Information Disclosure System in Japan: Development, implementation, and the role of Civil Society

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Information Clearinghouse Japan

Information Clearinghouse Japan (ICJ) is a non-profit, non-governmental, and non-partisan organization established in 1999. ICJ was organized after the passage of Japan's Information Disclosure Law in May 1999. Although we are a very new organization, we have a long history. Before the passage of the disclosure law there was the Citizen's Movement for Information Disclosure. The objectives of this organization were to promote the implementation of laws regarding the disclosure of information and act as a national center on information disclosure. When the law was successfully passed the citizen's movement was reformed as the Information Clearing House.

Now the ICJ is a national center for information disclosure. Increasing the disclosure of information in our society is our mission. To broaden and improve access to government information in Japan, ICJ concentrate on best practice through research and develop networks amongst citizen's groups all over the country, in some cases we develop our own definitions of best practice. ICJ also implement programs on survey research; run training workshops for citizens, local governments and elected officials; carry out contract projects; dispatch instructors to local governments, and disseminate information via the web.

The Background of Citizen's Movement for right to access to information in Japan

In early 1960 a consumer organization requested the Ministry of Health and Welfare (MHW) to disclose information concerning pesticides and food additives. The consumer organization harbored suspicions over the effect of these chemicals on the human body and wanted accessed to the discussion transcripts, and the analyses of pesticides and food additives. But all their requests were denied. In the same period, a serious public health disaster occurred because MHW did not act on warnings regarding the dangerous side effects of thalidomide and the other drugs. First warnings of the risk of birth defects for thalidomide was reported in Europe in 1961. In spite of receiving the same warning, MHW did not disclose this information for ten months and hundreds of cases of possibly preventable birth defects resulted.

In 1970's, citizens became more interested in public access to information after the Lockheed scandal was disclosed by Senate of the United States and a former prime minister in Japan was arrested. A foreign aircraft corporation had bribed a prime minister to buy their aircraft. Citizens demanded an inquiry and a complete disclosure of the incident, but the government refused the citizen's demand citing protection of the confidentiality of government officials.

Some constitutional and administrative law scholars introduced the Freedom of Information Act (FOIA) and in it citizens found the seeds for a solution of the government's resistance to disclose. The first concrete citizen's movement began with the publication in 1979 of the Japan Civil Liberty Union's Proposal for an Information Disclosure Law. The main discussants of the JCLU's Proposal were academics and attorneys who had represented the victim of thalidomide and other drugs. In 1980, an organization the "Citizens Movement for Information Disclosure (CMID)" was established. CMID called for legislation of a national disclosure law . CMID was a coalition to campaign for the introduction of an information disclosure law. JCLU; consumer groups; citizen groups fighting environmental pollution, citizen groups fighting corruption; journalists; attorneys at law; academics, and other citizen groups were at the center of the establishment of CMID. In 1981, CMID published "A Declaration of the Right to Information Disclosure", and the "The Eights Principles of Information Disclosure" setting out from a people's perspective, the basic structure of what information disclosure should be.

Activities of Citizen's Movement for Information Disclosure and Action by Local Governments and National Government

Some seventeen years before the government enacted the Information Disclosure Law the first information disclosure ordinance in Japan was enacted by Kanayama village in the Yamagata prefecture in 1982. The JCLU draft heavily influenced the wording of this and other ordinances subsequently adopted. As early as1979 deliberations on enacting information disclosure ordinances had begun in Kanagawa and Saitama prefectures. Both prefectures had enacted their own ordinances in late 1982, and in 1984 Tokyo, Osaka, and Nagano prefectures followed suit. By 1998 all of the prefectures had completed enacting ordinances, and 2,131 local governments had enacted ordinances as of April 1, 2001 (There are approximately about 3,200 local governments in Japan).

However, on a national level, there was no concrete action for enactment of Information Disclosure Law The government was for many years extremely passive about enacting an information disclosure law. The opposition party first submitted a bill for a disclosure law to the Diet in 1980, and in the period from 1980 to 1983 opposition parties, either singly or in cooperation with each other, submitted bills on seven different occasions. However, none of these bills were ever debated, and all were rejected. Furthermore, in 1985, members of the governing Liberal Democratic Party submitted a bill for a National Official Secrets Law to the Diet, and for several years that followed this the movement for the enactment of an information disclosure law was brought to a complete halt.

CMID changed their strategy as they concluded that in the existing political climate it was difficult to enact information disclosure law. As local governments led the process of enactment of Information Disclosure Ordinances the CMID decided to promote enacting ordinances as well as the law. Also, CMID supported citizens to utilize ordinances to create best practices for information disclosure. Through these activities, CMID accumulated concrete case studies of information disclosure. CMID thought these case studies in local governments highlighted the need for an Information Disclosure Law.

The reason why local governments led to enact information disclosure ordinances was because of the process of direct election of the heads of local government. In Japan the Prime minister is not elected by citizen directly, but is elected by members of the Diet. Information disclosure was not a major issue at the time of the prime minister's election. But, it has happened that sometimes, Information Disclosure is a major issue at the time of local government elections.

Process of enacting In formation Disclosure Law

A national information disclosure law first became a concrete political topic in Japan when the goal of an information disclosure law was included in a political power-sharing agreement between the then Cabinet and the Shin-Jiyu Club in 1979. In 1980, in response to this agreement, "document inspection windows" were established at each ministry and agency, but because these followed a clarification policy of volunteering information, they fell far short of an information disclosure law.

A 1990 mid-term report issued by the "Committee to Research the Question of Information Disclosure," resulted in the establishment of an advisory body in the

Management and Coordination Agency. Although in 1991 standards for the disclosure of administrative information were agreed upon, these did no more than follow the old policy of volunteering information for disclosure.

This condition changed in 1994. From 1994 the movement to enact an information disclosure law grew stronger. In 1993 six opposition parties joined together and submitted a "Bill for an Administrative Information Disclosure Law" to the Upper House of the Diet at a time when opposition parties had achieved a majority in the Upper House. CMID committed to the process of this bill. The bill was readied for debate, but was then discarded when the Lower House dissolved for a general election. However, after the election there was a shift in political power, and because the six parties that submitted the bill before the election assumed power, the process towards enacting an information disclosure law advanced.

Amid calls for administrative reform a "Project Team for the Enactment of an Information Disclosure Law" was inaugurated under the newly formed government in 1993. A bill to establish an administrative reform committee gave the committee the task of investigating and debating an information disclosure law. In 1994 there was another change in government The former governing Liberal Democratic Party joined with two other parties to form a governing coalition; part of the power-sharing agreement between the parties 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, and 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. CMID provided information about local government case studies what were ordinance problems and other issues, to the Administrative Information Disclosure Sub-Committee. CMID held symposiums and gatherings in the Diet, and put pressure on Diet members debating the law to revise and enact the law. These activities helped bring about a partial revision of the bill submitted to the Diet.

The bill was submitted to the Diet in March of 1998, and debate began in April of that year. The government's bill underwent important revisions, and was finally enacted in May 1999.

Mechanism of Information Disclosure System in Japan: Main Points of the System

By 1998 all of Japan's prefectures had finished enacting ordinances, and 2,178[1] local governing bodies had enacted information disclosure systems by April 1, 2001.
The main points of the law as set out in the publication "Main Points of Information Disclosure Law disseminated by Japanese Government are:

1. Purpose: In accordance with the principle that sovereignty resides in the people, and by providing for the right to request the disclosure of administrative documents, etc., the purpose of the law is to strive for greater disclosure of information held by administrative organs, thereby ensuring that the government is accountable to the people for its various operations.

2. Applicable Organs are: Organs established by law within the Cabinet (the Cabinet Secretariat, etc.); organs under the jurisdiction of the Cabinet (the National Personnel Authority); organs established as national administrative organs (offices, ministries, commissions, and agencies) and the Board of Audit.

3. Scope: Documents, drawings, and electromagnetic records that, having been prepared or obtained by an employee of an administrative organ in the course of his or her duties, are held by the administrative organ concerned for organizational use by its employees.

Disclosure of Administrative Documents

Any person may request disclosure of administrative documents. Disclosure is allowed, except for administrative documents in which the following non-disclosure information is recorded. Information concerning an individual from which a particular individual can be identified. However, excluding information made public as provided for by law or custom, and information, etc.

concerned with the offices of public officials. Information concerning a corporation where there is a risk that if made public, the corporation's legitimate interests would be harmed or where the information was voluntarily provided on the condition that it is not disclosed and it normally would not be made public. Information that if made public the head of the administrative organ with adequate reason deems to pose a risk of harm to the security of the State or a risk of damage to trustful relations with another country. Information that if made public the head of the administrative organ with adequate reason deems to pose a risk of causing a hindrance to the maintenance of public order and safety through crime prevention and criminal investigations. Information concerning deliberations or examinations, etc. internal to or between either organs of the State and local public entities that if made public would risk unjustly harming the frank exchange of opinions. Information that concerns the affairs or business conducted by organs of the State or local public entities, that if made public, would risk causing hindrance to their proper performance.

Discretionary Disclosure for Public Interest Reasons. Even when non-disclosure information is recorded, it may be disclosed if there is a particular public interest.

Information Concerning the Existence of Administrative Documents. When non-disclosure information would be disclosed merely by answering whether or not administrative documents exist, the disclosure request may be refused without making clear the existence or non-existence of the documents.

Procedure for the Disposition of Disclosure Requests. Disclosure decisions, etc. shall be made within thirty days of the day of the disclosure request (a maximum thirty day extension is possible). When information relating to a third party is recorded in an administrative document, the third party may be given the opportunity to submit a written opinion. That opportunity shall be afforded when disclosure takes place because of public interest reasons. Documents, etc. shall be disclosed by inspection or the provision of copies, and electromagnetic recordings shall be disclosed by a method to be determined by Cabinet Order. The fees for disclosure requests and the implementation of disclosure shall be within the scope of actual expenses to be determined by Cabinet Order. Consideration shall be given to see that the fee is as affordable as possible.

Establishment of the Information Disclosure Review Board. An Information Disclosure Review Board shall be established within the Prime Minister's Office

in order to examine and deliberate appeals in response to references from the heads of administrative organs concerning appeals of disclosure decisions.

Organization of the Review Board. The Review Board shall consist of nine members appointed by the Prime Minister having been approved by both Houses.

The Review Board's Investigative Authority
The Review Board may request that the reference agency present the administrative documents concerned with the appeal, or produce and submit materials classifying or arranging in a manner specified by the Review Board the information recorded in the administrative documents concerned with the appeal. The Review Board may have a designated member hear statements of opinion by the appellant. The plaintiff may file an information disclosure lawsuit with the district seat of the high court that has jurisdiction in the seat of the plaintiff's residence.

Management of Administrative Documents: Rules for the proper management of administrative documents shall be established as provided for by Cabinet Order, and they shall be made available for public inspection.

Provision of General Inquiry Offices: General Inquiry Offices shall be provided for in order to support the smooth application of this law.

Information Disclosure by Local Public Entities: In keeping with the spirit of this law, local public entities shall strive to formulate and implement measures necessary for the disclosure of the information that they hold.

Information Disclosure by Public Corporations: The Government, in accordance with their character and type of business, shall promote the disclosure and provision of information held by public corporations, and shall take necessary measures such as legislative measures relating to the disclosure of information held by public corporations. The legislative measures shall be taken approximately two years after the promulgation of this law.

Future Review: Approximately four years after this law comes into effect the government shall examine the state of enforcement of this law along with the manner of jurisdiction for information disclosure lawsuits, and shall take necessary measures based upon those results.

Mechanisms of Appeal

Procedure of administrative and judicial appeal for non-disclosure decision and the other complain to administrative decision is one of the most important processes in the system According to research by ICJ, to date, these have been at least 400 law suits, and it is thought that there have been over 15,000 administrative appeals. On the whole, these suits and appeals functioned to bring about disclosure, 51.7% of administrative appeals have resulted in greater disclosure than that of the original disposition (according to data as of April 1, 2000).

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, 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 who, 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 and can be done without any special legal knowledge, and it provides a simple and speedy form of relief.

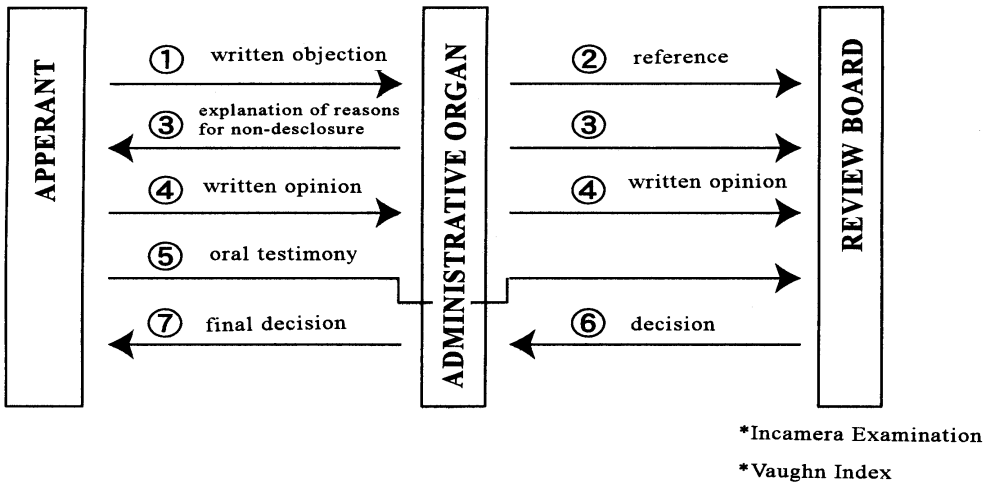

Figure 1: Process of Appeal

*_In camera_ examinations. 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.

*2 Vaughn Indexes. There are instances in which more than one of the six categories for non-disclosure information is 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.

The appellant must submit formal written objection to administrative organ in 60 days from when the appellant is notified of the non-disclosure decision. The administrative organ gives a detailed explanation of its' reasons for non-disclosure in a written "explanation of reasons for non-disclosure" (*hikokai riyu setsumeisho*).

The appellant may submit in writing her opinion regarding explanation of reasons for non-disclosure. If the appellant desires, she may appear before the Review Board to state her views in person. The Review Board then announces the result of its' deliberations. While the decision has no legally binding effect, administrative organs must give it serious consideration. The decision will be made public, and is sent to the appellant.

The administrative organ makes a final decision, after taking into account the Review Board's decision, whether or not to disclose the original information. For example, if the Review Board's decision calls for disclosure, the administrative organ will revoke its non-disclosure decision and make a final decision to disclose the materials in question. 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. Thus, the Appeals Board may travel a circuit to areas outside of Tokyo in order to hear appellants' oral testimony.

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 in the district courts of 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. However, unlike the Review Board, the court cannot view the documents in question in an *in camera* procedure.

The Operation of the Information Disclosure Law

According to the press release by Ministry of Public Management, Home Affairs, Posts and Telecommunication, which is in charge of the Law, the number of requests, which were made by the Law, are:

	Number
Total	**37,942**
April	**6,790**
May	**6,036**
June	**3,541**
July	**3,456**
August	**3,424**
September	**3,554**
October	**4,472**
November	**3,560**
December	**3,109**

Figure 2: Number of requests (From April 1st to December 31st)

	Number	%
Number of Decisions	35,614	-
Full disclosure and Partial disclosure	31,137	87%
Non-disclosure	4,477	13%

Figure 3: Aggregate Results on the requests (From April 1st to December 31st)

	Number
Administrative Appeals	1,136
Judicial Appeals	11

Figure 4: Administrative and Judicial Appeals (From April 1st to December 31st)

	Number
Consultations	265
Decisions	110

Figure 5: Number of Consultation to Information Disclosure Review Board and Decisions

How citizens use the law to fight corruption

Food and Beverage Expenditure

Citizen Ombudsmen is a local citizens private group and covers almost every prefecture. Each citizen ombudsmen is an independent but related through a national liaison. They became active nationwide in 1995. In 1995, citizen ombudsmen requested food and beverage expense records for the secretarial section, the finance section. The Tokyo office filed with each of Japan's 47 prefectures on the same date. Originally, food and beverage meeting fees was spent for beverage, lunch during in local government meetings. But the meeting fee is also spent to entertain for national government officials, other local government officials or members of the Diet and members of assembly.
As result of requests, almost all expenditure became clear. Most of local governments did not disclose information the names of officials entertained, but the citizen ombudsman could now know when, where, and how much money was spent, and what was consumed. According to research of all of records, two problems arose. First, local governments spent large sums to entertain national government officials. Secondly there was evidence of incorrect 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 entertaining national government officials provided a dinner at 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 Affairs and the Construction Ministry, with 45 events each. Representatives from Ministries of Home Affair, and Health and Welfare attended more than 30 events. We called such expenses " officials-to-officials entertainment". Food and beverage fees were used to entertain national government officials and members of assembly because they could share a national budget as a special supplement payment for prefectures. Some of Citizen Ombudsmen requested audit on these food and beverage expenditure to each prefecture Board of Audit.

The problem of incorrect expenses was a more serious case of corruption. Some citizen ombudsmen found that officials forged bills from restaurants. For example, in Miyagi prefecture, dates of many bills were the same date; moreover, were written by same person, in spite of the bills being issued by different restaurants. According to the governor of Miyagi after an internal investigation, in many of the cases, clerical staff to conceal the flow of cash to selected pockets inflated the

reported expenses. In case of Tokyo metropolitan, there were some names of national government officials in the disclosed records. A journalist asked national government officials whether or not they participated in these parties. All of them answered that they did not participate. Like many such tricks used to create hidden pools of cash, this procedure was repeated nationwide. Some of citizen ombudsmen requested audits for each prefecture Board of Audit.

However, prefecture-auditing commissions were also corrupt. In case of Hokkaido, local news reporters obtained expense reports concerning a gathering of auditors in the Tohoku region and 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 a phantom staff member. One member of the Board of Audit took responsibility and resigned. Through the revelations stemming from disclosed information, the Governor of Akita prefecture resigned and other governors instigated reforms of administrative procedures. At the same time, many local governments launched internal investigations. As a result of nationwide campaign by citizen ombudsmen, food and beverage fees were reduced in many places. Moreover, some of places decided to prohibit "official-to-official entertainment" and as a rule disclose all expense reports of food and beverage fees.

Land Buying Case

The function of "Land Development Public Corporations" (LPC) is to acquire land needed by local governments for future development projects. LPC is established and invested all by local government. Local governments are 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 have not taken place and large pieces of land have been frozen. At present, the total landholdings of such LPCs nationwide is more than nine trillion yen with a large proportion of these holdings frozen due to the inability of local governments to acquire the properties.

Much of the funding for initial acquisition by LPCs is obtained through bank loans. The LPC for the city of Kawasaki, for example, holds land originally acquired for a total of approximately 100 billion yen. By March 30, 1996 (1995 fiscal year end), the accumulated interest on these loans had reached 30 billion yen, for a total outstanding debt of 130 billion yen. The reasons for original acquisition and the process of acquisitions of many of these lands are not always clear.
For example many properties may 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 is a public corporation outside the local government, it is not subject to disclosure under the Kawasaki ordinance, but because the mayor's office maintained the document and therefore 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 the disclosed information, one former owner of some land was a brother to the chairperson of the Kawasaki City Assembly.

Local governments had to select which land they had to buy through the LPC. But, in general, their decisions were effected through pressure from politicians and special connections with officials. Many citizens are suspicious of land buying by their government because the process of buying land is not transparent. This situation is still going on in parts of local governments and in the national government. But disclosure of "frozen land" led to great public criticism. Kawasaki came up with plans to sell some parcels of land and to review planned projects. Demands for action spread from Kawasaki around the country and measures to address the problem have been adopted by various local governments.

Other Cases

Report On An Investigation Of The Mechanics Of Groundwater

Beginning in 1983, Takatsuki city (Osaka Prefecture) began pioneering studies 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 prepared by the city and submitted as a report to the Environment Agency.

At the time, the city's groundwater was 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 is 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.

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 prefecture governments to conduct a survey of the occurrence of side effects. The results of that survey, calculated and reported on a prefecture basis, are found in the attached document.
A citizens group filed disclosure requests with 16 separate prefecture 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 depth of disclosure is 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.

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." Prefecture governments keep copies of such applications and these documents are subject to disclosure under prefecture disclosure ordinances. The attached documents are parts of applications that were disclosed by the Tokyo metropolitan government.

Additives are used in pharmaceutical products in order to give them color and to form them into pills. Within such additives there are some that can cause serious side effects such asshock 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. Now the instructions that come with pharmaceuticals provide a description of additives, and it is easy for anyone to determine which additives are included in the product's ingredients. This is a result of the use of information disclosure ordinances. This example shows how information disclosure may help to prevent harm due to side effects from pharmaceutical products.

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, “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 that 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 prefecture 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.

Future Issues

Obviously, Information Disclosure System is very important as the reason why the system guarantees citizen’s right to access to official information. As a result of this right, citizens can make administrative appeals and judicial appeals against a non-disclosure decision. On the whole, these suits and appeals have functioned in their own way to bring about disclosure: According to research by Information Clearinghouse Japan, 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 a panacea. Citizens are only guaranteed an opportunity to access to information through the system and governments are not required information disclosure without citizen’s request through the system. For example, food and beverage fees exists for a long time but citizens could not know the problem of wrongful expenditure of this fee for long time after the passage first information disclosure ordinance in local

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

Future Issues for Arranging Information Disclosure System

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 many issues that must be tackled.

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 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, inherent in the concept of the sovereignty of the people, has been disregarded. Through our experience in the past war, we have suffered the bitter results that can occur when the eyes and the ears of the people are blocked and are isolated from fundamental information concerning the operation of government.

It is well known that the lives, health, and security of people have been threatened and harmed 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, accordin9 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 ratters shall be absolute1y 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 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 recognizes that laws concerning open meetings, privacy protection, and disclosure assets and like information of special public employees must be established Freedom of Information Law.

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(Special thanks to David Schultz who assisted my translation)

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[1] There are approximately 3,300 local governing bodies in Japan.)