessary information or clarification was received by the FRO shall be the date of receipt of the FOI request.
4. Upon receipt of the FOI request, the FRO shall ascertain whether the request is a fully compliant FOI request in accordance with the requirements provided under this FOI Manual. Within seven (7) working days from the date of receipt of such FOI request, the FRO shall:
 - a) advise the requesting party of the denial of the FOI request which is not fully compliant with the requirements set by this FOI manual; or
 - b) refer the request to the appropriate FEO for evaluation and inform the requesting party of such action.

C. EVALUATION BY THE FEO AND ACTION BY THE FDM

1. Upon receipt of the fully compliant FOI request from the FRO, the FEO shall proceed to evaluate the request, which shall consist of:
 - a) ascertaining whether the information requested is in its possession or custody; and
 - b) determining whether there are grounds for the denial of the requested information.
2. If the FEO requires clarification or further details to identify or locate the information requested, it shall seek clarification from the requesting party. The clarification shall toll the running of the seven (7) working day period, which period shall commence anew after the required clarification has been received by the FRO.
3. If the information requested requires extensive search of the government's office records facilities, examination of voluminous records, or cannot be easily retrieved due to occurrence of fortuitous events or other analogous cases, the FEO shall inform the requesting party of such need for additional time to act on the request. Such extension shall not exceed twenty (20) working days, unless exceptional circumstances warrant a longer period.
4. The FEO shall prepare and submit its recommendation to the FDM, who shall approve or deny the request.
5. Once the FDM approves or denies the request, the FDM shall apprise the FRO of such action. In case of approval, it shall submit to the FRO the communication in response to the FOI request, with the document or information requested attached to such communication, within five (5) working days from the FEO's receipt of the request.

In case of denial, the FDM shall likewise provide the FRO of the communication in response to the FOI request for transmittal to the requesting party within the same period. The denial shall clearly set forth the ground/s for denial and the circumstances on which the denial is based.

6. Failure to notify the requesting party of the action taken on the FOI request within the prescribed period shall be deemed a denial of the request for access to information.

V. REMEDIES IN CASE OF DENIAL

A party whose request for access to information has been denied may avail himself of the remedies set forth herein.

1. The requesting party may file an appeal of the adverse or unfavorable action of the FDM with the FOI Appeals Authority. The appeal shall be filed within fifteen (15) calendar days from receipt of the notice of denial or the lapse of the period to respond to the request.
2. The appeal shall be decided by the FOI Appeals Authority within thirty (30) working days from receipt of the appeal. Failure to decide within the thirty (30)-day period shall be deemed a denial of the appeal.
3. The denial of the appeal by the FOI Appeals Authority shall be considered final, and the requesting party may file the appropriate judicial action in accordance with the Rules of Court.

VI. TRACKING SYSTEM

The ERC shall develop and establish a system to ensure that all requests for information received, status of pending requests, and requests acted upon are properly documented and monitored.

VII. FEES

The ERC shall not charge any fee for accepting FOI requests. Nevertheless, it may charge a reasonable fee to reimburse necessary costs, including actual costs of reproduction and copying of the information requested, subject to existing rules and regulations.

The schedule of fees shall be posted outside the FRO or in any place within the ERC accessible to the public, and shall be posted in the ERC's official website.

The ERC may exempt any party from payment of fees upon request and showing of justifiable grounds.

VIII. ADMINISTRATIVE LIABILITY

Failure to comply with the provisions of this FOI Manual shall be considered a violation of reasonable office rules and regulations, and punishable as follows:

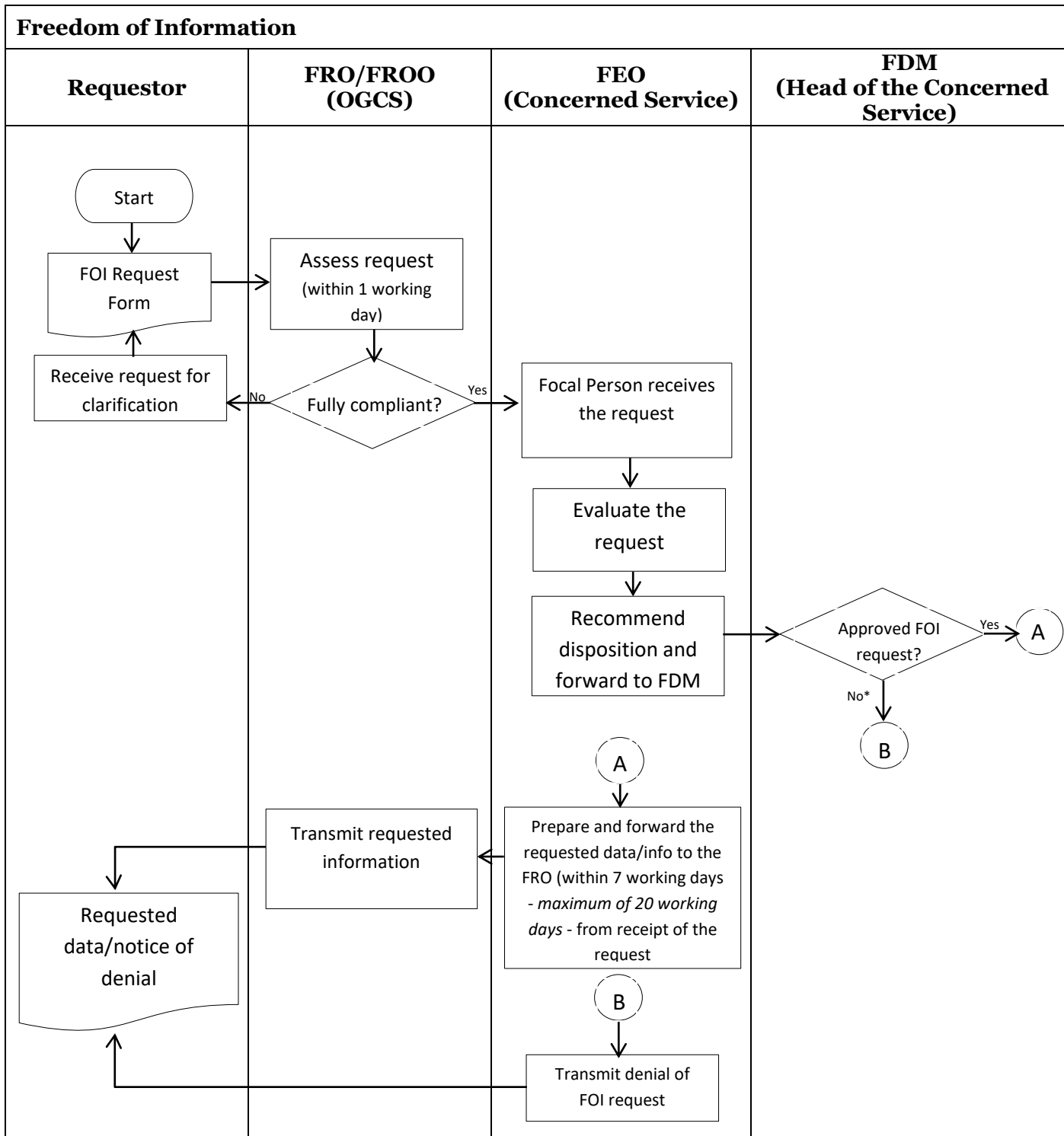
- a. 1st Offense – Reprimand;
- b. 2nd Offense – Suspension of one (1) to thirty (30) days; and
- c. 3rd Offense – Dismissal from the service.

The 2017 Rules on Administrative Cases in the Civil Service issued by the Civil Service Commission and other relevant CSC issuances shall be applicable in the disposition of administrative cases against officials and employees of the ERC under this FOI Manual.

ANNEX “A”
LIST OF EXCEPTIONS TO FOI

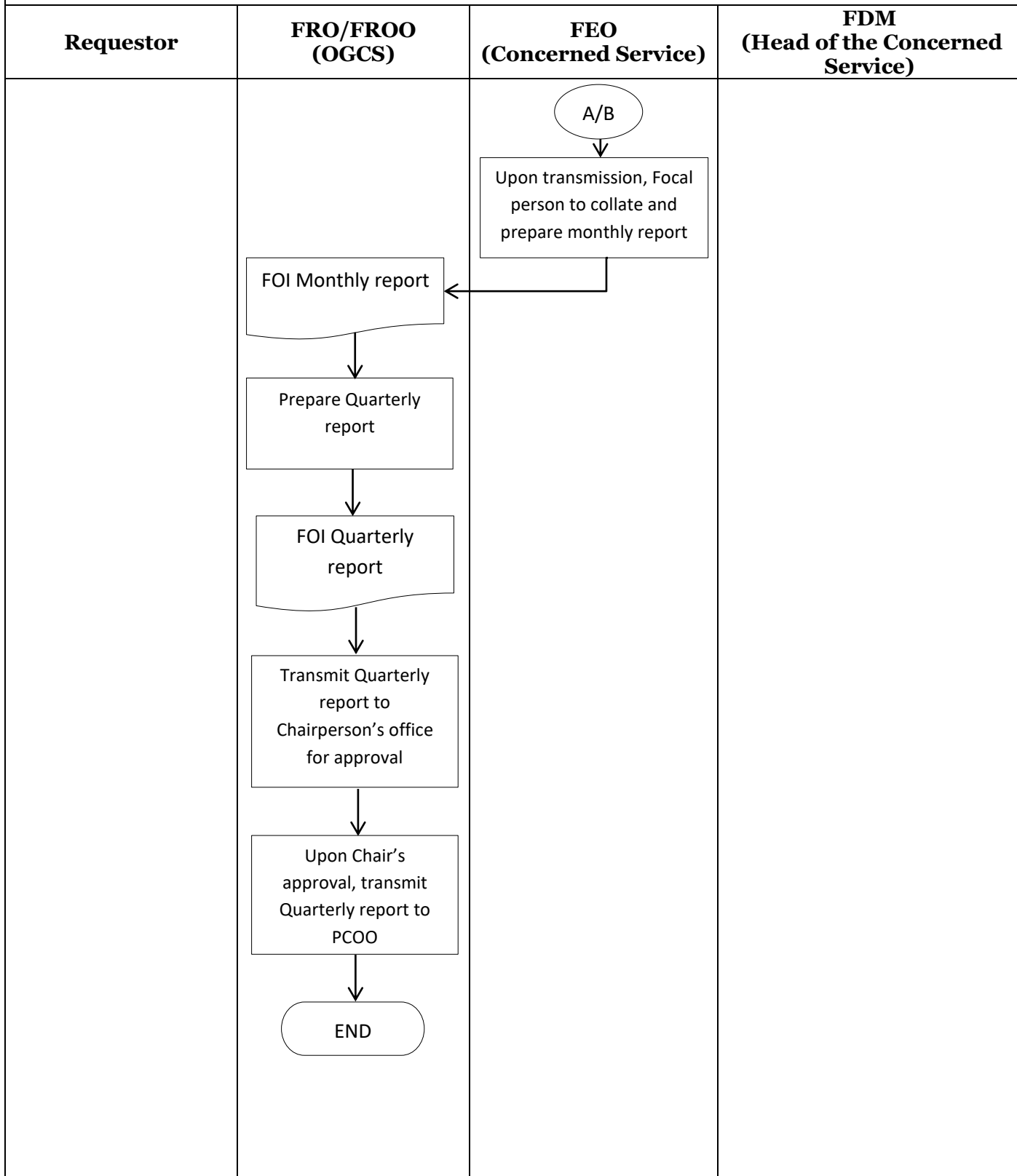
1. Information covered by Executive privilege;
2. Privileged information relating to national security, defense or international relations;
3. Information concerning law enforcement and protection of public and personal safety;
4. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
6. Prejudicial premature disclosure;
7. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
8. Matters considered confidential under banking and finance laws, and their amendatory laws;
9. Matters treated as confidential information pursuant to the Commission’s policy on confidential treatment of information; and
10. Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

**ANNEX B
PROCESS FLOWCHART**



**If there is no action on the request within the prescribed period, the request is deemed denied.*

Freedom of Information



**ANNEX C
FOI Request Form**

**PORMULARYO NG KAHILINGAN
FOI Request Form**

TITULO NG DOKUMENTO (Title of Document)/IMPORMASYONG HINIHING (Information Requested) : _____

MGA TAON/PANAHONG SAKLAW (Year): _____

LAYUNIN (Purpose): _____

PANGALAN (Name): _____ CONTACT Nos.: _____

LAGDA (Signature): _____ PETA (Date): _____

TIRAHAN (Address): _____

KATIBAYAN NG PAGKAKAKILANLAN (Proof of Identity):

Passport No. _____

Driver's License _____

Other _____

PARAAN NG PAGTANGGAP NG IMPORMASYON

(How would you like to receive the information?)

- Email _____
- Fax _____
- Postal Address _____
- Pick-up (Office Hours) _____

Gawaing itinalaga kay: _____

(Submitted to) (Lumagda sa ibaba ng pangalang nakalimbag)

Peta/Oras ng Pagkatalaga: _____

(Date/Time of Submission)

Taong nagpatunay ng Gawaing Natapos: _____

(Certified by) (Lumagda sa ibaba ng pangalang nakalimbag)

Uri ng isinagawang aksiyon: _____

(Type of action conducted)

Iniskedyul ni/Received by:

FOI Receiving Officer

Remarks:
