

Japan's Experience—Developing Information Disclosure System and Fighting for Corruption to Utilize the System

Yukiko Miki

International Clearinghouse, Japan

1. Introduction of 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. We are very new organization but we have a long history before establishing. Before passage of Law, there was a Citizen's Movement for Information Disclosure. Its object was to enact Information Disclosure Law. At the same time it had a role of a national center about this issue. Attaining its object by passage of Law, it was reorganized and ICJ was established.

Now, ICJ is a national center for Information Disclosure issue and Privacy Protection issue. Broadening Information Disclosure in our society is our mission. To broaden and improve access to government information in Japan, ICJ instead concentrate on best practice through research and our network among proper citizen's group all over the country, and in some cases we create best practice on our own. ICJ provides those information which were adjusted by ICJ as a publication. ICJ also implement the programs on survey research, running training workshop for citizens, local governments and elected officials, carrying out contract projects, dispatching instructors to local governments, and disseminating information via the web.

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

First time to attract attention for public access to information was early 1960. Consumer organization requested the Ministry of Health and Welfare (MHW) to disclose information concerning pesticides and food additives because there was a discussion whether permit them or not in MHW. Consumer organization had a suspicion for their influence to human body and wanted to know what went on in the discussion, and analysis date of pesticides and food additives. But all of their requests were denied. At the same period, serious public health disaster was raised because MHW did not act on warning regarding dangerous side effects presented by thalidomide and the other drugs. First warning 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 dangerously of its drug for

ten months. Hundreds of cases of birth defects were raised.

In 1970's, citizens were more interested in public access to information because serious political scandal which is called the Lockheed scandal was disclosed by Senate of the United States and former prime minister in Japan was arrested. This scandal was that foreign aircraft corporation bribed to a prime minister to sell their aircraft. Citizens demanded to inquire into the truth and disclose these information. But government refused citizen's demand to maintain the duty of confidentiality of government officials.

Then, some constitutional and administrative law scholars introduced Freedom of Information Act (FOIA) and citizens found the seeds of a solution for government secrecy. The first concrete citizen's movement began with publication in 1979 of the Japan Civil Liberty Union's Proposal for an Information Disclosure Law, and its effect on Japan's information disclosure systems. Main members of discussing JCLU's Proposal were attorneys at law who had represented the victim of thalidomide and other drugs, and academics. In 1980, an organization calling for legislation of a national disclosure law "Citizens Movement for Information Disclosure (CMID)" was established. CMID was a sort of coalition for campaign to enact information disclosure law. JCLU, consumer groups, citizen groups fighting environmental pollution, citizen group 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", as well as "The Eight Principles of Information Disclosure", pointing out from the people's perspective the basic structure of what an information disclosure should be.

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

The first information disclosure ordinance in Japan was enacted by Kanayama village in Yamagata prefecture, leading the way in 1982, some seventeen years before the government enacted the Information Disclosure Law. The JCLU draft heavily influenced the wording of this and other ordinances soon adopted. Even before that, deliberations on enacting information disclosure ordinances had begun in 1979 in Kanagawa and Saitama prefectures. Both prefectures were enacted their own ordinances in late 1982, and in 1984 Tokyo, Osaka, and Nagano prefectures followed suit. By 1998 all of prefectures had finished enacting ordinances, and 2,131 local governments had enacted ordinance as of April 1, 2001. (There are approximately about 3,200 local governments in Japan.)

On the other hand, there were not any concrete action for enactment of Information Disclosure Law in National Government. While the government was for many years extremely passive about enacting an information disclosure law, an 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, not one of the bills was ever debated, and they were all 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 the movement for the enactment of an information disclosure law was brought to a complete halt.

CMID changed their strategy because they concluded that the political condition was difficult to enact information disclosure law if citizens continued campaign for information disclosure. As local governments led to enact Information Disclosure Ordinances, CMID decided to promote enacting the ordinance as well as enacting the law in 1982. Also, CMID supported citizens to utilize ordinances, and utilized ordinances to create best practices of information disclosure. Through these activities, CMID accumulated concreate case studies of information disclosure. CMID thought these case studies in local governments had been reflected Information Disclosure Law. The reason why local governments led to enact information disclosure ordinances is the direct election of the heads of local government. Prime minister is not elected by citizen directly, is elected by member of the Diet in Japan. Information disclosure didn't become the point at issue at the prime minister's election. On the other hand, sometimes, Information Disclosure became the point at issue at the time of the head of local government's election.

4. Process of enacting Information Disclosure Law

The condition was changed in 1994. The movement to enact an information disclosure law became more positive from 1994. In 1993 six opposition parties together submitted a "Bill for an Administrative Information Disclosure Law" to the Upper House of the Diet; at the time, the opposition parties had achieved a majority in the Upper House. CMID 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 because the six parties that submitted the bill before the election assumed power, 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 1993, and amid calls for administrative reform, 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, and the former governing Liberal Democratic Party joined with two other parties to form a governing coalition; within 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 which were case studies in local governments, what are ordinance problems and the point at the issues, to the Administrative Information Disclosure Sub-Committee. CMID 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.

5. How citizens utilized Information Disclosure Ordinance for Fighting Corruption

(1) 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 Affairs and the Construction Ministry, with 45 events each. Representatives from Ministries of Home Affairs, and Health and Welfare attended more than 30 events. Such like things were disclosed by request information to use information disclosure 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, governor of Akita prefecture was resigned and some of governor reformed administrative procedure. At the same time, many local governments investigated internally. As a result of nationwide campaign by citizen ombudsmen, food and beverage fee was cut down in many places. Moreover, some of places decided to prohibit “official-to-official entertainment” and disclose all of expense reports of food and beverage fee as a rule.

(2) 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. All of the officers of LDP are temporarily

transferred 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; a large proportion of these holdings are frozen due to the inability of local governments to acquire 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), 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 are not always clear.

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. 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 have a suspicion for land buying by their government because the process of buying land didn't disclose to citizen. This situation is 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 have been adopted by various local governments.

(3) 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 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.

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 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.

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 keep copies of such applications and these documents are subject to disclosure under prefectural 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 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. 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.

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.

6. Future Issues

(1) Future Issues for

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 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 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.

(2) Future Issues for Arranging Information Disclosure System

The question of information disclosure for the courts and the Diet remains as a future issue as only administrative agency's are subject to the Information Disclosure Law as it will come into effect in April of 2001. Also, the government currently submits a bill concerning the disclosure of information held by special government corporations, and now discussing in the Diet. It is necessary to continue to actively set forth ideas on these issues.

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 many issues that must be tackled.