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1 Introduction

1.1 History of the Information Disclosure Law

Access to official information at the national level in Japan is principally governed by the *Law concerning Disclosure of Information Held by Administrative Organs*,[1] commonly abbreviated as the "Information Disclosure Law". Whereas the new Brazilian Law No. 12.527/2011 (herein, the "Brazilian Law") appears to be relatively comprehensive, and covers a number of aspects of information regulation, the Information Disclosure Law is only one of several key information laws in Japan. The two other key information laws are, first, the *Law on the Protection of Personal Information Held by Administrative Organs* (or the "Personal Information Protection Law"),[2] which governs the collection and use of personal information by administrative organs and access by individuals to information relevant to them, and, second, the *Public Records and Archive Management Law*,[3] which deals with the creation, storage and destruction of administrative documents. As discussed below, both laws are relevant to the type of information that can be accessed under the Information Disclosure Law. An additional information law, the *Specified Secrets Protection Law*,[4] was enacted in December 2013 after wide-spread controversy. The Bill could have significant implications for administrative discretion to refuse disclosure on national

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[1] Law No. 42 of 1999. The law has been translated by Katsuya Uga (Tokyo University) and David Moses Schultz (Uga & Schultz 2001; this is the version included in this paper) as well as by the Ministry of Justice. Both include in their translated titles "*Access to* Information Held by Administrative Organs". The use of the word "access" is debatable from a purely linguistic point of view, as the relevant Japanese word (*kôkai* – literally, "opening to the public") better translates as "disclosure". However, it is a more accurate reflection of the content of the law, since information is disclosed passively and on an ad hoc basis in response to applications for access by individuals, rather than proactively and systematically on the initiative of administrative organs. Nevertheless, the term "information disclosure" is preferred here. Note that the translation of the law included in this book is based on the Uga/Schultz translation, updated by the authors to reflect subsequent amendments.

[2] Law No. 58 of 2003 (not to be confused with the Law on the Protection of Personal Information (Law No. 57 of 2003), which applies only to private actors).

[3] Law No. 66 of 2009.

[4] Law No. 108 of 2013. Cf. Rheuben 2013a.

defense and safety grounds, as well as for the practical operation of the Information Disclosure Law, as discussed below.

The purpose of the Information Disclosure Law, as stated in its opening clause, is to "*…strive for greater disclosure of information held by administrative organs, thereby ensuring that the government fulfills its duty to explain its various operations to the people, and to contribute to the promotion of a fair and democratic administration…*". These lofty goals to some extent reflect the history of the law as the outcome of a "bottom-up" citizen-led movement for a freedom of information law. The birth of this movement is commonly traced to the prosecution of the journalist Takichi Nishiyama, in 1974, for "inducing" a public servant to leak evidence of a government cover-up.[5] The potential threat to freedom of the press galvanized transparency advocates to push for legislative protection. In a round table discussion held the same year, academics for the first time called for national legislation on information disclosure.[6] Civil society groups such as the Japan Civil Liberties Union and the Japan Consumers Union also joined in the calls.

The tactic adopted by the latter in particular was to encourage local governments to implement information disclosure ordinances under their local rule-making powers.[7] By the time the national Information Disclosure Law was enacted in 1999, all prefectures and the majority of municipalities had enacted such ordinances. These ordinances were a significant influence on the drafting of the Information Disclosure Law.[8]

In the mid-1990s, two incidents brought information disclosure systems to public attention.[9] The first were the activities of "Citizens' Ombudsmen", voluntary local watchdog groups monitoring public administration, which focused upon items in local budgets allocated as "food expenditure". It was known that such budget items were often abused by local administrations for the purpose of entertaining central government

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[5] Tokyo District Court, 306 Hanrei Times 91 (Judgment of 31 January 1974). For more details on the case in English, see Kadomatsu 1999, p. 35; Repeta 2011, p. 45-47.

[6] See e.g. Horibe 1992, p. 37; Schultz 2001, p. 130.

[7] Japanese local governments (both at the prefectural and municipal level) possess general rule-making powers pursuant to Article 94 of the Japanese Constitution and Article 14 of the Local Autonomy Law (Law No. 67 of 1947) (please note that, although the official translation of Article 94 of the Constitution refers to rules enacted by local governments as "regulations", the term "ordinance" is used here in accordance with custom). Local governments have adopted information disclosure ordinances on the basis of these general rule-making powers, rather than as delegated legislation. The first municipality to do so was tiny Kaneyama Town in Yamagata Prefecture, while the first prefecture was the significantly more populous Kanagawa Prefecture, both in 1982. See Repeta 2003.

[8] See Kadomatsu 1999, p. 39.

[9] For detail, see Kadomatsu 1999, p. 36-37.

bureaucrats and sometimes with an indiscreet sum, in order for local governments to maintain a “good relationship” with central ministries. Making use of information disclosure ordinances, the network exposed the systematic abuse of "food expenditure".

The “AIDS file scandal” within the Ministry of Health and Welfare was the other incident that focused public attention on the issue of information disclosure. In Japan, due to delays in measures to deal with HIV- contaminated non-heat-treated blood products, at least 1806 hemophilia patients were infected with HIV, and many of them have already died. The patient group demanded disclosure of documents related to the "Study Group for the Prevention of Onset and Treatment of HIV-Infected Persons" in the Ministry of Health and Welfare during initial stages of infection, but the ministry denied the existence of such documents. However, in January 1996, the newly appointed minister *Naoto Kan* (who later became prime minister from 2010-2011) ordered a search for the documents. The documents were soon "discovered" in the ministry’s offices and made open to the public. The document file proved to contain crucial pieces of information related to the responsibility of bureaucrats and doctors who took part in the decision-making process.

The direct impetus for the eventual adoption of the national law emerged from the political upheaval of the 1993 House of Representatives election that ended almost 40 years of single-party rule by the Liberal Democratic Party (“LDP”). The newly-formed coalition government under Prime Minister Morihiro Hosokawa agreed to implement information disclosure legislation as part of an overall “administrative reform” agenda.[10] This agenda continued even after the LDP’s return to power the following year, although the law was not finally passed until May 1999, and did not come into force until nearly two years later, in April 2001.

In 2004 a “Research Council on the Operation of the Information Disclosure Law” was established to review the law, and delivered its report in 2005.[11] The report recommended, for example, a tightening of the exemptions to disclosure under the law and a greater use of online applications and disclosure. The report was largely ignored by the LDP government, prompting the opposition Democratic Party of Japan (“DPJ”)

[10] In this sense, the legislative move was linked with the administration’s "New Public Management" policies, and especially deregulation efforts. Although information disclosure is by its nature neutral to the deregulation discussion, legislation was realized at a national level only after a linkage between the two issues was established. See Kadomatsu 1999, p. 38-39.

[11] Research Council on the Operation of the Information Disclosure Law 2005. The Research Council had been established pursuant to a supplementary clause in the law requiring a review of the law within four years of it coming into force. The clause was included at the insistence of opposition parties, which felt that the law did not go far enough towards ensuring accountability.

to put forward a private member's bill (ultimately rejected) in 2005, to implement the Research Council's recommendations.

Upon taking power in 2009, the DPJ established a new "Administrative Transparency Study Team" (herein, the "Transparency Team"), with terms of reference largely restricted to the matters covered by the DPJ's own 2005 bill. Unsurprisingly, the Transparency Team's 2010 report endorsed much of that bill's contents, and a substantially similar amendment bill was submitted to the Diet in April 2011.[12] However, the need to respond to the devastation caused by the March 2011 tsunami and nuclear disaster, as well as the general legislative paralysis after the LDP's victory in the 2010 upper house election, meant that the bill never made it past the committee stage. Instead, the bill expired with the dissolution of the Diet before the 2012 election, since which the new LDP government has shown little commitment to improving transparency (as evidenced by the passage of the *Specified Secrets Protection Law*).[13]

1.2 Scope of Application

While the Brazilian Law applies to "the Union, States, Federal District and Municipalities", the scope of the Japanese Information Disclosure Law is limited to administrative documents held by national "Administrative Organs".[14] Documents held by the Diet (the national parliament) and the courts are not the subject of disclosure. (Rather, both houses of the Diet and the courts operate their own information disclosure systems respectively based on their internal rules.) The law does not apply to prefectures and municipalities, although, as noted above, almost all of such local governments have enacted their own information disclosure ordinances.[15] With regard to quasi-governmental organizations, a separate law[16] was enacted in 2001.[17]

While the head of each administrative organ to which the Information Disclosure Law applies is responsible for implementing the law, the Ministry of Internal

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[12] On the Transparency Team's report and amendment bill more generally, see Rheuben 2013b.

[13] The now-opposition DPJ did re-submit its amendment bill to the Diet on the same date as the LDP submitted the Specified Secrets Protection Law; however, the former has not been passed.

[14] See Article 2.1 of the Information Disclosure Law.

[15] All prefectural governments and 99.9% of municipal governments have enacted such ordinances as of October 1, 2014. See Ministry of Internal Affairs and Communications 2015.

[16] Law concerning Disclosure of Information Held by Incorporated Administrative Agencies, etc., (Law No. 140 of 2001).

[17] Article 2 of the Brazilian Law applies the content of the law "to the extent possible, to non-profit public entities that receive public resources". In Japan, neither national law nor local ordinances have such a provision. However, some local governments conclude contracts with corporations that receive subsidies, which provide that the corporations shall supply certain important information to the government. In that case, the information will be subject to information disclosure as documents held by the local government.

Affairs and Communications is responsible for overseeing the administration of the law more generally, including collating annual statistics on usage of the law and promoting public education. The Ministry of Internal Affairs and Communications is also responsible for administering the Personal Information Protection Law, although, somewhat disjointedly, it is the Cabinet Office that has oversight for the Public Records and Archive Management Law.

The proposed amendments to the Information Disclosure Law would have similarly seen oversight shift to the Cabinet Office (although not for the Personal Information Protection Law). This reflects a general trend in recent years of diverting politically sensitive policy developments to either the Cabinet Office, directly responsible to the Cabinet, or to the Cabinet Secretariat, directly responsible to the Prime Minister, on the apparent assumption that both are best placed to drive reform. However, both agencies are in practice considerably under-resourced, and their nominal independence from the central bureaucracy is debatable, since most staff are short-term secondees from other ministries.[18]

It is to be hoped that any future moves for reform of the Information Disclosure Law will consider the creation of a well-resourced and genuinely independent body along the lines of the UK Information Commissioner, responsible for information policy more generally. Similar bodies anticipated by the Brazilian Law may also offer a model for Japan in the future.[19]

2 The Scope of the Right of Access

2.1 The Right of Access and the concept "Right to Know"

The Information Disclosure Law indirectly guarantees the right of access to administrative documents. Although the text of the law only stipulates the right to "request" disclosure,[20] the administrative organs are obliged to disclose the requested documents to the applicant, excluding "Non-Disclosure Information",[21] as described below.

[18] Cf. Rheuben 2013b, p. 269-270.
[19] E.g. under Chapter II, Article 9 and Chapter VI, Article 41 of the Brazilian Law.
[20] See Article 3 of the Information Disclosure Law: "Any person, as provided for by this law, may request to the head of an administrative organ…the disclosure of administrative documents held by the administrative organ concerned."
[21] See Article 5 of the Information Disclosure Law.

In the history of the “bottom-up” citizen-led movement that gave impetus to Information Disclosure Law, the concept of the “right to know” played an important role. The concept, which is theoretically derived from Article 21 of the Japanese Constitution, i.e. the Freedom of Expression Clause[22]. Hata explains as follows:

> Freedom of expression is a freedom to express one’s thoughts freely. In order to express his or her opinion on a particular problem, a person must have ample information related to it. For it is not until he/she has enough information that he/she could form an informed opinion. From such a point of view, scholars in the mid-1960s began to insist that Article 21, Paragraph 1 guarantees the right to know as the premise for freedom of expression.[23]

This view, which stresses the importance of taking the recipient side of the communication flow into consideration, gained consensus among scholars as a constitutional principle. As early as in 1969, the Supreme Court mentioned the concept in the context of freedom of the mass media in the *Hakata* Railway Station Film Case.

> In our democratic society, as is pointed out by the appellants, news reports offer important materials for the people to make judgments on their participation in the government and make a contribution to the realization of their "right to know information". Therefore, it goes without saying that the freedom of reporting news together with that of expression of thought is guaranteed under Article 21 of the Constitution providing the freedom of expression. And, for the purpose of supporting the news reported by the news media, the freedom of news-gathering activities as well as that of news reporting is to be sufficiently respected, in the light of the purport of Article 21 of the Constitution.[24]

In this case, the legality of the lower court's order to present a part of a news film for evidential use was in question. Although the court rejected the arguments of the broadcasting companies in the particular case, the *dicta* of the court was observed by a

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[22] See Article 21.1 Japanese Constitution: “Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.” See Matsui 2011, p. 196-211 about the situation of freedom of expression in Japan.

[23] Hata & Nakagawa 1997, p. 129.

[24] Japanese Supreme Court (Judgment of 26 November 1969), 23(11), *Keishû* 1490. http://www.courts.go.jp/app/hanrei_en/detail?id=33.

contemporary foreign observer as "much advanced when compared with the decisions on government secrecy by the highest courts in other leading democracies."[25] "The right to know" was also mentioned by the Supreme Court judgment in the above mentioned (see 1.1) *Nishiyama* Telegram case,[26] quoting the *Hakata* Railway Station Film judgment

Limitations on the activities of the mass media were at issue in these two cases. These cases, as well as other cases that refer to "the right to know", do not explicitly speak of citizens' constitutional concrete rights against the state or mass media to obtain specific information. In addition, there is no unanimous view as to the legal grounds for the "right to know". Many scholars are of the opinion that it is founded upon Article 21 (Freedom of Expression), while some scholars find its basis in Article 13 (Liberty for pursuit of happiness) or in the general principle of democracy. In sum, the "right to know" has gained consensus as a principle, but has not been fully developed as a usable legal tool[27] Nevertheless, the concept remained the impetus for the long-continuing movement toward the Information Disclosure Law.[28]

In the drafting stage of the Information Disclosure Law, there was a discussion as to whether to include the phrase "right to know" in the purpose provision[29] of the law. The government finally decided not to do so, claiming the concept allows too much room for interpretation. This decision became perhaps the most controversial aspect of the law, but it is open to discussion whether or not the inclusion would have made any practical difference.[30] The above-mentioned DPJ government bill would have included the right in the law's purpose provision.[31]

It is in any event important to note that, despite the decision not to incorporate the concept "right to know" in the purpose provision, the Information Disclosure Law clearly stipulates the right of access in Article 3.

2.2 Accountability or the "duty to explain"

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[25] Brown 1977, p. 117.
[26] Japanese Supreme Court (Judgment of 31 May 1978), 32(3) *Keishû* 457. An English translation can be found in Beer & Ito 1996, p. 543-547.
[27] Kadomatsu 1999, p. 35.
[28] Kadomatsu 2002, p. 459.
[29] It is a customary legislative technique in Japan to state the purposes of a statute in the first article. This "purpose provision" is understood to serve as a guideline for interpretation.
[30] Cf. Kadomatsu 1999, p. 39-40; Kadomatsu 2002, p. 458-460.
[31] See Rheuben 2013b, p. 276. It should also be noted that the right was mentioned in supplementary opinions of the two justices in Japanese Supreme Court decision of 15 January 2009, 63(1) *Minshû* 46 (see 5.3). See Rheuben 2013b, p. 265.

Instead of the “right to know”, the Information Disclosure Law stipulated the government’s “duty to explain” (*setsumei suru sekimu*) its activities to the people in the purpose provision. This represented the first time that the concept of the “duty to explain”, an equivalent concept to “accountability”, was used in Japanese statute.[32] The law also establishes “accountability” as an issue for popular sovereignty. At least in this respect, the Government is understood to owe direct responsibility to the people, not indirectly via the Parliament.[33] However, it should also be noted that the right to request disclosure is guaranteed to “any person”, not limited to Japanese nationals or to residents in Japan.[34]

2.3 Object of access

In contrast to the Brazilian Law[35] (and despite the name of the law), the object of disclosure in the Information Disclosure Law is "administrative documents ",[36] not “information”. “Documents” naturally cover not only paper documents but also "electromagnetic records". However, documents must already exist in order to fall under the law: an applicant can only request existing documents *held* by the administration. When no documents have been created, or when the documents have already been discarded at the time of the disclosure request, the Information Disclosure Law basically has no effect. The law cannot control how administrative organs should *gather* or *process* information but only demands that the *product* of the information process, stored in a particular medium (documents), be disclosed. In other words, the law is not a system that directly regulates information *flow*, but a system that makes rules about how the *stock* of information shall be treated.[37]

In this respect, it is noteworthy that the *Public Records and Archive Management Law*, enacted in 2009, emphasizes the importance of public documents as

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[32] Today, three other laws (the Law concerning Disclosure of Information Held by Incorporated Administrative Agencies, etc., the Law on the Evaluation of Policies of Administrative Agencies (Law No. 86 of 2001) and the Public Records and Archive Management Law) also stipulate “accountability” in their purpose provisions. They can therefore be regarded as "accountability related legal schemes (ARLS)”. Cf. Kadomatsu 2011, p. 6-7.

[33] Kadomatsu 1999, p. 41.

[34] See Article 3 of the Information Disclosure Law. The rationale for this is usually explained from a pragmatic point of view that it is practically impossible to limit the right holders. One could easily bypass any such limitation, since any non-right holder would be able to ask a right holder to request disclosure and to pass on documents received (Cf. Kadomatsu 1999, p. 42). However, there may also be theoretical explanations for this “any person” clause. Cf. Kadomatsu 2011, p. 15-16.

[35] See Articles 4 and 7 of the Brazilian Law.

[36] See Article 2.2 of the Information Disclosure Law.

[37] Kadomatsu 2002, p. 457 et seq.

"an intellectual resource to be shared by the people in supporting the basis of sound democracy, in accordance with the principle of sovereignty of the people."[38] The law imposes upon administrative organs the duty to create documents for the enactment, amendment and abolition processes of laws and regulations, cabinet decisions or agreements etc., since written documents shall "enable a decision-making process to be reasonably traced or verified."[39] However, since this "duty to prepare documents" is limited to very important decisions such as the enactment of statutes, the Brazilian Law, which guarantees the right to obtain "information regarding activities carried out by entities and institutions, including activities regarding their policies, organization and services" appears to have a far wider scope.[40]

A judgment of the Supreme Court in 2014 considered the burden of proof for the existence of administrative documents in information disclosure suits.[41] This case involved secret financial documents concerning the reversion of *Okinawa* to Japan from the United States in 1972 (a matter related to the *Nishiyama* incident - see 1.1). In 2008, the plaintiffs filed an information disclosure request to the Minister of Foreign Affairs and the Minister of Finance. The ministers refused the requests, on the ground that they did not hold the documents sought. At first instance, the Tokyo District Court revoked the administrative dispositions and ordered the ministers to disclose them.[42] According to the court's judgment, as a general rule it is the plaintiff (the applicant) who bears the burden of proving a document's existence. However, where the plaintiff succeeds in proving that the documents were held by the administrative organ for organizational use at a certain point in the past, it can be presumed that those documents are still being held. In this case, the ministries needed to argue and prove the documents were lost by disposal or transfer. The court found that the documents existed in 1971 and that the ministries did not search sufficiently to establish the existence or disposal of the documents. Therefore it presumed their continued existence and ordered disclosure.

On appeal from the government, the Tokyo High Court reversed the judgment and approved the legality of the administrative disposition on the ground of the non-existence of the documents.[43] It retained the burden of proof rule applied in the first instance decision. However, the Court argued that the Ministry of Foreign Affairs had a strong intention to conceal the documents from the public so that one may assume that

[38] See Article 1 of the Public Records and Archive Management Law.
[39] See Article 4 of the Public Records and Archive Management Law.
[40] See Article 7, item V of the Brazilian Law.
[41] Japanese Supreme Court (Judgment of 14 July 2014), 2242 *Hanrei Jihô* 51.
[42] Tokyo District Court (Judgment of 9 April 2010), 2076 *Hanrei Jihô* 19.
[43] Tokyo High Court (Judgment of 29 September 2011), 2142 *Hanrei Jihô* 3.

the documents were stored in an irregular way and discarded covertly. Hence there is a reasonable doubt that those documents are still being held.

On appeal from the plaintiff, the Supreme Court affirmed the judgment of the High Court. The court went further and varied the burden of proof rule adopted by the District Court. It held that, even where the plaintiff succeeds in proving that documents were obtained by an administrative organ at a certain point in the past, one cannot generally presume that the documents exist at the time of the disclosure request. Courts must instead consider the individual circumstances surrounding the document. With regard to diplomatic documents in particular, one must take note that those documents might sometimes be stored in an irregular way.

There is an obvious and probably universal incentive for administrative organs to seek to conceal documents of a highly sensitive political nature, and which may lead to such documents being stored or disposed of in an irregular manner. In this context, Article 5 of the Brazilian Law, which gives the interested party the right to request the opening of an inquiry to determine the disappearance of the documentation, is quite interesting.

3 Limitations on the Right of Access

3.1 Indifferent to the purpose of the request

As mentioned above, Article 5 of the Information Disclosure Law stipulates a duty to disclose requested documents, unless the documents contain information mentioned in any of the six Items in the article (non-disclosure information). In addition, when it is possible to easily divide and exclude any portion of a document in which non-disclosure information is recorded, the head of an administrative organ must disclose the remaining portion.[44]

The law is basically *indifferent to the purpose* of the disclosure request or the motive of the applicant.[45] The basic idea is that the administrative documents, when requested, shall be disclosed so long as the disclosure causes no harm, regardless of whether the disclosure may serve any kind of public interest.[46] Hence it is also legitimate to request information disclosure for commercial purposes. However, confronted with a massive amount of such requests and administrative costs caused by them, some local

[44] See Article 6 of the Information Disclosure Law.
[45] See 4.1.
[46] Only in case of exceptional disclosure of non-disclosure information (information which is found necessary to be disclosed in order to protect a person's life, health, livelihood, or property" (Article 5, item 1 (a), proviso to item 2, see 3.3.1.2) and in the case of Article 7 (discretionary disclosure, see 3.1) will there be a balancing between the public interest and the relevant harm.

governments amended their ordinances in order to collect disclosure application or processing fees (see below 4.2) for applications for commercial purposes while requests for non-commercial purposes remain free of charge. In addition, in extreme situations when a request is found to have been made out of an intention to obstruct business, the request may be regarded as an abuse of right, which can be a reason for non-disclosure under the Information Disclosure Law as well us under local ordinances.

3.2 No provision on designation and classification of secrets

As opposed to the Brazilian Law, the Information Disclosure Law does not have a provision concerning classification of secrets. This is because the law does not aim to provide a comprehensive scheme of information regulation in itself, but is only one of several important information laws (see above 1.1). Aside from Article 96.2 of the Self Defense Forces Law,[47] and Article 2 of the Secrets Protection Law based on the Japan and U.S. Mutual Defense Assistance Agreement,[48] there was no statutory basis for the designation of documents as secret by administrative organs until recently. The designation was in principle done based only on administrative internal rules. The new Specified Secrets Protection Law has expanded categories of information subject to secrecy designation and the list of organs empowered to designate information.[49]

3.3 Non-disclosure information

Six categories of non-disclosure information are enumerated in Article 5 of the Information Disclosure Law, namely personal information (Item 1), corporate information (Item 2), national security information (Item 3), public safety information (Item 4), information concerning deliberations, inquiries, or consultations (Item 5), and information that concerns governmental affairs or business that, by the nature of said affairs or business, would risk causing a hindrance to its proper performance if made public (Item 6). Express secret information categories in the Brazilian Law, such as information that could cause financial, economic or monetary instability[50] or information on scientific or technological research and development projects,[51] do not appear in Japanese Information Disclosure Law. On the other hand, the deliberative process information category (Item 5) as such is not found in the Brazilian Law.

It should also be noted that those categories of non-disclosure information are not

[47] Law No. 165 of 1954. However, the provision was inserted as late as in 2001.
[48] Law No. 166 of 1954.
[49] Repeta 2013.
[50] Chapter IV, Section II, Article 23, item 4 of the Brazilian Law.
[51] Chapter IV, Section II, Article 23, item 6 of the Brazilian Law.

only *exempt* from disclosure. In principle, administrative organs have a duty *not* to disclose such information.[52] As an exception, it is stipulated in Article 7 of the Information Disclosure Law that the head of an administrative body can disclose such information when there is a "particular public interest necessity". However, since each exemption category, as explained below, involves a balancing between the public interest and the interests protected by the category, it is quite rare for such discretionary disclosure to actually take place.[53] The DPJ government bill included a new provision by which the Prime Minister could recommend the use of Article 7 of the Information Disclosure Law by the head of an administrative organ in individual cases, for the purpose of encouraging greater use of this discretionary disclosure provision. The efficacy of this proposal may be debatable.[54]

3.3.1 Personal Information (Item 1)

Personal identification type and privacy invasion type: Article 5, Item 1 (personal information) exempts "information concerning an individual" from disclosure. The category is further defined to mean, “where it is possible to identify a specific individual from a name, birth date or other description, etc. contained in the information concerned.” This includes not only cases where a specific individual is identifiable by the information itself, but also cases “where through collation with other information” identification is possible (the so-called “mosaic approach”).

Needless to say, this personal information exception is a common exemption in information disclosure laws of many countries, including the Brazilian Law. Broadly stated, regulations of this category can be divided into two types: (A) “personal identification type”, such as the above definition in the Information Disclosure Law, and (B) “privacy invasion type”, which limits this exemption category to personal information that affects privacy rights, such as under the FOIA in the U.S. The Information Disclosure Law, as well as many local ordinances that had been enacted before the law, chose type A because of the perceived “vagueness” of the definition of “privacy”. However there are some local ordinances for which type B was chosen, and still now use this type.[55]

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[52] Most of the categories of non-disclosure information in the Brazilian Law find their equivalents in the Information Disclosure Law, with the exception of Article 23.4 (elevated risk of financial, economic or monetary instability).

[53] Between business year (i.e. April – March) 2001 (being the first year of operation of the Information Disclosure Law) and business year 2014, Article 7 was used only 33 times. Between 2002 and 2009, it was used only twice (Ministry of Internal Affairs and Communications 2016, Cf. Rheuben 2013b, p. 269).

[54] See Fujiwara 2012, p. 63.

[55] For example, the Osaka prefectural ordinance enumerates categories of personal information (personal belief, religion, physical features, etc.) and further limits them by the requirement that "it is deemed justifiable that people generally prefer that this information not be known by others."

With respect to this point, Section I of the Brazilian Law defines "personal information" for the purposes of the personal information exemption in that law as, "information related to the identified or identifiable natural person", and so appears to adopt type A.[56] However, in Article 31 of the Information Disclosure Law concerning treatment of personal information, the law limits personal information to that which relates "to intimacy, private life, honor and image". It therefore remains to be seen how far the Brazilian courts will extend the personal information exemption.

It should be noted that "information concerning an individual" in Item 1 of the Information Disclosure Law does not include information "concerning the business of an individual who carries on said business". Such information falls within the framework of Item 2 (corporate information).

Even in cases when identification of a specific person is impossible, information concerning an individual such as medical records is exempt from disclosure when there is a "risk that an individual's rights and interests will be harmed".

Exceptions: The Information Disclosure Law stipulates 3 exceptions by which documents must be disclosed even though they contain "information concerning an individual", namely public domain information (Article 5, item 1a of the Information Disclosure Law), public official information (Article 5, item 1c of the Information Disclosure Law), and public interest information (Article 5, item 1b of the Information Disclosure Law).

The first exception is "Information that is made public, or information that is scheduled to be made public, as provided for by law or by custom" (so-called "public domain information").[57] For example, the names of members of advisory councils are often disclosed for the reason that they are customarily made public. A further exception applies to "information that concerns the performance of …. duties" of a public official.[58] In this case, the portion of the information that concerns the position of an official and the substance of the performance of their duties are to be disclosed, even in the case when such a disclosure would lead to identification of the official. The text of this exception implies that the name of the official itself may not be disclosed; however, it is now an established practice[59] among national administrative organs to disclose the name in principle.[60] It is understood that names of officials are information that belongs in the

[56] See Article 4, item 4 Brazilian Law.
[57] See Article 5, item 1 (a) of the Information Disclosure Law.
[58] See Article 5, item 1 (c) of the Information Disclosure Law. "Public official" here includes not only national public employees but also local public employees and employees of incorporated administrative agencies, etc.
[59] Ministry of Internal Affairs and Communications 2005.
[60] The DPJ government bill proposed to entrench this practice in statutory form.

public domain (under the previous exception). In addition, disclosure of career summaries of executive officials is now a common practice.[61]

The final exception stipulates that, "information recognized as necessary to be made public in order to protect a person's life, health, livelihood, or property" is exempted from the above "personal information". In judging whether this obligatory disclosure for public interests shall take place, it is necessary to carry out an adequate balancing between the public interests attained by the disclosure and the disadvantages to privacy and other interests.[62] In an opinion of the Information Disclosure and Personal Information Protection Review Board (hereafter, the "Review Board"; see below 5.2), information about the detailed medical process of a certain patient in a case report on adverse effects of a particular drug was deemed to belong to this exception.[63] Although a specific individual could not be identified by the disclosure, there was a risk "that an individual's rights and interests would be harmed" by the disclosure of the medical process. However, the public interest in disclosing information on the adverse effects was held to prevail, in order to guarantee the safety of use of the drug.[64]

3.3.2 Corporate Information (Item 2)

Item 2 (corporate information) stipulates the two cases when information concerning a corporation[65] or other entity will be exempt from disclosure: (a) when there is a risk that disclosure of the information may harm "the rights, competitive standing, or other legitimate interests" the corporation etc.; and (b) where the information was offered voluntarily at the request of an administrative organ on the condition that it not be made public. This requirement can only be met when the imposition of such a condition is "in light of the nature of the information and the circumstances… considered to be reasonable" (Article 5, item 2b of the Information Disclosure Law).

In contrast with personal information, corporate information is not regarded as non-disclosure information in principle, but only when either of the above requirements

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[61] Ministry of Internal Affairs and Communications 2007.

[62] A similar balancing of public interests and privacy seems to be required under Article 31.3 (5) of the Brazilian Law.

[63] Opinion of the Information Disclosure and Personal Information Protection Review Board of 12 April 2002.

[64] Interestingly, the applicant was the patient herself in this case. Before the enactment of the Personal Information Protection Law, it was not unusual for an individual to request the disclosure of information that concerned his- or herself using the Information Disclosure Law. In most cases, such requests were rejected. See Kadomatsu 2002, p. 446-450; Schultz 2001, p. 156.

[65] As mentioned above, information "concerning the business of an individual who carries on said business" belongs to this category, and not item 1, notwithstanding that they are not, strictly speaking, legal persons.

is met. Similar to Item 1, obligatory disclosure in the public interest must be made when disclosure is deemed to be necessary "in order to protect a person's life, health, livelihood, or property" (Article 5, item 2 of the Information Disclosure Law).

An opinion of the Review Board applied this provision to a disclosure request of documents held by the Ministry of Health, Labor and Welfare submitted from a certain medical company concerning a drug that had caused hepatitis C.[66] The documents included names of private medical institutions to which the medicine was supplied. The Board acknowledged that, while disclosure of such information would harm "competitive standing, or other legitimate interests" and therefore met the above requirement (a), the necessity of disclosure for the protection of "a person's life, health" was deemed to be more significant, since disclosure may motivate possible patients to undertake a hepatitis examination.

A judgment of the Supreme Court in 2011[67] dealt with disclosure of a periodic report with regard to energy consumption and other indicators of energy use in factories. According to Article 15 of the Law on the Rational Use of Energy,[68] designated businesses are obliged to submit such reports to the Minister of Economy, Trade and Industry each business year. Following a request for disclosure of such reports (1055 reports in total), the head of the ministry consulted the relevant businesses in accordance with Article 13.1 of the Information Disclosure Law (see 4.3). For those reports where the businesses opposed disclosure (171 reports), the head of the ministry body made a non-disclosure decision, and the applicant subsequently filed a judicial appeal. The first and second instance decisions affirmed the applicant's claim and ordered disclosure of the reports. The Supreme Court reversed and affirmed the non-disclosure decision. According to the Court, disclosure of the periodic reports of a business may give competing businesses an improved competitive position. It may also give customers of the business a better position in price bargaining. Hence disclosure may harm "the rights, competitive standing, or other legitimate interests" of the business (Article 5.2 (a)).

The above requirement (b) was one of the most disputed provisions in the legislative history of the Information Disclosure Law, partly because of the then-prevalent criticism against a prominent feature of Japanese administrative style, namely its heavy dependence on informal activities or non-binding "administrative guidance".[69] The DPJ

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[66] Opinion of the Information Disclosure and Personal Information Protection Review Board of 20 February 2004.
[67] Japanese Supreme Court (Judgment of 14 October 2011), 2159 *Hanrei Jihô* 53.
[68] Law No. 49 of 22 June 1979.
[69] See Kadomatsu 1999, p. 44-45.

government bill aimed to delete this provision.[70]

3.3.3 National Security Information (Item 3) and Public Safety Information (Item 4)

Item 3 (national security information) excludes certain information from disclosure when the head of an administrative organ "with reasonable 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."

In contrast with Items 1 and 2, "the head of an administrative organ" appears in the definition, which is intended to grant discretion to the organs to make a judgment on whether the conditions are met. The same scheme is used in Item 4 (public safety information), under which information will not be disclosed where disclosure is found by the head of the administrative organ to hinder "prevention, suppression or investigation of crimes, the maintenance of public prosecutions, the execution of sentencing, and other public security and public order maintenance matters" (Article 5, item 4 of the Information Disclosure Law).

In the Supreme Court Judgment in the above-mentioned *Nishiyama* case, the Court confirmed that "secrets" protected under the National Public Employee Law are "substantive facts not known to the public that are worthy of protection as secrets…and that their determination is subject to judicial review".[71] The Court held that it is not sufficient that the concerned administrative organs regard or designate certain facts to be secret. The position taken by the Court is commonly called "substantive secret theory", as opposed to "formal secret theory". It may be open to argument whether the discretion provisions in Items 3 and 4 come into conflict with the substantive secret theory.

The DPJ government bill would have replaced "reasonable grounds" with "sufficient grounds", thereby diminishing (although not removing entirely) agency discretion. The intention of the proposal was to increase the possibility of higher judicial scrutiny, although it is doubtful whether such result will be attained just by a change of wording.[72] Factors such as the burden of proof in judicial challenges, requiring applicants to show that non-disclosure of a document – to which neither they nor the court have access – was unreasonable, no doubt acts as a larger barrier than the

[70] Rheuben 2013b, p. 266.
[71] Japanese Supreme Court (Judgment of 31 May 1978), 32(3) *Keishû* 457. An English translation can be found in Beer & Ito 1996, p. 543-547.
[72] Rheuben 2013b, p. 266.

standard itself. Conversely, the above-mentioned Specified Secrets Protection Law has moved the situation to the opposite direction, insofar as the law expands the statutory basis for secrecy designation by administrative organs, and allows the heads of the organs (who are also responsible for disclosure decisions under the Information Disclosure Law) to declare that information is secret by reason of its potential effect on national defence or diplomacy. This raises the fear that agency interpretation would come closer to "formal secret theory", not only in the National Public Employee Law but also in the Information Disclosure Law, since organs would ordinarily be bound by such secrecy designations.[73]

3.3.4 Deliberative Process Information (Item 5)

Item 5 exempts information about "deliberations, examinations, or consultations" within national government organs or between national and local governmental organs or incorporated administrative agencies, etc., from disclosure, when the disclosure has a risk of: first, unjustly harming the frank exchange of opinions or the neutrality of decision making; second, unjustly causing confusion among the public; or third, unjustly bringing advantage or disadvantage to specific individuals. The word "unjustly" is added in order to prevent the abuse of the Item.

It is noteworthy that some prefectural ordinances include a category of "collegial organ information" as non-disclosure information. In those provisions, it is stipulated that when such collegial organs classify certain information that was discussed in their meetings as non-disclosable, such information will automatically be exempt from disclosure. However, the Information Disclosure Law did not include such a category, and handled the problem within the general framework of deliberative process information.

The DPJ government bill would have deleted the second category (unjustly causing confusion among the public) from this exemption. The rationale was the vagueness of the provision and the contention that it reminds one of the Confucian notion of "making people follow the ruler but not understand the reason."[74]

3.3.5 "The Nature of Governmental Affairs or Business" Exemption (Item 6)

Item 6 is difficult to summarize concisely. It relates to information, disclosure of which, "by the nature of said affairs or business, would risk, such as the following

[73] Cf. Rheuben 2013c.
[74] Miyake 2012, p. 68-69.

mentioned risks, causing a hindrance to the proper performance of said affairs or business." In order to avoid the abuse of such a broad and vague category, the Item enumerates, although not restrictively, typical categories of activities that must be hampered by the disclosure in order for the exemption to apply. Namely, when the disclosure has the risk of (i) making difficult fact-finding along with facilitating illegal or unfair acts, etc., in relation to audits, inspections, supervision, and testing; (ii) unfairly harming the property interests or the position as a party of the State or incorporated agencies etc. in relation to contracts, negotiations, or administrative appeals or litigation; (iii) unjustly obstructing the impartial and efficient execution of research studies; (iv) hindering the impartial and smooth maintenance of personnel matters; or (v) harming legitimate interests arising from the management of the enterprises run by a local government or an incorporated administrative agency, etc.

3.4 Partial Disclosure

As mentioned above, Article 6 of the Information Disclosure Law stipulates a duty of partial disclosure.[75] When it is possible to easily divide and exclude a portion of the document in which the non-disclosure information is recorded, the administrative organ must disclose the remaining portion, with the exception of cases when no meaningful information is recorded in the latter. This clause aims to encourage the disclosure of information to the greatest extent possible, so long as there is no harm. However, the practical application differs depending upon how one defines a "unit of information".

Let us suppose a situation where an official of an agency had business lunch with her private sector associate, paid for out of the "social expense budget" of the agency. An administrative document records the date of the business lunch, the name of the restaurant, the amount of expenditure, and the name of the client. Let us also suppose that the name of the client is non-disclosure information according to Item 1 (personal information). When there is a disclosure request for the document, can the agency regard the set of records concerning the business lunch as "one unit of information" and totally reject the request? Or should the agency divide the information and disclose the date, the name of the restaurant, and the amount of expenditure?

In some similar cases, concerning not the Information Disclosure Law but local government ordinances, the Supreme Court took the former position. The Court said that, when there is "independent and integral information" in the requested document, the

[75] The Brazilian Law has an equivalent proviso in its Article 7.2.

agency may, but need not, further divide the information and disclose part of it only.[76] This position of the Supreme Court is criticized by scholars.[77] The DPJ government bill would have amended the article so that this contested interpretation would not be possible.[78]

3. 5 "Glomar" Response (Article 8)[79]

When confirmation or denial of the existence of requested documents practically means revealing the substance of the non-disclosed information, the head of the administrative organ may refuse the request for disclosure without making clear existence or non-existence of the documents.[80] A typically featured example is a request for "documents concerning the clinical history of a specific person". This provision is based on the so-called "Glomar" response in the United States.[81]

Two judgments of the Tokyo District Court and Tokyo High Court, respectively, both revoked a non-disclosure decision based on this provision.[82] In these cases, a disclosure request was made for documents concerning dinner parties held by the Japanese Embassy in the U.S. when a specific Diet member visited the country. The Minister of Foreign Affairs rejected the request, not making clear whether such documents existed or not. The minister contended that, given some parties may be a part of diplomatic activities, information on which may be protected by Items 3 or 6, and given also that parties may involve secret meetings, information about the existence or non-existence of the parties should not be revealed. The courts did not admit this line of argument, since the disclosure of existence of "documents concerning dinner parties" does not necessary reveal whether such secret meetings actually occurred.

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[76] Japanese Supreme Court (Judgment of 27 March 2001), 55(2) *Minshû* 530; Japanese Supreme Court (Judgment of 28 February 2002), 56(2) *Minshû* 467. Some other judgments, however, do not appear to follow this interpretation. See Japanese Supreme Court (Judgment of 11 November 2003), 1847 *Hanrei Jihô* 21; Japanese Supreme Court (Judgment of 17 April 2007), 1971 *Hanrei Jihô* 109. In the latter decision, Justice Tokiyasu Fujita severely criticizes the "independent and integral information" theory in his supplementary opinion.

[77] See Uga 2014, p. 114-118.

[78] However, it is debatable whether the text in the bill can really achieve its intent. See Fujiwara 2012, p. 61-62.

[79] The Brazilian law seems to have no equivalent provision.

[80] See Article 8 of the Information Disclosure Law.

[81] The term "Glomar response" originates from a response of the U.S. Central Intelligence Agency to the information disclosure request by a journalist with regard to the agency's covert project using "the Glomar Explorer", a large salvage vessel built by the agency. The CIA rejected the request on the ground that existence or nonexistence of the requested records was itself a classified fact exempt from disclosure. See https://www.justice.gov/oip/blog/foia-update-oip-guidance-privacy-glomarization.

[82] Tokyo District Court (Judgment of 20 September 2007), 1995 *Hanrei Jihô* 78; Tokyo High Court (Judgment of 29 May 2008) (Unreported- see http://www.courts.go.jp/app/files/hanrei_jp/097/037097_hanrei.pdf).

4 Procedure for Application

4.1 Paper and Electric Applications

In contrast with the position under the Brazilian Law, which allows applications for disclosure of information to be made by "any legitimate means"[83] – or indeed in the UK, where applications may even be made by way of social media such as Twitter[84] – the Information Disclosure Law sets down a relatively narrow application procedure, requiring all applications to be "in writing".[85] In principle, this requirement is not limited to paper applications. A ministerial order issued by the Minister of Internal Affairs and Communications in 2004 provides that disclosure applications may be made electronically.[86]

In practice, however, few administrative organs have embraced electronic applications.[87] A small number of organs responsible for the largest number of disclosure applications received between them more than 6300 electronic applications in 2014, out of a total of nearly 105,000 applications received by all organs.[88] Several other major organs (including the Ministry of Internal Affairs and Communications itself) previously allowed electronic applications via a one-stop government online application website,[89] but appear to have stopped this service in 2010. None of these organs received any online applications in 2014.[90]

Consequently, in practice most disclosure applications are made either in person at the relevant agency's dedicated information disclosure counter, or by post. In-person applications may also be popular because of the advantages for inexperienced applicants

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[83] Chapter III, Section I, Article 10 of the Brazilian Law.

[84] See the Information Commissioner's Office website: http://www.ico.org.uk/for_organisations/freedom_of_information/guide/receiving_a_request.

[85] See Article 4.1 of the Information Disclosure Law.

[86] Ministerial Ordinance on Applicable Procedures, etc., under the Law in relation to the Disclosure of Information Held by Administrative Agencies pursuant to Article 3 of the Execution of the Law in Relation to the Use of Information Technology in Administrative Procedures, etc. (Ministry of Internal Affairs Ministerial Ordinance No. 39 of 2004). Article 3 of the Law in Relation to the Use of Information Technology in Administrative Procedures, etc. (Law No. 151 of 2002) authorizes the Minister of Internal Affairs to issue ministerial ordinances designating any application required by law to be made "in writing" as capable of being carried out electronically.

[87] Cf. Chapter III, Section I, Article 10.2 of the Brazilian Law, which requires relevant entities and institutions to facilitate online applications.

[88] Specifically, the National Personnel Authority (3621 applications), the Ministry of Land, Infrastructure, Transport and Tourism (1733),the Ministry of Health Labor and Welfare (671), and, interestingly, the Imperial Household Agency (317). See Ministry of Internal Affairs and Communications 2016, p. 43.

[89] http://www.e-gov.go.jp/shinsei/index.html.

[90] Ministry of Internal Affairs and Communications 2016, p. 43

of consulting agency staff. Some 41% of applications in 2011 were in-person.[91] Many administrative organs provide multiple counters at government offices around the country so as not to disadvantage applicants outside of Tokyo. Nevertheless, surprisingly, the Transparency Team did not touch on the merits of increasing online accessibility.

"On-paper" applications are made by way of a pro forma application form, which is essentially the same for each agency. The Information Disclosure Law requires that applications include the applicant's name and address,[92] precluding the possibility of anonymous applications. The application forms themselves generally also require further contact details.

The provision of such details is principally for contact purposes, reflecting the essentially on-paper nature of the application process, and not for the purpose of gathering information about the applicant. Nevertheless, in 2002 the National Defense Agency (as it then was) caused a scandal when it was revealed that staff had collated and internally distributed lists of applicants that included personal information not relevant to the Information Disclosure Law, such as occupation and known political sympathies.[93] The Defense Agency was roundly criticized,[94] leading to an internal investigation, which concluded that the practice breached existing privacy laws.[95] The current Personal Information Protection Law similarly provides that administrative organs must not retain personal information beyond the scope necessary to perform their functions,[96] and must not use personal information outside of the purpose for which it was retained.[97]

Applications for disclosure must also include the names of the documents sought, or otherwise sufficient details to allow the documents sought to be identified.[98] In order to assist with identification, the Public Records and Archive Management Law requires each agency to maintain registers of documents held by the agency.[99] A searchable database combining these registers is available online.[100] Heads of administrative organs are also required to provide applicants with any available information that would assist them in making their application.[101] Where no information about the documents sought

[91] Ministry of Internal Affairs and Communications 2016, p. 10.
[92] See Article 4.1 (i) of the Information Disclosure Law.
[93] National Defense Agency 2002.
[94] See e.g. Repeta 2002.
[95] National Defense Agency 2002.
[96] Article 3 of the Personal Information Protection Law.
[97] Article 8 of the Personal Information Protection Law.
[98] See Article 4.1 (ii) of the Information Disclosure Law. Cf. Chapter III, Section I, Article 10.1 of the Brazilian Law.
[99] See Article 7 of the Public Records and Archive Management Law.
[100] http://files.e-gov.go.jp/servlet/Fsearch.
[101] See Article 22 of the Information Disclosure Law.

is available, or applicants are unaware as to whether the documents exist, they may instead specify the content of the documents (e.g., "all documents pertaining to…").[102]

Neither the Information Disclosure Law nor the pro forma application form require applicants to disclose their reasons for seeking disclosure or their intended use of the information, although the Information Disclosure Law does not go as far as the Brazilian Law[103] in prohibiting administrative organs from requesting such information. Indeed, in practice many local governments request applicants to voluntarily provide such information for statistical purposes.[104] However, as noted above (see 3.1), reasons for seeking disclosure cannot be taken into account in deciding whether to provide disclosure.

4.2 Application Fee

All on-paper applications, whether in person or by post, must be accompanied by a flat JPY 300 (approx. USD 3) application fee.[105] For the most part fees must be paid by way of government revenue stamps, which must first be purchased from a government office, post office or one of Japan's ubiquitous convenience stores, further underlining the user un-friendliness of the on-paper system. The Implementation Regulations under the Information Disclosure Law make provision for a reduced application fee of JPY 200 (USD 2) for applications made electronically.[106] However, the potential reduction in revenue appears if anything to have been a disincentive to electronic applications, as again few administrative organs offer online payment options.

In 2010 report, the Transparency Team proposed that application fees should be abolished in principle.[107] Under the DPJ government bill, application fees would no longer apply, except for applications made by corporations or for commercial purposes. A number of administrative organs were opposed to the in-principle removal of application fees on the basis that it could encourage a deluge of meritless requests.[108]

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[102] Ministry of Internal Affairs and Communications, Administrative Management Bureau (ed.) 2001, p. 33-34.
[103] See Article10.3 of the Brazilian Law
[104] Uga 2014, p. 57.
[105] See Article 16.1 of the Information Disclosure Law and Article 13.1 of the Information Disclosure Implementation Regulations. Cf. Chapter III, Section I, Article 12 of the Brazilian Law, which does not appear to anticipate payment of an application fee.
[106] See Article 13.1 of the Information Disclosure Implementation Regulations. (The "Implementation Regulations" here refers to the cabinet order enacted under delegation pursuant to the Information Disclosure Law, and which sets out the various items necessary for the implementation of that law.)
[107] Administrative Transparency Study Team 2010, p. 8-9.
[108] Miki 2010, p. 10.

However, given that application fees are currently the equivalent of only a few US dollars, it is unlikely that they were ever a significant deterrent to applications.

4.3 Time Limit

After receiving an application for disclosure, the head of an administrative body must provide its decision within 30 calendar days,[109] unless this is impractical. Administrative bodies may unilaterally extend the time limit for a decision by up to an additional 30 calendar days,[110] or, where a large volume of documents has been requested and collating them would affect the body's ability to carry out their functions, must render their decision in respect of as many as documents as possible within the allotted time frame, and the remainder "within a reasonable period".[111] In each case the agency must notify the applicant in writing, and provide reasons why the decision cannot be rendered in full within the 30-day time limit.

In practice, most decisions are made within the 30-day time period. In 2014 90.5% of all decisions were made within the initial 30 days, without any extension of time.[112] Where the extended 60-day time period was exceeded due to large volume requests, 43% of final decisions were completed in less than 90 days, 75.7% within six months, and 94.8% within one year.[113]

In light of these time frames, however, it is arguably ambitious for the Brazilian Law to anticipate immediate disclosure,[114] or even disclosure within an extended 20 or 30 day period.[115] Even in Japan, there are some significant slippages: 151 responses to requests carried out in 2014 had taken more than one year.[116]

A common reason for delay in responding to disclosure applications is the need to consult with third parties affected by the potential disclosure of document. The Information Disclosure Law allows administrative bodies to consult with third parties (again, in writing) on a voluntary basis in order to confirm whether either of the privacy

[109] See Article 10.1 of the Information Disclosure Law. The "clock" starts running from the date that a satisfactorily completed application form is received. Upon receiving an application form the agency must immediately review the application for defects, and notify the applicant of any found, providing a reasonable period of time to remedy (Article 4.2 of the Information Disclosure Regulations in combination with Article 7 of the Administrative Procedures Law). This period of time is not counted towards the agency's processing period.
[110] See Article 10.2 of the Information Disclosure Law.
[111] See Article 11 of the Information Disclosure Law.
[112] Ministry of Internal Affairs and Communications 2016, p. 13.
[113] Ministry of Internal Affairs and Communications 2016, p. 15.
[114] Chapter III, Section I, Article 11 of the Brazilian Law.
[115] Chapter III, Section I, Article 11.1 and 2 of the Brazilian Law.
[116] Ministry of Internal Affairs and Communications 2016, p. 15.

or confidentiality exemptions to disclosure applies (for example, when it is unclear to an agency whether given information in respect of a private company constitutes commercially sensitive information).[117] Consultation with third parties is mandatory where it is apparent that a privacy exemption applies, but where the disclosure is deemed to be "necessary to be made public in order to protect a person's life, health, livelihood, or property."[118] The same applies in the case of public interest discretionary disclosure.[119]

Where, following consultation, the head of an administrative organ intends to disclose private information notwithstanding a written objection from the affected third party, the head of the organ must immediately inform the third party and wait a period of two weeks before proceeding with disclosure, within which time the third party may mount an appeal.[120] 3 such appeals were made by affected third parties in 2014.[121] Although the Brazilian Law sets some limited exceptions to the general restriction on disclosing personal information,[122] there are no apparent obligations to consult with affected third parties, or rights of third parties to challenge a decision to disclose.

4.4 Notification of Decision

Once a decision to disclose or not to disclose a document has been made, it must be notified to the applicant in writing.[123] Where the decision is against disclosure (including where the document does not exist or has been destroyed), the head of an administrative body must provide the applicant with reasons,[124] and inform the applicant about their right to appeal the decision, either by way of internal review,[125] or judicial review.[126]

Where the decision is in favor of partial or full disclosure, the written notification will identify all accessible documents pertinent to the request, and invite the applicant to indicate to which documents the applicant wishes to receive access, as well as the manner in which the applicant wishes to receive it. Applicants will ordinarily have the choice of

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[117] See Article 13.1 of the Information Disclosure Law.
[118] See Article 13.2, Article 5, item 1 (b), and the provision contained in Article 5 item 2 of the Information Disclosure Law.
[119] See Article 13.2 and Article 7 of the Information Disclosure Law.
[120] See Article 13.3 of the Information Disclosure Law.
[121] Ministry of Internal Affairs and Communications 2016, p. 17.
[122] Chapter III, Section V, Article 31.3 Brazilian Law.
[123] See Article 9 of the Information Disclosure Law.
[124] See Article 8 of the Administrative Procedure Law.
[125] See Article 57.1 of the Administrative Appeals Law.
[126] See Article 46.1 of the Administrative Case Litigation Law.

inspecting original documents in person at the relevant offices, or receiving paper or electronic copies.[127] Since only a small number of administrative organs provide online application facilities, copies of documents are similarly provided principally in hard copy form, including by way of CD-ROM for electronic copies.

Disclosure decisions also notify the applicant of all fees payable for the documents disclosed (separate from the initial application fee). Unlike, for example, the UK or Australia, fees are calculated on the basis of providing or reproducing the relevant documents, rather than on a time-cost basis for processing the request. Therefore, whereas in the former jurisdictions fees can quickly become quite expensive where documents have taken several days to locate and review, in Japan a relatively low flat rate applies, according to the size and format of the document disclosed. In-person disclosures, for example, are charged at JPY 100 (USD 1) per 100 pages viewed, while on-paper and digital copies are charged at JPY 10 (USD 10c) per page.[128] The first JPY 300 (or JPY 200, in the case of electronic applications) worth of documents are covered by the initial application fee and so are free.[129]

The determination of fees essentially involves a trade-off between accessibility for applicants on the one hand, and the possibility to recoup costs and ensure proper resource allocation on the other. Japanese policymakers have ultimately sided with keeping fees low enough to avoid discouraging applications.[130] The Brazilian Law, which also requires fees to be calculated on the basis of reproduction costs only (albeit in a more open-ended manner), appears to reflect similar considerations.[131]

Notwithstanding that fees are already relatively low, the Information Disclosure Law makes provision for reductions of fees in certain circumstances.[132] Unlike the Brazilian Law, which allows total exemption from fees for applicants in economic difficulties,[133] the Information Disclosure Law allows a reduction of up to JPY 2000 (USD 20) per application.[134] Reductions in fees are explicitly available for applicants in economic difficulties, but are arguably also available for applications by public interest

[127] See Article 14 of the Information Disclosure Law.
[128] See Article 16.1 of the Information Disclosure Law & Schedule to Information Disclosure Implementation Regulations.
[129] See Article 13.2 of the Information Disclosure Implementation Regulations.
[130] Article 16.2 of the Information Disclosure Law requires fees to be as "accessible as possible". This provision was added to the Information Disclosure Law in the course of the Diet debates over the law. The Diet also passed a subsequent separate resolution to this effect. See Ministry of Internal Affairs and Communications, Administrative Management Bureau (Ed.) 2001, p. 148-149.
[131] Chapter III, Section I, Article 12 of the Brazilian Law.
[132] See Article 16.3 of the Information Disclosure Law.
[133] Chapter III, Section I, Article 12 of the Brazilian Law.
[134] Article 14.1 of the Information Disclosure Implementation Regulations.

organizations [135] Perhaps unsurprisingly, administrative organs received only 61 applications for reductions in fees in 2014, of which 50 were granted.[136] Nevertheless, the Transparency Team proposed that the initial application fee should be abolished and disclosure fees lowered.[137]

Applicants must respond to a disclosure decision, together with payment of the requisite fee (again by way of revenue stamp for on-paper responses) within 30 calendar days, unless there are "justifiable reasons" for failing to respond within a timely manner.[138] After this, the head of an administrative body can put disclosure into effect, whether by sending copies of the relevant documents by way of return, or by allowing in-person disclosure on a date designated by the applicant.

4.5 Access and Administrative Procedure

Decisions under the Information Disclosure Law, as with most other administrative decisions, are governed by the Administrative Procedure Law.[139] Like the Information Disclosure Law, the Administrative Procedure Law was one of the major administrative law reforms of the 1990s, although one that had been in contemplation for considerably longer.[140] It aims to improve the fairness and transparency of decision-making by setting out in broad terms appropriate procedures to be followed by administrative organs in respect of specific types of decisions (although many provisions of the law are hortatory only, requiring organs to "make efforts" to comply).

To some degree, both the Information Disclosure Law and Administrative Procedure Law overlap. For example, as noted above, the Information Disclosure Law requires administrative organs to consult with third parties where they intend to disclose those parties' private information.[141] However, this is also arguably required by the Administrative Procedure Law, under which organs must "endeavor" to seek comment from affected third parties whose interests must be taken into account in granting approvals.[142]

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135 Uga 2014, p. 154.
136 Ministry of Internal Affairs and Communications 2016, p. 23.
137 Administrative Transparency Study Team 2010, p. 8-9.
138 See Article 14.3 of the Information Disclosure Law.
139 Law No. 88 of 1993. Chapter 2 of the law applies to decisions in relation to applications, which includes disclosure applications under the Information Disclosure Law.
140 As far back as the early 1950s: see Uga 2016, p. 32-39.
141 Under Article 13.2 of the Information Disclosure Law.
142 See Article 10 of the Administrative Procedure Law.

In other respects, the Administrative Procedure Law is complementary. For example, while the Information Disclosure Law merely requires administrative organs to give written notice of a decision not to disclose documents,[143] the Administrative Procedure Law is the source of the additional obligation to provide reasons for non-disclosure.[144] The Transparency Team noted that in providing reasons for non-disclosure decisions in practice, administrative organs too often merely avert to the relevant disclosure exemption under Article 5 (for example, "national security") without setting out the relationship between the exemption and the document sought.[145] It recommended the Information Disclosure Law to be amended to require the provision of detailed reasons.[146] The DPJ government bill did include a new provision mirroring reasons requirement under the Administrative Procedure Law, but this was still not explicit as to the level of detail required, other than that reasons should be "as specific as possible".[147] From this perspective, the provision of the Brazilian Law allowing applicants to obtain the "full content" of a non-disclosure decision is encouraging.[148]

Another important, although limited, way in which the Administrative Procedure Law complements the Information Disclosure Law is in respect of proactive disclosure. The Information Disclosure Law currently applies a passive model of disclosure insofar as it relies on applicants to request documents in order to access them.[149] Unlike the Brazilian Law, which requires the dissemination of certain fundamental information,[150] there are no obligations under the Information Disclosure Law to proactively make public types of documents commonly requested by applicants (although, as noted above, the Public Records and Archive Management Law does require the publication of document registers).[151] However, the Administrative Procedure Law does require the publication of certain information, including internal guidelines and standards upon which administrative organs make decisions,[152] and feedback received from interested parties when conducting public consultations.[153]

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[143] See Article 9.2 of the Information Disclosure Law.
[144] See Article 8 of the Administrative Procedure Law.
[145] Administrative Transparency Study Team 2010, p. 7.
[146] Administrative Transparency Study Team 2010, p. 7.
[147] Note, however, that the Supreme Court has held in respect of reasons given under a local government information disclosure ordinance that reasons must make clear the relationship between the relevant exemption and the non-disclosure decision: Japanese Supreme Court (Judgment of 10 December 1992), 1453 *Hanrei Jihô* 116.
[148] Chapter III, Section I, Article 14 of the Brazilian Law.
[149] Cf. Kadomatsu 2002, p. 463.
[150] See Chapter II, Article 8 of the Brazilian Law.
[151] See Article 7 of the Public Records and Archive Management Law.
[152] Articles 5 & 12 (1) of the Administrative Procedure Law.
[153] See Article 43.1 of the Administrative Procedure Law.

The DPJ government bill inserted an entire new chapter into the Information Disclosure Law that mandated the proactive disclosure of certain types of information not unlike those enumerated under the Brazilian Law (in relation to organizational structure, budgeting, etc.). The new chapter also required administrative organs to consider proactive disclosure of documents that have previously been requested by two or more separate applicants and are likely to be requested again in the future.

5 Judicial Protection

5.1 Overview

A decision to disclose or not to disclose a document according to the Information Disclosure Law or local disclosure ordinances is regarded as an "administrative disposition",[154] therefore allowing the applicant to file an administrative litigation (revocation litigation) under the Administrative Case Litigation Law against total or partial non-disclosure decision, or an affected third party against a disclosure decision.[155] The applicant can also file an application for internal review by the relevant agency in accordance with the Administrative Appeals Law.[156] He is not required to use the internal review system in advance before resorting to the litigation.

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[154] Japanese administrative litigation centers around the concept of "administrative disposition"*(gyôsei shobun* , which is derived from the traditional German law concept of "*Verwaltungsakt*" (administrative act), the exercise of a public authority that directly forms or establishes the scope of an individual's legal rights or duties. Whereas the concept of "administrative act" *(gyôsei kôi)* is used only as an academic concept, statute exclusively uses the term "administrative disposition". The Administrative Case Litigation Law (Law No. 39 of 1962) anticipates revocation suits, an ex-post and negative remedy against an administrative disposition already rendered, as the most typical form of administrative suit (for the classical features of administrative suits in Japan and the 2004 amendments to the Administrative Case Litigation Law, see Kadomatsu 2009, p. 149-152). The classification of administrative decisions concerning administrative information disclosure as "administrative dispositions" was not so self-evident in the very early stages of practice. A judgment of the Yokohama District Court (Yokohama District Court (Judgment of 25 July 1984), 1132 *Hanrei Jihô* 113) found a revocation suit filed by an applicant against a non-disclosure decision under the Kanagawa Prefecture Information Disclosure Ordinance non-justiciable, stating that the requested public document did not affect the applicant's concrete rights or interests. On appeal, however, the Tokyo High Court reversed the judgment (Tokyo High Court (Judgment of 20 December 1984), 1137 *Hanrei Jihô* 26). It stated that the ordinance fictitiously regards any person who has an interest in the prefectural administration generally to have interest in having access to prefectural public documents, hence giving them an individual and concrete right to request access to public documents. Since this High Court judgment, the issue has rarely been disputed.

[155] Under Article 12 of the Administrative Case Litigation Law, applicants may only bring administrative suits in the defendant's local court (invariably Tokyo, in the case of national government organs), or in the district court with jurisdiction over the area of the seat of the high court with appellate jurisdiction for the applicant's local court. This complicated formula means, for example, that applicants in Okinawa may only bring suits in either the Tokyo or Fukuoka District Courts, and not in the central Naha District Court in Okinawa. The DPJ government bill would have expanded jurisdiction to the applicant's local court, as is already the case with some other specialized administrative laws.

[156] Law No. 160 of 1962. For an overview of the administrative appeal system, see Okamura et al. 2014, p. 2-19. Amendments to the law were enacted in June 2014 (Law No. 68 of 2014), and put into effect in 2016.

The use of the former, however, would usually be beneficial to the applicant for the reasons explained below.[157]

In the period between 2001and 2014, there were 1005.8 applications for internal agency review and 17.5 administrative suits filed annually on average[158] .

5.2 Information Disclosure and Personal Information Protection Review Board

When an application for internal review against a disclosure or non-disclosure decision is made by an applicant or by a third party (see below), the head of an administrative body responsible for the review must ask for an advisory opinion of the Review Board.[159] The Review Board is set up established under the Cabinet Office with 15 members, appointed by the Prime Minister with the consent of both Houses of the Diet. As the name of the Review Board suggests, it is responsible for considering appeals not only under the Information Disclosure Law, but also under the Personal Information Protection Law.

When the Review Board finds it necessary, it may examine the concerned documents *in camera*. The Review Board can also order the head of an administrative organ to classify the content of any relevant documents, according to the formula designated by the Review Board (similar to a "Vaughn Index" in the United States). Following examination, the Review Board may issue an opinion either affirming, rejecting or altering – for example, recommending greater or lesser partial disclosure – the agency's original decision. The opinion is informed to the complainant as well as made open to the public.

Although the Review Board *de jure* only issues an "advisory" opinion, its opinions have been in fact highly respected by the administrative bodies. Only in very rare cases these bodies have not followed the opinion of the Review Board.[160]

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[157] Under the Brazilian Law, appeal to the Office of the Comptroller General against the refusal of disclosure appears to only be possible after having been assessed by superior authorities (Article 16.1 of the Brazilian Law).

[158] Ministry of Internal Affairs and Communications 2016, p.32&p.38.

[159] Article 18 of the Information Disclosure Law.

[160] Between 2001 and 2013, there were only 14 cases (out of 6337) in which administrative organs did not follow the opinion of the Review Board. It may be noteworthy that the Information Disclosure Law does not have any provision allowing the punishment of administrative officials in the case of non-compliance, equivalent to Article 32 or 33 of the Brazilian Law. In extreme cases, however, non-compliance might result in the liability of the national government under to the State Redress Law (Law No. 125 of 1947).

5.3 In Camera Procedure

As mentioned above, an *in camera* examination procedure is adopted in the inspection process of the Review Board. However, this is not the case in the litigation process. This is one of the reasons why it is usually beneficial for the applicant to file an administrative internal appeal before going to court.

The absence of *in camera* procedure is often regarded as one of the defects of the present Information Disclosure Law. The legislature in 1999 was concerned that such a procedure might be incompatible with (A) the constitutional principle of open justice,[161] and (B) a basic principle of civil procedure that evidence in litigation should be limited to evidence that the parties have been given the opportunity to inspect and challenge. However, many academics[162] as well as two concurring opinions of a Supreme Court decision in 2009[163] are today of the view that the introduction of the procedure would not violate the Constitution and that provision for a system of *in camera* review is a matter subject to legislative discretion.

The DPJ government bill proposed the introduction *in camera* procedure into judicial challenges under the Information Disclosure Law. Unlike in the inspection process conducted by the Review Board, the consent of the defendant (i.e. administrative bodies) would be necessary for the use of procedure. However, refusal of consent would be possible only in the case when the submission of the document to the court will hamper significant interests of the state such as national defence, diplomatic relations, or public safety.

5.4 Third Party Protection

As mentioned above, the Information Disclosure Law has provisions to protect third parties whose information is recorded in administrative documents concerned with

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[161] Article 82 of the Japanese Constitution reads as follows:
(1) Trials shall be conducted and judgment declared publicly.
(2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

[162] Uga 2014, p. 180-181; Murakami 2011, p.497-499; Fujiwara 2012, p. 64; Cf. Rheuben 2013b, p. 272-273.

[163] Concurring opinions of Justice Izumi and Justice Miyagawa in Japanese Supreme Court decision of 15 January 2009, 63(1) *Minshû* 46. The latter also points out that the fact that *in camera* inspection is possible in the case of inspection by the Review Board but not in the litigation process "may be inconsistent with the purpose of the information disclosure system, in which the judiciary is authorized to make a final decision".

the disclosure request. The administrative agencies either voluntarily or mandatorily consult with the third party in such cases.

When the head of an administrative organ intends to disclose the documents notwithstanding the objection of the third party, the third party can also file an administrative suit or an application for internal review against the disclosure decision.[164] Article 13.3 of the Information Disclosure Law stipulates that, where third party consultation occurs, the agency should allot at least two weeks between the day of the disclosure decision and the day that disclosure will be implemented. The rationale for this provision is to ensure the possibility of filing the litigation or the appeal before the disclosure will be actually implemented.

6 Summary: Main differences between the Brazilian Law and the Japanese Law

At the end of this chapter, we will concisely summarize the main differences between the Brazilian Law[165] and the Japanese Information Disclosure law.

(Scope of Application)

- The Japanese Information Disclosure Law is only one of several key information laws in Japan, which governs access to official documents at the national level. The law shares the role with other key information law such as the Personal Information Protection Law, the Public Records and Archive Management Law, and the Specified Secrets Protection Law. The Brazilian Law, however, appears to be relatively comprehensive, and covers a number of aspects of information regulation (see 1.1).
- While the Brazilian law applies to "the Union, States, Federal District and Municipalities", the scope of the Japanese Information Disclosure Law is limited to administrative documents held by national "Administrative Organs". Documents held by the national parliament and the courts are not the subject of disclosure. The law does not apply to prefectures and municipalities (see 1.2).

[164] The Brazilian Law does not have express provisions concerning the standing of third parties.
[165] Since the authors' knowledge about the Brazilian Law is limited to its text, there is a considerable and unavoidable risk of misunderstanding.

(Object of Access)

- In contrast to the Brazilian Law, the object of disclosure in the Japanese Information Disclosure Law is "administrative documents", not “information”. However, since the “documents” in the Japanese law cover not only paper documents but also “electromagnetic records” (Article 2.2 of the Information Disclosure Law) (see 2.3).
- While the Brazilian Law guarantees the right to obtain “information regarding activities carried out by entities and institutions, including activities regarding their policies, organization and services” (Article 7, item V of the Brazilian Law), the target of the Japanese Information Disclosure Law limited to existing documents. The law does not regulate the duties of administrative organs to create documents. The Japanese Public Records and Archive Management Law stipulates such duties, but is limited to documents concerning very important decisions such as the enactment of statutes (see 2.3).

(Non-Disclosure Information)

- As opposed to the Brazilian Law (Section IV), the Japanese Information Disclosure Law does not have a provision concerning classification of secrets (see 3.2).
- Express secret information categories in the Brazilian Law, such as information that could cause financial, economic or monetary instability or information on scientific or technological research and development projects (Article 23, Item 4 of the Brazilian Law), do not appear in the Japanese Information Disclosure Law. On the other hand, the deliberative process information category (Article 5 Item 5 of the Information Disclosure Law) as such is not found in the Brazilian Law.
- Personal Information is in principle exempt from information disclosure in both Brazilian and Japanese law. Concerning the definition of “personal information”, the Japanese Information Disclosure Law adopts “personal identification-type” information as opposed to “privacy invasion-type” information (Article 5 Item 1 of the Information Disclosure Law). With respect to this point, the position of the Brazilian Law is not clear (see 3.3.1).

(Procedure for Application)

- While the Brazilian Law allows applications for disclosure of information to be made by "any legitimate means", the Japanese Information Disclosure Law sets down a relatively narrow application procedure, requiring all applications to be "in writing". In principle, this requirement is not limited to paper applications. A ministerial order issued by the Minister of Internal Affairs and Communications in 2004 provides that disclosure applications may be made electronically.
- The Japanese Information Disclosure Law does not require applicants to disclose their reasons for seeking disclosure or their intended use of the information, although the Japanese Law does not go as far as the Brazilian Law in its Article 10.3 in prohibiting administrative organs from requesting such information. Indeed, in practice many local governments request applicants to voluntarily provide such information for statistical purposes. However, reasons for seeking disclosure cannot be taken into account in deciding whether to provide disclosure (see 3.1 and 4.2).
- The Japanese Information Disclosure Law imposes a flat JPY 300 (approx. USD 3) application fee for all on-paper applications and JPY 200 (approx. USD 2) for online applications (Article 16.1 of the Information Disclosure Law, and Article 13 of the Information Disclosure Implementation Regulations). Separate from the initial application fee, when the requested documents are disclosed, a "disclosure implementation fee" is also imposed (Article 16.1 of the Information Disclosure Law and Schedule to the Information Disclosure Implementation Regulations). The Brazilian Law stipulates that "the service of search and supply of information is free", but that reproduction of the information may be charged to cover the cost of services and materials (Article 12 of the Brazilian Law). Both the Japanese Law and Brazilian Law make provision for reductions of fees in certain circumstances. Total exemption may also be possible in the latter (see 4.2 and 4.4).
- The Japanese Information Disclosure Law requires the head of an administrative organ to provide his or her decision within 30 days after receiving an application for disclosure. The administrative organ may unilaterally extend the time limit up to an additional 30 days (Article 10 of the Information Disclosure Law). It is arguably ambitious for the Brazilian Law to anticipate immediate disclosure, or even

disclosure within an extended 20 or 30 day period (Article 11 of the Brazilian Law) (see 4.3).

- The Japanese Information Disclosure Law does not have any equivalent provision to Article 32 or 33 of the Brazilian Law, allowing the punishment of administrative officials in the case of non-compliance. In extreme cases, however, non-compliance might result in the liability of the national government under to the State Redress Law (see 5.2, Footnote 161).

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Annex: Law on Access to Information Held by Administrative Organs

Law No. 42 of 14 May 1999 [166]

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, etc., the purpose of this law is to strive for greater disclosure of information held by administrative organs thereby ensuring that the government fulfills its duty to explain its various operations to the people, and to contribute to the promotion of a fair 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 House-hold Agency and organs established as provided for in Article 49, paragraph 1 and 2 of the Cabinet Office Establishment Law (Law No. 89 of 1999). (Provided that the organs is one in which an organ designated by the Cabinet Order referred to in the item (4) is established, the organ designated by the Cabinet Order is excluded.)

166 This translation is based on a translation by Prof. Katsuya Uga (Tokyo University) and David Moses Schultz, which appeared in Law in Japan: An Annual, 27, p. 170-183. It has been partly amended by the authors to reflect changes in the law. An alternative translation of the law can be found on the Japanese Government's Translation of Japanese Laws database (see: http://www.japaneselawtranslation.go.jp/) (Reflects amendments up to 2004).

(3) Organs established as provided for in Article 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 the item (5) is established, the organ designated by the Cabinet Order is excluded.)

(4) Organs under Article 39 and 55 of the Cabinet Office Establishment Law and under Article 16, paragraph 2 of the Imperial House-hold Agency Law (Law No.70 of 1947), and extraordinary organs under Article 40 and 56 (including the case applied mutatis mutandis in Article 18, paragraph 1 of the Imperial House-hold Agency Law), that are designated by Cabinet Order.

(5) Facilities and other organs under Article 8-2 of the National Government Organization Law, and extraordinary organs under Article 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) Specified Historical Public Records and Archives, Etc.. as provided for by Article 2 paragraph 7 of the Public Records and Archives Management Law（Law No. 66 of 2009）

(3) Items that are, pursuant to the provisions of a Cabinet Order, specially administered as either historical or cultural materials, or as materials for academic research in the National Archives or other organs designated by a Cabinet Order (excluding items provided for in the previous item).

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 Article, paragraph 1, item (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 in writing(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 item s (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.

(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 Article 2, Section 1 of the National Public Service Law [Law No. 120 of 1947], executives and employees of the Executive Corporations as described in Article 2, paragraph 4 of the Law Concerning the General Rules of the Incorporated Administrative Agencies [Law No.103 of 1999] excluded; executives and employees of the incorporated administrative agencies, etc. as described in Article 2, paragraph 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 Article 2 of the Local Public Service Personnel Law [Law No. 261 of 1950]; and executives and employees of the local incorporated administrative agencies as described in Article 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 and the substance of the said performance of duties.

(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, 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 it could be considered reasonable to attach said condition, in light of the nature of the information and the circumstances, etc. at the time, such as when the Corporation, etc. or the individual do not ordinarily make the information public.

(3) Information that, if made public, the head of an administrative organ with reasonable 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 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, inquiries, 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, or 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 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. In the case that 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. However, this shall not apply when it is deemed that meaningful information is not recorded in the portion other than the excluded portion.

2. In the case that the information of item (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 item, 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.

Article 10
Time Limit for Disclosure Decisions, Etc.

1. The preceding Article's decisions (Hereinafter referred to as "Disclosure Decisions, Etc.") shall be made within thirty days after the day of the Disclosure Request. However, in the case that a revision is requested as provided for in Article 4, paragraph 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.

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

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 sixty days of the Disclosure Request the performance of duties will be considerably hindered, notwithstanding the preceding 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. In this case, the head of the administrative organ shall within the period of time provided for in the first paragraph of the same Article notify the Requester in writing of the following items:

(1) The application of this Article and the reason for its application.

(2) The time limit for making Disclosure Decisions, etc.. for the remaining administrative documents.

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 Article 9, paragraph 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. as provided for in Art.10 paragraph1 of the Incorporated Administrative Agencies, etc. Information Disclosure Law, 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 Article 2, paragraph 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 Article 4, paragraph 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 shall apply. In this case, "Article 4, paragraph 2" in Article 10, paragraph 1 of the Incorporate Administrative Agencies, etc. Information Disclosure Law is to be read as "Article 4, paragraph 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, Article 19, paragraph 2, and Article 20, paragraph 1, 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 Article 5, item (1)(b), or within the proviso contained in item (2) of the same Article.

(2) When administrative documents within which information concerning a Third Person is recorded are to be disclosed under Article 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 Article 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 obtain disclosure of administrative documents based upon a Decision to Disclose, 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 Decision to Disclose.

3. The request as provided for by the preceding paragraph shall be made within thirty days after the notification provided for in Article 9, paragraph 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 Decision to Disclose, 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 provison 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 Article, paragraph 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 Article, paragraph 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, as provided for by Cabinet Order, shall pay respectively a fee for the Disclosure Request and a fee for the implementation of disclosure of an amount determined by Cabinet Order and within the limits of actual expenses.

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

3. 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 fee of paragraph 1.

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
Applications for Review, Etc.

Section 1
References, Etc.

Article 18
Exceptions, Etc. to the Application of Provisions regarding Review Procedures by Reviewers

1. The provisions of Article 9, Article 17, Article 24, Chapter 2, Section 3 and Section 4, and Article 50, paragraph 2 of the Administrative Appeal Law (Law No. 68 of 2014) do not apply in respect of applications for review of omissions regarding Disclosure Decisions, etc. or Disclosure Requests.

2. With respect to the application of the provisions of Chapter 2 of the Administrative Appeal Law in respect of applications for review of omissions regarding Disclosure Decisions, etc. or Disclosure Requests, the reference in Article 11, paragraph 2 of that law to "the person designated by the provision of Article 9, paragraph 1 (hereinafter referred to as a "Reviewer")" shall be read as "the administrative organ against which an application for review was made (Including an administrative organ to which a request was transferred in accordance with the provision of Article 14. Hereinafter referred to as "the Review Agency".) in accordance with the provision of Article 4 (Including Cabinet Orders based on the provision of Article 20, paragraph 2 of the Law on Access to Information Held by Administrative Organs (Law No. 42 of May 14, 1999.)", the reference in Article 13, paragraph 1 and paragraph 2 of that law to "Reviewer" shall be read as "the Review Agency", the reference in Article 25, paragraph 7 of that law to "in such case, or in the case that the Reviewer submits a written opinion that there should be a stay in accordance with Article 40" shall be read as "in such case", the reference in Article 44 of that law to "the Administrative Appeal Review Board, etc." shall be read as "the Information Disclosure and Personal Information Protection Review Board (When the head of the Review Agency is head of the Board of Audit, a review board separately provided for by law. The same applies for Article 50, paragraph 1, item 4.), and to "where…received (or, in the case that in accordance with the provision of paragraph 1 of the previous article no reference is required (other than in the case that item 2 or item 3 of that paragraph applies), where the Reviewer has submitted a written opinion, or, in the case that item 2 or item 3 of that paragraph applies, where the review provided for in item 2 or item 3 of that paragraph has occurred)" shall be read as "where…received", and the reference in Article 50, paragraph 1, item 4 of that law to "the Reviewer's written opinion, or the Administrative Appeal Review Board, etc., or the Council, etc." shall be read as "the Information Disclosure and Personal Information Protection Review Board".

Article 19
References to the Review Board

When there is an application for review of an omission regarding a Disclosure Decision, etc. or a Disclosure Request, the head of the administrative organ who is expected to make a ruling on the application for review, excluding cases that fall within either of the following items, shall make a reference to the Information Disclosure and Personal Information Protection Review Board (When the head of the administrative organ who

is expected to make a ruling on the application for review is head of the Board of Audit, a review board separately provided for by law).

(1) In the case that the application for review is illegitimate and is dismissed.

(2) In the case that, the ruling admits the whole of the application for review, and all of the administrative documents concerned with the relevant application for review are to be disclosed (Excludingcases where a written decision opposing the disclosure of the relevant administrative documents is submitted.)

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

(1) The applicant for review and intervenor (Meaning an intervenor as provided for by Article 13, paragraph 4 of the Administrative Appeal Law. The same applies for the remainder of this paragraph and for paragraph 1, item 2 of the following article.).

(2) The Requester (Excluding cases in which the Requester is the applicant for review or intervenor.).

(3) Third Persons who have submitted an opposition written opinion about the disclosure of the administrative document that is concerned with the application for review (Excluding cases in which the Third Person is the applicant for review or an intervenor.).

Article 20
Procedures in the Case that an Application for Review from a Third Person is Dismissed, Etc.

1. The provisions of Article 13, paragraph 3, shall apply mutatis mutandis in a case in which the ruling falls within either of the following item s.

(1) A ruling to reject or dismiss an application for review from a Third Person regarding a Decision to Disclose.

(2) A ruling altering the Disclosure Decision, etc.. concerned with an application for review to the effect of disclosing administrative documents concerned with an application for review (Limited to cases in which an intervenor who is a Third Person has expressed an intention to oppose the disclosure of the administrative documents.).

2. For applications for review of omissions regarding Disclosure Decisions, etc. or Disclosure Requests, exemptions to the application of Article 4 of the Administrative Appeals Law can be prescribed by Cabinet Order.

Article 21
Special Provisions for the Transfer of Lawsuits

1. In the case a lawsuit demanding the revocation of a Disclosure Decision, etc. or the rescission of a ruling regarding the application to review an omission regarding a Disclosure Decision, etc. or Disclosure Request (referred to as an "Information Disclosure Lawsuit" in the following paragraph and in paragraph 2 of the Supplementary Provisions) is brought to the court of special jurisdiction prescribed in the provision of Article 12, paragraph 4 of the Administrative Case Litigation Law (Law No. 139 of 1962), if, notwithstanding the provision of Article 12, paragraph 5 of the same Law, a complaint lawsuit (which means a lawsuit for the judicial review of an administrative disposition, prescribed in Article3, paragraph 1 in the same Law; the same shall apply in the following paragraph.) against a Disclosure Decision etc. regarding the same, the same type of or similar Administrative Documents or against a ruling regarding the application for review of an omission regarding a Disclosure Decision etc. or Disclosure Request is pending in another court, the said court of special jurisdiction may, when it finds it reasonable in consideration of the addresses or locations of the parties, the addresses of witnesses who shall be examined, characteristics common to the points at issue or the evidence, and other circumstances, 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 prescribed Article 12, paragraphs 1 to 3 of the same Law.

2. The preceding paragraph shall apply mutatis mutandis to the case when a complaint lawsuit against a Disclosure Decision etc. or against a ruling regarding an application

for review of an omission regarding a Disclosure Decision etc. or a Disclosure Request, other than an Information Disclosure Lawsuit, is brought to the court of special jurisdiction prescribed in the Article 12, paragraph 4 of the Administrative Case Litigation Law.

Chapter 4
Supplementary Provisions

Article 22
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, other than the measures prescribed in Article 7, paragraph 2 of the Public Records and Archives Management Law.

2. In order to secure the smooth application of this law, the Minister of Internal Affairs and Communications shall provide for general inquiry offices.

Article 23
Publication of the State of Enforcement

1. The Minister of Internal Affairs and Communications may request reports on the state of enforcement of this law from the heads of the administrative organs.

2. The Minister of Internal Affairs and Communications 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 25
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 disclosure of the information that they hold.

Article 42
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

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 Article 23, paragraph 1, concerning receiving of the consent of both Houses, Article 40 through Article 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.

[This translation is based on a translation by Prof. Katsuya Uga (Tokyo University) and David Moses Schultz, which appeared in *Law in Japan: An Annual*, 27, p. 170-183. It has been amended by the authors, in part to reflect changes in the law. An alternative translation of the law can be found on the Japanese Government's Translation of Japanese Laws database (see: http://www.japaneselawtranslation.go.jp/).]