How the Freedom of Information Act Became Law in Japan

MIYAKE Hiroshi, Attorney
Steering Committee member of Citizens' Movement Seeking a Freedom of Information Act
Director of the Japan Civil Liberties Union
Managing Director of Japan Information Clearinghouse

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Ⅰ. How a Freedom of Information System Came to Be Proposed in Japan

In the 1960s, Japan enjoyed a high rate of economic growth, but we also experienced the concomitant problems of harmful drugs and foods, pollution, and destruction of the natural environment. Some of these problems were caused by the "withholding of information" from the public. Additionally, the citizens' movements formed to solve these problems failed in some cases due to the withholding of information.

A. Withholding of Information about Pharmaceuticals

The thalidomide incident in 1962 is a typical example of a tragedy engendered by the failure to make government information available.

When pregnant women took thalidomide, a synthetic chemical substance, it caused the deformity of their fetuses. When West Germany's Dr. Renz warned of thalidomide's dangers on November 18, 1961, West Germany, the northern European countries, and England immediately withdrew the drug from public distribution.

The Renz warning was reported to Japan's Ministry of Health and Welfare (MHW) by a Japanese pharmaceutical company on December 6 of that year.

However, the Ministry did not release information about the Renz warning to the general public, merely directing pharmaceutical companies to perform experiments with laboratory animals and collect data; MHW did not stop the sale of thalidomide, or enact measures to withdraw it from the market. It was ten months later – in September of 1962 – that MHW ordered thalidomide to be withdrawn from sale. This came about due to newspaper reports on the dangers of the drug.

The ten months of information withholding from the time of the Renz warning to the withdrawal of thalidomide by MHW had great significance.

Estimates hold that about 48% of Japan's thalidomide babies were born because their mothers took thalidomide after Renz's warning, though in ignorance of it. If MHW had informed the citizens of the danger of thalidomide immediately after receiving the Renz warning, pregnant women would not have taken the drug, and the harm would have been held down to a minimum.

Similar incidents occurred after the thalidomide problem. One example is that in spite of having obtained information that the drug chloroquine causes retinopathy, MHW did not inform the citizens of this fact immediately.

At the time of this incident, the chief of MHW's Pharmaceuticals Section was coincidentally under medication with chloroquine, and stopped taking it immediately when he obtained the information on its dangers. However, since he made no attempt to inform the public, many citizens – unaware of the danger – took chloroquine and suffered the loss of their eyesight due to retinopathy.

The major reason that such harm due to drugs happened over and over again is that data concerning drug side effects were not released to the public, or because the very screening process for manufacturing authorization was not made public. For example, without taking into

consideration the data concerning the effects of thalidomide on fetuses, and basing their examination on only a few examples of data from experiments commissioned by pharmacutical companies, the New Drug Screening Commission granted authorization to manufacture thalidomide after a mere 20 or 30 minutes of deliberation. What is more, the Commission conducted its deliberations on thalidomide behind closed doors.

For both thalidomide and chloroquine, if the course of deliberations by the New Drug Screening Commission and Pharmaceutical Deliberative Committee, as well as the data submitted, had been made public, one would expect that they would have been subjected to public censure, authorization to manufacture the drugs would not have been granted so easily, and there would have been an immediate ban on sales, as well as measures taken to withdraw the drugs from the market.

Furthermore, if the course of deliberations and the data on drugs were made public, we would know that the cause of harm lay in the use of a certain drug, and it would be an easy matter to file suit against the pharmaceutical companies and national government to seek damages.

Until Freedom of Information System, there were still massive barriers impeding the release of information on drugs to the public.

B. Withholding of Information about Food

There were also great barriers to the release of information on food safety to the public.

In April, 1977, MHW authorized the use of OPP (ortho-phenylphenol), a fungicide used on imported citrus fruits such as lemons and grapefruit, as a food additive. Doshisha University's Professor Nishioka Hajime had warned on the basis of experimental evidence that OPP had one-seventh the genetic toxicity of the synthetic germicide AF2, and that OPP was suspected of being carcinogenic.

The Food Sanitation Commission, an MHW advisory body, was supposed to deliberate upon the matter of whether or not to authorize the use of OPP.

The Consumers' Union of Japan asked the date, time, and location of the Commission's next meeting so that the Union could hand deliver written requests to the Commission's members asking them not to grant authorization, but MHW did not inform the Union. What is more, the MHW refused the Union's request to publicize the experimental data submitted to the Commission for its deliberations. Thus, MHW authorized the use of OPP while keeping secret from the nation the method of determing OPP's "safety".

In the same way MHW authorized TBZ (thiabendazole), another fungicide like OPP, in August of 1978. Here as well, the data on TBZ which had been submitted to the Food Sanitation Commission were not made public at all.

Still more, then House of Councilors Member Ichikawa Fusae demanded data on the basis of her administrative right of inquiry, but even then only a cataloged listing of the experimental data was released, with the raw data being withheld. In this way the government thoroughly withheld the information. According to a subsequent investigation, almost all the submitted data were nothing more than those prepared by the manufacturer of TBZ, a U.S. company called Merck. If the data submitted to the Commission had been made public in advance, the authorization for use would have been subjected to criticism by the public or academics, and the Commission would have had to be more careful in deliberating upon whether or not TBZ should be used.

The authorization for use of food additives was conducted without making the information public.

On August 27, 1983, MHW promulgated and enacted a partial

amendment to the enforcement orders for the Food Sanitation Act. This amendment included the authorization for 11 food additives. This was done in response to a report from the Food Sanitation Commission that there would be no problem with designating as food additives 11 substances, including aspartame. However, the Commission had produced the report entirely behind closed doors, and most of the data used in the deliberations were taken from unpublished monographs. Data for five of the 11 substances were obtained only from summarized materials by the World Health Organization (WHO) and the U.S. Food and Drug Administration (FDA), and authorization was granted even though accurate data from the original documents were not available. Of the 21 documents dealing with aspartame, 11 were from the U.S. company G.D. Circle, which held the basic patents, four were from Ajinomoto Co. experiments, and the final six were from a company which both G.D. Circle and Ajinomoto had commissioned to conduct experiments. Twenty of the documents were unpublished monographs. Additionally, the Commission had no time to review the documents or hold deliberations in advance, with authorization being recommended within a mere two weeks after the data had been distributed (Mainichi Shinbun, 7/1/1983).

There were perious problems with administrative practices with regard to food additives since the Commission's meetings were held behind closed doors and reports were made without publicizing their data in advance.

C. Withholding of Information about Pollution and Environmental Issues

There were also great barriers to accessing information on pollution and environmental issues.

The government refused to make public environmental impact assessments and development planning documents for the construction

of roads and subways. They also refused to release the design specifications, water quality data, and other information dealing with sewage treatment facilities.

With nuclear power, there was a demand for the submission of documents vital to a lawsuit seeking cancellation of the permission to site the Ikata Nuclear Power on the island of Shikoku, with a decision of the Takamatsu High Court ordering the submission of the documents (July 17, 1975, Hanrei Jiho {Report on Court Decisions}, No.786, pp.6 ff.). This decision recognized the legality of the lower court's decision ordering the government to submit the information that the Shikoku Electric Power Company had submitted to the Atomic Energy Commission, which had promised that it would not be made public. The Takamatu High Court decision resulted in the first publicizing, in a lawsuit, of an application for permission to establish a nuclear power plant and its attached documents. The problem here is that, if citizens had not filed the lawsuit seeking cancellation of the permission to site the nuclear power plant, the application for permission would never have been made available to the public.

Information about pollution and protection of the environment is a matter of vital concern to the citizens in order that they may know what measures are being taken to prevent harm to human life and health. It was evident from examples of withheld information that administrative agencies had refused to release project plans and raw data from studies to the public because they feared citizen opposition. Such excessive withholding of information engendered an increase in citizen distrust and outrage, and brought about unnecessary problems.

By the 1980's a number of local governments had established and enacted ordinances or guidelines for environmental assessments. However, these could not function adequately unless they were operated in unison with institutions freely providing information, unless planners

publicized all data used in the preparation of written environmental impact assessments, and unless both citizens and government conducted scientific debate using the same data on pollution, the environment, and the government administration of development.

Ⅱ. Citizens' Movement Seeking a Freedom of Information Act

A. As stated above, one of the major problems held in common by Japan's national and local citizens' movements is the withholding of government information. The citizens have always run up against the barrier of "withheld information" when stating their objections against policy decisions by the national and local governments in order to defend their interests with regard to their lives and health, as well as their fundamental human rights; in order to protect the natural environment, which constitutes the common assets of all the people living in a certain locale; or in order to question the government's unjust or unreasonable methods.

Used to justify the withholding of information is the public servants' obligation to maintain secrecy as stipulated in the Government Officials Act and the Local Officials Act. Citizens have never been able to do anything when public officials say they "cannot make the information public" on the grounds of this secrecy obligation. The citizens could do nothing but leave themselves at the mercy of administrative information management. That which the citizens' and consumer movements sought in order to break down the barriers of information withholding was a freedom of information system that would require the national government, local public bodies, and other public organizations to release to the public the documents and other information in their possession.

B. The following quote describes the course of events as the citizens' and

consumer movements sought a freedom of information system in order to succor democracy under national sovereignty, while at the same time safeguarding their lives and conditions for daily living.

"Already from about 1965, the Japan Housewives' Association had been demanding that government screening committees and official records of government proceedings be made public. From about 1970 the people who had been involved in the movement to expose harmful drugs such as thalidomide began demanding that the Ministry of Health and Welfare release information on drug side effects to the public……

"In November of 1968, the Consumers' Union of Japan proposed the establishment of a Freedom of Information Act. I think this was the first time that the citizens made a clear demand for the establishment of a freedom of information system. This came about because the Union had, through the consumer movement, many times experienced the withholding of information from the public. The Union was confronting the trend toward increased secrecy. This came about due to the addition to the Labor Safety and Sanitation Law. They added a clause on the obligation to keep secrets, and they included a stipulations making it a crime to leak industrial secrets to the bill for the revised criminal law.

"The Japan Civil Liberties Union (JCLU), which is composed chiefly of lawyers and academics, developed a concern for the freedom of information issue through the thalidomide incident and other activities for the protection of human rights. In November of 1976, the organization established a Subcommittee for Studies on Freedom of Information, and initiated studies. In September, 1979, it published a document entitled An Outline of a Freedom of Information Act, and proposed that such a law be established……

"The Association held an 'Assembly to Consider a Freedom of Information System' in November of the same year .....and this conference triggered activities, principally among the citizens' groups that participated in the conference, to form a citizens' movement which would make freedom of information a reality, and on March 29, 1980 the 'Citizens' Movement Seeking a Freedom of Information Act' (CMFOIA) was formed," (Freedom of Information in Local Government, by AKIYAMA Mikio, et al., pp.162-163)

C. In January of 1981 CMFOIA published A Declaration on the Right to Freedom of Information and Eight General Principles on the Freedom of Information, documents which described the ideals and rationale upon which it was seeking freedom of information, as well as what form a freedom of information system must assume. (The contents of the Declaration and the Eight General Principles are as follows for your reference. See page 47～50.)

The CMFOIA maintained that a freedom of information system must first and foremost be established in the local governments, which conduct the administrative business close to the lives of the people, and it proposed to local citizens' organizations in every part of the country that, in each locale, they should augment the movement for the establishment of freedom of information ordinances. The JCLU had published "A Model Draft of a Freedom of Information Ordinance" which was to be used in this movement. Again, in October of 1983, JCLU published a "A Model Bill and Model Ordinance for Meetings Open to the Public, and in February of 1987, "A Model Bill and Model Ordinance for the Protection of Personal Information." In addition, it published "A Model Bill for a Freedom of Information Act" in November, 1988.

Ⅲ. The Establishment and Application of Freedom of Information

Ordinances in Japanese Local Governments

In response to the rapid rise of the movement seeking a freedom of information system, Kanayama Town in Yamagata Prefecture passed Japan's first such law, the "Kanayama Town Ordinance for the Freedom of Access to Official Documents" in March of 1982, and the ordinance took effect on April 1 of that year. In October of the same year Kanagawa Prefecture passed its "Ordinance Concerning the Public Disclosure of Official Documents by Kanagawa Prefectural Organizations" (which took effect on April 1, 1983), and Saitama Prefecture passed its "Saitama Prefectural Ordinance on the Freedom of Administrative Information" (which took effect on June 1, 1983). Subsequently, and by the end of April 1990, freedom of information systems were established in 31 prefectures, including Metropolitan Tokyo and Osaka Prefecture, which accounted for 136 smaller administrative units comprising cities, towns, villages and the 23 wards of Tokyo. This was less than 10% of all the local governments, but when converted to population, we saw that more than two-thirds of all Japanese lived in places with freedom of information systems. All of these systems were strongly influenced by the United States' Freedom of Information Act. Of course, certain of these Japanese freedom of information systems were inadequate for insuring the right to know, since some allowed people to request only a limited variety of information, and others gave broad interpretations to the provisions for exceptions that allowed the sought information to be excluded from public examination.

However by 1991, these laws were used in various ways by the citizens, and had realized certain achievements in many parts of Japan.

A. Information on Pharmaceuticals

Additives which were not indicated on the labels of

pharmaceuticals (Kanagawa Prefecture; released to public)

Even when requesting, on the basis of freedom of information ordinances, information that was held by the national government, there were many instances in which the government replied that such documents did not exist, but here we had a notable example in which citizens took advantage of the fact that applications for permission to manufacture pharmaceuticals were submitted to the Minister of Health and Welfare via the prefectures.

B. Information on Food and Other Consumer Concerns

1. Names of products and companies for which there were many complaints about door-to-door sales (Kanagawa Prefecture; released to public)

2. Notifications on the results of spot checks for fungicides(BHT and BHA) (Kanagawa Prefecture released some information, to which there was an objection, in response to which the prefecture released part of the previously withheld information)

3. Results of spot checks on New Years' pre-prepared food; names of violating companies, details of additive labeling violations (Metropolitan Tokyo; some information made public)

4. Register of companies engaged on food services (name, address, date permit granted; Metropolitan Tokyo; released to public)

5. Test results on melamine resin tablewear used for school lunches (Iizuka City; released to public)

C. Information on Pollution and Environmental Protection

1. Official records of deliberations by Environments Impact Assessment Screening Committee and Subcommittee in relation to the East Zushi Residential Area Development Project (Kanagawa Prefecture; released to public)

2. Report on General Study of Vegetation, and Report on Avian Ecology in the Ikego Armory Area (Kanagawa Prefecture;

released to public)

3. Pollution Control Agreement (Murayama City; released to public)

4. 1981 Report on Geological Survey of Togakushi Toll Road (Nagano Prefecture; released to public)

5. Memorandum on Ai River Dam and Boring Survey (Osaka Prefecture; withheld at first, then released in response to objectin)

6. Plan for the attainment of interim target for carbon dioxide by Tokyo Electric Power Company, Nippon Kokan, and other companies with plants emitting great amounts of CO (Kawasaki City; part released, to which there was an objection, whereupon city released part of previously unreleased information)

7. Annual disposal report and monthly disposal costs of waste disposal plant (Metropolitan Tokyo; released to public)

8. Information on use of asbestos in prefectural facilities (Kanagawa Prefecture; released to public)

9. Report on accident involving automatic shutdown of the Tsuruga Nuclear Power Plant's #1 reactor (Fukui Prefecture; Partly disclosed)

10. Official record of committee deliberations on the pollution-related harm of Minamata disease (Kumamoto Prefecture; partly disclosed)

Having and using freedom of information systems had been a major trend among local governments in Japan. Citizens utilized Freedom of Information Ordinance for fighting corruption.

Ⅳ. How citizens utilized Freedom of Information Ordinance for Fighting Corruption

A. Making Clear Of Expenditure For Food And Beverage Fee In Local Governments

Citizen Ombudsmen is a local citizens private group and spreads almost every prefecture. Each citizen ombudsmen is an independent but related and cooperated by national liaison. They began to be active nationwide since 1995.

In 1995, citizen ombudsmen requested food and beverage expense records of the secretarial section, the finance section, and Tokyo office filed with each of Japan's 47 prefectures at the same date. Originally, food and beverage meeting fee was spent for beverage, lunch and something like those during meeting in local governments. But, before one knows, meeting fee was spent to entertain for national governments officials, other local government officials or members of the Diet and members of assembly.

As result of requests, almost expenditure became clearly. Most of local governments did not disclose information on the name of joining and entertaining officials, however citizen ombudsman could know when, where, and how much money was spent, and what they ate. According to research of all of records, two problems were afloat. First, local governments repeated to entertain to national government officials to spent a large sum. Second is a wrong expenditure by officials.

For example, Hokkaido ranked number one with 1,629 events at which officials had spent 188 million yen, followed closely by Nagasaki and Tokushima prefectures. One local government entertained national government officials to provide dinner more than 100,000 yen per person. According to Wakayama prefecture's Tokyo office case, the most frequent guests at these parties were from the Ministry of Agriculture, Forestry, and Marine Affair and the Construction Ministry, with 45 events each. Representatives from Ministries of Home Affair, and Health and Welfare attended more than 30 events. Such like things were disclosed by

request information to use freedom of information ordinances and happened all over the country. We called such expense as “ officials-to-officials entertainment”. Food and beverage fee had been used to entertain national government officials and members of assembly because they could share national budget as a special supplement payment for prefectures. Some of Citizen Ombudsmen requested audit on these food and beverage expenditure to each prefectural Board of Audit.

Problem of wrong expense was more serious corruption. On the way to analyze disclosed records of expense, some of citizen ombudsmen found that officials forged bills from restaurant in general. For example, in Miyagi prefecture, date of many bills were the same date, moreover, those were written by same person in spite of bill being issued by different restaurant. According to revealing the governor of Miyagi after finishing internal investigation, in many cases, the reported expenses were inflated by clerical staff to conceal the flow of cash to selected pocket. In case of Tokyo metropolitan, there were some name and belonging of national government officials in disclosed records. A writer of newspaper asked national government officials whether or not they participated parties. But all of them answered they did not participate them. Like many such tricks used to create hidden pools of cash, this procedure was repeated nationwide. Some of citizen ombudsmen requested audit such like a wrong expense to each prefectural Board of Audit.

However, prefectural auditing commissions were also corrupted. In case of Hokkaido, local news reporters obtained expense reports concerning a gathering of auditors in the Tohoku region. They discovered an error. The number of participants stated in the expense reports was one more than actual number of attendees. Apparently, someone had pocketed the cash for one phantom staff member. One

member of the Board of Audit resigned to take responsibility.

Through revealing disclosed information by ordinances, the governor of Akita Prefecture was forced to resign and other governors reformed their prefecture's administrative procedures. At the same time, many local governments carried out internal investigations. As a result of a nationwide campaign by citizen ombudsmen, food and beverage fees were reduced in many places. Moreover, some to places decided to prohibit "official-to-official entertainment" and disclose all expense reports for food and beverages.

B. Land Buying Case

The function of "Land Development Public Corporations" (LPC) was to acquire land needed by local governments for future development projects. LPC was established and invested all by local government. All of the officers of LDP were temporarily transferred by local government.

Local governments were ordinarily required to budget and execute such projects and to purchase the land from the LPCs within five years. However, due to deterioration of public finances, many such purchases had not taken place and large pieces of land had been frozen. At the time , the total landholdings of such LPCs nationwide was more than nine trillion yen; a large proportion of these holdings were frozen due to the inability of local governments to acquire properties.

Much of the funding for initial acquisition by LPCs was obtained through bank loans. The LPC for the city of Kawasaki, for example, held land originally acquired for a total of approximately 100 billion yen. By March 30, 1996 (1995 fiscal year end), accumulated interest on these loans had reach 30 billion yen, for a total outstanding debt of 130 billion yen. Among these properties, the reasons for original acquisition and the process of acquisition were not always clear.

Many properties might no longer be needed. A citizen of Kawasaki

requested disclosure of a list of such properties. The appended document was provided in response to the request. Because the LPC itself was a public corporation outside the local government, it was not subject to disclosure under the Kawasaki ordinance. Nonetheless, because the mayor's office maintained the document in its possession, it was deemed subject to disclosure. The city of Kawasaki made complete disclosure of additional details, including locations of subject properties. According to be disclosed information, former owner of one land was a brother of chairperson of Kawasaki city assembly.

Since the times were bad, local governments were sold lands inrush. Local governments had to select which land they buy through LPC. But, in general, their decisions were effected by pressure from politicians and special connection with officials. Many citizens had a suspicion for land buying by their government because the process of buying land didn't disclose to citizen. This situation was still going on in part of local governments and national government. But disclosure of the "frozen land" led to an uproar of public criticism. Kawasaki came up with plans to sell some parcels of land and review planned projects. Demands for action spread from Kawasaki around the country. Measures to address the problem had been adopted by various local governments.

C . Other cases

1 . Report On An Investigation Of The Mechanics Of Groundwater

Beginning in 1983, Takatsuki City (Osaka Prefecture) began pioneering the study of groundwater contamination. In 1987, because of the city's achievements in this area, it was commissioned by the Environment Agency to do a study on the mechanism of groundwater contamination. The attached materials are the results of this study that were prepared by the city and submitted as a report to the Environment Agency.

At the time, the city's groundwater was actually contaminated by an organic solvent. Disclosure of the report was requested on the basis that it was necessary to make public the mechanism and current state of contamination in order to protect the environment and the lives and health of the citizens of Takatsuki.

In response to the disclosure request, the city at first gave two reasons for complete non-disclosure. First, release of the information would "materially harm the cooperative and trustful relations" between the Environment Agency and the city (a clause in the commissioning contract stated that "results of the commissioned work will not be made public without prior approval of the Environment Agency"). Second, the city stated that without the benefit of the Environment Agency's conclusions on the study, disclosure "would give city residents an inaccurate understanding and cause misunderstandings."

These grounds disappeared when the Environment Agency agreed to disclosure. The complete report was released, along with an additional document intended to clarify information in the report.

This additional document was an explanation directed towards the requesters, suggesting they "give special attention to the following points." Just as in the original reasons for not disclosing the information, the local officials were not able to completely eliminate their fears that disclosure would result in misunderstanding. Thus, rather than merely disclosing the document (as required by the ordinance), an explanation was attached.

2. Report on the Occurrence of Side-Effects Associated with the MMR

The MMR vaccine is a mixed vaccination for measles, mumps, and rubella that was introduced in 1989. Information requests filed by concerned citizens led directly to discontinued use of this vaccine. Concerned about the risk of side effects from this vaccine, the Health

and Welfare Ministry requested prefectural governments to conduct a survey of the occurrence of side effects. The results of that survey, calculated and reported on a prefectural basis, are found in the attached document.

A citizens group filed disclosure requests with 16 separate prefectural governments that participated in the survey. Their goal was to check the authenticity of the rate of occurrence of side effects announced by the Ministry in 1991 (it was said to be 1 in 1200). This was the first example of a coordinated program featuring identical requests filed with different local governments around the country.

Seven prefectures decided against disclosure (Akita, Tochigi, Fukui, Toyama, Hiroshima, Kagawa, and Miyazaki) The reason: “because the national government had asked that the information not be disclosed, to do so would cause a loss of cooperative and trustful relations with the state.” Nine prefectures decided to disclose, deleting only personal information. The breadth of disclosure was slightly different from prefecture to prefecture.

From just the disclosed information it became clear that there were 321 cases of side effects. Based on this, the citizens group independently calculated an occurrence rate of 1 person in 490. This demonstrates that the actual occurrence rate for side effects is over two times that announced by the Health and Welfare Ministry. Because the occurrence of side effects was greater than that originally anticipated the use of the MMR vaccine was discontinued.

3. Names, Amounts, and Concentrations of Additives Noted in Copies of Applications for Approval of Pharmaceutical Products

Article 20 of the National Pharmaceuticals Law requires that applications for licensing and approval of pharmaceutical products “must be made through the governor of the prefecture in which the pharmaceutical maker is located.” Prefectural governments kept

copies of such applications and these documents were subject to disclosure under prefectural disclosure ordinances. The attached documents were parts of applications that were disclosed by the Tokyo metropolitan government.

Additives were used in pharmaceutical products in order to give them color and to form them into pills. Within such additives there were some that could cause serious side effects such as shock or respiratory disorders. However, in the past only the active ingredient was listed in product packaging, and there was no requirement to disclose additives. A group of doctors who had misgivings about these additives asked pharmaceutical companies and the Health and Welfare Ministry to disclose the names and amounts of additives. They were not able to get adequate information from those sources, so they requested Tokyo, Kanagawa, and Osaka prefectures to disclose their copies of the approval applications.

Tokyo and Kanagawa prefecture disclosed the names of the additives. Because the amount of additives used constitutes corporate know-how, under the exemption for corporate information that information was not disclosed. However, the amounts of additives were disclosed in the case of injected products where the disclosure of such information could be considered to be necessary in order to protect a person's life or health. Osaka also disclosed the requested information in the same manner, but only after the original non-disclosure decision was appealed to the Osaka review board.

At about the same time that these requests were being processed, the Health and Welfare Ministry sent out a notification broadening the requirements for the listing of ingredients to include additives. The instructions that came with pharmaceuticals provide a description of additives, and it was easy for anyone to determine which additives were included in the product's ingredients. This was a

result of the use of information disclosure ordinances. This example showed how information disclosure might help to prevent harm due to side effects from pharmaceutical products.

4. Receipts for Expenses related to Local Legislators Foreign Trips

An official signing ceremony sealing a friendship agreement between Tokyo and Rome was conducted in Rome in July 1996. Governor Aoshima and a group of Tokyo legislators attended the ceremony. Following the event, the legislators visited Munich and Berlin. A requester wished to know how much this event cost.

At that time, the Tokyo legislature was not the subject of Tokyo's disclosure ordinance. However, the request for relevant documents was filed with the Expense Chief, who had possession of the documents. When the Expense Chief sought guidance from the Tokyo legislature, it opposed disclosure. On the ground that disclosure of these documents would damage relations between the Governor and the legislature, Tokyo prefecture withheld all documents.

Tokyo District Court and Tokyo High Court both granted judgments in favor of plaintiff overturning non-disclosure, stating that "Determination whether the relationship of trust will be damaged or not must be objectively rational when viewed by residents of Tokyo. The determination of Tokyo Prefecture, based solely on its respect of the subjective relationship between the parties, is not acceptable to Tokyo residents."

Tokyo Prefecture appealed to the Supreme Court of Japan, but in April 1999, the Court refused the case and the High Court decision became final. Documents such as the appended item were released, excluding only the signatures of persons issuing such receipts.

As a result, numerous items which appear to have been forged, such as the appended handwritten receipts were discovered and legislators were found to have padded their bills. Based on the information in

these documents, the requester filed a demand for audit and the auditor identified more than eight hundred thousand yen in losses due to falsified receipts. Adding interest, legislators and prefectural staff reimbursed approximately one million yen to the prefecture. Tokyo prefecture disputed plaintiff's disclosure all the way to the Supreme Court of Japan in an attempt to conceal these false expenditures.

V. Negligence of the Japanese Government

The Japanese government's actions to institutionalize freedom of information had stagnated.

During the days when the aforementioned CMFOIA was formed, and the movement expanded, there was a great deal of news about the Lockheed incident and the Douglas-Grumman incident, and this was also a time when the government's secret improper acts became an issue.

The Lockheed incident began in February of 1976 when it was revealed in the U.S. Senate Foreign Relations Committee's Multinational Corporation Subcommittee that Lockheed had made massive illegal contributions to Japanese high government officials in order to entice them into buying passenger aircraft. The Douglas-Grumman incident began to the end of 1978 when it was discovered that the companies had made illegal contributions to Japanese high government officials in an effort to sell E2C early warning aircraft. These two incidents clearly showed that a few politicians were taking advantage of their positions behind the heavy veil of administrative secrecy in order to obtain improper benefits, and that, as this incident came to light only through investigations by the U.S. Congress and administrative committees, the Japanese political and governmental system had lost its capacity to expose improper acts. "It is a fact that Japanese politics is totally dependent upon criminal

and judicial procedures in order to have institutional assurance" to prevent the corruption of power. (KYOGOKU Junichi, Japanese Politics, p. 95.)

In the Lockheed affair, the government refused to submit documents to the Diet on account of Article 47 of the Criminal Procedure Act (documents pertaining to a lawsuit must not be made public prior to a public hearing). Additionally, Diet members' administrative right of inquiry was powerless before the public employees' secrecy obligation.

The Lockheed and Douglas-Grumman incidents acted to inform the citizens that institutions for the freedom of information were essential in order to monitor improper government behavior. In response to this, the Japan Democratic Socialist Party submitted a bill for a Public Document Release Ace (May 15, 1980), and after it became a dead bill, the next session of the Diet saw the submission of a bill for a Law Concerning the Release of Administrative Agency Public Documents by the Japan Communist Party (April 25, 1981), a bill for a Freedom of Information Act by the Social Democratic Party of Japan (SDPJ) (May 12, 1981), and a bill for a Law for the Release of Public Documents submitted by four parties, the Komeito ("Clean Government Party"), the Japan Democratic Socialist Party, the New Liberal Club, and the Social Democratic Federation (May 19, 1981). However, as the House of Representatives was dissolved, all of these bills died without a hearing.

It was during this period of time that the government, on the basis of a May 27, 1980 Cabinet-approved document entitled "Concerning Measures for Improving the Provision of information, "made decisions to implement the definition and establishment of procedures for making official documents public, the preparation of document listings, the establishment of offices in government ministries and agencies for the public to examine official documents, and promoting the transferal of official documents to the National Archives; The government established

offices in ministries and agencies where the public can examine documents. However, these measures amounted merely to the creation of an information purveying service, so that the real work on institutionalized freedom of information had to wait for a report by the Second Special Administrative Board of Enquiry.

According to this report, which was released on March 14, 1983, “Administrative agencies should, based on idea of an open government, establish a fundamental policy in which they make the transition to generally open operations”. The report also said that a freedom of information system is “a matter for positive, forward-looking discussion.” At the same time, the report states: “On the other hand, such a system is a completely new field in Japan, and it will be necessary to consider various aspects such as the handling of information in Japan, and the general trend of motions concerning such handling; reconciliation with broad and diverse associated systems, which will be necessary to enact and implement a freedom of information system; as well as the disadvantages inherent in its implementation. “ In short, the report merely acknowledges that these are problems which bear examination. In response to this, the Management and Coordination Agency started a “Panel for Studies on Freedom of Information,” which is performing a study of the problems that would result with the creation of such a system, but no decisions whatsoever had been made on how to bring this about.

On the national government level, if there were a freedom of information system which included provisions for disclosing politicians’ funds, the citizens would have institutional assurance that improper government acts would be exposed, and this would then contribute to preventing the corruption of power. However, even though ten years had passed since the Lockheed incident was uncovered, we had yet to establish a national freedom of information system. A few politicians

and high-level officials were taking advantage of their positions behind the heavy veil of administrative secrecy in order to obtain improper benefits.

Ⅵ. Process of enacting the Information Disclosure Law

A freedom of information system is essential for effective citizen sovereignty and democracy. In December 1988, the Diet barely passed, as a privacy protection system, the Law Concerning the Protection of Personal Information Processed by Electronic Computers of Government Agencies. However, the only purpose of this law was to benefit government agencies by giving them the right to manage and control personal information. The national government made no effort to enact a freedom of information law. Why? The answer can be found in the strong predilection of Japanese government officials to keep all information under their own control, and not hold it in common.

The passage of a freedom of information law was also necessary if Japan was to become a model of democracy for the world along with the United States and other advanced nations. However, at that time Liberal Democratic Party, which was not positive about passing a Freedom of Information Law, and a bureaucratic structure that wanted to place all information under its own control, dominated Japan's politics, and the same people had held the reigns of government for nearly 40 years since the end of the war. Under these conditions, passing a freedom of information law was extremely difficult.

In 1993, the opposition parties. the Social Democratic Party, the Komeito (Clean Government Party), the Japan Democratic Socialist Party, the Social Democratic Federation and the RENGO Upper House Group submitted an Administrative Information Disclosure Law bill to the Upper House, which was based on the U.S. Freedom of Information Act. CMFOIA committed making process of this bill. This bill was

readied for debate, but was then discarded when the Lower House was dissolved for a general election.

However, after the election there was a shift in political power, and the opposite parties had power, so the movement in politics towards enacting an information disclosure law was greatly advanced. A Project Team for the Enactment of an Information Disclosure Law was inaugurated under the newly formed government.

In 1994 there was another change in government, and the former governing Liberal Democratic Party joined with two other parties, the Social Democratic Party and as Sintoh Sakigake, to form a governing coalition; within the power-sharing agreement between these it was agreed to revise the bill to establish an Administrative Reform Committee to make clear that the committee must investigate and debate the enactment of an information disclosure law, and to make clear that the committee must conclude its discussions within two years. Having clearly set out this policy in law, it became practically impossible to turn back from the enactment of an information disclosure law.

The Administrative Reform Committee was established in 1994; in 1995, the Administrative Information Disclosure Sub-Committee was set up as an expert sub-committee. The results of the sub-committee's deliberations were published and submitted to the government in 1996 in the form of a proposal for an information disclosure law, and the Cabinet decided to submit a bill to the Diet within the 1997 fiscal year. CMFOIA provided information to the Administrative Information Disclosure Sub-Committee in the form of case studies on ordinance problems in local governments. CMFOIA held symposiums and gatherings in the Diet, and put pressure on the Diet members debating the law to revise it and quickly enact it. These activities helped bring about a partial revision of the bill that was submitted to the Diet.

The bill was submitted to the Diet in March of 1998, and debate began from April of that year. Because each opposition party submitted a bill to the Diet at the same time that the government's bill was submitted, the government's bill underwent important revisions, and finally was enacted in May of 1999.

Ⅶ. The Enforcement of Japan's Information Disclosure Law

Japan's Information Disclosure Law took effect on April 1,2001.

Japan's Information Disclosure Law allows "any person" to request the disclosure of information held by the Japanese government. If you are interested in receiving Japanese government information, it is possible to ask for information from anywhere in the world, and you will never be asked the purpose of your request. From now on, use of the Informatin Disclosure Law may provide efficient means for doing research. In countries where there are public works projects supported by the Japanese government, the Information Disclosure Law may be used as a tool to extract information concerning such projects.

Going back 18years before the Information Disclosure Law was enacted, local level governments in Japan enacted information disclosure ordinances that have been used by citizens to extract information from local government bureaucracies. By fighting against the non-disclosure of requested information, we have made these local information disclosure ordinances into tools for gradually broadening the disclosure of information in our society. From now on, Japan's information disclosure will be judged through the eyes of the world.

A. The law guarantees the right to request that the government disclose information

The Information Disclosure Law is a law that establishes the right to demand that the government disclose information.

Up until the Information Disclosure Law was created, the only way to get government information was to petition the government by saying "please." However, now that there is a law, we can demand the disclosure of information as a right, and the government must decide whether or not to disclose the information within a set period of time.

The Information Disclosure Law sets out various rules and procedures in order to guarantee us this right while placing obligations on the government.

B. Who can use it against what?

This law can be used by anyone. It does not matter what our citizenship is, or where we live. Not only individuals, but organizations also may make requests.

To whom can one make a disclosure request?

Government agencies subject to disclosure requests are all the "administrative organs." For example, the Cabinet Office, the various ministries and agencies, the various administrative committees, the board of audit, national universities, national hospitals, national research institutes, etc.

On the other hand, Public corporations Information Disclosure Law was enacted on November,2001. The Law sill be enforcement soon. Also, the Law will be used by anyone.

However, under these laws, and the Diet, the courts are not subject to disclosure requests.

C. What kind of information is subject to the law?

From among the information held by agencies subject to the law, items that may be subject to requests are those that were prepared or obtained in the course of an official's work and that are held by the agency for organizational use. These are called common use documents.

For example, where an official has written a personal memo, has not shown it to anyone else, and keeps it in a place where no one else is likely to refer to it, then the memo can be not subject to a request. However, if the official shows that memo to someone else as part of her work, then the memo may become subject to a request.

Also, the information need not only be that which is recorded on paper; all media for recording information, including electronic formats such as floppy disks and computer hard drives, as well as video tapes, cassette tapes, microfilm, and photographs, are included in the definition of a common use document.

D. Under the law, what kind of information may not be disclosed?

While the Information Disclosure Law's fundamental rule is disclosure, the law provides for six exceptional circumstances in which information may not be disclosed. The interpretation of the range of these non-disclosure exceptions is a frequent problem in the operation of an information disclosure system.

1. Personal Information – information that identifies an individual. However, there are exceptions, such as where the information has already been made public in a different place.
2. Corporate information – where if disclosed the information would harm the legitimate interests of a corporation or a person who carries on a business, or information volunteered to the government on the understanding that it will not be disclosed.
3. Defense and foreign relations information – where if disclosed the information would damage trustful relations with another country, or would cause a disadvantage in negotiations with another country, or that would harm the security of the state.
4. Criminal investigations and maintenance of public order information – where if disclosed the information would cause a hindrance to the

maintenance of public safety and order.

5. Information concerning deliberations, examinations, or consultations – information that concerns the deliberative process, where disclosure would harm proper decision making.

6. Administrative operations information – information concerning the affairs or business conducted by an administrative agency where its disclosure would hinder the proper performance of the agency's affairs or business.

However, personal or corporate information must be disclosed when disclosure is necessary to protect a person's life, health, livelihood, or property. Also, where on balance the benefits to disclosure outweigh the interests protected by non-disclosure, non-disclosure information may be disclosed at the discretion of the agency concerned.

If the government does not have the requested information, that information is then said not to exist. Within this category of non-existent information may fall information where the government cannot say whether or not it exists without possibly harming someone's interests; in this case the government responds that it cannot answer whether or not the information it holds exists.

E. Non-disclosure can be challenged

Even where the requested information is not disclosed, under the Information Disclosure Law that decision can be challenged. This is where the major difference lies between having a disclosure law and not having a law. The law gives every person the right to demand disclosure, and the administrative agency from which disclosure is demanded must make either a disclosure or non-disclosure decision in answer to that demand. The correctness of this decision can then be challenged either through an administrative appeal or a judicial appeal.

F . Searching for information to request (specifying the information)

It is not necessary to make any special preparations in order to make a disclosure request. However, we may not know which section or which official of what agency holds the information that we are interested in, or in what form that information is maintained.

1 . Searching on our own (a preliminary search)

a) Try searching through information that has already been made public

Ministries and agencies have begun to make various kinds of information available through their internet home pages. Also, there are white papers and other government publications that are available to the general public. Of course all the information provided in this way has been prepared for public consumption, and it may not necessarily include the information that we really want to know. However, there may be hints for making a disclosure request hidden within such information. Searching through such information is a good way to prepare to make a request.

b) Using the file management catalog

In order to properly manage their information, each administrative organ produces an “administrative document file management catalog” (gyosei bunsho fairu kanribo) that is provided to the public via the internet. Each file management catalog records file names, the date of creation, the duration of preservation, and the place of storage, etc., but they do not go so far as to let one know what kind of information can be found within each file.

However, because the file management catalogs can be searched via the internet (start searching from http://soumu.go.jp), at least we can do a simple preparatory search to find out what kind of files there are that concern the matter in which you are interested. But, the catalogs are not revised every time a new file is created, so it is

not possible to do a search for the most recently created files.

If we do not have access to the internet, we should use the terminals that are available at the information windows and general inquiry offices that will be introduced later in this pamphlet.

2. Using the Information Windows (Madoguchi)

Even after doing our own preparatory search, it still may be very difficult to specify what kind of information exists in the administrative organs regarding whatever it is we would like to know. Because of this, the law requires that administrative organs provide the information necessary to requesters in order to carry out a reasonable disclosure request. To that purpose, information windows have been set up to give advice and provide information. It's probably a good idea to consult an official at an information window, telling her that we would like to make a disclosure request.

a) Information windows that have been established at each organ subject to the law

Information disclosure windows have been established at each administrative organ that is subject to the law. These windows provide advice and information, and accept disclosure request forms. In addition to ministries and agencies, information windows have also been established at branch offices such as local legal affairs bureaus and local transport bureaus, as well as national universities and research institutes; an information window will only accept disclosure requests for information that is held by the organ in which it is located.

At the information window please explain in detail what kind of information we wish to know about. The official at the window will help us out by contacting other officials to search for the department or officer who is most likely to have the information we

seek, and to find out in what form it exists. At this point, if we are able to have a proper consultation with the officer at the information window the rest of the request should go relatively smoothly.

It is also possible to submit a request for information held by that agency at its information window. Consultations may be done by telephone.

If we do not know which particular administrative organ is likely to have the information that we desire, it is best to make an inquiry with a General Inquiry Office.

b) Information Disclosure General Inquiry Offices (Sogo Annai-jo)

General Inquiry offices have been established in 51 locations throughout the country. These offices were established to provide advice and information for disclosure requests, and we here can inquire about which administrative organ is in charge of the information we are looking for. Also, the inquiry offices will help in specifying the information that we seek, and we may also consult with them by telephone.

The inquiry offices are only there for consultations and the provision of information to support disclosure requests, and they do not accept actual disclosure requests. Even if we fill in a request form at a General Inquiry Office, we will still have to send it by mail to the office that holds the requested information.

3. Ask for the provision of information

There are cases in which, without actually having to use the law, information that should be made public will be provided without making a request. The Information Disclosure Law itself calls on administrative organs to enhance the provision of information, so depending on the circumstances, why not go ahead and ask that the information be provided to us without a disclosure request.

Making a disclosure request takes time and money, so asking that the information be provided to us without filing an official disclosure request is a simple and speedy way of obtaining information. If the information is not given to we, then we can always go ahead and file an official request.

G. Writing the request form and Making a request

When requesting disclosure one must fill out and submit the following "administrative document disclosure request form" (gyosei bunsho kaiji seikyusho). Portions A and B must be completed, but C is optional, and the choice of whether or not to complete it is left to the individual requester. If A and B are completed the request will be accepted even if it is not written on an official form. Please note that requests must be completed in Japanese.

When making a request we will be asked its purpose, but it is not required that we are able to answer, and if we are not able to answer our request will still be accepted.

Currently the only methods of submitting a request are in person at an information window or by mail.

Under the local information disclosure ordinances we sometimes have come across instances of people giving up and not submitting a request simply after being told by an official at an information window that "this information won't be disclosed...." To disclose or not to disclose is not something that is decided by officials at the information window, and they cannot refuse to accept a request. Without submitting a request it is impossible to fight against non-disclosure, so if the information is not otherwise being provided to you, always submit a request.

When making a request, a "disclosure request handling fee" of 300 Yen is charged per each request form. So long as there is a close connection

between the contents of each file, it is possible to request collectively a number of different files using just one form, and it is possible to attach another sheet where there is not enough room to specify all the files on one form.

Requests are submitted to the head of the agency holding the sought-after information.

H. Decisions on requests

Administrative organs must consider whether the requested information can be disclosed or whether it constitutes non-disclosure information and come to a decision within a period of time fixed by the law. The requester is informed of the decision in a written notification sent by mail.

1. the time limit to make a decision

Disclosure or non-disclosure is decided within 30 days after the request is submitted.

As an exception, where with good reason it is not possible to reach a decision within 30 days it is possible to extend the decision-making period for another 30 days.

As a further exception, it is possible to extend the decision-making period again if it is still not possible to come to a decision.

Please note that where there is an extension of the decision-making period, the requester must be notified of the reason for the extension and the time period of the extension.

2. types of decisions

disclosure – see page 35.

partial disclosure – see page 37.

non-disclosure – see page 38.

3. The process of an Information Disclosure Request are as follows for your reference.(see page 51.)

Ⅰ. Disclosure decisions

1. Receiving the information

After receiving notification of a disclosure decision, the next thing to do is to take receipt of the requested information. Within the notification of disclosure there will be an entry giving the possible methods for implementing disclosure. For example, for information recorded on paper the possible methods may be inspection or copying, or for electronically recorded information, inspection by listening, or in the case of floppy disks, by copying.

When accessing the information one must fill out a form called a "application for the method of implementing disclosure of administrative documents" (gyosei bunsho no kaiji no jisshi hoho-to moshidesho) The possible methods of accessing information are either to go directly to the administrative organ to inspect the materials or to receive a copy, or to receive a copy by mail. As of this time it is not possible to receive copies by fax or e-mail. Also, one must pay a non-refundable inspection fee of ¥300 and an additional copying fee, if a copy is requested. The fee may be paid in the form of revenue stamps, or in cash if one goes directly to an information window. Depending on the administrative organ, it may be necessary to pay by bank or postal transfer.

a) Inspection – Copying

methods of pursuing inspection or monitoring:

Paper

Microfilm, photographic film, slides, audio tape, video tape, electronic records (floppy disk, hard drive, CD-ROM, MO, etc.) where there is a machine on which the medium can be viewed or played back.

methods of receiving copies

Paper copies, print-outs

For electronic records, copying directly onto the same medium (for example, the dubbing of a video tape to another video tape, or the copying of electronic information onto a floppy disk).

b) Fees

paper

If you wish to receive a hard copy of written or audio-visual, materials, you must pay an additional charge.

If these fees do not amount to more than the ¥300 handling fee paid at the time the request was submitted, there is no additional charge.

For example, to get a copy of a 10-page document, the cost would be ¥100 for the 10 pages plus ¥20 per page copied, that is, ¥100 inspection fee and ¥200 copying fee. However, if the disclosed document is only 5 pages long, the inspection fee is still ¥100, but the copying fee only comes to ¥100, a total of ¥200, so there will be no additional fees charged at the time of disclosure. There is also no refund.

If the disclosed document is 15 pages long, the inspection fee is still ¥100, but the copying fee is ¥300, a total of ¥400, so an additional ¥100 must be paid.

If the material is only inspected, ¥100 is charged for each 100 pages, so up to 300 pages may be inspected without incurring any additional costs at the time of disclosure.

There are different fees for the inspection and copying of information in a media other than paper.

Calculation of these charge is complicated by the non-refundable inspection fee. We feel that this ¥300 charge should be eliminated.

c) receiving copies by mail

A mailing fee will be charged in addition to the inspection and copying fees.

d) Reduction of or Exemption from fees

"Application form for the reduction (exemption) of disclosure implementation fees" (kaiji jisshi tesuryo no gengaku (menjo) shinseisho)

e) A reduction due to financial difficulties will reduce the fee by up to ¥2000. Financial difficulties are defined as "inability to pay the charged fee," but it is likely that, for example, a person receiving welfare support would be eligible to receive the reduction.

f) Where there are "other special reasons" there may also be a reduction of fees. Other special reasons would apply in a case where the requested information normally should have been made public without a request, or where the information is necessary to protect a person's life, or where there is discretionary disclosure for reasons of public welfare.

2. Asking for an explanation

The requester may ask for various explanations concerning the disclosed information. The requester's understanding will be increased by actually meeting with or talking by telephone with the officials who held the information and by asking questions and demanding an explanation of the information.

J. Partial disclosure decisions

Where there is both information that may and may not be disclosed in the requested document, the administrative organ may disclose only parts of the document by placing black marks over the non-disclosure portions, making those portions illegible. In that case a "partial disclosure notification" (bubun kokai kettei tsuchisho) will be sent out. When that happens:

a.) first, receive disclosure of the disclosed portions. The procedure is the same as that for full disclosure.

b.)where you are not satisfied with the degree of non-disclosure, this can be challenged in the same way as complete non-disclosure.

K. What Happens When There Is Non-Disclosure

1. What is a non-disclosure decision

Where the requested information corresponds to non-disclosure information a non-disclosure decision will be made and a "non-disclosure decision notification" (hikokai kettei tsuchisho) will be sent to the requester.

Where there is a non-disclosure decision, the reasons for non-disclosure will be indicated in the notification. For example, a reason may be the applicable non-disclosure information category (see page 28), or that the information does not exist, or that it is not possible to say whether or not the information exists.

Where one is not satisfied with the non-disclosure decision, one can challenge it through an administrative appeal and/or a law suit.

2. Filing an administrative appeal

a) What is an administrative appeal

It is possible to file an administrative appeal within 60 days of a non-disclosure decision.

An administrative appeal takes the form of a formal written objection sent to the administrative organ that made the non-disclosure decision. However, because there is little chance that the organ that made the original non-disclosure decision would change that conclusion after further deliberation, the objection is referred for deliberation to the Information Disclosure Review Board (Joho Kokai Shinsakai) as established under the Information Disclosure Law. The Review Board is a third party organ made up of 9 members that, having received the objection, deliberates the propriety of the non-disclosure decision. The actual deliberations of the committee

are not disclosed.

An administrative appeal may be employed without expense by anyone who has received a non-disclosure decision. It does not take as long as a judicial suit, can be done without any special legal knowledge, and it provides a simple and speedy form of relief.

b) How an administrative appeal works

an apperant submits an objection to an administrative organ.(see page 52－①)

the administrative organ send the objection to the Review Board for the refernce.(see page 52－②)

The Review Board has the power to make an administrative organ submit to the Board the documents that it decided not to disclose; during its deliberations the Review Board may then take a firsthand view of the documents, and consider whether or not there really is a need to keep them from being disclosed. This kind of inspection is called a In camera examination.

There are instances in which more than one of the six categories for non-disclosure information are applied in a non-disclosure document. When that is the case, the Review Board may ask the administrative organ to prepare an index that indicates which category of non-disclosure information applies to which part of the document in question. This kind of index is called a Vaughn Index.

The administrative organ gives a detailed explanation of its reasons for non-disclosure in written “explanation of reasons for non-disclosure” (hikokai ryu setsumeisho). (see page 52－③)

The appellant may submit in writing her opinion regarding what is stated in the explanation of reasons for non-disclosure. (see page 52－④)

If the appellant desires, she may appear before the Review Board to

state her views in person. If you wish to do this, make sure to let the Board know that you want to appear before them. (see page 52－⑤)

The Review Board announces the result of its deliberations as a decision. While the decision has no legally binding effect, administrative organs must give it serious consideration. The decision will be made public, and is also sent to the appellant. (see page 52－⑥)

A final decision is made by the administrative organ, taking into account the Review Board's decision, deciding once again whether or not to disclose the information that was the subject of the original request. For example, if the Review Board's decision called for disclosure, the administrative organ will revoke its non-disclosure decision and make a final decision to disclose the materials in question. (see page 52－⑦)

c) Circuit Review Board

An opportunity to present one's views in person is guaranteed as a part of the administrative appeals procedure, but because the Appeals Board is a part of the Cabinet Office in Tokyo it may be difficult for residents of other parts of Japan to appear before it. Therefore, the Appeals Board may go on a circuit to areas outside of Tokyo in order to hear appellants' oral testimony.

3. Judicial Appeals

Where an administrative appeal does not change the non-disclosure decision, a judicial appeal may be made if it is filed within 90 days. Appeals may be filed with the Tokyo District Court, and also the district courts in Sapporo, Sendai, Nagoya, Kyoto, Osaka, Hiroshima, Okayama, and Fukuoka.

A judicial appeal is an "administrative suit" (gyosei sosho) demanding the revocation of the non-disclosure disposition. In information disclosure suits there is also a form of first person suit in

which the requesters themselves advance the suit.

Please note that it is also possible to file a judicial appeal without first making an administrative appeal. However, unlike the Review Board, the court cannot view the documents in question in an *in camera* procedure, and because there are expenses involved in filing suit, it is probably best first to try an administrative appeal.

4. Support of Information Clearinghouse Japan

The organization CMFOIA, which was founded in 1980, was reorganized after the Information Disclosure Law was enacted in May of 1999, resulting in the formation of Information Clearinghouse Japan in July of 1999. The Tokyo government gave Information Clearinghouse Japan(ICJ) non-profit corporate status in December, 1999.

The primary goal of ICJ to collect and provide information about information disclosure. We believe that through mastering the use of information disclosure systems in a variety of areas, and through citizens actively taking part in both social and administrative policymaking, the diverse potential of information disclosure systems will flourish. To this end, we provide advice and information concerning the use of information disclosure systems, collect and disseminate examples of citizen use of disclosure systems, and provide a data base of fundamental materials concerning information disclosure.

ICJ, having received donations from a wide range of sources, has founded the “Information Disclosure Fund” (Joho Kokai Kikin). The Fund is meant to partially support the expense of judicial appeals that concern socially important topics or new areas of non-disclosure. The allocation of funds is decided by the board of directors of ICJ; if you have a compelling case please consult with us in advance of the ICJ’s directors meeting.

Upon deciding to provide funds for a particular case, we will also introduce lawyers.

Ⅷ Future Issues

A. Future Issues

Obviously, Information Disclosure System is very important the reason why the system guarantees citizen's right to access to official information. As a result of this right, citizens can make an administrative appeal and judicial appeal for non-disclosure decision. On the whole, these suits and appeals have functioned in their own way to bring about disclosure; according to research by ICJ, 51.7% of the administrative appeals have resulted in greater disclosure than that of the original disposition (according to data as of April 1, 2000).

But Information Disclosure System is not panacea. Citizens are only guaranteed an opportunity to access to information by system and governments are not required information disclosure without citizen's request by system. For example, food and beverage fee exists a long time ago but citizens could not know the problem of wrong expense of this fee for long time after passage first information disclosure ordinance in local government. Land buying case and the other cases are as well. If citizens did not find such like problems, nothing was happened.

Citizens should use information disclosure system positively, at the same time, governments should disclose information for their accountability and transparency without request.

B. Future Issues for Arranging Information Disclosure System

Furthermore, the Information Disclosure Law itself requires that it be re-examined within four years from its enactment. The law has many problems, and many points that need improvement. After the

law comes into effect, it is necessary for citizens actively to use the law, creating case studies that make clear the law's problem points, in order to create a law which is both easy to use and a powerful tool. As well as promoting use of the law, it is necessary to promote preparations for the re-examination of the law.

In addition to the law itself, there are also related areas such as the Personal Information Protection Law and the Public Documents Archive Law. While these laws already exist, they lack meaningful content and have many problems. Without promoting the right of an individual to request the disclosure of personal information, as well as the preservation and management of older documents in archives, there will not be sufficient over-all information disclosure. Even though Japan has enacted the Information Disclosure Law there are still may issues that must be tackled.

C. Local governments and information disclosure ordinances

Aside from the national Information Disclosure Law, local governments have their own information disclosure ordinances. Because the Information Disclosure Law only applies to information held by national administrative organs, one has to use the various local information disclosure ordinances to make disclosure requests concerning the work of local government. It probably is best to choose which system to use depending on whether the state or a local entity is in charge of the activity in question.

In this connection, as of April 1, 2001, there were 2,178 local bodies in Japan that had enacted information disclosure ordinances, and all 47 prefectures (including Tokyo) had enacted disclosure ordinances. The disclosure systems and methods of requesting disclosure on the local level are much the same as with the national Information Disclosure Law.

D. Information disclosure for government corporations, the Diet and the courts

A law governing information disclosure for government corporations was enacted in 2001. It is similar in content and form to the Information Disclosure Law for administrative organs.

On the other hand, there is no system of information disclosure for either the Diet or the courts. Unless the Diet and the courts each enact their own information disclosure laws we cannot carry out our right to disclosure and they will remain unaccountable to us. When one thinks that both the Diet and the courts were originally meant to be open to the people, it makes it all the more desirable that they prepare information disclosure laws as soon as they possibly can.

Ⅸ Building a Future Based on Mutual Understanding and Tolerance

In spring 1996, I had the opportunity to make a public address at Reinan University in Korea, through the introduction of Professor Usaki of Dokkyo University. When I finished speaking, a student asked whether Japan`s Information Disclosure Law would allow for the release of documents concerning the case of the wartime “comfort women,” and whether it would enable her and others to obtain this information.

The student’s question impressed me deeply. It forced me to think about the role of information disclosure in the relations between our peoples. Of course, I am not in a position to say what kinds of documents may or may not exist or be released. But the first step is clear. First we must use the Information Disclosure Law to request information. If we are successful, it will lead to greater understanding.

What we need more than anything is to develop mutual understanding based upon a shared factual record. The mutual exchange of government documents can help to build this record. In this regard, a

particular problem is posed by a gap in the Information Disclosure Law. Article 2 of the Law excludes historical materials from the definition of administrative documents subject to disclosure. For example, the Documents Division (Shoryobu) of the Imperial Household Agency is charged with maintaining documents more than 3 years old concerning the Imperial family. Such documents include those of past emperors. Unfortunately, materials held by this agency are outside the scope of the Information Disclosure Law. This should be changed. Through broad disclosure of materials maintained by the Imperial Household Agency, we can show an "Open Imperial House" not only to Asia, but to the world.

About forty years ago, the great social thinker and political scientist Masao Maruyama, a professer at Tokyo University, proposed that we place our hopes not with the "historical fact" of the Japanese Empire, but instead with the "illusion" of Postwar Democracy. As for myself, I believe that with the tool of the new information disclosure system, we can now establish the "historical fact" of democracy. By aggressively opening government files, we can demonstrate that democracy is not merely an "illusion."

Countries throughout Asia must develop information disclosure systems. By developing mature democracies in Japan and throughout Asia, we can realize the great goals of mutual understanding and tolerance. It is commonly said that "he who builds a bridge is not likely to be the one to use it." However, through the mutual demand for information disclosure, together with the next generation, we would like to cross that bridge.

For more than ten years, Japan has been unable to escape the dark cloud that has enveloped Japan's politics, its economy and even its educational system. Countries throughout Asia have experienced difficulty escaping the effects of the Asian economic crises. Perhaps an

open information disclosure can lead to a revival. In the imperialist age of the past, people sought to protect their own country by invading others. Today, we seek to live together in an “open civil society” in which information is open to all and anyone can use the disclosure system of any country.

I’m gratified that our effort during the past two decades are bearing fruit, not only in Japan but throughout the Asia Pacific Region. I believe that our pioneering struggles have been worthwhile. Let us join together in the spirit of transparency and egalitarianism, as the 21st century begins.

Through this conference, I hope that we can enrich the flow of information to the people of the world.

Declaration of Right to Public Access to Information

"Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people." These words from the preamble of the Constitution of Japan clearly express the principle of the sovereignty of the people, a universal principle of mankind.

In violation of this principle and in contradiction to the indisputable truth that the power of the government belongs to the people, important information concerning the power of government has for a long time been kept beyond the reach of the people. The most significant reason for this is that the people's right to know, which is inherent in the concept of the sovereignty of the people, has been disregarded. Through our experience in the past war, we ourselves have suffered the bitter result that can occur when the eyes and the ears of the people are blocked an they are isolated from fundamental information concerning the operation of government.

As is already well-known, the lives, health, and security of the people have been threatened and injured by dangers such as pollution, defective pharmaceutical products and others. If it had not been for the improper handling and concealment of information by government ministries and agencies, the sources of such perils may have been rapidly determined and the resulting damage minimized. In addition, closed door politics has resulted in the repeated occurrence of cases of the waste of public funds and corruption involving high government officials, culminating in the Lockheed scandal. Even now a true understanding of such cases lies hidden in a dark mist. Can this be called a system of government with the people as sovereign?

Contemporary government is characterized by an extreme expansion and strengthening of administrative authority. In the information society of today, such extreme administrative power has resulted in government monopolization and management of information. This has occurred despite the fact that information held by public institutions is originally the common property of the people. To grant public access to such common property is no more than the natural duty of the government as servant of the people.

James Madison, one of the authors of the United States Constitution, chose these words to identify the freedom to participate in the acts of government as a condition necessary to the preservation of democracy. “A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy; or perhaps both.”

Further, according to the International Covenant on Civil and Political Right, the right of freedom of expression “shall include freedom to seek, receive and impart information and ideas, of all kinds, regardless of frontiers,”

We firmly believe that a system providing concrete protection for the right to know is indispensable to the preservation of human rights and democracy and hereby solemnly declare that we hold the right to freely request and to use all publicly held information.

Public Access to Information: Eight Principles

We hereby confirm that the Freedom of Information'Law and Freedom of Information ordinances that we demand in our "Declaration of Rights to Public Access to Information" must at the minimum fulfill the following eight general principles.

1. As a general principle, all written documents and other information in the possession of the national government, local governments and other public entities shall be disclosed to the citizens and residents of Japan.
2. All citizens and residents of Japan shall be granted the right to request that the national government, local governments and other public entities disclose information and in the event that this request is denied, the requesting party shall have the right of appeal to an independent administrative committee or court of law and to receive a substantive decision on the merits of his request.
3. In the event that it is decided that, as an exception, certain information need not be disclosed, such information shall be limited to the necessary minimum, it shall be required that the conditions to such exceptional cases shall be clearly provided in the relevant law or ordinance, and the national government, local governments or other public entity shall bear the burden to prove the fulfillment of such conditions.
4. Information relating to matters affecting the life, health and security of mind and body of the people and other matters having a substantial effect on the daily life of the people, as well as the records of deliberative councils, committees, and similar entities concerned with such matters shall be absolutely subject to disclosure, and disclosure thereof may not be denied for any reason.
5. Information relating to the determination of operational plans of

monopolistic industries affecting the public welfare (electricity, gas supply, and similar industries) and other such information that exerts a substantial impact on the daily lives of the people shall be absolutely subject to disclosure, and disclosure thereof may not be denied for any reason.

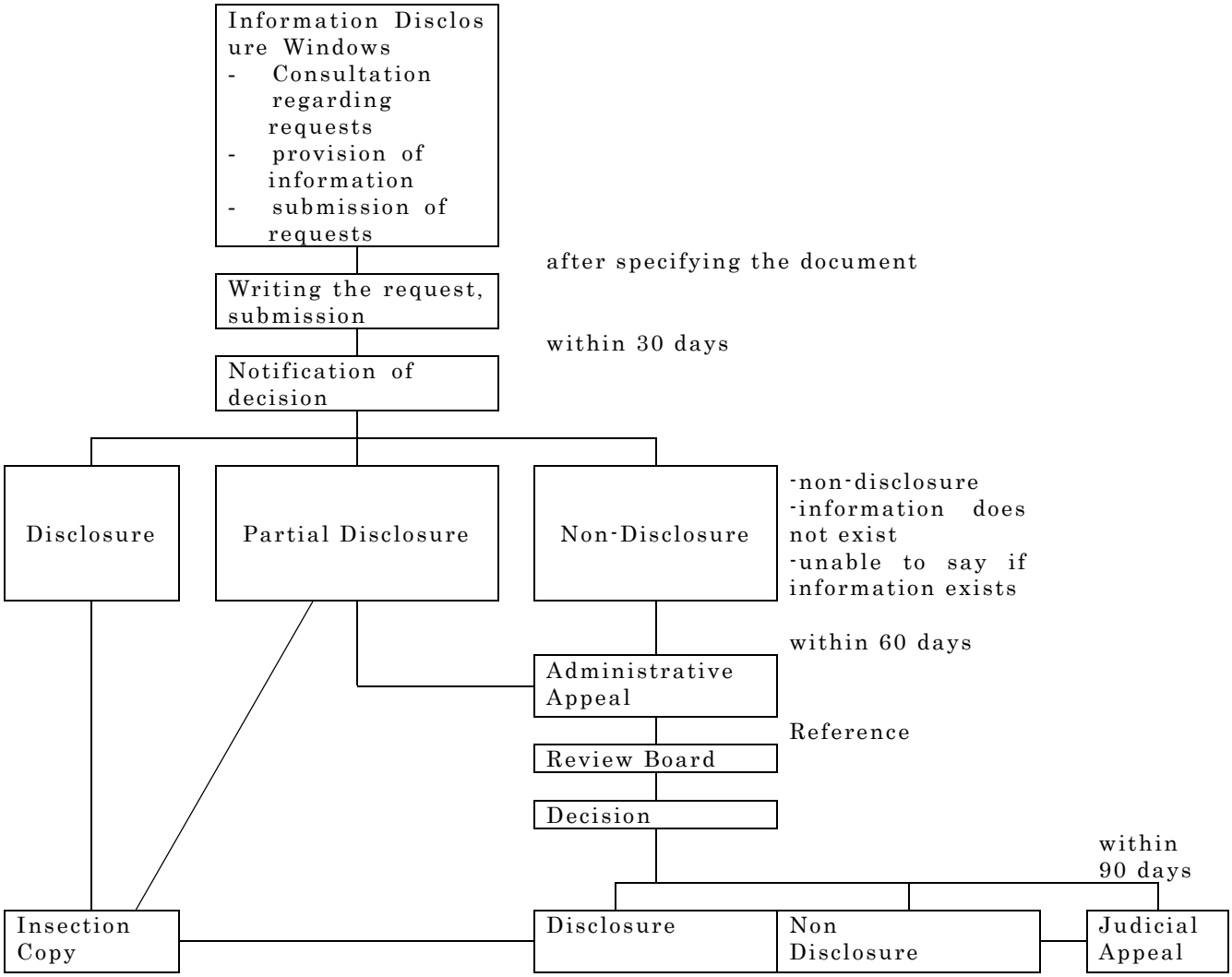
6. Information relating to individuals must be disclosed to the individual concerned upon request. Unless otherwise provided by law, information relating to individuals shall not otherwise be disclosed, Provided, however, that the foregoing shall not apply to information concerning government employees or the employees of public entities.

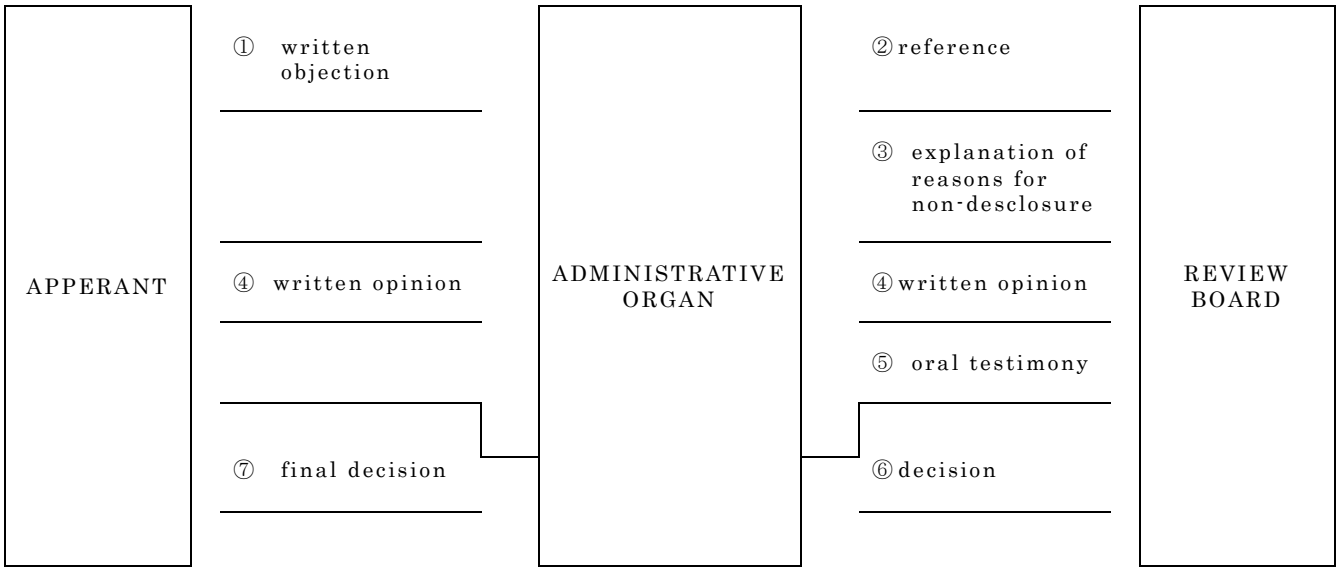
7. The national government, local governments and other public entities shall bear the duties to record 'their activities, to preserve written documents and other forms of information, and to prepare indexes to such information.

8. Oversight committees in which citizens and residents may participate shall be established to monitor the assembly, disposition, use and disclosure of information.

Further, it is recognized that laws concerning open meetings, privacy protection, and disclosure of assets and like information of special public employees must be established in addition to a Freedom of Information Law.

The Process of an Information Disclosure Request




APPERANT
① written objection
④ written opinion
⑦ final decision
ADMINISTRATIVE ORGAN
②reference
③ explanation of reasons for non-desclosure
④written opinion
⑤ oral testimony
⑥decision
REVIEW BOARD