

## 《研究ノート》

# Overview of Implementation of Japan's Information Disclosure Act\*

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Japan's Information Disclosure Act was enacted in 1999 and went into effect in 2001. We might say the Act is still undergoing a test run. There have been many problems related to the implementation of the Act. I will give an overview of the Act and will identify several problem areas.

## I Background of Enactment of the Information Disclosure Act

Local governments moved to establish information disclosure long before the national government took action. Kaneyama, a small town in Yamagata Prefecture, located in the northeastern part of the country, adopted Japan's first "Information Disclosure Ordinance" in 1982. This provided town residents the right to demand that public documents held by the town be disclosed.

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Kanagawa Prefecture, located next to Tokyo with the city of Yokohama within its borders, followed in the same year, and Saitama Prefecture followed close behind. Information disclosure ordinances rapidly spread throughout the country. There were three factors that promoted fast development at local level: 1) corruption in the local political arena, 2) environmental pollution, and 3) the emergence of the enlightened leaders of local governments directly responsible to the residents for the safety of their life and health.

Documents disclosed under these ordinances revealed the improper use of public money at local governments throughout the country. Thus the information disclosure ordinances performed an important role to ensure openness and accountability of local governments. Such experience propelled the information disclosure policy at the national level, and in 1999 the Information Disclosure Act (An "Act Concerning the Disclosure of Information Held by Administrative Agencies") was adopted by Japan's national Diet and went into effect on April 1, 2001. Now two years have passed.

## II A Brief Outline of the Information Disclosure Act

The Information Disclosure Act provides any person the right to request the heads of administrative agencies to disclose information held by their agencies. The Act places on the administrative agencies an obligation to disclose all information requested so long as it does not fall within exempted categories of information, such as personal or corporate information.

The government agencies must make a decision to approve or refuse the requests within 30 days, but that the heads of administrative agencies may extend the time limit for up to more 30 days in case of exceptional

circumstances. The government agency must give a specific reason for withholding any information requested.

Whenever a request is refused and requested information is withheld, the requester may appeal the non-disclosure decision either to the Information Disclosure Review Board, a quasi-independent organization established by the Act, or directly to the courts. The Information Disclosure Review Board is an advisory committee, with members appointed by the Prime Minister and approved by the Diet. This Review Board follows the pattern established by local government ordinances. Although recommendations issued by such Review Boards are not legally binding, nonetheless they are almost always followed. In Japan, the information disclosure review boards under the local information disclosure ordinances have performed a critical role for a long time.

### III Weaknesses of the Act

Article 1 of the Act provides that its purpose is to strive for greater disclosure of information held by administrative agencies and thereby ensure government accountability to the people for its operations. This is a very weak statement of purpose. I believe that the Act should state unequivocally that its purpose is to realize the people's "right to know." Decisions of Japan's Supreme Court have recognized a constitutional right to know as an aspect of freedom of speech. Language in the Act should leave no doubt that its fundamental purpose is to provide a means to achieve this right. Another important weakness of the Act is the wide range of exemptions. Yet another problem is insufficient judicial relief. In particular, Japan's courts do not employ an "in camera" procedure to examine evidence on a confidential basis. Another shortcoming is that courts in only eight locations around the country have jurisdiction to handle these cases. Thus, many

people must endure additional cost and inconvenience if they are to bring their cases to trial.

#### IV Two-year Implementation of the Act

Data summarizing the first two years of implementation of the Act were made public in April of 2003. According to the Ministry of General Affairs, the total number of requests in the second year were 59,880, compared with 48,636 in the first year, an increase of 23 percent. In 56,066 cases, or 96 percent of the total, government agencies decided to disclose all or part of the documents. The comparable number in the first year was 39,653, or 87 percent of the total (See, *Appendix A*).

The number of appeals submitted to the Information Disclosure Review Board in the second year was 910, compared with 1,354 in the first year. And the number recommended by the Review Board to reverse all or a part of the decisions were 219 except for nonexistence of documents, and were 59 percent of all recommendations. The number of the first year were 72, and 62 percent of all. In short, the Information Disclosure Review Board recommended to amend the original decisions by the administrative agencies in around 60 percent of appealed cases (See, *Appendix B*).

These figures are almost equal with the accomplishments under the local information disclosure ordinances. The fact shows that the administrative relief goes well enough, but, on the other hand, it indicates that the administrative agencies still excessively withhold information.

#### V Implementation Issues

Several problems have emerged in the implementation of the Act. One is the unlawful delay by the agencies. As noted above, the Act requires the

administrative agencies to approve or refuse requests within a set of period of time. Nevertheless the Ministry of General Affairs announced last November that there were 127 cases which the time limit was disregarded or the period of time was delayed without any statutory grounds. The Ministry of Foreign Affairs, the agency with the worst track record, said that it could not promptly respond to requests because of being busy with the urgent matters relating to Iraq and North Korea.

Another problem is the improper or insufficient management of administrative documents. In many cases requested documents were said to be nonexistent. In not a few cases, this proved that agencies had failed to make and keep documents adequate records. The proper management of public documents is a prerequisite to an effective information disclosure system. The insufficient management of public documents makes nonsense of the Information Disclosure Act.

Fee policies are also unpopular among requesters. In addition to copying fees, requesters must pay a handling fee at the time of request. And even when the response is a refusal to disclose or a statement that the requested documents are nonexistent, fees are not refunded to the requesters.

## VI Perspective of the Information Disclosure Act

As is noted above, the Information Disclosure Act does not contain the explicit guarantee of the right to know. In my opinion, that is the fundamental reason for confusion in implementation of the Act. If the Act guaranteed the right to know on its face, it would be more strictly enforced, and its implementation would be more effective.

The right to know is not a slogan or a catchphrase, but a judicially enforceable legal right. Full protection of the right to know requires narrow application of exemptions to disclosure and robust judicial relief in the form

of ready access to the courts and flexible judicial procedures including in camera review of evidence.

This must be a living law. Fortunately, the Information Disclosure Act provides in a supplementary provision that four years after this Act comes into effect, the government shall examine its enforcement and shall take necessary measures to reform the Act based on the results. So it is already time to start discussion of amendments to the Act.

## VII Activities of Information Clearinghouse Japan

There are currently two major nonprofit organizations working in Japan to promote government openness and accountability. One is the Citizen Center for Information Disclosure and the other is Information Clearinghouse Japan ("ICJ"). These two NPOs respectively have been performing remarkable activities including monitoring implementation of the Act, lobbying for reforms to related laws and even filing suits against government agencies such as the Ministry of Foreign Affairs or the Headquarters of Judicial Reform.

ICJ is a non-profit organization established in 1999 when the Information Disclosure Act was enacted. It is a descendant of the Citizens Movement for the Information Disclosure Act founded in 1981. The Citizens Movement issued a Declaration of the Right to Information Disclosure in January of 1981. This Declaration led public opinion to the enactment of the Information Disclosure Act.

ICJ has now been conducting research, publishing books and periodicals, and supporting various citizens' attempts to obtain government information. ICJ is also running the Japan branch of Transparency International and the Project for Whistleblower Protection.

We surely have enacted the Information Disclosure Act in Japan, but

many problems in implementation remain. Accordingly, there is much to do in order to promote and secure government openness and accountability.

## VIII A Brief Supplement on Business Information

Neither the Information Disclosure Act nor local disclosure ordinances apply directly to information in the possession of corporations or other business entities, unless the entity is a specially-designated government corporation. But business-related information held by government agencies and local governments necessarily becomes the object of requests under these laws. An ongoing case illustrates the kind of struggle that can take place. In the city of Takatsuki in Osaka Prefecture, a resident who had worried about possible bio-hazards requested information on a bio-technological plant in the city planned by Japan Tobacco Industry, a private corporation. The mayor first refused to disclose the requested information on the ground that it contained significant confidential business information. But the resident filed suit, and after the Osaka High Court ordered the mayor to disclose the requested information, he announced that he would like to obey the court order. However, Japan Tobacco Industry intervened in the litigation and opposed disclosure. The litigation against disclosure by Japan Tobacco Industry is now ongoing in the Supreme Court.

Generally speaking, as indicated in this case, the local governments seem willing to release information related to private corporations. But so far the attitude of the national government seems to be tougher than that of the local level.

# Appendix A Top Ten information Requests for Administrative Agencies Under Japan's 2001 Law

(April 1, 2001-March 31, 2003)

Agency	Requests		Decisions		Full disclosure		Partial Disclosure		Non-Disclosure	
	F Y 2002	F Y 2001	F Y 2002	F Y 2001	F Y 2002	F Y 2001	F Y 2002	F Y 2001	F Y 2002	F Y 2001
Tax	32,278	19,296	32,454	18,888	30,435	16,283	1,658	2,141	361	464
Land, Infrastructure & Transport	7,853	5,129	7,602	4,770	4,434	3,402	2,784	1,088	384	380
Health, Labour & Welfare	4,424	3,818	3,692	2,959	441	455	2,961	1,959	290	545
Justice	3,070	1,623	2,517	1,342	496	342	1,758	746	263	254
Foreign Affairs	1,346	2,233	1,060	2,000	236	254	603	879	221	867
Posts & Telecom	927	1,102	984	900	697	465	266	284	21	151
Defense	853	1,172	959	428	409	126	478	234	72	68
Defense Facility	821	1,280	866	1,204	729	1,059	110	105	27	40
postal	807	2,182	920	960	392	344	476	489	52	127
Personnel	612	62	601	60	579	48	15	8	7	4
Others	6,889	10,739	6,943	14,179	1,840	2,341	7,227	6,601	834	2,181
Total	59,880	48,636	58,598	44,734	40,688	25,119	15,378	14,534	2,532	5,081

Note : Number of Decisions may exceed number or Requests as certain requests are divided or consolidated.



Appendix B Top Ten Appeals for Administrative Agencies

(April 1, 2001–March 31, 2003)

Agency	Number of Appeals		Recommendations Issued		Appeal Supported		Appeal Partially Supported		Appeal Rejected		Backlog	
	FY 2002	FY 2001	FY 2002	FY 2001	FY 2002	FY 2001	FY 2002	FY 2001	FY 2002	FY 2001	FY 2002	FY 2001
Health, Labour & Welfare	138	86	117	39	10	4	35	13	72	22	65	46
Tax	77	1	20	1	2	0	6	0	12	1	57	0
Justice	54	51	49	33	3	2	6	13	40	18	21	18
Education & Science	50	5	48	4	0	0	43	1	5	3	3	1
Fair Trade Commission	47	0	41	0	17	0	1	0	23	0	6	0
Forestry	34	10	17	0	0	0	9	0	8	0	25	10
Prosecutor's Office	27	26	36	5	3	1	0	0	33	4	11	20
Foreign Affairs	22	23	8	18	0	0	2	0	6	18	16	5
Land,Infrastructure & Transport	22	14	17	9	1	0	8	4	8	5	10	5
Finance	20	4	8	2	0	0	4	0	4	2	14	2
Others	205	154	179	66	4	16	73	17	102	33	111	86
Total	696	374	540	177	40 (7%)	23 (13%)	187 (35%)	48 (27%)	313 (58%)	106 (60%)	339	193