LOCAL GOVERNMENT DISCLOSURE SYSTEMS IN JAPAN

Lawrence Repeta

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Executive Summary

The history of Japan’s information disclosure movement is a story of a handful of Japanese academics, attorneys, and journalists who discovered a good idea in the United States Freedom of Information Act (FOIA), which became a law in 1966 and was dramatically expanded in 1974. Despite the determined opposition of Japan’s national government and without any significant assistance from the United States or any other foreign government, a progressive group of citizen activists struggled to see something like the FOIA adopted in their country. On May 7, 1999, after more than twenty years of energetic lobbying, Japan’s Diet adopted a national information disclosure statute.

About a decade after the U.S. FOIA was established, Japan’s local governments began to adopt legislation patterned on the U.S. law. Major metropolitan areas, including Tokyo, Osaka, and Yokohama (Kanagawa Prefecture), had information disclosure ordinances in place by the mid-1980s. Today all prefectures and major metropolitan governments have information disclosure ordinances, and usage of the request procedure has gradually increased. Annually, individuals now make more than 30,000 formally documented requests for information from government files related to public works, education, and consumer and environmental safety. Hundreds of thousands of additional information requests are filled, but undocumented; the presence of a mandatory disclosure system means that public officials are more willing to disclose information in a proactive manner and to respond to requests more quickly on an informal basis.

Although information disclosure ordinances have existed in Japan for 15 years, one can point to relatively few concrete political changes that can be traced to greater access to government files. The citizen ombudsmen movement is an outstanding exception. The citizen ombudsmen are a loosely aligned network of private attorneys and supporters who have become the most prominent information requesters in Japan. Since 1994, this group has utilized Japan’s local disclosure ordinances to audit the accounts of local governments. In the very short span of two years, they achieved a dramatic reduction in a broad range of corrupt practices, including systematic falsification of expense vouchers and lavish entertainment of national officials in exchange for favorable treatment.

The ombudsmen’s success illustrates the importance of a motivated and powerful advocacy group. It also proves the success of the Occupation-era reforms, including the 1949 Attorneys Law, which released Japan’s private attorneys from the rigid regulatory control of the central government. Today Japan’s attorneys are relatively few in number, but they are highly educated, they are professionals in the use of the courts and protection of legal rights, and they are independent of government control. The citizen ombudsmen case clearly illustrates that Japan’s attorneys are free to challenge government practices they think improper and that they are capable of using information disclosure rules in a creative and constructive manner to seek better government.
Key Findings

If a primary objective of American foreign policy is to foster the growth of democratic societies around the world, the government information disclosure movement in Japan provides a series of valuable lessons.

- There is a strong demand for more open government at the grassroots level in Japan.
- The U.S. Freedom of Information Act has provided the primary inspiration for government information disclosure in Japan.
- Adoption of an information disclosure system by itself does not guarantee more open government. Successful implementation requires a community of well-organized policy organizations independent of government control, capable of identifying meaningful issues and using information obtained in some productive manner.
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A research team, supported by the Japan-U.S. Friendship Commission and The National Bureau of Asian Research, conducted interviews in Japan in 1998 and uncovered a wealth of information providing the foundation of the report. Key members of the research team include Project Advisors Professor Masahiro Usaki of the Law Faculty of Dokkyo University and Shigeki Okutsu, Executive Director of the Citizens Movement for a Freedom of Information Law. Mr. David Schultz, at the time a second year student of the University of Washington Law School, conducted most of the interviews in Japan, prepared English language transcripts, and conducted other research. He is also the primary author of the three case studies appended to the main report.

The author expresses his sincere gratitude to all team members and to the institutions that supported this study. All errors are the responsibility of the author.
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Lawrence Repeta

PART I

Introduction

Inspired by the American Freedom of Information Act and spurred on by the occurrence of numerous scandals involving government officers, liberal law professors and other activists have worked hard to promote government information disclosure laws in Japan since the mid-1970s. After more than two decades of battle against the national bureaucracy and other entrenched interests, in 1999 these activists saw their work bear fruit in the form of a national statute. On May 7 the Lower House of the Diet voted unanimously to approve Japan’s first national information disclosure law. The new legislation provides ample room for government discretion in deciding which documents to disclose and which to withhold, but nonetheless establishes for the first time a legally enforceable right to demand access to national government files.

Although actual implementation of the statute will not occur until 2001, there is solid ground for hope that the new law will eventually provide a meaningful tool to establish more open government and expand citizen participation in policymaking.

The reason for this optimism is the substantial body of law and practice established over the past fifteen years at the local government level in Japan. Knowing full well that the national establishment would fight long and hard to keep its files closed, the loose coalition of professors, attorneys, and other disclosure activists adopted a clever if circuitous strategy. While national governments led by the Liberal Democratic Party (LDP) stonewalled Liberal Democratic Party (LDP) led national governments stonewalled, the activists focused their efforts on developing information disclosure systems for prefectures, cities, and other local government bodies. This strategy has been an unambiguous success. During the period between 1982 and 1998, local government bodies adopted more than five hundred information disclosure ordinances around Japan, covering virtually all prefectures and all major population centers.

The positive response of local government leaders has been reinforced by glowing press accounts of the trend to more open government and, of much greater significance, by the dedicated and creative efforts of the courts to make practical applications of these rules in contested cases. The new national statute has been born into a judicial environment well prepared for its appearance.

The objective of this study is to examine the overall impact of Japan’s local disclosure ordinances on the relationship between people and government. After a brief look at the history
of the movement for information disclosure in Japan, we will examine the structure and function of Japan’s local ordinances. We will take a number of approaches. First, we will take an in-depth look at the Kanagawa ordinance. Adopted in 1983, this is Japan’s first prefectural ordinance. And as the home of a relatively wealthy and well-educated community, Kanagawa is well positioned to provide leadership in such matters of local administration.

Second, we have included among the Appendices three case studies to illustrate actual use of a local ordinance by an individual or business seeking practical information. These cases were selected because they provide concrete illustrations of the practical use of an information ordinance. One of the cases occurred in Tokyo, one in Osaka, and one in the suburban district of Saitama, on the edge of Tokyo. The cases were chosen because they demonstrate real examples where requesters have used the disclosure rules to seek a practical result.

Next we examine broader trends throughout Japan, including a review of action taken by the courts. As a supplement to the description of the key developments in information disclosure litigation in Part One, Appendix II(K) summarizes 20 of the most significant court precedents to date. Finally, Part II provides a detailed examination of the most powerful organization of information requesters to appear so far, Japan’s citizen ombudsmen, a loose national alliance of attorneys and others who have successfully used the information disclosure ordinances to cause dramatic change in local government practices.

**Historical Background**

*Early Stirrings in the Movement for Information Disclosure*

As early as the 1960s, consumer organizations such as the Shufu Rengokai requested the Ministry of Health and Welfare (MHW) to disclose information concerning pesticides and food additives. There was no means to compel such disclosure, however, and specific requests were denied. During the same period, MHW’s failure to act on warnings regarding dangerous side effects presented by thalidomide and other drugs resulted in a public health disaster. Due to warnings of the risk of birth defects, thalidomide was withdrawn from distribution in Europe in late 1961. Although MHW had received the same warning, the drug continued to be distributed in Japan for ten months, resulting in hundreds of cases of birth defects.1 Japanese attorneys and consumer advocates believed that if there were a means to compel government disclosure of information in Japan, such tragic cases could be averted.2

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2 The thalidomide case was a preview to the AIDS tragedy of the 1980s, when approximately 2000 hemophiliacs contracted the virus from imported unheated blood products. The great majority of these cases appeared well after a connection between such products and the disease had been established in the United States and use of the product had been terminated there. See: Takehisa, “The HIV Litigation and its Settlement,” Pacific Rim Law and Policy Journal, vol. 6 no. 3 (July 1997).
In the 1970s, concern over secrecy in government and public access to information was spurred by strong public interest in incidents of wrongdoing involving public officials, which were heavily reported in the press. The granddaddy of them all was the Lockheed scandal concerning a foreign corporation’s bribe to a prime minister. As interest in establishing some control over government secrecy grew, constitutional and administrative law scholars found the seeds of a solution in their study of the U.S. Freedom of Information Act (FOIA) and other foreign information disclosure systems. Scholarly interest was followed by more direct calls for action. The first public demand for the adoption of such a law was issued by the Japan Consumers Federation in November 1976.3

Litigation arising from the thalidomide disaster, and other cases where information to prove government culpability was required, piqued the interest of attorney-members of the Japan Civil Liberties Union (JCLU). Without practical tools or an information disclosure law, they were stymied in efforts to find documentary evidence.4 In September 1979, the JCLU published the “Information Disclosure Guideline,” a concrete proposal for a national statute. This was followed in March 1980 by the formation of the “Citizens Movement for an Information Disclosure Law,” a larger umbrella organization including the JCLU and a variety of consumer and public interest groups.

In January 1981, the Citizens Movement published its “Declaration of Rights to Information Disclosure,” a resounding statement grounded in the principle of sovereignty of the people as recited in the preamble to Japan’s Constitution. “In past wars,” it proclaimed, “we have bitterly experienced the calamities that can strike when the eyes and the ears of the People are covered and they are kept at a distance from information concerning the fundamental affairs of state.”5 In books and numerous articles, academics, lawyers, and journalists began a drumbeat promoting the need for an information law. By late 1979, the Asahi Shimbun published an editorial demanding adoption of a national law and soon after began a long-running front page series with government information disclosure as the theme. Other elements of the press joined the movement.

The phrase “right to know” (shiru kenri) became a rallying cry for the movement. This term cannot be found in the text of Japan’s constitution, but had appeared in two 1969 Supreme Court decisions. These cases established the principle that the “freedom of expression” guaranteed by Article 21 includes a freedom to receive information as well.6 Insistence that the words “right to know” appear in information disclosure ordinances—and in the national statute adopted in May 1999—would later encounter much resistance.

4 Japan’s Code of Civil Procedure does not provide means to gather information from opposing parties in litigation (including the national government) comparable to the U.S. discovery system.
Initial Discussion of National Legislation

Government discussion of a national information disclosure policy goes back at least to September 1979. In the course of interpellations in the 88th session of the Diet, Prime Minister Masayoshi Ohira declared, “Because we expect fairness in administration, to the extent appropriate, it is necessary for the government to disclose the vast information it holds.” A 1980 Cabinet resolution established information disclosure as a national policy, requiring central government agencies to establish measures to promote disclosure.

For the next decade and a half, successive prime ministers and other government spokesmen paid lip service to the need to establish a meaningful information disclosure system, but took no concrete action. In pursuit of the objectives stated in the 1980 Cabinet resolution, government ministries established information windows and guidelines concerning information disclosure, but established no right to request information. Under these practices, information was provided at the pleasure of government officers without judicial review. Reporters and citizens’ groups claim that this system is very poorly administered and meaningless as a real tool to demand information.

Opposition political parties also entered the campaign. Between May 1980 and May 1981, all major opposition parties submitted draft information disclosure laws to the Diet. Without the support of the majority Liberal Democratic Party, however, all of these bills died at the end of the respective parliamentary sessions. The opposition continued to submit additional bills in succeeding years with the same result.

By the early 1980s a sizable information disclosure lobby had arisen. Given the early positive comments of a prime minister, the 1980 Cabinet resolution, and virtual unanimity of the press and academia in favor of adopting a law, one might even suggest that a national consensus had been created. Throughout the 1980s and 1990s, a national information disclosure law was

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9 “Transparency in government has never been a favorite topic among Japan’s top bureaucrats. After all, if government information was freely available to all, the bureaucracy would lose one of its key assets.” Nikkei Weekly, January 10, 1994, p. 5.
10 A specific distinction between the terms “joho teikyo” (information presentation) and “joho kokai” (information disclosure) arose, with the former referring to disclosure at the discretion of the government and the latter presuming a system in which requesters hold a legal right to demand disclosure.
11 See, for example, Jinno, Joho Kokai, (Kadensha, 1996), for a brief description of a “Kasumigaseki Tour” in which requesters visited the “information windows” at various government offices, with disappointing results. (Mr. Jinno is a reporter with the Asahi Shimbun.) Among the complaints, activists have pointed out that (1) responses to requests are verbal, with no written record; (2) there is no statement of reasons when requests are declined; (3) there may be no response at all for periods as long as a year or more; and (4) requesters may be allowed to examine documents, but may not be allowed to make copies. Of course, the primary complaint is that there is no means to seek redress. Shimizu and Okutsu, “Joho Kokai Shimin Undo” (Citizens Movement for Information Disclosure), Jurisuto, special edition, 129 (May 1994), p. 133.
discussed and duly appointed commissions recommended action. Then all such proposals were quietly buried.

The critical break occurred in July 1993 with the passage of a no-confidence motion in the Lower House of the Diet, bringing about the collapse of the Miyazawa Cabinet and the appointment of the first non-LDP government in four decades. An Administrative Reform Commission was appointed under Social Democrat Prime Minister Murayama in October 1994. One of its statutory duties was to prepare a report to the prime minister concerning the need for a government information disclosure system. This task was duly completed in December 1996. The political situation had changed radically in the interim. Appearing two months after LDP Prime Minister Hashimoto’s call for “Big Bang” de-regulation of Japan’s financial markets, the report was timely. Mired in recession and the growing perception that Japan was falling far behind the United States in preparing for the challenges of a new information age, Japan’s leadership was ready to embrace wide-ranging reforms, including the concept of public access to government files. The Hashimoto Cabinet immediately passed a resolution stating its intention to adopt legislation based on the Administrative Reform Commission recommendations. But the bureaucracy was not quite ready to give up. Nearly thirty months would pass before Diet approval of the new law on May 7, 1999.

Twenty years before this long-awaited event, local governments made preparations to establish information disclosure rules of their own. The dynamics of power in the prefectures and cities differ considerably from Kasumigaseki and Nagata-cho. To the local governments our story must turn.

Action by Local Governments

When Professor Hideo Shimizu addressed a symposium in Kanagawa in November 1980 on the issue of government information disclosure, he found an audience with representatives of no fewer than 78 local governments. Approximately 80 percent of these governments had already commenced study of a local ordinance or planned to do so soon.12

Japan’s Constitution provides for the principle of local autonomy,13 including local government right to manage property, affairs, and administration within the bounds of national law.14 Key features of local autonomy include the direct election of chief executive officers and other officials, and the power to enact local regulations within the law.15

While the postwar national government has featured a virtual monopoly by the Liberal Democratic Party, elections of governors, mayors, and members of local assemblies have been much more sharply contested. The politics of liberal enclaves in urban areas, including Tokyo,

13 Constitution of Japan, Article 92.
14 Constitution of Japan, Article 94.
Osaka, and Kanagawa, have even featured long-term domination by politicians independent from the LDP. The 1995 election of professional entertainers to the governorships of Tokyo and Osaka, even though they ran without the backing of any major political party, underscores the political independence of Japan’s city dwellers.

The Diet’s failure to adopt a national information disclosure law did not foreclose local governments from acting on their own. Progressive governments wasted no time. Kanagawa was one of the early leaders, with Governor Nagasu directing in May 1979 that study of a prefectural independent information disclosure system commence. Many other prefectural and municipal governments soon appointed commissions and commenced study of the information disclosure problem. The Japan Civil Liberties Union published a model information disclosure ordinance for use as a reference by local governments in May 1981.

The first local government to formally adopt an information disclosure ordinance was the village of Kanayama in Yamagata Prefecture in 1982. The JCLU draft heavily influenced the wording of this and other ordinances soon adopted by other villages. Kanagawa was the first prefecture to adopt an ordinance in October 1982 (effective as of April 1, 1983) and was followed by the major population centers of Saitama, Osaka, and Tokyo by the end of 1983.

A great wave of lawmaking passed over the country. Twenty-five prefectures had adopted some form of disclosure ordinance by the end of 1988. In March 1996, Nara became the last of Japan’s prefectures to adopt an information disclosure ordinance or guideline. Including municipalities and other local governments, more than five hundred ordinances are in effect as of this writing.

As Diet members and bureaucrats haggled over details of pending national legislation through 1998 and 1999, legislative assemblies in numerous prefectures considered proposals to revise ordinances passed more than a decade before. Notable examples include Hokkaido, Tokyo, and Kochi, which are all presently considering progressive amendments to their ordinances which would go beyond the proposed national legislation. The list also includes Kanagawa, the pioneer among major local governments. After the ordinance had been in effect for fifteen years, Governor Okazaki directed a panel to consider an amendment to the ordinance in March 1998.

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18 The full texts of the Kanagawa, Osaka and Tokyo ordinances and a handy analysis of key provisions in all prefectural ordinances adopted by April 1, 1996, are published in Joho Kokai Hosei (Information Disclosure Legal Systems), Dai-ichi Hoki, 1997. This volume, edited by the staff of the Administrative Reform Commission, reproduces the historic December 16, 1996, report of the Commission proposing adoption of an information disclosure law along with a mass of reference material reviewed by members of the information disclosure subcommittee during approximately two years of deliberations.
The Kanagawa Information Disclosure Ordinance

Outline

Kanagawa borders immediately on Tokyo to the south and west. It is blessed with a mild climate and stunning natural beauty, with a western border in the foothills of Mt. Fuji and a jagged coastline bending around from east to south. With a population of more than eight million, it ranks behind only Tokyo among Japan’s prefectures. Its great city, Yokohama, serves as the port and natural entryway to Tokyo and the Kanto plain. As the home of Japan’s greatest port and a significant portion of the managerial class for Japan’s international companies, its people have a far more cosmopolitan and progressive outlook than the rural population, which has had a strong influence on national politics in Japan. One result is that local voters tend to favor independents and intellectuals, such as Governor Nagasu, who ordered that his prefecture be the first in Japan to adopt a disclosure ordinance. Nagasu himself was a professor of economics at Yokohama National University prior to running for governor.

Kanagawa’s prefectural ordinance came into effect on April 1, 1983. In March 1998 Governor Okazaki instructed a standing review committee to commence a comprehensive reexamination of the ordinance and produce recommendations for its first revision. The committee delivered an interim report early in November 1998 but as of this writing, has yet to deliver final recommendations. (One innovation in the structure attending the ordinance is the appointment of a standing committee to review operation of the rules and recommend improvement. This committee was charged with proposing amendments.

The ordinance provides the right to inspect or receive copies of public documents. (A translation of the ordinance appears as Appendix IIA.) The right is granted to a broad category of persons, including individuals who reside, work, or attend school in the prefecture, corporations with a place of business in the prefecture, and to others with interests affected by prefectural administration. The interim report delivered by the Review Committee on November 27, 1998 indicates that proposed changes are likely to be relatively minor. Perhaps the potential revision with greatest impact is the possible introduction of a fee payable for each request. The Kanagawa ordinance has enjoyed an especially good reputation in the requester community because, to this point, no request fees have been collected. This reputation contrasts with Tokyo and other prefectures, where requesters may be required to pay up to 200 yen per item in addition to copying charges. Of course, some officials find this to be a problem: “Because Kanagawa does not charge anything, sometimes people request a large number of documents, for example, all the contracts a particular division has entered over the period of a year. Those requests are the most difficult to handle because of the large number of documents.”

In fiscal 1997, 772 persons filed a total of 6,281 disclosure requests with Kanagawa prefecture. This was the largest number of requesters in any year in the history of the ordinance (up from 435 requesters in 1996) and the second largest number of requests in any year (slightly more than 10,000 requests were filed in 1995, at the height of a nationwide campaign to uncover

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19 Interview with Kanagawa prefecture official, July 17, 1999.
excessive spending for entertainment and other hidden perks for public officials. (See Appendix II.) Approximately half the requests resulted in full disclosure and somewhat less than half in partial disclosure. In 1997, only 90 requests or 1.4 percent resulted in complete denial. This compares with 226 or 4 percent in 1996 and 180 or 1.7 percent of such cases in 1995. (See Appendix III.) The category “Partial disclosure” resists meaningful evaluation. The category encompasses cases where nothing more than a name seal is redacted from a file as well as those where virtually everything is withheld.

There are no reliable estimates of total information requests filed nationwide. Each prefecture and city operates under its own ordinance, and each is free to decide its own procedures, including methodology for counting requests. Some local governments, like Osaka, show an unusually small number of requests because the staff delivers many files upon request and neither require the filing of a formal application nor include such a request in any tabulation. (Requesters have been known to insist that the officials accept an application form in some cases; this creates an official record for any follow-up or potential appeal.)

**Requesters and Categories of Information Requested**

As indicated in the data cited above, both the number of requests and the number of requesters have shown a gradual increase since introduction of the information disclosure system. Because government officials will not disclose the identities of individual requesters, it is difficult to get a precise understanding of the kinds of people using the system. But the broad outlines are clear. One Osaka official told us, “Thirty percent are made by citizen groups. The media does another thirty percent or so. Last year media did forty percent, but that was unusually large. Individual citizens do the other forty percent or so.”20 An official from Kawasaki confirmed a recent rise in interest by the media. “Recently there has been an increase in the number of media-related people making requests. Otherwise there are the citizen groups whose mission is to watch what the city does, and then there are the individuals who just love to request information—they’re a special group. There are also a lot of requests from businesses…by developers or construction companies for things like plans for road construction, etc.”21 (In 1997, 250 people filed 1,313 requests under the Kawasaki city ordinance.)

For the government official, the most notorious—and feared—requesters are members of a loose national affiliation called the Zenkoku Shimin Ombudsmen (National Citizen Ombudsmen). The members are primarily attorneys whose objective is to reduce corruption and wasteful spending by public officials. Their work has resulted in dramatic change in spending practices, reimbursements by officials caught in improper expenditures, penalties in the form of salary cuts for large numbers of officials, and even the resignation of a prefectural governor who had held office for many years.22 We will review the accomplishments of the “ombudsmen” and their impact on the information disclosure movement later in Part II of this report.

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20 Interview with Osaka prefecture official, August 3, 1998.
21 Interview with Kawasaki city official, July 10, 1998
22 Sasaki resigned as governor of Akita prefecture after seventeen years in office to accept responsibility for excessive entertainment spending and other abuses. See Asahi Shimbun, Nov. 25, 1996, President (monthly), February 1997.
Large prefectures like Kanagawa and major cities like Kawasaki publish annual reports that provide a rough breakdown of information requests by subject matter and affected governmental office. (See Appendix IV.)

**Administration of Information Requests**

**Request Procedure**

Article 4 of the Kanagawa ordinance states that “Any person who maintains a residence, or works or attends school within the prefecture, any corporation or other body maintaining an office or other place of business within the prefecture, or any other person with some interest affected by prefectural administration, may request to inspect public documents or receive copies of public documents.” Such geographic limitations are common among Japan’s local ordinances. (In Kanagawa’s case, this is likely to be eliminated to enable “all persons” to demand information in an expected revision of the ordinance.) Requests are required to be submitted in writing, on a form prescribed by an implementing regulation. (See Appendix II(E).)

No regulation says anything about the manner of delivering a request. One might assume that the bulk of requests are submitted by mail, but throughout Japan, use of the mail—or fax—seems to be rare. Information officers we met strongly prefer face-to-face requests in order to enable them to gain a good understanding of the information sought. An Osaka official made the case for in-person requests: “If we are told the purpose of the request and the kind of information that the requester wants then we can say what documents are available to fulfill the request. And the requester can specify from those documents which he wants. If it is by mail then the request might be quite vague, and in order to narrow down what the requester actually wants we may have to go back and forth many times with the requester using the telephone or fax machine to specify the documents that will match the request. That’s a lot of work, so if the requester comes in person it is a lot easier.”

Regulations typically designate a fixed form that must be used to file a demand. (The Kanagawa request form is reproduced at Appendix II(E).) The requirement to complete a specific detailed form contrasts with the American approach, in which any communication to a government agency which states that it is a FOIA request must be treated as such, requiring a response within the time allotted and subject to statutory protections, regardless of the form in which it is submitted.

The actual decision to release or withhold any specific document is made by the prefectural agency in control of the document. However, in order to ease the processing of requests, Kanagawa has established a specialized unit, the “Kensei Joho Shitsu” (Prefectural Information Office), to operate a public desk to accept requests, to set formal procedures to handle requests, and to advise administrative agencies on the rules governing disclosure of public documents. Requesters typically visit the Kensei Joho Shitsu to fill out request forms to commence the process. (In nearly all major local governments except for Kanagawa, a fee is

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23 Interview with Osaka prefecture official, August 3, 1998.
payable with the request. This may be handled at a separate payment window or at a bank outlet established within the government building or nearby.)

Upon receiving a request, the staff member typically calls an officer of the administrative agency concerned. This official or a colleague will go to the information window to discuss the request directly. One official described the practical value of the discussion as a means to shape the request. “Depending on the way the request is written, the reply may be that the document doesn’t exist, or if the request is too broad, that there are just too many documents that match the request to know which documents to release. If the request is too broad there may be so many portions to black out that it takes a lot of time until release, so if the request is put in narrow terms it is easiest.” Then the official will commence a search for relevant documents. In general, the ordinance allows the prefecture 15 days from the date of the request to respond.

When the requested documents are ready, the requester is notified by mail. Then the requester must go back to the Kensei Joho Shitsu to examine the documents and have copies made, if desired. The regulation states that documents will be delivered at a place and time specified by the governor, but does not address the possibility that requested documents could be sent by mail or other means of dispatch. Again, this contrasts with the typical American approach that commonly features an exchange by correspondence, with copies mailed to the requester.

Nationwide, fees for copying range from 10 to 40 yen per page. The Kanagawa procedure requires payment of 10 yen per page. We were unable to identify any Japanese ordinance which provides special exemptions from copying charges in the manner of the U.S. FOIA.

Staff Training and Dissemination of Policy

Government officials are commonly referred to as okami (god) in colloquial Japanese. One activist neatly summarized the difficulty felt by an ordinary Japanese confronting the government: Okami ni wa monku wa ienai. (You can’t complain against the gods.) Imposition of a law mandating that government officials open their files to public examination (and potential criticism) represents a 180-degree reversal of pre-existing practice. This is nothing less than a

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24 Interview with Kanagawa prefecture official, July 17, 1998.
25 We received comment on these practices from the Office of the General Counsel, United States Information Agency. In a letter dated September 8, 1998, Lola Secora, Chief, FOIA/Privacy Act Unit, wrote: “After carefully reading the interviews with Kawasaki City, Kanagawa Prefecture and Osaka Prefecture officials, I must say that I am impressed with the document disclosure abilities, sensitivities and insights the officials proffer, and even more impressed with the personal attention these officials are able to provide each requester…. The ability of the Kawasaki City officials to provide documents on the spot, without the requester filling out a form and waiting for fifteen days to locate and provide the records is remarkable. Like the Kawasaki officials, I too believe that aiding a requester in writing his/her request to determine exactly what is sought benefits everyone.” Letter to Mark W. Frazier, The National Bureau of Asian Research, September 8, 1998.
27 Nihon Keizai Shimbun, January 22, 1996, interview with Satoshi Shinkai, a director of the National Conference of Citizen Ombudsmen.
revolution in the nature of the relationship between citizen and government. Perhaps the most
eloquent statement on the radical nature of a legally enforceable right to demand information is
the national bureaucrats’ successful twenty-year battle to keep such a law off the books.

Needless to say, the national officials did not demand such a system. As indicated in the
introduction, this idea has been patiently fostered by an elite group of academics and attorneys.
The birth of a system in any particular prefecture or local government resulted from the demand
of the local governor, an elected official pursuing a popular issue. Development of the local
disclosure ordinances illustrates the institutional tension between elected governors and mayors
and unelected government officials. As one official from Osaka put it, “The governor created
this regulation as a way to enhance his own image.”28 And although the local leaders took the
credit for new regulations, the legislative drafting was typically the work of a committee of
academics and other outside experts, who worked from models produced by academic experts
and organizations such as the Japan Civil Liberties Union.

In Kanagawa’s case, the primary authors were Professor Masao Horibe and a small
committee of other academics, working primarily from the U.S. Freedom of Information Act and
U.S. state legislation as models.29

In each case, formal adoption by the local assembly is required, but real deliberation in
such a forum rarely takes place. With very few exceptions, the legislature simply approves the
legislative proposals without amendment. (But patterns do vary. For instance, members of our
team observed an unusually sharp debate over a proposed disclosure ordinance in Koganei-city,
Tokyo in July 1998.)30

Requesters report that in the early days officials were especially hostile to information
requests, and avoided disclosure by destroying documents, claiming the documents did not exist,
or delivering pages in which virtually every line was deleted.31 Many say that the situation has
dramatically improved since those early days. According to the same Osaka official, “On the
whole the consciousness of the basic principle that information must be disclosed has permeated
the administration, and all of us understand that we are required to follow that principle. At first
it was just the governor’s personal policy, but over the past 15 years it has become a part of the
whole administration.”32 (Undoubtedly, the heavy national media coverage of officials’ attempts
to conceal excessive entertainment spending has had a positive effect. This will be discussed in
detail in Part II.)

28 Interview with Osaka Prefecture official, August 3, 1998.
30 In 1998, a research team, led by Professor Masahiro Usaki, Law Faculty of Dokkyo University, and
Shigeki Okutsu, Executive Director of the Citizens Movement for a Freedom of Information Law, conducted
interviews and research in Japan that serve as the foundation of this report.
31 In one example, Tokyo District Court ordered the Tokyo Metropolitan government to pay the plaintiff’s
legal fees in a case where government officials shredded documents requested by the plaintiff. Asahi Evening News,
December 12, 1997.
32 Interview with Osaka official, August 3, 1998.
But 15 years after the Kanagawa ordinance took effect, information officers themselves say that persuading some officials to open their files can still be a daunting task. One information official said, “No matter what, the employees always have a kind of allergy when it comes to disclosing documents.”

Thus, the dilemma: If the law mandates disclosure, but the officials view this as a violation of their own prerogative, how can the law be implemented? How can the principles driving the disclosure efforts be transformed into working rules that guide the day-to-day practice of local administrations?

Ultimately, the courts do have power to order compliance, but litigation is inevitably time-consuming and expensive. As a practical matter, this is a remedy available to only a few. And legislative drafters have been very timid on the issue of ensuring that officials actually implement disclosure. The law does not impose a penalty for the failure to follow terms of the ordinance nor does it punish officials who fail to comply with court decisions ordering disclosure. Additionally, plaintiffs seeking court redress must fully shoulder the attorneys’ fees and other costs. (This contrasts sharply with the American Freedom of Information Act which does provide for such penalties and for government payment of attorneys’ fees when requesters are victorious in FOIA litigation.)

Ultimately, the success or failure of the system depends on the energy and enthusiasm of the officials themselves. The most progressive prefectures have adopted a two-track approach, whereby they provide general education for all prefectural employees and create a cadre of information disclosure experts. (For large local governments, staff training and information dissemination is a massive task. Kanagawa, for example, employs a total of more than 78,000 people. Nearly 50,000 work as teachers and other staff in the educational system and about 15,000 are related to the police and fire departments, leaving nearly 15,000 other staff. Similar figures for Tokyo include a total force of more than 188,000, with approximately 60,000 viewed as “administrative staff.”)

Kawasaki provides annual training for the heads of divisions and agencies and for employees charged with maintaining documents. In addition, all new city employees receive orientation regarding the disclosure system. According to one official, the orientation is very general: “the training sessions are meant to try to get rid of this allergy—instead of teaching very detailed things about information disclosure we try to rid the employees of this allergy against disclosure.” Osaka takes a similar approach. “Once a year we hold an explanatory meeting for those people in the agencies who are in charge of information disclosure regarding the annual report. We talk about what kind of recommendations have been issued by the review board and what last year’s numbers were and tell everyone in their agency that we’re counting on their cooperation.”

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33 Interview with Kawasaki official, July 10, 1998.  
34 Ibid.  
The subject matter is difficult. There are numerous exceptions to the general rule requiring disclosure. The decision whether a particular file—or information within that file—should be disclosed may require sophisticated knowledge of precedents set by courts and review boards all over the country, not to mention the subtle judgment necessary to apply abstract rules to the specific documents at issue.

Information Specialists

Successful implementation of the system requires experts. They must conduct training for the general staff, provide advice in difficult cases, write memoranda and reference materials, and otherwise guide local officials confronted with information disclosure questions and allergic reactions.

In Kanagawa, it is the Kensei Joho Shitsu that performs these functions. To recognize the position of the specialists who lead this effort, the office has created the specialized position of “shinsahan” or inspection teams. These officials assist in reviewing documents subject to request and making decisions on disclosure. In general, shinsahan do not meet with requesters, but instead act as specialists to assist agencies in responding to requests. Despite the specialized nature of this work, these personnel are generally subject to regular rotation throughout other departments of the government in the manner common among large Japanese organizations.

Like information specialists in other local governments, the Kanagawa Information Office produces an Information Disclosure Handbook for use throughout the government. This carries the text of the disclosure ordinance along with commentary on each provision and other relevant rules and guidelines for administrative procedures. It also reproduces the mandatory forms to be used for information requests, responses, appeals, and other procedures. Kanagawa also publishes an Annual Report. In addition to breaking down all information requests received that year (and other data), this volume reproduces the written recommendations of the review board issued that year and summaries of cases pending before the board. The shinsahan also serve as the secretariat for the review board, a panel of independent experts that makes recommendations to the prefectural government in disputed cases. (A detailed discussion of local review boards follows.)

The need for specialists is very clear, especially because the situation is in flux. Emphasizing the need for these experts to stay up-to-date, a Kawasaki official said, “In today’s Japan, the courts and the appeals committees are deciding that information that was not disclosed two years ago should have been disclosed, and this is occurring at a very fast rate. Things are changing so quickly, ultimately in an individual case we have to make our decisions based on the present situation, and cannot depend on past judgments. Things are changing at a high speed towards disclosure.”

Especially in light of the highly publicized national campaign against questionable spending of public monies, the decision may be very sensitive. On this note, the same official

36 Interview with Kawasaki official, July 10, 1998.
offers the following example, “two years ago we did not disclose the names of the guests who
had been entertained by city officials, but now we disclose those names.”37 When disclosure may
result in the embarrassment of other local officials or influential persons, the information specialist
is in the hot seat. “We need to have specialists like me,” said one official. “It is not enough to
just say that you have to open up. We use examples of past court decisions and decisions of the
review board to tell employees that if they try to hide such and such a thing they will lose if their
decision is appealed.”38

The specialized position of the *shinsahan* is quite unusual. It appears to have had a
salutary effect in Kanagawa, where the number of appeals is relatively small. Undoubtedly, the
creation of this cadre promotes consistency throughout the government and provides section
chiefs with the comfort of some degree of expert assistance in making disclosure decisions. By
contrast, Tokyo does not have an equivalent cadre of experts. Therefore, each department of the
Tokyo government follows its own approach in implementing the ordinance, which leads to a
great deal of variability in the responses met by specific requests. Throughout Japan, each
prefecture has a different body of positions and each department has its own set of rules.

**Common Features of Local Information Disclosure Legislation Throughout Japan**

*Statutory Wording*

Although each information disclosure ordinance was adopted by the independent author-
ity of a local legislature, common reference was made to model statutes drafted by scholars, bar
associations, and other interest groups. As the first prefecture with an information disclosure
ordinance in Japan, Kanagawa has served as a role model for the rest of the country. Most of the
prefectural ordinances around the country have relied on the wording of the Kanagawa ordinance
as a reference. As a result, local ordinance developed a common structure. This structure pro-
vides the key elements of (1) a right to demand information; (2) a list of categories of informa-
tion exempt from disclosure; and (3) a right of appeal to a review panel appointed for this pur-
pose by the local government. Within this basic framework, however, wording of the local laws
has varied. Legislatures in liberal enclaves such as Saitama and Kanagawa adopted wording
most favorable to broad disclosure.

The essence of this structure is virtually universal in disclosure laws worldwide. The
critical substantive element is the breadth of the exemptions. With one startling exception, the
categories of exemption adopted in Japan are similar those in the United States, including matters
relating to national defense, police investigations, personal data, business trade secrets, and
others where a need for some degree of confidentiality is obvious. Exempted categories of data
set forth in the Kanagawa ordinance are listed below. (See Appendix II(A) for the full text of
these exemptions.)

37 Ibid.
38 Ibid.
A simple review of the statutory text, which defines exemptions in broad language and grants confidential status to a wide range of internal administrative activities, exposes the weak textual underpinning of the disclosure laws. Undoubtedly, the development of a true disclosure system requires the active cooperation of judges and others charged with interpreting the rules. As described below, both the review panels and the courts have stepped up to fill this role, with a generally pro-disclosure attitude in their review of concrete cases in dispute.

**Unified National Legal System**

Despite the existence of more than five hundred different ordinances adopted by more than five hundred different legislative assemblies around the country, a remarkable commonality resonates between the structure and the wording of the rules. Moreover, the structure of Japan’s legal system ensures a relatively uniform approach to statutory interpretation and dispute resolution. There are no prefectural or other local courts; all litigation must be filed with courts within the unified national court system. But this is only the most obvious element of the monolithic legal structure. Japan’s attorneys, prosecutors, and judges are all required to pass the same national examination and spend two years in training at the same national legal research institute. At the pinnacle of the system is the Supreme Court of Japan, with authority to administer both the national research institute and the national court system. The latter includes the power to appoint (and remove) all judges throughout the country.

Professors of administrative law at all universities in Japan apply scholarly analysis to the precedents created by these courts. The same cadre of professors teaches the law, writes the authoritative commentary on legislation and court decisions, and in many cases actually occupies positions on prefectural review boards to make “recommendations” to prefectural agencies in disputed cases. An “information disclosure bar” of specialist attorneys has developed, and some of its leading members travel around the country to make speeches, pursue litigation against local governments, and otherwise share their expertise with colleagues and information disclosure activists.

<table>
<thead>
<tr>
<th>Kanagawa Prefecture Categories of Information Exempt from Disclosure</th>
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<tbody>
<tr>
<td>1  Information concerning individuals</td>
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<tr>
<td>2  Information concerning businesses</td>
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<tr>
<td>3  Information related to requests from national government agencies</td>
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<tr>
<td>4  Information related to agency deliberations, studies, research, etc.</td>
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<tr>
<td>5  Information concerning implementation of agency operations</td>
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<tr>
<td>6  Information concerning criminal investigations</td>
</tr>
<tr>
<td>7  Information designated confidential by law or regulation</td>
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As difficult issues have arisen in the interpretation of the disclosure ordinances and courts and review boards established by those ordinances have addressed individual cases, a relatively coherent body of precedent has arisen. The next section will provide an overview of these cases.

**The Appeal Process**

In cases where a request is wholly or partially rejected, the requester has two alternative avenues to seek redress. A national statute that applies to all dispositions by a government agency provides a right to file suit seeking a court order to overturn the disposition. In addition to the right to file suit, virtually all local ordinances establish a review board to examine appeals and make recommendations concerning disclosure. These procedures and cases where these procedures have been applied are examined below.

**Local Review Boards**

A recent survey indicates that, as of March 31, 1998, at least 5,079 appeals had been filed with review boards in 312 local governments nationwide. Of these, 3,517 appeals had been filed with prefectural review boards, of which 1,234 had reached definitive recommendations. (Forty of Japan’s 47 prefectures responded to the survey.) The results have generally been in favor of disclosure. Approximately ten percent of the recommendations have called for complete disclosure of all information requested and another 52 percent for expansion of disclosure beyond the documents originally released.

But the system is under severe strain. Only about one-third of the appeals have reached conclusion. Of the remainder, only 888 of the appeals are under active examination. Review boards have taken no action at all to address more than 1,100 cases—nearly one-third of all appeals.

A great deal of variability marks the appeals process throughout the country. A large number of the appeals are clearly serious matters, with appellants raising meaningful issues, but others are not. Because the appeals are free, there is a significant gadfly factor. It is said that the very large number of appeals in Kyoto (157) and Aichi (147) derive from certain active requesters who appeal every non-disclosure decision, without regard to merit. The resulting logjam is the greatest source of complaint from the activists. The purpose of the review board system is to provide a fast, low-cost avenue for appeal. But as case loads build, many appellants are finding they may have to wait for years before a recommendation is produced.

Undoubtedly, the most important factor determining the attitude of a panel is the composition of the membership. Academics, attorneys, and representatives of the media are

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39 Administrative Case Litigation Law, Law No. 139 of 1962.
41 Interview with Shigeki Okutsu and Yukiko Miki of the Citizens Movement for a Freedom of Information Law, February 1999.
commonly appointed. One complaint is that the process for appointing them is non-transparent and lacks a review by the legislature or other body. Panels populated by liberal academics and attorneys tend to favor disclosure. On the other hand, panels comprised of the cronies of administrators who seek to avoid public scrutiny block attempts at information disclosure. In Sendai, two positions for attorney members of the panel are filled by the recommendation of the local bar association. But this is highly unusual. Ordinarily, the governor or mayor simply selects the appointees without such formal input.

In Kanagawa’s case, the review board consists of five persons appointed by the governor. At this writing, this board included four university professors and one attorney. (See Appendix VI for a list of members.) Since its establishment in 1983, the chairperson of this panel has been Masao Horibe, professor of law at Hitotsubashi University. Horibe is the most revered academic specialist on information disclosure in Japan. (Both Professor Horibe and another member of the board, Professor Mitsuo Kobayakawa of the University of Tokyo, were appointed members of the national commission that prepared a draft national information disclosure statute published in December 1996.) From establishment of the ordinance through December 10, 1997, the board had received 69 appeals, including 13 filed in 1997. As of March 31, 1998, it had issued 51 formal recommendations. Of these, seven recommended full disclosure and 12 upheld the agency’s decision denying disclosure. The remaining 32 recommendations called for partial disclosure, with at least 13 essentially leaving the agency decision unchanged.42

Appeals have typically required about one year before arriving at a formal recommendation. Although board recommendations are non-binding, as of December 1997, Kanagawa’s administrative agencies have always issued orders enforcing the board’s recommendations. This is in line with a similar experience nationwide.43

Board sessions are closed to the public and members are subject to a duty of confidentiality, since they are in a position to examine documents not yet released. The board may hear oral arguments from the requester. In fiscal 1997, the Kanagawa Board met 15 times and delivered four recommendations. By providing a low-cost and relatively fast alternative to a court trial, the review board concept is clearly an advantage to the requester. To the extent that these boards are populated with experts on information disclosure willing to spend the time and effort to tackle sensitive cases, they also provide a mechanism to generate precedent and advance the development of the system. Board members receive nominal payments for their work. It is unclear whether Japan has a sufficient supply of persons with the expertise, the time, and the willingness to work in order to make this a long-term solution. The large backlog suggests that review boards provide at best only a partial answer to the issue of handling disputed cases.

Requesters without the patience to pursue an appeal to the review board have the right to file suit immediately seeking a court order to overturn an unfavorable disclosure decision.

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Information Disclosure Litigation

The First Lawsuit

Japan’s first information disclosure suit was filed in Saitama in November 1983, just five months after that prefecture adopted an ordinance. The plaintiff was a housewife demanding to see the minutes of a city planning meeting which approved the decision to construct a trash incinerator near her child’s school. The meeting was closed to the public. In rejecting her request, the prefectural document center cited Article 6(2)(1) of the Saitama ordinance, which exempts “information clearly prohibited from disclosure by the terms of a law or ordinance.” No further explanation was provided. Her appeal to the Saitama Ombudsman was also rejected with no further explanation. (The Saitama ordinance is quite unusual in providing for the appointment of an ombudsman instead of a review board.)

She responded by filing a suit against Saitama Prefecture that sought a court order to release the documents. On June 6, 1984, after only four hearings, the Urawa District Court announced its decision. The court dismissed the prefecture’s blanket interpretation that because the meeting was closed to the public, documents concerning that meeting were exempt from disclosure. To justify application of Article 6(2)(1), the court required that exemption “must be provided in the clear terms of a law or ordinance, or at minimum, is limited to cases where this result is recognized as the unavoidable interpretation of the clear terms of a law or ordinance.” The simple fact that the meeting was closed did not meet this standard.

Before the court, the prefecture also argued that Article 6(2)(5) applied to deny disclosure. This is an omnibus provision that exempts “other information whose disclosure would result in a conspicuous obstruction to the fair and efficient execution of administrative duties.” Denying this exemption, the court stated that, “It is insufficient that merely in the subjective judgment of the administrative agency,” disclosure would result in obstruction of administrative duties. “We require that it be objectively clear that this danger has concrete existence.” The prefecture had offered no such evidence. Urawa District Court ordered disclosure. Saitama Prefecture did not appeal.

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46 Ibid. Although the decision made a nice point of law, it was of little value to the plaintiff. Saitama did release the minutes of the meeting, but they were pro-forma and conveyed no information concerning any deliberations. Either no substantive discussion took place in the meeting or nothing was recorded.
47 Reaction to the court’s pro-disclosure interpretation was immediate. In 1984, few local governments had finalized wording of disclosure ordinances. As the Saitama suit moved forward, it was watched closely by legislative drafters around the country. Tokyo stands out. Apparently in reaction to the Saitama decision, the draft of the Tokyo ordinance was rewritten to provide four separate exemptions relating to government administration. Among them was Article 9(6), which negated the Saitama result. This item empowers deliberative committees (including expert panels and committees appointed to advise administrative entities) to declare all or a portion of documents under review exempt from disclosure.

Following Tokyo’s lead, this type of provision was adopted elsewhere. This was subject to sharp criticism, with Japan’s Bar Associations joining the attack (even the governor of a prefecture has no power to specify exempt documents, why should this power be granted to advisory committees?) and litigation. The threat of such provisions...
Thus, Japan’s first information disclosure litigation resulted not only in the release of the documents, but also sent a warning that Japan’s judges might interpret the ordinances as true mandates for disclosure. When resourceful plaintiffs came to court to complain that government agencies refused their requests, the government agency would have to demonstrate that an exemption applied.

Since the Urawa decision in 1984, Japan’s courts have built an impressive body of judicial precedent interpreting and applying the terms of hundreds of ordinances adopted nationwide.

**Number of Cases and Results**

As of March 1999, Japan’s courts have rendered nearly two hundred court decisions involving claims under Japan’s information disclosure ordinances. This total includes decisions by courts of the first instance and appeals, including twelve decisions by the Supreme Court of Japan. Dissatisfied requesters have filed 126 separate lawsuits. (Another dozen cases have involved claims for damages resulting from failure to disclose information and “reverse FOIA” cases in which parties have sought a court order to stop disclosure.)

The results of the litigation have been quite startling. In 28 cases, courts have ordered full disclosure in accordance with the original request; in 47 cases, courts have ordered partial disclosure. On the other side of the ledger, courts have upheld complete non-disclosure in 40 cases. Four cases were withdrawn after the parties reached compromise and eight were dismissed for procedural reasons.

In reviewing these court decisions, Japanese commentators commonly refer to the combined share of decisions ordering full disclosure and partial disclosure as the “reversal ratio” (gyakuten shosoritsu). Thus, the reversal ratio for all cases is an impressive 65.2 percent. This statistic parallels the “reversal ratio” of recommendations issued by prefectural review boards. The rate would be even higher if one includes cases where compromises were reached and where courts denied “reverse FOIA” requests.

The courts’ adoption of such an aggressive role in correcting administrative behavior is without precedent in Japan’s modern legal history. In general, courts have displayed great respect for administrative discretion. With regard to general administrative litigation,
Masahiro Usaki estimates that the rate of reversal of administrative decisions is approximately five percent.\textsuperscript{49}

\textit{The “Right to Know” and the Purposes Clause of Information Disclosure Legislation}

Of course, one may interpret the high reversal ratio as an indication that local governments have been very negative in their response to sensitive information requests, and that requesters have had to go to the trouble and expense of filing suits to gain access. Such a development may be inevitable in the implementation of a new administrative system. The reversal ratio indicated above and analysis of court decisions show that the courts are fulfilling their role. Unquestionably, the courts’ pro-disclosure attitude has had a powerful impact on officials’ behavior in administering the ordinances.

In general, it appears that the courts have taken local legislatures at their word, and interpret the ordinances to mandate disclosure as a general rule. To justify non-disclosure, local governments often bear a burden of proof to demonstrate that an exception applies. In this process, the courts commonly refer to the “purposes” clause of an ordinance, which often makes a broad statement of legislative intention. (In Kanagawa’s case, this clause includes the statement that “the purpose of this law is to realize an open prefectural government….” This language will change in the pending revision.)

As noted elsewhere, from the beginnings of the information disclosure campaign in the 1970s, Japanese activists have demanded that purposes clauses state that the ordinance is a legislative implementation of the public’s “right to know.” This wording clearly grounds the information requests in Article 21 of Japan’s Constitution, which protects freedom of expression. In a landmark 1969 decision, the Supreme Court first adopted the term “right to know” in articulating the scope of “freedom of expression” to include not only a right of expression itself, but a right to receive information as well. The words do not appear in the text of Japan’s constitution itself.\textsuperscript{50}

When the “right to know” is mentioned in the purposes clause, courts have not hesitated to cite these words in holding governments to a higher standard to demonstrate that an exception applies and thereby justify non-disclosure of requested files. This was true in two 1989 decisions made by the Osaka District Court concerning entertainment spending.\textsuperscript{51} Such a “right to know” was also cited in a decision by the Kyoto District Court and the appellate decision of the Osaka High Court in the well-known Kamogawa Dam site case.\textsuperscript{52} In numerous other decisions, although courts have not cited such language in the ordinance, they have made broad statements

\textsuperscript{49} "Joho Kokai Jorei no Tenkai to Sono Impact” (Developments in Information Disclosure Ordinances and Their Impact). Unpublished memorandum by Professor Masahiro Usaki, April 1999.

\textsuperscript{50} This decision is commonly known as the “Hakata Station Film Case.” It is reported at Keishu 23-11-1494, Decision of the Supreme Court, November 26, 1969.


\textsuperscript{52} Decision of Osaka High Court, March 23, 1993; Decision of Kyoto District Court, March 27, 1991. The Osaka High Court decision, ordered disclosure of maps identifying potential sites for a dam to be built on the Kamogawa River. This decision was overturned by the Supreme Court of Japan, Decision of Second Division of the Supreme Court, March 25, 1994, 1512 Hanrei Jiho 22. (See Appendix case list, case number 10.)
that the right to demand information is a concrete application of the abstract constitutional “right to know.”

Unquestionably, the pro-disclosure attitude of the courts has had a powerful impact on local governments. In addition to forcing administrators to revise existing practices in order to meet the new court-mandated standards, some local legislatures have actually revised ordinances to accord strictly with court developments and otherwise expand the scope of disclosure. A number of them have even inserted new language grounding the right to demand disclosure in a public “right to know.” Other pro-disclosure amendments have expanded the range of persons with a right to make a request and have redefined the term “documents” to widen the scope of material. (Like Kanagawa, most local governments have limited the right to residents and others with some particular connection to the prefecture. In line with national legislation, some local legislatures have expanded the scope of potential requesters to include “any person.”)

The favorable attitude toward information disclosure displayed by the courts and local governments has been a significant factor in the movement toward a national statute. In turn, Article 41 of the new national statute commands that all local governments adopt regulations which meet the minimum standards set by national legislation.

Appendices to this report provide reference material for the study of court precedent. Appendix I provides three separate case studies illustrating the utilization of the courts by Japanese information requesters. Appendix II(K) provides a list of twenty of the most significant court decisions made to date.

**Litigation by Citizen Ombudsmen**

Without question, the most significant court dispute to date concerns the disclosure of questionable spending practices by local officials. Prior to a national “information disclosure campaign” featuring simultaneous information requests pursuant to local ordinances all over the country, these practices were not reported in the press and virtually unknown to the public. As the direct result of this campaign, local governments sharply curtailed entertainment spending, with nationwide spending reductions of hundreds of millions of dollars per year. In addition, more than twenty thousand local officials have been subject to disciplinary measures for improper behavior and have been required to repay funds improperly received from government accounts.

Part II will tell the story of Japan’s citizen ombudsmen and their use of information disclosure rules to revolutionize the relationship between local officials and ordinary citizens. Their story also illustrates the great importance of the court system as the constitutional guardian of the laws. Japan’s information disclosure ordinances have effected a significant reallocation of power among government officials, the courts, and members of the public. The citizen

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53 “Joho Kokai Jorei no Tenkai to Sono Impact” (Developments in Information Disclosure Ordinances and Their Impact), Unpublished memorandum by Professor Masahiro Usaki, April 1999.
54 “Joho Kokai Jorei no Shin Doko” (Recent Trends in Information Disclosure Ordinances), Unpublished memorandum by Professor Masahiro Usaki, April 1999.
ombudsmen’s campaign against questionable spending has been highly emotional and heavily publicized. Court decisions have confirmed the dictate of public opinion: disclosure is good and it is the law.

PART II

Citizen Ombudsmen Use Information Disclosure Rules to Attack Corruption

Rating the “Openness” of Japan’s Local Governments

On August 22-23, 1998, the city of Takaishi in Osaka played host to the “Fifth National Conference of Citizen Ombudsmen.” More than four hundred persons from forty-four prefectures representing more than sixty organizations were present. The ombudsmen selected “information disclosure and legislative assemblies” as the theme of the conference. In preparation for the event, they conducted a survey of prefectural governments. All but two of Japan’s forty-seven prefectural governments provided a detailed response. The results of the survey were carried by the Asahi Shimbun on August 22, 1998.

According to the Asahi, Hiroshima and Ehime tied for the dubious honor of the least transparent of Japan’s prefectural assemblies, with Tochigi and Oita close behind. “These four prefectures provided absolutely no documentation concerning activities by legislative council members or groups, including such matters as expenses for trips abroad and research activities. Observing council meetings is prohibited and the minutes of meetings are not released to residents.” The Asahi did not fail to point out that the same four prefectures also scored poorly in the previous ranking published by the ombudsmen in February 1998.

The highest scores were awarded to Mie, Nara and Fukuoka. The newspaper pointed out that in each case, the prefectural disclosure ordinance applies expressly to the legislative assembly.55

The ombudsmen published their first national survey in July 199556 and their first ranking of local governments in February 1997.57 The ombudsmen regularly conduct this well-established drill. After selecting a topic (early surveys on “Food and Beverage Expenditures” and “Allowances for Business Trips” attracted a lot of attention), they create a question list and send it out to targeted local governments. When the results come back, the ombudsmen apply a point system to establish a ranking based on the degree of openness (or “closedness”) and distribute the rankings to participating governments and the press. This tool effectively focuses people’s attention on their local governments.

One might assume that the “National Citizen Ombudsmen Liaison Conference” is some kind of public auditing body created to track spending of local tax monies, or perhaps that the ombudsmen are public officials analogous to those established by statute in Sweden, Finland, Denmark, and other European countries. Under the Swedish statutory scheme, an ombudsman is a public official legally empowered to investigate government activities and to accept complaints from citizens and act on their behalf. But neither Japan’s national laws nor its local ordinances provide for such an office.

In fact, the “National Citizen Ombudsmen Liaison Conference” is unrelated to any public agency. The term “citizen ombudsman” is not created by any statute, nor are the ombudsmen’s duties defined in any law or regulation. Article 2 of the organization’s charter states that its purpose is “to conduct surveillance of improper and unfair activities concerning national and local public bodies, and to exchange information and experiences among citizens ombudsmen and conduct joint research and other activities with the objective of correcting such improper and unfair activities.”

The organization was created by a group of private attorneys who work as volunteers, without the advantage of any official authority. Their primary tool of investigation is the information disclosure ordinance.

Creation of the Citizen Ombudsmen Liaison Council: Something Rotten in Sendai

Sendai is a charming city of about one million located on the Pacific coast, two hours by bullet train north of Tokyo. It is an old castle town, formally established early in the seventeenth century. Residents enjoy a four-season climate, with snow in winter and summers far more pleasant than sultry Tokyo. As the leading city of the six prefecture “Tohoku district,” it serves as the administrative center for the entire region, stretching to the northern shore of the main island of Honshu.

The first national gathering of the citizen ombudsmen was held in Sendai in July 1994 and attended by approximately 130 persons. The choice of Sendai as the site for this event was no accident. The group had been formed there a year before. A handful of local attorneys established the local ombudsmen’s organization to investigate rumors of rampant corruption in local government and the spending practices of local officials.

A team of attorney-ombudsmen appeared at Sendai City Hall for the first time on June 29, 1993, in order to file their initial requests for files concerning entertainment spending by Mayor Toru Ishii. When they arrived, they were startled to find a mass of reporters in the lobby. “This kind of press coverage for our very first request?” wondered Attorney Tadayuki Yamada, at the head of the group. As a reporter passed by, Yamada called out “What’s going on?”

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Turning his head as he dashed out of the building, the reporter responded: “Mayor Ishii has been arrested.”

Ishii was indeed under arrest and later charged and convicted of collecting huge bribes from virtually all of Japan’s major general contractors (known as “zenekon”) in connection with bid rigging for public works in the Sendai area. In one of the largest scale corruption investigations of the post-war period, prosecutors followed up the arrest of Sendai Mayor Ishii with the arrests of the governors of Ibaraki and Miyagi prefectures, the chairmen and presidents of two major zenekon companies, nearly a dozen other senior executives from a long list of contractors, and finally, former Minister of Construction Kishiro Nakamura.

As neatly summarized by Professor Gavan McCormack, “The executives arrested controlled some of Japan’s biggest companies. Shimizu (Construction), with 1992 annual sales of 2.16 trillion yen and an operating profit of 132 billion, was Japan’s largest corporation and had been accustomed to allocating an annual budget of two billion yen for gifts to politicians…All the top zenekon companies followed the same practice.”

As a direct attack on corruption in Japan’s construction industry, which has for many years exerted a powerful influence on national politics, this prosecution is an important event in Japan’s modern history. But for the people of Sendai, it was a local story. Mayor Ishii had been in office since 1984 and had long played a key role in coordinating “dango” bid-rigging on Sendai area public works projects. The immediate cause of his arrest arose from events preceding the mayoral election of 1992. Although Ishii was virtually unopposed, construction company executives saw the election as an ideal opportunity to prove their allegiance to the mayor with donations of several hundred million yen to his campaign chest. This included the delivery of one hundred million yen in cash to the mayor’s son-in-law at a restaurant in the Shiba area of Tokyo. Ironically, Sendai, the center of the nation’s biggest bid-rigging scandal, would soon give birth to the nation’s most dynamic movement for more open government.

The Peculiar Status of Japan’s Private Attorneys

The ombudsmen story is primarily a story of Japan’s attorneys, or bengoshi. Like judges and prosecutors, they are members of a national elite. When this elite group focused on entertainment spending by local government officials and discovered the information disclosure ordinance as a fact-finding tool, they changed the relationship between the citizens and local government officials forever.

As of March 1999, there were 16,738 persons licensed to practice law in Japan. Reporters and academic writers frequently point out that this is a very small number of attorneys

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59 Ibid., p. 20  
60 Ibid., p. 20.  
64 Website of the Nihon Bengoshi Rengo Kai, (Japan National Federation of Bar Associations), http://nichibenren.org.jp.
for such a populous nation, especially in comparison with the United States, where more than 800,000 persons hold a license to practice law. The practice of law is a highly prestigious, well-compensating profession in Japan. Entry to the profession is limited to the elite capable of passing the entrance examination to the national legal research institute, staged once per year. For the past three decades, roughly the top two percent of those sitting for each annual exam have gained entry to the institute.

Professor John Haley explains the unique status of the private attorney in Japanese society: “Ask most Japanese bengoshi why they chose the legal profession as a career and invariably the answer will be that the practice of law enables one to have both security and autonomy. As in the United States, today lawyers in Japan have a relatively high degree of economic and social security. The income of most Japanese attorneys is considerably higher than their counterparts in either government or business. Most work fewer hours and individually enjoy the less tangible rewards of elite social status as well. As important for the bengoshi, however, is a second attribute of legal practice in Japan: autonomy—the freedom from control by others that the profession offers. The importance of autonomy...to the Japanese lawyer is difficult to exaggerate.”

The Sendai ombudsmen are excellent examples of Professor Haley’s autonomous elite. In demanding access to the mayor’s expense accounts, they did not represent clients who had retained them to do this work. Nor were they employed by a Ralph Nader-style public interest organization, with a salaried staff in the nation’s capital and a defined legislative program or agenda for political reform. Rather, they were independent individuals who acted on their own.

**The Sendai Citizen Ombudsmen**

The work environment of these volunteers provides a striking contrast to the sophistication of a corporate business office. The office of the Sendai Citizen Ombudsmen is located on the third floor of a nondescript building at the edge of Sendai’s public market. To get there, one passes the stalls of sellers of fish and vegetables and flowers. There is no elevator, so it is necessary to climb a narrow staircase to the third floor. The office of the “Sendai Citizen Ombudsmen” is located to the rear, on the left. It consists of a single large room. Most of the space is taken up by a set of cheap, collapsible tables pushed together to create one long conference table stretching from one end of the room to the other. At the back of the room, there are a few individual desks. Stacks of files, pamphlets, and miscellaneous papers cover every available surface, except for the big conference table. Here, through the autumn and winter of 1993-94, the Ombudsmen would return from their forays to the offices of Sendai city and Miyagi prefecture, carrying the stacks of paper they received from local officials. Sipping tea from kettles placed on kerosene stoves, they pored over the pages, puzzling over what might be hidden by all the black ink and debating what steps they might take to learn more.

When they made their first requests, the Sendai attorneys did not have a good understanding of the structure of the city’s accounts, the filing system and file categories, clerical procedures, and other aspects of city records. They simply filed some requests and did their best

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to decipher the cryptic material that came back. The attorneys had two initial targets: to clarify entertainment spending by senior officials and to investigate a local real estate deal involving the city’s purchase of land for a park. The ombudsmen suspected that word of the city’s plans had been leaked to insiders who then acquired the land and sold it back to the city at a mark-up of two to three times market value.66

Progress was slow, both because of their poor understanding of the government accounts and because many of the documents they received were heavy with black ink that blocked out details such as the restaurants where events were held, the names of persons attending, and other matters. This was truly a “fishing expedition.” Although the ombudsmen had little to guide them, they quickly achieved a measure of success through the diligent analysis of documentation, the evaluation of evidence, and the pursuit of more valuable evidence. By the winter, the Sendai attorneys commenced a practice of filing a request every month for entertainment expenses. This regular scrutiny along with the influence of the general contractor scandal resulted immediately in a sharp drop in entertainment expenses.67

The First National Meeting of Citizen Ombudsmen

The Sendai attorneys were living in the shadow of a nationally reported scandal which exposed deeply entrenched corruption in Tohoku public works. But though the spotlight was on Sendai and this attention spurred them on in their work, they were convinced that this was not really a local problem. As a Tokyo Ombudsman has written, “All local governments across the country are operated under the same laws and with the same administrative structure. Bids for public construction projects are gathered through the same system and the relationship between administration and industry is the same. Therefore, this corruption in government was not just a special product (tokusanbutsu) of the city of Sendai. There may be differences of degree, but such corruption can occur anywhere in Japan and, without a doubt, is taking place.”68

And so the Sendai attorneys contacted their colleagues around the country and told them how they had formed a small team and commenced use of the local information ordinance to dig into expense accounts. Not surprisingly, other attorneys in Osaka, Nagoya, and elsewhere shared their concern and enthusiasm for action. So the Sendai attorneys called a national meeting to share information. This was held in July 1994, one year after Mayor Ishii’s arrest, and attended by about 130 persons from around the country. Sendai attorney Kazuhiro Yoshioka served as the chair. Prominent attendees included attorneys Toshiaki Takahashi of Tokyo, Yoshio Inoue and Kimio Tsuji of Osaka, and Satoshi Shinkai of Nagoya.

When Sendai attorney Shinichi Onodera of Sendai delivered his report to the gathering, he was especially critical of the local legislatures and auditors, for they had failed completely to provide any check on abuse by officials in the executive branch of government.69 All agreed that this was a national problem well-worth a collaborative effort and decided to establish a “liaison

67 Ibid., p. 31.
68 Ibid., p. 29.
69 Ibid., pp. 29-30.
council” (renraku kaigi) as a means of building a national network to share information and resources.

Step-by-Step—Probing the Accounts of Miyagi Prefecture

The Sendai ombudsmen gained some satisfaction by the drop in entertainment expenditures registered since their information request program had begun, but their efforts to disclose the details of “entertainment spending” failed to uncover evidence of lavish entertainment at expensive nightclubs. Japan’s nightlife or “mizu shobai” (literally “water trade”) is justly famed throughout the world. The top-end features the company of young hostesses in kimonos or miniskirts and bar tabs that can run to many thousands of dollars for a few hours of entertainment. A deeply entrenched feature of Japan’s male-dominated culture, the Sendai attorneys suspected that local officials had been using public money for this kind of entertainment. But as they pawed through the “entertainment expense” accounts, they could find no evidence that funds had been used for such lavish spending.

After a year of going through reports for “entertainment expenses,” they stumbled upon a completely separate category of expenses under the innocuous heading “food and beverage expenses” (shokuryohi), which proved to be the key. The original purpose of this account was to provide a record of payment for dinners of staff working late and for snacks at internal meetings. Apparently, local officials had decided to expand the role of this account far beyond its original purpose. The Sendai ombudsmen filed their first information request for reports of shokuryohi expenses in September 1994. Soon they would find reports for millions of dollars in questionable entertainment items.

For example, they discovered that, of 70 instances under this expense column for the finance section of Miyagi Prefecture in fiscal year 1993, 64 of the expense records were created on May 17, 1994. It also appeared that the majority of the reports were in the same handwriting. The ombudsmen suspected that the reports had been prepared not by persons actually spending the money, but had been manufactured after the fact by staff in the finance section.

Further analysis revealed that the tabs included heavy volumes of alcohol. For example, one expense report said that a party of six persons consumed 30 bottles of beer, 26 decanters of sake, and four bottles of reishu (chilled sake). Another stated that 17 individuals drank 30 bottles of beer, 18 decanters of sake, and ten bottles of wine (at a cost of 15,000 yen each). Either the reports were false or the officials were having a rollicking good time.70

Through the autumn and winter, the ombudsmen continued their search through the food and beverage accounts, demanding copies of expense reports, restaurant receipts, and other details, but they were not satisfied by the response from the local officials. At a meeting of the Sendai ombudsmen on February 9, 1995 members agreed that the documents were very curious and incomplete. Details such as the names of restaurants and the identities of those participating in the events had been blacked out of the released documents. They unanimously decided to file suit under the information disclosure ordinance for release of details blacked out from the

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70 Ibid., pp. 33-34.
expense reports. (They decided to forego appeal to the Sendai Review Board, since they thought this would be a waste of time.) Their suit was filed against Miyagi Prefecture on March 3, 1995.71

The complaint identified the plaintiff as the Sendai Citizen Ombudsmen, a “body without legal standing” (kenri naki shadan), and listed eleven attorneys, including Yoshioka, Onodera, Yamada, and others who had busily filed information requests over the preceding eighteen months.

By late February, the local press had gotten wind of the Sendai ombudsmen’s campaign. Reports appeared in the local papers and rumors began to fly. Some said that much of the shokuryohi money had been used to entertain officials of the national government and members of the legislative assembly, and that the source of funding for these expenditures was special “supplemental payments” (hojokin), received from the national government. The suggestion that national government officials were involved reinforced the suspicion that this was not just a problem in Miyagi, but that similar practices were going on nationwide. Following that first meeting in July 1994, directors (kanji) of the new “Citizens Ombudsmen Liaison Conference” began to meet on a regular basis.

**A Call for Nationwide Action**

At a meeting of the directors held in Nagoya on March 18, 1995, the Sendai representatives made a radical proposal. They suggested that the group use their experience in Sendai as a model and take their search for improper expenditures nationwide. They proposed a coordinated strike, with simultaneous demands for food and beverage expense records filed with each of Japan’s 47 prefectures. The date chosen was April 25, just five weeks later. Nagoya attorney Satoshi Shinkai wrote: “Because the Ombudsmen, their friends, and acquaintances participate in nationwide attorneys’ groups with members scattered around the country, we thought it would be easy to find one person to take charge of information disclosure in each prefecture.”72

The attorneys and their fax machines went to work. They drafted a formal “Request for Participation in Simultaneous Nationwide Information Disclosure” which briefly described the objective of demanding food and beverage reports for the Tokyo office, the secretarial section, and the finance section of each prefectural government under each government’s local ordinance. In early April faxes were sent around the country from ombudsmen offices in Nagoya, Sendai, Tokyo, and Osaka.

Of course, at that time, no one had heard of the citizens ombudsmen organization and relatively few attorneys had any experience using the disclosure ordinances. The ombudsmen received numerous phone calls asking basic questions about how to approach local governments, what specific documents to seek, what if anything to tell the press, and other details. Weeks

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71 The Sendai District Court decision in this case was handed down on July 29, 1996. Hanrei Jiho, no.1575 p. 31.

passed. The response was slow. As they entered the second half of April, they had established representatives in fewer than half of the prefectures. At the edge of crisis, members gathered in Tokyo attorney Toshiaki Takahashi’s office and reviewed names of attorneys around the country who might be counted on to join. They went back to the phones and, by April 23, just two days before their target day, they succeeded in identifying an attorney to act in each of the 47 prefectures.73

According to Sendai attorney Tsunesuke Kurayama, “On April 25, 1995, requests were made for documents related to ‘food and beverage expenses’ (shokuryohi) of the secretary’s section, the finance section, and the Tokyo office of all prefectures and major cities (seirei toshi). On this day there were only four prefectures where requests were not filed: Aomori and Nara (no ordinance had yet been established) and Kochi and Shimane (requests were filed at a later date), and two cities: Chiba (due to clerical error) and Kyoto (a similar request had already been filed in 1994).” The writer then posed the following rhetorical question: “In the more than ten-year history since local information disclosure ordinances were first established, had anyone ever conducted an information request on such a grand scale?”74

The answer is clear. A simultaneous nationwide request filed with approximately fifty local governments (under approximately fifty separate ordinances) was entirely without precedent—and almost certainly unforeseen by the legislative champions of Japan’s information disclosure movement. On a single day at local government desks all across Japan, clerks found ombudsmen filling out forms to seek records for the same categories of spending incurred in fiscal 1993.

The Data Trickles In

The ordinances generally grant the government a two-week period to respond. The directors of the national liaison conference requested that all ombudsmen send them the material received so that they could compare responses and create a national database. The results would be presented at the next national congress of ombudsmen, to be held in Nagoya on July 29-30. The directors waited—and waited—for a response. According to Tokyo attorney Tsutomu Shimizu, “we expected a flood of documents, but only a few were sent in. When we called some of the requesters, we found that, although a few local governments had refused to disclose the expenditures altogether, most had responded. Lawyers around Japan had received the requested documents, but they did not forward them because they were so fascinated by what they saw.”75

As the reports trickled in, big expense numbers came in from all over the country. The abuse was not limited to their home town. Hokkaido ranked number one with 1,629 events at which officials had spent 188 million yen (about one and a half million dollars), followed closely by Nagasaki and Tokushima prefectures. By the end of May, the Sendai attorneys had received 40 responses and began production of an omnibus report. (Tokyo conspicuously refused to disclose any of the files requested.) The data indicated that under the three categories selected

73 Ibid., pp. 39-42.
74 Ibid., p. 36.
75 Interview with attorney Tsutomu Shimizu, July 29, 1998.
(Tokyo office, secretarial section, and finance section), the annual expenditure for “food and beverage” was 2.3 billion yen (roughly twenty million dollars). Extrapolating from this data, they estimated that the total annual expenditure for all local government agencies for this category at approximately 30 billion yen (roughly two hundred-fifty million dollars), a figure that was later confirmed by an *Asahi Shimbun* study.

Although the responses gave gross figures for the expenditures, no response from any local government identified precisely who was being entertained at these events. Among all the responses, only the report from Wakayama shed light on how the money was really spent. Although the Wakayama response did not identify who had attended the events, it did identify the government ministries that employed the guests.

**The “Tokyo Office”—Focal Point for Entertainment of Central Government Officials**

The Wakayama response revealed that in fiscal year 1993, the prefecture’s Tokyo office had sponsored no fewer than 253 events to entertain national government officials. The most frequent guests at these parties were from the Ministry of Agriculture, Forestry, and Marine Affairs (Wakayama is a rural prefecture) and the Construction Ministry, with 45 events each. Representatives from the Ministries of Local Government Affairs and Health and Welfare attended more than 30 events. The response also enabled the ombudsmen to calculate exactly how much money had been spent entertaining officials of each ministry. Again the Agriculture Ministry was tops with well over 5 million yen, or nearly one-quarter of the reported total of almost 25 million yen.

These amounts were spent by the Tokyo office of Wakayama prefecture and do not include amounts spent by other departments of the Wakayama government. Because the national government is the primary source of funding for Japan’s prefectures, and national government programs extend throughout the country, all prefectures maintain an office in Tokyo to coordinate actions of the central and local governments. Attorney Shinkai explained other functions: “All prefectures maintain a Tokyo office…. Even prefectures on the immediate periphery of Tokyo (Saitama, Chiba, and Kanagawa) maintain Tokyo offices. Their function is to serve as the forward line for entertainment (*settai*). The Tokyo offices are equivalent to the Edo quarters of the Daimyo (*Edo yashiki*) of the Edo period. When the entertainment expenses, first became an issue, some heads of local governments defended the practice saying, ‘If we spend one hundred thousand yen and can obtain a central government grant (*hojokin*) of one hundred million yen, it’s a small price to pay,’ or ‘it’s necessary to get information,’ or ‘private companies do it.’ But now that Ministry of Finance officials have been arrested for bribery because they received entertainment, local government chiefs no longer say such things openly.’”

Although entertaining central government officials had become so deeply entrenched that it consumed hundreds of millions of dollars per year, it had not been reported in the national

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76 “Laundering Japan,” p. 46.
media. Either Japan’s press had never caught on or it accepted the widespread practice as standard operating procedure.

With release of the ombudsmen’s findings a new term was born: “kan-kan settai,” literally “official-to-official entertainment.” The term became a conspicuous addition to Japanese vocabulary in 1995.

Shinkai goes on to point out the analogy between the kan-kan settai practice and the cases of excessive entertainment of officials from the Ministry of Finance and Bank of Japan by executives from large financial institutions. The Tokyo District Prosecutors Office conducted a campaign to attack excessive entertainment of public officials in exchange for information in the winter of 1997-98. This included the first arrest of a career official of the Ministry of Finance in decades. He was charged with granting Nomura Securities a new product approval in exchange for lavish entertainment. In a separate incident, at the Bank of Japan (Japan’s central bank), a division head was arrested for trading highly sensitive market information in exchange for entertainment and money. The governor of the bank resigned to take responsibility. In another case, two Ministry of Finance bank inspectors were arrested for soliciting bribes in the form of entertainment, including outings at “no pan shabu-shabu” restaurants, which featured young waitresses without undergarments. Regardless of past standards, Japan’s prosecutors were now establishing the rule that excessive entertainment could constitute a bribe.

The behavior of the finance industry executives and the regulators closely paralleled the “official-to-official” entertainment practices. The notion that local government officials were utilizing the shokuryohi accounts to pay bribes in the form of excessive entertainment led Attorney Shinkai, among others, to muse that criminal prosecution might be appropriate.

Disclosure of Lavish Entertainment by Officials from Around the Country

The Wakayama example was noteworthy because it was the single local government that disclosed that officers of national government agencies were entertained as guests at banquets. Nearly all local governments disclosed the amounts of the expenditures, and, on this front, the Wakayama practices were not at all unusual. While Wakayama reported 253 entertainment events that year, several prefectures reported more than one thousand. Standouts included Nagasaki prefecture, with 1,080 events and Hokkaido, with 1,070. Osaka gained the distinction of the largest per capita expenditure for a single party, spending 106,000 yen per person for a dinner held at the famous Tokyo restaurant “Kitcho.” Neighboring Hyogo prefecture reported an event labeled “Gathering to Sample High Class Wines.” (Kokyu Wine o Ajiwau Kai.) Expense reports disclosed that six staff members of the finance section sampled four bottles of wine, with two at 15,000 yen each, one at 30,000 yen, and one at 50,000 yen, for a total of 110,000 yen (about $1,000) for the four bottles.79

Niigata expense reports openly stated that money had been spent to provide flowers for geisha and for their transportation. Oita, Ehime, Saga, and others reported fees paid for female

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79 Ibid., p. 50.
companions. Others such as Miyagi and Yamagata hid such expenses by inflating the amounts spent on drinks.

Confronted with the news that such questionable expenditures had been concealed, the governor of Yamagata accepted the criticism and proposed amendment of existing practices. The governor’s office released new “Standards for Activities with Guests” (Sekkyaku Gyomu no Irai Kijun). The standards provided that spending for female companions would only be allowed in “social gatherings attended by someone of the rank of bureau chief or higher.”

As spring turned into summer, reports listing expenditures for hundreds of parties sponsored by local officials trickled in little by little in response to the series of disclosure requests filed nationwide on April 25. The ombudsmen’s objective was to gather all of this data into a single report and deliver this to the next national gathering of ombudsmen to be held in Nagoya on July 29 and 30.

As the July meeting approached, the national report began to take shape. The media-savvy ombudsmen leaked the report to the Asahi Shimbun in advance of the event. The Asahi put it on the front page under the headline “Food and Drink Expenses—40 Prefectural Governments: 5.2 billion yen.”

“A total of 5.2 billion yen in food and drink expenses for the 1993 fiscal year has been disclosed (as the result of information disclosure requests filed) with forty-seven prefectures nationwide by the National Liaison Council of Citizen Ombudsmen (Yosio Inoue, Esq., Representative Director)…. Most of the shokuryohi (food and beverage expense) has been used to treat central government officials in kan-kan settai (official-to-official entertainment). Amounts gathered to date appear to be the ‘tip of the iceberg’ of grand shokuryohi expenditures. The deep roots of abuse of tax money have been exposed.”

The Asahi report featured a prefecture-by-prefecture listing of amounts disclosed. Hokkaido ranked first, with more than 188 million yen in expenditures for fiscal 1993, followed by Tokushima and Saitama in second and third places. The report explained that, although the “food and beverage” category was intended to provide payment for dinners for staff working late nights and for snacks at internal meetings, the ombudsmen analysis indicated that 82 percent of the funds were used for kondankai and settai. Five prefectures, including Miyagi, had decided full cooperation was the preferred course, and released the shokuryohi expenditures of all offices of the prefectural government, even though the ombudsmen request had been limited to three specific departments. On the other hand, the report also noted that Tokyo refused to disclose any information at all.

As for the details revealed, “Most of the documents released constituted partial disclosure, failing to identify guests attending the events, locations, and other details.” The startling reports whetted the public appetite for more. Who was spending all this money and

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80 Ibid., p. 51.
82 Ibid. See also “Laundering Japan,” pp. 37-38.
where? Was this truly used for some public purpose or were the senior honchos of government an aging group of hedonists engaged in a wild binge at public expense?

Although various local press entities had reported on ombudsmen activities, it was the national study that caught the attention of the big newspapers and media organizations that dominate discussion of national issues. The ombudsmen’s national report touched off a frenzy. The ombudsmen counted no fewer than fifteen editorials in national newspapers condemning excessive entertainment spending by public officials between August and December 1995. The nation observed these revelations on the television screen as well, no doubt with a mixture of disgust and glee. The haughty bureaucrats had been caught with their hands in the till and would finally get a well-deserved comeuppance. The term “kan-kan settai” would be selected as one of the hit new additions to Japanese vocabulary for the year. The practice was out in the open and could not be pushed back into the bottle.

A Reformer in the Governor’s Mansion

Just as the national media had focused on Sendai as a hotbed of corruption two years earlier, now it was back for a very different story. The Asahi treated its readers to a peak inside the governor’s mansion: “The residence of the governor of Miyagi Prefecture is located in Sendai city’s Aoba district. To the right of the entrance is a small meeting room. This is the room in which the previous governor, Shuntaro Homma, currently on trial for taking bribes, received one hundred million yen from representatives of the Daishowa Paper Company.” The primary use of the room had changed, according to the Asahi. Now, “Governor Asano uses this room as his study.”

It was said that Asano had entered this very room one morning in late June to type out the terms of a sharply worded instruction addressed to the senior members of the Miyagi prefecture civil service. The instruction framed the issue in stark terms: “We must choose one of two avenues. Either we will sincerely devote ourselves to explication of the real truth, or we will direct all of our efforts to protection of prefectural officials, even if it means concealing the truth.” Asano’s decision was clear: “In all ways, we will seek to show the truth.” The final two sentences removed any doubt about the governor’s intention: “This statement is not merely for discussion; this is an order. For those of you who cannot follow this guideline, resignation is the only course.” The Asahi reprinted a summary of this order beneath a photo of Asano with a senior prefectural official taken at a press conference held on August 10.

Asano had been a career official in the national Ministry of Health and Welfare who abruptly resigned in November 1993 to return home to Sendai and declare his candidacy in the election to succeed the fallen governor Homma. Like other “outsider” candidates, such as the governors of Tokyo and Osaka elected in 1995, Asano scored a victory without the backing of any major political party. Confronted with proof of systematic abuse of public funds throughout

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83 Ibid., pp. 229-30.
84 Asahi Shimbun, August 11, 1995.
85 Ibid.
his government, he addressed the problem in a straightforward, workmanlike manner and sud-
denly became the model of a progressive administrator for the rest of the country.

The investigation launched by Governor Asano revealed that the receipts and statements
maintained in the Miyagi government offices and provided to the ombudsmen in response to
their requests did not always reflect the reality of the expenditures. In many cases, the reported
expenses were inflated by clerical staff to conceal the flow of cash to selected pockets. Suspec-
ting this was the case, the Sendai attorneys filed a residents’ suit against selected officials in the
Miyagi government they suspected of pocketing the cash. Like many such tricks used to create
hidden pools of cash, this procedure was repeated nationwide.86

Of course, not all prefectural governors embraced disclosure quite as openly as Mr.
Asano. Representatives of the old regime, such as governors Tatsuya Hori of Hokkaido and
Kikuji Sasaki of Iwate, defended heavy entertainment spending. Sasaki himself would soon be
attacked for using public funds to tour South America and resigned on November 25, 1996.87
Hori, on the other hand, launched his own investigation and discovered that even the prefectural
auditors had adopted a practice of falsifying expense reports in order to build a casual slush fund
of their own. This abuse by the auditors especially raised the ire of the ombudsmen and subse-
quently lead to an independent nationwide inquiry into their spending practices.88

Perhaps the greatest surprise was the response of the Tokyo metropolitan government.
Yukio Aoshima, a well-known television writer and comedian, was elected governor of Tokyo on
a reformist platform in spring 1995, just as the ombudsmen were launching their national cam-
paign. But the Aoshima government’s response provided a sharp contrast to Miyagi and other
progressive governments around Japan. Tokyo refused to disclose any information in response to
the April 25 request of the ombudsmen. The ombudsmen filed suit and the judicial response was
swift. A little over a year later, in June 1996, the Tokyo District Court announced a decision
ordering the metropolitan government to open its files. Despite the presence of a new reformist
governor, senior officials of the Tokyo government set the agenda one more time. Rather than
follow the court order, Tokyo filed an appeal to the Tokyo High Court seeking a reversal of the
order to disclose.89 (Under Japanese procedure, district court orders are generally unenforceable
pending the result of such an appeal.) The new governor was duly roasted in the press. Due to
this and other disappointments, Aoshima lost his image as a reformer. When re-election time
came around in 1999, Aoshima announced that he had had enough and would not run.

Meanwhile, Jiro Asano had the conviction to get ahead of the issue. As noted in the
Asahi report of July 26, he ordered that his government give the citizen ombudsmen more than
they requested. Miyagi prefecture delivered shokuryohi data for the entire government rather
than just the three departments selected. In the face of internal opposition (“In the midst of
litigation, why should he be conducting the very kind of investigation our opponents are

86 “Laundering Japan,” pp. 53-54.
87 Asahi Shimbun, November 25, 1996; President (monthly magazine), February 1997.
demanding?” “What can somebody who just dropped in from the Ministry of Health and Welfare do? The governor is all excited about putting on a performance for some public audience. He won’t defend us.”, he ordered his internal investigation to go forward and for the results to be announced to the public.

On September 25, 1996 Asano took another big step. Together with Governor Hashimoto of Kochi, Asano declared that further use of public money for the entertainment of public officials was prohibited. In one stroke, the ombudsmen achieved their key objective. The entrenched practice of using tax money for entertainment at expensive nightspots was put to a stop—in Miyagi and Kochi. No change had yet taken place in the other 42 prefectures in Japan.

Asano and Hashimoto would be followed in succeeding months by the governors of Hokkaido, Akita, Ibaraki, Gunma, Shiga, and Tokushima. At a press conference held on February 24, 1996, Governor Aoshima of Tokyo belatedly announced that he too would prohibit bureaucrat-to-bureaucrat entertainment “in principle.”

Although the progressive governors began to declare they would ban excessive spending of public money, they were not ready to reveal the secrets of the past. Thus far, even progressive local governments had made only limited disclosure. In response to the ombudsmen’s April 25, 1995 requests, local governments without exception had refused to disclose the identities of persons attending the parties, banquets, and nights-on-the-town. The only break on this front came from Wakayama, which disclosed only the guests’ government agency, not the identities of specific individuals. The Sendai ombudsmen’s suit sought details, especially the names of the partygoers.

The Ombudsmen Movement Expands: Hokkaido as Number One

Because Hokkaido had ranked first in the shokuryohi survey released by the ombudsmen in July, Japan’s northernmost island naturally became a focus of attention. And, according to Sapporo Citizen Ombudsman Kenji Ohta, not only did the prefecture rank highest in total spending, but “details were shocking. Meals priced at more than 20,000 yen per person were standard. Niji-kai (separate drinking parties following dinner meals) were all paid for with tax money. Even beer served at lunch meetings had become standard. Daily life of the officials had drifted far from what people expected. And there were many examples where officials had revised invoices received from restaurants.” Nonetheless, Governor Tatsuya Hori stood behind his staff, declaring not only that Hokkaido practices were no worse than anywhere else, but that his prefecture had adopted tighter procedures than elsewhere precisely to prevent this kind of abuse.

The ombudsmen were unimpressed by this official bravado. In October, investigation of documents received under an information disclosure request revealed a false travel report. Meanwhile, following the ombudsmen’s example, local news reporters obtained expense reports

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90 Asahi Shimbun, August 11, 1995.
91 Mainichi Shimbun, February 24, 1996.
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 the actual number of attendees. Apparently, someone had pocketed the cash for one phantom staff member. Officials initially denied the report, but when confronted with additional proof, admitted that it was true. One member of the Board of Audit resigned to take responsibility.\(^{93}\)

Confronted with these examples and perhaps more, on November 3, Governor Hori switched sides, joining the ombudsmen. He offered a statement of apology to the people of Hokkaido and, following the examples set by Governor Asano of Miyagi and others, announced the prohibition of all official-to-official entertainment. Moreover, he ordered a thorough investigation of improper expenditures.

Ten days later, the investigation identified 138 million yen in false travel expenses. After another week, the investigators announced the discovery of another 805 million yen in improper allowances related to false travel reports. But this was only the start. By February, the amount identified had risen to nearly 2 billion yen. By 1998, the officially recognized amount of falsified expenditures had reached 7.8 billion yen, and according to Ombudsman Ohta, “No one thinks that this is a full clarification of real expenditures.”\(^{94}\)

Although Governor Hori was mistaken in his initial assessment of the state of affairs in Hokkaido, he was not wrong when he suggested that Hokkaido was no different from other prefectures. The Hokkaido investigation provided inspiration for the citizen ombudsmen’s next campaign. The ombudsmen encountered evidence suggesting that falsification of expense reports was widespread. In Miyagi and elsewhere, they had come across expense reports showing unrealistic volumes of alcohol consumed or improbable dates or some other indication that the report had either been inflated to increase the amount reimbursed or falsified completely.

Taking a clue from the revelations pouring out of Hokkaido, the ombudsmen selected a narrow target for their second coordinated nationwide demand for local government files. On January 25, 1996, the citizen ombudsmen filed requests to see the records of travel spending by prefectural auditing staff.\(^{95}\)

Once again, ombudsmen all over the country visited the information windows at their local government offices and examined stacks of expense reports, doing their best to reconstruct actual events from edited documents received in response to information disclosure requests. But this time they had a tougher job. Demanding files to expose the high levels of spending was one thing; proving that expense reports were false and someone had stolen the money or created hidden pools for unauthorized and unrecorded use was something else.

Once they received the reports, the ombudsmen set out to verify the payments. From their offices all over the country, the ombudsmen checked train schedules and contacted hotels and sought to interview prefectural staff and others who might help them confirm actual

\(^{93}\) Ibid., p. 70.

\(^{94}\) Ibid., p. 64.

\(^{95}\) Ibid., pp. 64-96.
expenditures. In their investigation of entertainment spending the previous year, they had found questionable sums and practices, but now they found actual wrongdoing. They discovered that throughout Japan, local officials had adopted a practice of collecting expense allowances for business trips that never took place.96

The ombudsmen were especially shocked to find that many officials claimed to have taken business trips over railroad tracks that had been destroyed in the Kobe earthquake of January 1995. The Tokyo office of the Fukuoka prefectural government stands out. During the period when the Bullet Train was out of action due to the earthquake, Fukuoka officials of the Tokyo office filed claims for no fewer than 37 roundtrips across the broken railway, for approximately 3.4 million yen.97

As a result of the “kan-kan settai” investigation, the citizens ombudsmen were well-known, and the national media followed their moves closely. When the new investigation was announced, it was front page news. As in the kan-kan settai case, progressive and media-sensitive governors decided to conduct investigations of their own. Again, the combined work of the governors and the ombudsmen revealed startling results.

In varying periods from 1992 through 1997, data gathered by the ombudsmen and from newspaper reports indicated that a total of 43.6 billion yen in improper spending had been identified by 25 prefectures. Eighteen prefectures had refused to conduct any internal investigations, contending that no such spending practices had taken place among their employees. Of the 43.6 billion identified, prefectural governments had ordered employees to return no less than 30 billion yen (approximately $250 million). More than 20,000 prefectural employees nationwide had been reprimanded or subject to disciplinary measures.98 Heavy media coverage popularized a new term to describe the practice: kara shutcho, literally “empty business trip,” entered the Japanese vocabulary to describe the collection of expense payments for business trips that never happened.

Results of the Citizen Ombudsmen Campaign

The Law

The primary target of the ombudsmen’s campaign—wrongdoing by public officials—is as likely to elicit a sharply defensive reaction as any issue one could imagine. Newly elected governors like Asano or Aoshima were presented with a critical choice: should they enforce the new disclosure rules or try to protect their staff?

Aoshima toed the officials’ line. Virtually alone among Japan’s local governments, Tokyo took the position that the metropolitan government need not release any information at all regarding entertainment spending. Even Asano, the most prominent pro-disclosure governor in

96 Asahi Shimbun, December 15, 1996.
98 Asahi Shimbun, December 15, 1996.
the country, agreed to a critical limitation on his government’s response, in effect saying, “we’ll tell you how much was spent, but we won’t tell you who was there to spend it.”

The ombudsmen filed suit against both governments. On June 20, 1996, Tokyo District Court ordered Tokyo Prefecture to respond to the ombudsmen’s request, but this order was appealed. Thus the spotlight shifted back to Sendai.

In filings with Sendai District Court, Miyagi Prefecture put forth three grounds to justify the nondisclosure of the names of the officials and others attending the kan-kan settai events: 1) the release of the names and positions of public officials attending these functions would violate their right to privacy; 2) the release of the names of restaurants and details of expenditures would unlawfully disclose confidential business information; and 3) the disclosure of the identities of those attending, the location of the events, and expenditure details would obstruct the proper conduct of administrative duties.

Of these defenses, the most critical concerned the issue of privacy. There is a great fear of government intrusion into private lives in Japan, especially where financial questions are concerned. For decades, the privacy rights of public officials have been a source of controversy. Privacy has been commonly raised as a defense to inquiries into the financial practices of Japan’s elected officials. To this day, all efforts to adopt a national account numbering system similar to the U.S. social security number as a tool to track ownership of financial accounts and ensure the collection of taxes have been blocked.

The information disclosure rules bring the issue of protecting privacy squarely into the spotlight. The U.S. Freedom of Information Act exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”99 The authors of Japan’s information disclosure ordinances were especially sensitive to this concern. All of the ordinances include an exemption to protect privacy and they typically include very broad language. On this issue, the wording of the Miyagi ordinance is identical to Article 5(1) of the Kanagawa ordinance. “Information concerning individuals by which specific individuals are or can be identified” is exempt from disclosure. (The provision then sets forth some limited exceptions, none of which applied in this case. See Appendix II(A).)

Information “identifying specific individuals” was precisely what the ombudsmen sought to reveal. And the release of the names would surely result in serious embarrassment to the persons concerned. As noted in the section on litigation, Japan’s courts have taken a generally pro-disclosure stance in their interpretation of the disclosure ordinances. How would they deal with this very delicate issue?

Like Kanagawa, Miyagi Prefecture has adopted a manual to assist officials in interpreting and applying its information ordinance (joho kokai jimu no sabiki). The Sendai Court looked to this manual for clues in applying the exemption and found a valuable item—a definition for the

99 5 USC Sec. 552 (b)(6).
term “information concerning individuals.” The manual defines this phrase to mean “philosophy, beliefs, mental and physical condition, health records, school records, grades, work history, family details and relations, income, assets, and all other information concerning individuals.”

Citing this definition, the Court announced:

The names and titles of those public officials included in reports created in the course of official duties did nothing more than specify those persons who had executed these public duties, if necessary clarifying the locus of responsibility. They carried nothing more concerning the individual activities or daily lives of these public officials as individuals. Therefore, to such extent, there is no ground to raise the issue of privacy.

The court also considered the right to privacy of non-government guests at the events. The Prefecture argued that the banquets and other events were held in private—there was no public announcement, and, aside from guest lists in official files, there was no means to identify the persons attending these events. The court wasted no time in disposing of these arguments: “The banquets described in the requested documents were not private affairs; the gatherings were sponsored by the prefectural budget….”

What about the identities of non-governmental guests at the events? Citing the purposes clause, the court noted that “…in order for residents to understand prefectural administration, it is necessary to have maximum disclosure of information concerning those charged with prefectural administration as well as those they deal with.” Although it was conceivable that release of information might infringe on the privacy of some officials, the court stated that the prefecture carries a burden of proof to demonstrate that this is the case. The Prefecture had not met this burden.

Thus the Sendai Court joined the mainstream of Japanese courts in seeking to apply the ordinances in a meaningful way. Imposing a burden of proof on the government stresses that disclosure is indeed the general rule and exemptions listed in the ordinance apply only in extraordinary circumstances.

Finally, it is worth noting that the court homed in on the heart of the matter: money. “Residents have an interest to receive as much concrete information as possible in order to guard against the waste of tax moneys.”

Thus the court waived aside all of the prefecture’s defenses and ordered full disclosure. Miyagi Prefecture duly followed this order. The Sendai decision is one of the most influential court judgments since the establishment of Japan’s local information ordinances. This was the first court to face the privacy issue head-on. It delivered a well-reasoned and persuasive judgment that set a standard for courts throughout the country. Although not all courts have followed its example, in succeeding months courts in Tokyo (Tokyo High Court decision,

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100 All quotations from the court decision are from 1575 Hanrei Jiho, 31, 39-40 (Sendai District Court decision, July 29, 1996).
February 27, 1997), Osaka (Osaka District Court, March 25, 1997), Kagoshima (Kagoshima District Court, September 29, 1997), and others chose to require the disclosure of the identities of guests at publicly funded events.

And the courts influenced the legislatures as well. In Miyagi, Tokyo, Iwate, and elsewhere, operating guidelines were revised to indicate that the names and titles of public officials would not be exempt from disclosure. In Saga, Kagawa, Fukuoka, and elsewhere, prefectural assemblies amended the ordinances themselves to achieve the same result. 101

Changes in Administrative Practice: Spending Cuts

Even before achieving their success in the courtroom, the ombudsmen had already obtained concrete results in the form of sharp reductions in questionable expenditures. In April 1997, the Liaison Conference published a study that compared budgeted amounts for shokuryohi spending before and after the ombudsmen commenced their campaign, on a prefecture-by-prefecture basis. The comparison reveals a dramatic decline in budgets from fiscal year 1995 to fiscal 1997.

In 1995, the 47 prefectures budgeted a total of 23.6 billion yen (approximately $200 million). For 1997, this total was reduced to 11.6 billion yen, a drop of 12 billion yen, or nearly 58 percent. Miyagi Prefecture stood out with a decline of 75 percent. Several other prefectures declined by more than 70 percent, led by Kochi (84.2 percent down) and Wakayama (80.4 percent down). 102

The travel-spending campaign had a similar impact. As in the case of entertainment expenditures, the ombudsmen compared budgets for fiscal 1995 and 1997 and found a sharp drop in expenditures. Budgeted travel expenses in all prefectural governments declined by 17 billion yen (approximately $150 million).

But the impact of the citizen ombudsmen on local government practices is far greater than even the spending cuts of hundreds of millions of dollars would indicate. As suggested by the Sendai District Court, no issue is more fundamental to citizen oversight than auditing expenditures of public funds. With the arrival of the citizen ombudsmen, Japan’s local governments would have to deal with a true third party audit for the first time.

The information disclosure movement had led to the discovery of systematic falsification of all manner of expense reports, accounts, and other standard documentation, engaged in by many thousands of public employees throughout the country. In accordance with the dictate of a national statute, each local government duly appointed a Board of Audit, but this rule had been...

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101 “Joho Kokai Jorei no Tenkai to Sono Impact” (Developments in Information Disclosure Ordinances and Their Impact), Unpublished memorandum by Professor Masahiro Usaki, April 1999.
102 Declaration of the Liaison Conference of Citizen Ombudsmen, “Calling for Across-the-Board Cuts in ‘Shokuryohi’—considering the prefectural budgets for Shokuryohi for the 1997 fiscal year.” Issued on April 11, 1997, under the name of director Toshiaki Takahashi. (“Shokuryohi no Isso no Sakugen o Motomeru—Todofuken no 97 nendo ’shokuryohi’ no yosan o kangaeru.”)
circumvented. Instead of acting in their stated role to prevent false reporting, the auditors themselves had joined in the practice, systematically falsifying their own expense records and creating pools of cash to be used at their own discretion for unrecorded purposes. Clearly, this practice had become so deeply ingrained that, in their day-to-day work procedures, the creation of false documents had become the standard in government offices throughout the country.

Reform of this practice required the intervention of investigators without a financial interest in the continuation of the existing system. Local information disclosure ordinances had effectively empowered a small number of idealistic attorneys and their allies to achieve this goal.

Conclusion

More than a decade before the Sendai attorneys triggered a national movement, a small group of crusaders in Osaka had already labeled themselves “citizen ombudsmen” and commenced a clean government campaign of their own. The Osaka group was formed in 1980. One of their first tasks was to lobby for the adoption of a disclosure ordinance in Osaka. Once the ordinance was adopted, they filed requests and when these were rejected they filed lawsuits. Two of these cases resulted in landmark decisions handed down by the Supreme Court of Japan in 1994, just as the Sendai attorneys were struggling to make sense of expense reports with key details obscured by heavy black ink.

The Osaka group joined the national “liaison council” and continue their activities with vigor. Members maintain a web site which describes the group’s history and objectives along with news of ombudsmen activities. A recent visit to the web site found the agenda for the Eighth National Citizen Ombudsmen’s Conference, held in Yokohama on the weekend of July 31-August 1, 1999, the Third National Information Disclosure Rankings (from March 1999), and the text of a letter to the governor of Osaka requesting that copy fees for information requesters be reduced from 20 yen to 10 yen per page.104

The web site also noted adoption of the national statute on May 7, 1999 and cautioned visitors that the critical issues going forward include “(1) document administration and maintenance, (2) protecting access by citizens, and (3) expansion of the scope of disclosure (to include special purpose entities, public companies and others) and number of local governments (with disclosure systems).”105

Diet passage of a national law was applauded not only by citizen ombudsmen and other Japanese, but also by the United States government (and undoubtedly other foreign governments as well). Since the early 1990s, the U.S. government included adoption of an information

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104 www.asahi-net.or.jp/~kv6y-frsw/ombudsman/main.htm

105 Ibid.
disclosure law as one of the infrastructural improvements required to make government administration more transparent and allow greater penetration of the Japan market by foreign business organizations.\textsuperscript{106}

By the time this request appeared, domestic political forces had already built up a full head of steam. It probably had little effect on the fate of national legislation. The most influential action taken by the United States occurred in 1966 when Congress adopted the Freedom of Information Act. As we have seen, this example of Americans acting in their own enlightened self-interest inspired a legion of Japanese academics, attorneys, and others to demand a law of their own.

The primary force behind broader access to government files has come from the Japanese people themselves. And just as the success of the “national citizen ombudsmen’s liaison council” could not be foreseen by the framers of the early disclosure ordinances, so it is not possible to predict or measure how far the disclosure movement will go in reshaping the relationships between government and people.

Perhaps the primary question is the relative strength of the officials in power who may wish to keep their files closed versus the people on the outside who seek to gain access. In 1998, Japan took another step toward establishing a more open field of public debate with the adoption of a national statute recognizing incorporated status for non-profit organizations (NPO) engaged in a wide range of public interest activities. The NPO law may be a harbinger to the appearance of better organized and informed citizen groups articulating alternative visions of the public interest and more effectively participating in policy debates of the future.

\textsuperscript{106} See Boling, pp. 4-5, citing various U.S. government submissions to the government of Japan in the context of the “Structural Impediments Initiative” and other trade discussions in the 1990s.
Appendix I(A): Aigawa Dam Case Study

(A request for geologic data related to dam construction results in an appeal to the prefectural Review Board and litigation. The Review Board recommends non-disclosure. The lawsuit is ultimately appealed to The Supreme Court of Japan. Eleven years after the initial request, the Court upheld an order to disclose, creating one of the most important legal precedents established to date.)

Yoichi Esuga calls it “Japan’s first backyard dam.” Driving down a street in central Ibaraki, a city in Osaka prefecture, he points to the horizon and says that the planned location for the dam is right behind the first of the green hills one can see rising up immediately outside of the town. The plan calls for a 82.5 meter high dam that will hold 22.9 million tons of water, flood approximately 92 hectares, and displace 70 homes. Yoichi Esuga’s mission is to stop its construction.

The plan to build a dam was developed after the Aigawa river over-ran its banks during a torrential rain storm some 30 years ago. Sixty people died, and many homes and fields were ruined. The Ibaraki city assembly decided that something had to be done to prevent future floods, so they asked the Osaka prefectural government to construct a dam. The Osaka government immediately began to look for an appropriate place to build. By 1971 they began to do geological tests along the Aigawa River.

Mr. Esuga, who teaches science at a high school in Ibaraki, became interested in the plan to construct the dam after hearing about it from friends in the early 1980s. As a student he was taught the benefits that a dam can bring to a community, but after attending a lecture on the problems caused by dams in other areas of Japan, he began to think that the dam planned for the Aigawa River would be more dangerous than beneficial. Along with some friends and acquaintances he formed a group to research problems caused by dams. This group decided to oppose the construction of the Aigawa dam.

A visit to the future dam site makes it easy to understand the grounds for opposition. The area is known for its many geological faults. As he drives through the mountains Esuga points out the groves of bamboo that grow on the steep slopes—bamboo, he says, thrives in ground that is inherently unstable. There are over ten faults in the area, including an active fault, and some of the faults run beneath the area that will be flooded. The active fault runs through land intended to provide a new home for families to be relocated. The fault line can be clearly seen; nothing lives along this line where the rain has washed away the broken and loose earth. Mr. Esuga claims that the presence of the faults, in combination with unstable geological formations on each side of the dam, mean that the dam could easily be destroyed by an earthquake.
Upriver from the area to be flooded there are several large quarries that drain dust and stone chips into the Aigawa. Mr. Esuga claims that the detritus from these quarries will quickly fill the dam’s lake. He also worries that the water stored by the dam could easily be contaminated by run-off containing pesticides used on golf courses upstream from the dam, making the water unfit for irrigation or drinking. In the area that is to be flooded there is an industrial waste incinerator; unless the ground around it is removed, any dioxins left in the soil will be released into the water. But perhaps one of his most convincing arguments against the dam is simply the undisturbed natural beauty of the river as it flows between its steep banks. During the hot summer children play in the water and men with long bamboo poles dip their lines into shaded pools, patiently waiting for the fish to chase their bait.

Early in 1982, Mr. Esuga’s group requested information regarding plans for construction of the dam from the Osaka prefectural government. At the time, Osaka did not have an information disclosure ordinance. The prefecture refused to disclose anything additional to what had already been released. Later, Esuga’s group submitted a list of fifteen specific locations they felt were problematic; the government’s answer said simply that the results of investigations show that it is possible to build a dam, and that the details are currently under consideration.

Despite this difficulty in receiving information, when Esuga learned that Osaka would adopt an information disclosure ordinance, he was dead set against it. His fear was that the ordinance would exempt documents containing “deliberative information,” the information that the government uses to decide whether or not to pursue specific policies. Without a formal rule exempting this kind of information from disclosure, at least he could try to negotiate informally with officials for the release of selected materials.

When the Osaka Prefecture Public Documents Disclosure Ordinance came into effect on October 1, 1984, it was Mr. Esuga himself who was first in line to use it. That very day he sat down at the information disclosure section’s reception desk and requested information about the dam. The head of dam construction for the northern part of the prefecture and the official in charge of dams in the public works division were called in to hear his request. Mr. Esuga reviewed a catalog of document names, and chose to request 18 files, including a report on the geological characteristics of the area in which the dam was to be built. One week later the relevant agencies contacted him to say that of those 18 files, 14 did not actually exist. He was allowed to see the remaining four documents, including the geological report, but the prefecture had blacked out large portions of each report.

The officials explained the deletions by reference to exemptions set forth in the Osaka ordinance. In particular, they wrote that “the results of the investigation are not yet entirely conclusive, and if this information is to be made public at this time, there is a risk that it will exert a substantial hindrance on the fair and proper conduct of research surveys, planning, and coordination.” Here they relied upon Article 8(4) of the Osaka ordinance, which protects from
disclosure deliberative materials, namely the information and opinions agencies use in forming policy.

Just as Esuga had foreseen, the new “disclosure” ordinance had actually provided a shield against release of the very information he was seeking. He did not understand what “hindrance” might result from disclosure; there had been a great deal of local opposition to the dam. Perhaps the government feared that the release of any data regarding the dam site would further inflame local resistance to its construction. Mr. Esuga decided to appeal the partial disclosure decision to the Osaka Review Board.

After examining Mr. Esuga’s appeal and the documents in question, the Review Board recommended that the information deleted from the geological report should remain undisclosed. Of course, this was exactly the information that Mr. Esuga most wanted to have when he originally made his request. Still not convinced by the prefecture’s reasoning, in June of 1986 he filed an administrative suit with the Osaka District Court seeking reversal of the prefecture’s decision not to disclose information in the geological report.

The decision of the Osaka District Court107, handed down six years after the suit was originally filed, was a complete defeat for Mr. Esuga; the court agreed that release of the geological data might cause confusion and jeopardize the prefecture’s plans to seek the cooperation of local residents. Mr. Esuga’s attorney was so incensed by the court’s lack of consideration for his arguments that he immediately decided to appeal the decision on a pro bono basis.

Two years later, and almost ten years after Mr. Esuga originally requested the geological survey, the Osaka High Court overturned the lower court’s ruling. Distinguishing between the agency’s actual deliberations and the factual material used in the deliberations, the Osaka High Court found the contents of the geological survey to be “…objective and scientific facts that were investigated by experts, along with...scientific analysis of these facts.” The court concluded that “…it is unthinkable that something in the [survey] itself would cause a misunderstanding regarding the execution of research surveys or plans that are associated with the construction of the Aigawa dam.”108 Although the court accepted the prefecture’s claim that the survey was just one part of the ongoing process of the construction of the dam, the court found that the factual nature of the report made it possible to evaluate its content apart from the deliberations for which it had been commissioned. The prefecture appealed to the Supreme Court, which upheld the Osaka High Court’s ruling in April of 1995.109

107 Esuga v. Nakagawa, Governor of Osaka Prefecture, 1463 Hanrei Jiho 52 (Osaka District Court, June 25, 1992)
108 Esuga v. Nakagawa, Governor of Osaka Prefecture, 890 Hanrei Taimuzu 85 at 86 (Osaka High Court, June 29, 1994)
The Osaka High Court’s decision is very similar to the U.S. Supreme Court’s ruling in *EPA vs. Mink*,\(^{110}\) in which members of the U.S. Congress brought suit under the Freedom of Information Act (FOIA)\(^{111}\) to obtain documents pertaining to an underground atomic test. Although the government agency primarily resisted disclosure on the basis that the information was of a kind that fell under the disclosure exemption for matters that are in the interest of national defense or foreign policy, it also claimed that certain documents fell under the deliberative process exemption. The Court pointed out that materials that are part of the deliberative process are exempt “...only insofar as they would not be available by law to a party...in litigation with the agency,”\(^{112}\) and the Court goes on to point out that “memoranda consisting only of compiled factual material or purely factual material contained in deliberative memoranda and severable from its context would generally be available for discovery....”\(^{113}\) The Court ruled that when documents contain factual or investigative material that is separable from matters reflecting deliberative or policy-making processes, the factual material must be disclosed when it is not intertwined with the policymaking processes.

Mr. Esuga’s victories in the Osaka High Court and the Supreme Court narrowed the interpretation of what is deliberative information, and they created an opening, even if only a small opening, for citizens to be given information with which they can make informed decisions about the policies being considered by their local governments. The exception for deliberative information can be found in one form or another in most, if not all, of Japan’s local information disclosure ordinances. By accepting the Osaka High Court’s ruling that factual data cannot be considered to be deliberative information, the Supreme Court effectively rewrote every ordinance in Japan that provides a disclosure exception for deliberative materials.

Mr. Esuga won the battle, but he appears to be losing the war. The Supreme Court’s decision to uphold the Osaka High Court’s ruling was an important victory, yet the final decision came almost ten years after he originally filed suit.

As of this writing, construction of the dam continues at a snail’s pace—the project is now over 30 years old, and no construction has begun on the actual dam. A broad agreement has been reached with the residents of the villages that will be flooded to provide new homes and compensation, but the details have yet to be worked out. The active fault that runs through the new housing site could still cause residents to balk at moving into their new homes if they perceive it to be too dangerous.\(^{114}\) At the point along the river where the dam is to be built there is no sign of it except for a foot bridge built to allow access to the engineers who continue their geological

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\(^{112}\) *EPA vs. Mink*, 93 S.Ct. 827 at 835 (1973).

\(^{113}\) Ibid. at 836.

\(^{114}\) See *Active Fault Under Housing Site Causing Great Concern*, Mainichi Daily News, January 8, 1996, at 12.
tests. The Aigawa River has not caused any more trouble since it over-ran its banks so many years ago, and on a hot summer day it provides a cool refuge to the citizens of Ibaraki.
Appendix I(B): Health Tea Case Study

(A request for chemical content of a food product results in a lawsuit. Three years after the initial request, Tokyo District Court orders disclosure. There is no appeal.)

In the early 1990s, teas such as oolong tea, barley tea, and safflower tea began to fill Japanese store shelves in an already brewed liquid form, packaged in disposable plastic bottles or metal cans. Because these tea drinks are not sweetened and are considered to be all-natural, they were collectively called “health teas,” and they quickly became a popular product. In May of 1991, in the midst of this “health tea” boom, a national daily newspaper published an article under the shocking headline “Agricultural Chemicals in Imported Health Teas.” The item reported that scientists at a Tokyo metropolitan government research laboratory recently had tested “health teas” made from imported ingredients, and had found that they contained a high level of an agricultural pesticide, benzine hexa-chloride, the use of which is banned in Japan.115 Although researchers at the laboratory said that the levels were within acceptable ranges, they expressed concern that daily consumption of the contaminated products could be dangerous.

One month after the article appeared, Mrs. Shizue Aoki happened to be on a tour of the Tokyo metropolitan government’s information disclosure section that was organized by a civic group seeking to broaden knowledge of the government’s information disclosure ordinance. Mrs. Aoki did not have a specific interest in requesting information, but went on the tour out of simple curiosity. As part of the tour, individuals were invited to sit down at one of the reception desks and fill out a request form for documents held by the city government. Having read the Mainichi newspaper article about the pesticide-laced “health teas” the month before, Mrs. Aoki requested information that had not been included in the article: the brand names of the teas along with the amount of pesticide detected in each tea. Her request was accepted without comment at the reception desk, and she expected that she would receive a notice telling her that she could pick up copies of the documents in a couple of weeks.

Ten days later, she received a notice in the mail informing her that the Tokyo health division had decided not to release any of the information requested. The reason was provided in a hand-written statement included with the notice: “The study in question did not investigate all the ‘health teas’ being sold in Tokyo, and the results of the investigation show that the levels [of pesticide] are within the range of the standards set by the Food Hygiene Law. In addition, if the information is disclosed it is recognized that businesses will lose their position in competition or operation of their enterprises or otherwise lose social standing.”

Regarding familiarity with the workings of Japan’s Legal system, Mrs. Aoki is not the typical citizen. In fact, she is employed by the Tokyo Bar Association. Mrs. Aoki is the first to admit that because of her close association with lawyers she might be more willing to pursue legal remedies than the average Japanese housewife; she quickly decided to appeal the decision to Tokyo’s Public Document Release Review Board.

The stage was set for a confrontation. Which would take precedence: the physical health of the public or the financial health of businesses operating in Tokyo?

Mrs. Aoki was assisted by members of the Bar Association in putting together an appeal. She argued first that the exemption did not apply because disclosure would not cause the companies concerned a loss of profit or check their ability to compete. Next, the appeal argued that the presence of the pesticide—even in quantities that are approved by the Food Hygiene Law—put the health of consumers at risk. Therefore the information should be disclosed to protect the public. Like most prefectural rules, Tokyo’s ordinance provides that even though it may result in commercial injury, release of information may be ordered when public health or safety depend on it.

Seven months after submitting her appeal, Mrs. Aoki testified in front of the Review Board regarding her reasons for requesting the brand names of the teas and the amounts of pesticide found. Four months after her testimony, the Review Board sent its recommendation to the governor of Tokyo. The Board concluded that information in the laboratory’s report should be released, but only in a manner where it would not be possible to identify the particular companies that sold the teas. The Board was afraid that disclosure might result in “a concentrated and excessive boycott” of the companies’ products and that this was enough to bar the release of the names of the individual companies that distributed the teas.\footnote{Tokyo Metropolitan Public Document Release Review Board, Report No. 44, July, 1992, page 6.} The governor accepted the Board’s recommendation, and Mrs. Aoki received a report from which liberal portions had been deleted. The information left meant almost nothing to her because she could not tell which teas had high levels of pesticide.

She decided that the principle of human health over corporate health was something worth fighting for, and filed suit with the Tokyo District Court seeking to overturn the Review Board’s decision. Almost exactly one year later the court handed down its decision.\footnote{Aoki v. Suzuki, Governor of Tokyo, 1510 Hanrei Jiho 27, (Tokyo District Court, Nov. 15, 1994).}

It was a clear victory for Mrs. Aoki—the court ruled that the brand names of the teas and the levels of pesticide in the teas must be disclosed. In its opinion, the court outlined a narrow interpretation of the corporate information disclosure exclusion, stating that, “[i]t is not enough that there is only the fear that the disclosure of the information will cause some kind of a disadvantage to the company or its enterprises; it is appropriate to interpret [the exemption] to mean a case in which it is objectively clear that the competitive standing held [by the company] defi-
nently will be damaged by the release of the information. And the judgment whether or not it can be found that through the release of the requested information the competitive standing of the company definitely will be damaged, while naturally differing according to the content of the information concerned, must be made by synthesizing various circumstances, beginning with the content and nature of the information concerned, the company’s business activities, and what kind of meaning [the information] holds in relation to the company’s business activities.”

The court went on to discuss how public knowledge of information about a product’s quality and properties allows consumers to decide which product to purchase, saying that, “[i]f by making public objective information about the qualities and properties of a product it becomes possible for the consumer to compare the qualities and properties of one business’s product with that of another business, and as a result damage is caused to profits or the strength of sales of the product of a specific business, then that comes about because of the differences in the product’s qualities and properties, and the business that placed the product into distribution must resign itself to that result. Accordingly, objective information that relates to a product’s quality and properties is not normally ... the kind of information that will particularly harm the competitive standing held by a business.” The Tokyo government decided not to appeal the decision to a higher court, and the laboratory’s report was released to Mrs. Aoki.

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118 Ibid., p. 33
119 Ibid., p. 34
Appendix I(C): Koshigaya Case Study

(Local citizens oppose construction of a waste incinerator. Requests to review files under the Saitama Information Disclosure Ordinance reveal that the operator of the incinerator has filed forged documentation with the application. Due to this discovery, the application is denied and construction of the incinerator is stopped.)

Koshigaya is a typical bedroom community in the massive urban sprawl surrounding Tokyo. The small city’s population stands at about 300,000, having quadrupled since 1965. Little if any urban planning attended this rapid growth. Open space and farmland were converted to industrial and residential uses; little provision was made for parks and amenities; every year the volume of household and industrial waste increased.

One day in April 1996, a local farmer was surprised to see some workers preparing to install a fire hydrant in the middle of a small, over-grown field. When he asked why a fire plug was necessary in such a place, he was told that an industrial waste incinerator was about to be built on the land. It was the first he had heard of this new neighbor. Word spread quickly.

The field is located in the Odamari section of Koshigaya. Odamari residents were shocked to learn about the planned incinerator. The site is located only 80 meters from a high school and just 200 meters from an elementary school and kindergarten. Their children’s health was at stake.

A special meeting was called by the Odamari community council to discuss the impending arrival of the industrial waste incinerator. The council had very little information. The members decided to send a delegation to visit the headquarters of the company that had bought the land to build the incinerator. When the delegation arrived at the offices of Miki Sangyo in another section of the city, they were shocked again. They found tall piles of rubbish left in the open air along with black smoke spewing from a smokestack, blowing into neighboring houses. It quickly became obvious exactly what kind of business Miki Sangyo was running. They became all the more fearful of the construction of the same kind of incinerator in their own neighborhood.

They were met by the president of Miki Sangyo, who told them not to worry about the mess, that the city administrators had already approved the move of the facility to another section of Koshigaya. The incinerator would be moved to a part of town called Odamari—the president made the mistake of thinking they were just another group of protesters from the immediate neighborhood. After realizing his mistake, he agreed to a formal meeting with the delegation.

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120 According to the Population Census of Japan, published by the Bureau of Statistics, Office of the Prime Minister, the population of Koshigaya in 1965 was 76,571, in 1970 it was 139,368, in 1975 it was 195,917, and in 1980 it was 223,241. The Koshigaya city government’s internet home page states the current population to be 304,104.
He even allowed the Odamari residents to make an audio tape recording of the meeting. He told the group how the company had managed to obtain ownership of the land in their neighborhood. When he explained how city officials had assisted the company in buying the land, he identified specific officials in the city’s bureaucracy. The Odamari residents were shocked yet again. No one from the city had bothered to inform them that they were about to become neighbors with an industrial waste processing facility.

The Odamari citizens took their complaints and the tape of their meeting to the city office where the bureaucrats listened to the tape. They asked permission to make a copy, but admitted to no wrong.

The Koshigaya city government is a very stable institution. The mayor had been in office for 19 years, and officials are secure in their lifetime jobs. These men were not about to reconsider their decision to allow Miki Sangyo to relocate to the Odamari district. With no access to city council meetings or other decision making processes, it is a daunting task to try to influence government policy. But that is exactly what the people of Odamari set out to do.

Their first move was to tell their neighbors to spread the word, to build awareness among neighboring communities, and to try to attract some attention to the problem. Flyers were printed up, and flags and signs stating opposition to the incinerator were placed around the neighborhood. The Odamari council met neighboring councils, demonstrations were planned, and they slowly began to build public awareness about the industrial waste processing facility that was about to be built in the middle of their community.

One day in June 1996, an Odamari housewife, Mrs. Eiko Misaki, attended a meeting held by a Koshigaya citizens group to study the use of information disclosure ordinances. Although Koshigaya itself did not have such an ordinance, the group had asked an expert on the topic, Mr. Nosaka, to tell them how to make disclosure requests. Their initial concern was the safety of school lunches, but because the planned incinerator was attracting so much attention they played the tape of the conversation between the president of Miki Sangyo and the Odamari residents for Mr. Nosaka to hear. After listening to the tape, Mr. Nosaka said that he thought it would be a good problem to attack using Saitama prefecture’s information disclosure ordinance. He had done a study of the way in which waste disposal companies go about applying for a license to operate a new facility, and because it is the prefecture and not the city that ultimately issues the license, he thought that it would be worth the time to make a few disclosure requests to the prefectural government.

Mrs. Misaki was not very excited about the prospect of doing battle with the deeply entrenched city government, but she was intrigued by Mr. Nosaka’s suggestion. She began to think that it might be interesting to ask the government for information about Miki Sangyo—maybe something new would turn up.
A member of the city council who was opposed to the planned incinerator, Mrs. Kato, had already been to the prefectural office to ask what could be done to try to block it. She learned that the prefecture would approve Miki Sangyo’s application only if the company obtained a consent form from each of the immediate neighbors to building site. The Odamari group contacted the three neighbors of the site to ask if they had put their personal name seal on any consent forms. Two told them that they had, but the third, Mr. Kohayakawa, said that he had not put his seal on any consent forms, and that he had not even heard of the plan before the community began to campaign against it. He promised the members of the citizens group that if Miki Sangyo approached him he would refuse to put his name seal on a consent form.

Soon after the information disclosure meeting, Mrs. Misaki and Mrs. Kato went to the prefectural public documents center to request Miki Sangyo’s license application forms. When they explained their request to a staff member at the information section, he called the environmental agency of the prefectural government, and an employee from that division immediately came to meet Mrs. Kato and Mrs. Misaki. They were told that they would have to fill out a form to request the documents, and that a decision on the request would be made within fifteen days.

Soon they went back to the prefectural offices to look at the documents. They were given copies of the plans Miki Sangyo had submitted for the industrial waste facility, and to their surprise, three consent forms, each one bearing the seal of one of the three neighbors to the land on which the facility was to be built. Of course, this was not supposed to be the case. Either Mr. Kohayakawa had lied to them when he said that he had not put his seal on a consent form, or Miki Sangyo had forged his name and personal name seal. When they asked Mr. Kohayakawa about the consent form he showed them samples of his handwriting and samples of his name seal, and it was immediately clear that the consent form had been forged.

Although the forging of the consent form in itself might have put an end to Miki Sangyo’s application to operate the new industrial waste facility, her initial success inspired Mrs. Misaki to make several more requests for documents concerning Miki Sangyo’s operations.

What she learned about Miki Sangyo was far worse than anything the Odamari activists had imagined. In part, the disclosed documents consisted of reports written by environmental agency inspectors going back over several years, along with copies of the instructions issued by the prefecture’s environmental agency to Miki Sangyo, ordering it to clean up its operations. Many of the inspections took place in response to the complaints of neighbors, and while Miki Sangyo did have a license to transport industrial waste, the reports written after each inspection indicate that for years the company had been illegally storing and burning trash at its facilities next to its headquarters in the Shinkawa district of Koshigaya. The reports include photographs

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121 In Japan name seals are used in the same way as signatures are used in the West.
taken by the inspectors showing huge piles of industrial waste along with what appears to be an incinerator.

The documents reveal the prefectural authorities’ frustration with the company. In September of 1993 the prefecture decided that it would not be enough to simply have its inspectors give the company oral warnings; a formal written warning was drafted, and a copy was sent to the mayor of Koshigaya. Copies of all these documents were disclosed in response to Mrs. Misaki’s requests, and she learned that no matter how many times Miki Sangyo was told to change its operations in accordance with the law, it never obeyed, and the transgressions by the company and complaints from its neighbors only grew worse. The company claimed that it was being forced to move from its present location because of the city’s plan to build a public road that would pass through the company’s property, but it seemed that the company was about to lose its license to operate at its existing facilities, and the only way it could stay in business was to move to a new location.

By the middle of August prefectural authorities told the Odamari residents that they would reject the application for the incinerator. The residents had won a clear victory. But Miki Sangyo still owns the land, and there is no guarantee it will not file a new application in the future.

Beginning this autumn Mrs. Misaki will no longer need to depend on the kindness of city officials in order to monitor Miki Sangyo’s plans for the land. Koshigaya now has its very own information disclosure ordinance, passed by the city council earlier this year, and set to come into effect in October, 1999. The mayor who was in office at the time of the fight against the incinerator was voted out of office in the fall of 1997, the new mayor, with a more open administration, has promised that the land will eventually become a public park. Perhaps the people of Koshigaya who fought against the incinerator can claim some measure of responsibility for the new ordinance; their efforts brought attention to information disclosure, and the new mayor may have seen sponsoring the ordinance as a politically timely move. For Mrs. Misaki and her friends, worried about the future of the land, the new ordinance cannot come into effect a day too soon.

122 In an ironic twist, the mayor at the time of the dispute over the industrial waste facility, Mr. Shinichiro Shimamura, built his reputation as a leader in developing community-friendly trash incinerators. The crowning glory of his 19 year long administration was the construction of a trash incinerator that doubles as a power plant. The plant cost 36 billion yen, which was shared by an association of five cities and one township in eastern Saitama prefecture that calls itself REUSE—Shimamura became its president. The plant was built to be kind to the eyes as well as the environment—from the outside it looks like a medieval castle. For more information see “Plant Energizes Waste Disposal,” The Daily Yomiuri, March 8, 1997, p. 11. See also “Saitama-ken Koshigaya-shi, miserarete...gomi ni idomu—umetate shobun zero mokuzen [Koshigaya city, Saitama prefecture, Fascinated, Challenging Trash, Immediate Zero Land-fill Disposal],” Nihon Keizai Shimbun (morning edition), October 6, 1996, p. 27.
## Appendix I(C): Koshigaya Case Study

<table>
<thead>
<tr>
<th></th>
<th>“Aigawa Dam”</th>
<th>“Health Tea”</th>
<th>“Koshigaya”</th>
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<tr>
<td><strong>Topic</strong></td>
<td>Geologic survey report</td>
<td>Chemical composition of food product</td>
<td>Industrial Waste Incinerator</td>
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<td><strong>Information Requested</strong></td>
<td>Survey data related to plans to build a dam</td>
<td>Data concerning use of pesticide in a food product</td>
<td>Application for approval to build incinerator and related documents</td>
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<td><strong>Requester</strong></td>
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<td>Individual</td>
<td>Individual</td>
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<td>June 1991</td>
<td>July 1996</td>
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<td><strong>Local Ordinance</strong></td>
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<td>Tokyo</td>
<td>Saitama</td>
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<td><strong>Government Response</strong></td>
<td>Partial disclosure; key information withheld</td>
<td>Partial disclosure; key information withheld</td>
<td>Disclosure of a large volume of documents satisfying the request</td>
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<tr>
<td><strong>Administrative Appeal</strong></td>
<td>Upheld non-disclosure</td>
<td>Partial disclosure; key information withheld</td>
<td>None</td>
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<tr>
<td><strong>Court Proceeding</strong></td>
<td>Suit filed in Osaka D.C.</td>
<td>Suit filed in Tokyo D.C. November 1992</td>
<td>None</td>
</tr>
<tr>
<td><strong>Final Resolution</strong></td>
<td>April 1995 Supreme court upholds Osaka H.C. decision ordering full disclosure</td>
<td>November 1993 Court orders full disclosure Not appealed</td>
<td>July 1996</td>
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</table>
Appendix II(A): Ordinance Concerning the Disclosure of Public Documents of Kanagawa Prefectural Agencies

(October 14, 1982, Kanagawa Prefectural Ordinance No. 42)

Article 1 (Purpose)

Believing that it is essential to make public documents accessible to the people when promoting a prefectural government that meets the fundamental aim of local self-governance, the purpose of this ordinance is to realize an open prefectural government through greater fairness by clarifying the right to request the inspection of public documents and by establishing provisions necessary to the inspection of public documents, thereby deepening the people’s understanding of their prefectural government and advancing the relationship of trust between the prefecture and its people.

Article 2 (Interpretive Guideline)

Administrative agencies shall interpret and apply this ordinance so as to give full consideration to the right to request the inspection of public documents or to receive copies of public documents. However, the greatest possible consideration must be taken so that information that individuals do not want made public, such as an individual’s confidences or private life, are not carelessly made public.

Article 3 (Definitions)

1) According to this ordinance, “public documents” means those documents and drawings prepared or acquired by administrative agency employees in the course of their official duties, (including those that appear on microfilm), that are under the control of the relevant agency.

2) According to this ordinance, “administrative agency” means the governor, the prefectural assembly, managers of public corporations, the board of education, election administration committees, the personnel commission, members of the audit commission, the regional labor commission, the expropriation commission, the coastal fishing regulatory commission, and the inland fisheries management commission.

Article 4 (Right to Request the Inspection of Public Documents)

Any person who maintains an address, or works or attends school within the prefecture, any legal entity with an office or place of business within the prefecture, and any group, prefectural government or other person with an interest in prefectural administration may request to inspect public documents or to receive copies of public documents.
Article 5 (Public Documents which may be Withheld from Public Disclosure)

I. Administrative agencies may deny the inspection of public documents or the furnishing of copies of public documents in cases in which the recorded information comes within any of the following exceptions:

1) Information concerning an individual (except for information concerning the business of an individual who manages said business) where a specific individual is identified or can be identified. However, the following information is excluded:

   a) Information that is stipulated by law to be available for inspection by any person.
   
   b) Information prepared or acquired for the purpose of public dissemination.
   
   c) Items based upon stipulations in the law such as permits, licenses and notifications, and other information prepared or acquired based upon those stipulations, where it is recognized that disclosure is necessary in order to benefit the public.

2) Information concerning legal entities and other bodies (excluding the national government and regional governmental bodies (hereinafter referred to as “corporations”)), as well as information related to the business of individuals who manage said business, if the corporations or related individuals would clearly be at a disadvantage as a result of disclosure. However, the following information is excluded.

   a) Where it is recognized as necessary to disclose information in order to protect human life or health from ill-effects resulting from the business activities of corporations or individuals.
   
   b) Where it is recognized as necessary to disclose information in order to protect consumers from extreme difficulties related to daily life as a result of the illegal or improper business activities of corporations or individuals.
   
   c) Where the information corresponds with information in sections (a) or (b), and disclosure is recognized as necessary to the public interest.

3) Information which is prepared based upon requests or consultations from agencies of the national government or from other regional public bodies (hereafter referred to as “national or other public bodies”), as well as acquired information acquired from the same, the disclosure of which could significantly harm cooperative relations with national or other public bodies.
4) Information that is related to deliberations, investigations, surveys, or similar matters that occur within prefectural agencies, within or between prefectural agencies, or between prefectural agencies and national or other public bodies, the disclosure of which may cause a significant hindrance to the deliberation, investigation or surveys in question.

5) Information that is related to investigations, audits, management of plans and operation particulars, dispute negotiation policy, schedules for bidding, examination questions, and other information related to the affairs and business of prefectural or national agencies if, beyond the nature of the affairs or business, through disclosure the purpose in the execution of the affairs or business is lost, or the complete execution of the affairs or business is or may be caused significant difficulties thereby.

6) Information in cases in which non-disclosure is deemed necessary in order to prevent crime, to investigate crime, or to protect human life, body, or property, or to maintain other aspects of public safety.

7) Information that is expressly forbidden from being disclosed by law.

II. In cases in which the information delineated in previous paragraphs, as well as information that can be disclosed, is recorded in the same public document, if it is possible to reasonably separate the information that can be withheld from information that can be disclosed without losing the original intent of the request to inspect or be furnished with a copy of said public document, then regardless of the stipulations mentioned in the previous paragraphs, the inspection or furnishing of a copy of that public document must be permitted, excluding the portion containing information that can be withheld.

Article 6 (Procedures for Requesting the Inspection of Public Documents)

Persons (hereinafter referred to as “requesters”) who would request to inspect public documents or who would request to be provided with copies of public documents (referred to below as “inspection requests”) must submit a request form stating the following matters to the administrative agency that controls the public documents that are concerned with the inspection request:

1) The petitioner’s name or other designation, address or office address, and in the case of a legal entity or other body, the name of the representative.

2) The contents of the public documents related to the request for inspection.

3) Other information as stipulated by the administrative agency.
Article 7 (Decisions Concerning Requests to Inspect Public Documents)

1) When there is a request to inspect public documents, an administrative agency must make a decision to accept or to deny the request within 15 days of the date on which the request is made. However, if, for unavoidable reasons, a decision cannot be made within the stated period, a decision may be made after the reasons for not making a decision cease to exist.

2) When a decision has been made in accordance with the previous item, the administrative agency must inform the petitioner of the substance of the decision according to procedures established by that agency.

3) As to the previous section, when the request to inspect or receive copies of public documents is denied, the reason for that denial must be given along with the notification of the determination of the request. In such cases, if it is possible to give the date when the rationale for the rejection will no longer exist, then that date must be stated to the petitioner.

Article 8 (Procedures for Inspecting Public Documents)

1) Based on the provisions of Article 1, when a decision is made to allow the inspection of public documents or to furnish copies of public documents, an administrative agency must, without delay, allow inspection or furnish copies of the concerned documents.

2) If the possibility of staining or damaging a public document exists as the result of making such documents available for inspection, or if there are other appropriate reasons, then, disregarding the provisions of the previous paragraph, a copy of a copy of that public document may be provided for inspection, or copies of duplicated documents may be furnished in place of the inspection of the original document or furnishing of a copy of that document.

Article 9 (Procedures for Requests to Inspect Public Documents in Special Cases)

1) Irrespective of the provisions of Article 6, requests to view public documents may be oral when the requested document is a publication or is some other document that the administrative agency has specified as having been created for the purpose of being made common knowledge.

2) When there is an inspection request that falls under the provisions of the previous section, irrespective of the provisions of Article 7 and Article 1, administrative agencies must promptly allow inspection of the requested public documents or provide copies of the relevant public documents.
Article 10 (Responsibility for Expenses)

The expenses necessary for furnishing duplicated copies of public information (including copies of public documents as stipulated in Article 8, Clause 2) as stipulated in Article 8, Clause 1 and Article 9, Clause 2, must be borne by the petitioner.

Article 11 (Public Document Disclosure Review Board)

1) In cases in which an appeal is filed in accordance with the Administrative Appeals Investigation Law (Law No. 160 of 1962), regarding a decision made according to the provisions of Article 7, an administrative agency must, without delay, and based upon the deliberations of the Kanagawa Prefecture Public Document Disclosure Review Board (hereinafter referred to as the “Review Board”), make a decision on the appeal. This excludes situations in which the appeal is dismissed as unlawful.

2) When it is necessary to investigate a case delegated from the administrative agency to the Review Board, the Review Board may request opinions, explanations, or necessary documents from the petitioner, the staff of the targeted agency, or any other concerned parties.

3) The Review Board members must not divulge secrets that they come to know through their official duties. This also applies to members after they have retired from their official posts.

Article 12 (Users’ Responsibilities)

Persons who inspect public documents or acquire copies of such documents under the terms of this ordinance must use the acquired information in an appropriate manner.

Article 13 (Indexing of Public Documents)

Each administrative agency shall create an index of their public documents and make it available for public inspection at a place designated by the agency.


1) Administrative agencies must devise plans for the maintenance of public documents, facilitation of procedures to access public documents, and other policies necessary to plan fair and efficient management of matters as stipulated in this ordinance.

2) In accordance with the stipulations made in the preceding paragraph, administrative agencies must undertake policies to improve systems pertaining to public document disclosure. When executing these policies, they must consider the opinions of the Kanagawa Prefecture Advisory Council for the Management of Public Document Disclosure.
Article 15 (Announcements of Operation Status)

Administrative agencies shall publicly announce the status of the application of this law on an annual basis.

Article 16 (Affirmative Disclosure)

Administrative agencies shall make affirmative efforts to provide necessary information to Kanagawa residents in order to bring about improvement and fulfillment to their lives.

Article 17 (Coordination with Other Laws)

1) This ordinance does not apply to the inspection, reading, or the issuing of certified copies or abstracts of public documents in cases where, according to provisions of other laws, there is an already determined procedure for such actions.

2) In addition to provisions stated in the previous paragraph, this ordinance does not apply to the inspection or the issuing of copies of public documents that already exist in libraries, museums, art museums, and other similar institutions. Such documents include publications, records, and pictures that are collected, managed, and preserved with the purpose of providing them for the use of residents of the prefecture.

Article 18 (Authorization)

Administrative agencies will determine matters necessary to the carrying out this regulation.

Supplementary Provisions (Enforcement Date and other matters)

1) This ordinance shall be enforced from April 1, 1983.

2) This ordinance applies to the following public documents:

   (i) Public documents that are prepared or acquired on or after the date on which this law is enforced.

   (ii) The following public documents that are prepared or acquired prior to the date on which this law is enforced:

       a) Public documents whose storage term is set at greater than 10 years;

       b) Public documents, other than those under (a), in which information is recorded that has an effect on people’s lives or health, that is related to the preservation of the environment or the protection of consumers and other information of this type
3) The Ordinance concerning the Establishment of Affiliated Agencies (1953 Kanagawa Prefecture Regulation Number 3) is amended in part as follows:

The following is added to the section after the clause on the Kanagawa Prefecture Consumer Injury Relief Committee under the separate listing under Prefectural Governor:

| Kanagawa Prefecture Public Document Disclosure Review Board | Based upon the terms of Article 7 of the ordinance (1982 Kanagawa Prefecture Regulation Number 42) related to the disclosure of the public documents of Kanagawa prefectural agencies, the results of investigative inquiries into statements of dissatisfaction with public agencies shall be reported. | Fewer than 5 people |
| Kanagawa Prefecture Advisory Council for the Management of Public Document Disclosure | The results of investigative inquiries into improvements in the system of public information disclosure and other important matters related to public agencies shall be reported or the comments aired. | Fewer than 20 people |
Appendix II(B): Kanagawa Prefecture Information Disclosure Requests

<table>
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<tr>
<th>Year</th>
<th>Number of People Requesting</th>
<th>Number of Disclosure Requests</th>
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<tr>
<td>1987</td>
<td>104</td>
<td>483</td>
</tr>
<tr>
<td>1988</td>
<td>130</td>
<td>766</td>
</tr>
<tr>
<td>1989</td>
<td>104</td>
<td>482</td>
</tr>
<tr>
<td>1990</td>
<td>102</td>
<td>3,055</td>
</tr>
<tr>
<td>1991</td>
<td>149</td>
<td>1,208</td>
</tr>
<tr>
<td>1992</td>
<td>163</td>
<td>3,416</td>
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<td>1993</td>
<td>200</td>
<td>1,294</td>
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<tr>
<td>1994</td>
<td>245</td>
<td>1,841</td>
</tr>
<tr>
<td>1995</td>
<td>234</td>
<td>10,492</td>
</tr>
<tr>
<td>1996</td>
<td>435</td>
<td>5,611</td>
</tr>
<tr>
<td>1997</td>
<td>772</td>
<td>6,281</td>
</tr>
<tr>
<td>1998</td>
<td>950</td>
<td>5,823</td>
</tr>
</tbody>
</table>

TOTAL 1983-1998 4,154 43,267
### Appendix II(C): Kanagawa Prefecture Prefectural Government Management of Information Disclosure Requests

(1 Disclosure Request=1 Unit)

<table>
<thead>
<tr>
<th>Year</th>
<th>Disclosed</th>
<th>Partially Disclosed</th>
<th>Disclosure Denied</th>
<th>Total Requests</th>
</tr>
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<tbody>
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<td>212</td>
<td>44</td>
<td>6</td>
<td>268*</td>
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<tr>
<td>1984</td>
<td>359</td>
<td>73</td>
<td>24</td>
<td>456</td>
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<tr>
<td>1985</td>
<td>390</td>
<td>86</td>
<td>8</td>
<td>484</td>
</tr>
<tr>
<td>1986</td>
<td>1,212</td>
<td>70</td>
<td>25</td>
<td>1,307</td>
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<tr>
<td>1987</td>
<td>248</td>
<td>121</td>
<td>114</td>
<td>483</td>
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<tr>
<td>1988</td>
<td>370</td>
<td>160</td>
<td>236</td>
<td>766</td>
</tr>
<tr>
<td>1989</td>
<td>401</td>
<td>58</td>
<td>23</td>
<td>482</td>
</tr>
<tr>
<td>1990</td>
<td>2,751</td>
<td>214</td>
<td>90</td>
<td>3,055</td>
</tr>
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<td>1991</td>
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<td>1992</td>
<td>2,956</td>
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<tr>
<td>1993</td>
<td>906</td>
<td>353</td>
<td>35</td>
<td>1,294</td>
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<tr>
<td>1994</td>
<td>965</td>
<td>860</td>
<td>16</td>
<td>1,841</td>
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<tr>
<td>1995</td>
<td>848</td>
<td>9,464</td>
<td>180</td>
<td>10,492</td>
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<td>1996</td>
<td>3,244</td>
<td>2,141</td>
<td>226</td>
<td>5,611</td>
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<td>1997</td>
<td>3,208</td>
<td>2,983</td>
<td>90</td>
<td>6,281</td>
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<td>1998</td>
<td>3,936</td>
<td>1,823</td>
<td>64</td>
<td>5,823</td>
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<td>TOTAL 1983-1998</td>
<td>22,924</td>
<td>19,084</td>
<td>1,253</td>
<td>43,267</td>
</tr>
</tbody>
</table>

PERCENT OF TOTAL

|                  | 53.0% | 44.1% | 2.9% | 100% |

*Includes six requests marked “other.”
Appendix II(D): Kanagawa Prefecture Categories of Information Requests

(1 Disclosure Request=1 Unit)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<tbody>
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<td>Population</td>
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<td>—</td>
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<td>Land/Nature</td>
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<td>Natural Resources/Energy</td>
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<td>4</td>
<td>5</td>
<td>16</td>
<td>35</td>
<td>14</td>
<td>—</td>
<td>79</td>
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<tr>
<td>Health &amp; Hygiene</td>
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<td>325</td>
<td>556</td>
<td>561</td>
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<td>815</td>
<td>359</td>
<td>731</td>
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<td>Social Welfare</td>
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<td>124</td>
<td>173</td>
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<td>Consumer Issues</td>
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<td>—</td>
<td>—</td>
<td>—</td>
<td>1</td>
<td>—</td>
<td>4</td>
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<tr>
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<td>64</td>
<td>65</td>
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<td>Culture</td>
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<td>Fire Prevention/Crime Prevention</td>
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<td>11</td>
<td>20</td>
<td>146</td>
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<td>Urban Infrastructure</td>
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<td>555</td>
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<td>2,032</td>
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<td>27</td>
<td>30</td>
<td>14</td>
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<td>Environment</td>
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<td>180</td>
<td>316</td>
<td>392</td>
<td>356</td>
<td>2,402</td>
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<td>Industry</td>
<td>78</td>
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<td>17</td>
<td>91</td>
<td>132</td>
<td>192</td>
<td>547</td>
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<td>1,360</td>
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<tr>
<td>General Administration</td>
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<td>9,251</td>
<td>2,013</td>
<td>2,329</td>
<td>735</td>
<td>17,781</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>8,509</strong></td>
<td><strong>3,416</strong></td>
<td><strong>1,294</strong></td>
<td><strong>1,841</strong></td>
<td><strong>10,492</strong></td>
<td><strong>5,611</strong></td>
<td><strong>6,267</strong></td>
<td><strong>5,823</strong></td>
<td><strong>43,253</strong></td>
</tr>
</tbody>
</table>
Appendix II(E): Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies Implementation Regulations

Form No. 1 (related to Article 2) (JAS A4 elongated size)
Request for Inspection, etc., of Public Documents

Date:
To: Governor, Kanagawa Prefecture
Postal code: Address:
Name (if corporation or other entity, enter its name and the name of the representative individual): Telephone number:

Pursuant to the provisions in Article 6 of the Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies, the following request is hereby submitted.

Nature of Request:
o Inspection of public documents o Receipt of copies of public documents
o (Mailing is requested.)

Type of person who may request inspection and receive copies of public documents as provided for in Article 4 of the Ordinance:
o Person who maintains an address within the prefecture
o Person who works within the prefecture
(Employer Location)
o Person who attends school within the prefecture
(Name of school Location)
o Corporation or other entity having an office or a branch office within the prefecture
(Name of office Location)
" Other person or entity having any interests in any of the administrative activities of the prefectural government
(Nature of the interest and reason for requesting inspection, etc.:

Nature of the public document requested for inspection, etc.:
(Please describe in a concrete manner the title of the public document or the outline of the subject matter you are interested in knowing so that an appropriate public document/s requested for inspection, etc., can be identified:)
Prefectural office keeping the public document:
(Department name: Section name:)
The fiscal year when the public document was processed:
Description of the public document in the list thereof:
List of Filed Documents: (Name of the file folder:)
List of Documents Kept for 30 Years (10 Years):
(Title of the document:)

Other remarks:
Note: Please enter X marks in o where applicable and fill out (     ) above.
## Appendix II(F): Kanagawa Prefecture Public Document Disclosure Investigation Board

Members List, effective March 31, 1998

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Masao Horibe</td>
<td>Professor, Chuo University, Law Department</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Shigetaka Kobayashi</td>
<td>Professor, Yokohama National University, Engineering Department</td>
</tr>
<tr>
<td></td>
<td>Shiho Kawashima</td>
<td>Attorney, Member of Yokohama Bar Association</td>
</tr>
<tr>
<td></td>
<td>Mitsuo Kobayakawa</td>
<td>Professor, Tokyo University, Law Department</td>
</tr>
<tr>
<td></td>
<td>Jun’ichi Chiba</td>
<td>Professor, Tokyo Metropolitan University, Economics Department</td>
</tr>
</tbody>
</table>
## Appendix II(G): Roster of the 8th Term Kanagawa Prefecture Public Document Disclosure Steering Committee

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yoichiro Osawa</td>
<td>Regular Trustee, Kanagawa Prefecture Nature Conservation Association</td>
</tr>
<tr>
<td></td>
<td>Tatsuo Ono</td>
<td>Senior Managing Director, Kanagawa Prefecture Small Businesses Association</td>
</tr>
<tr>
<td></td>
<td>Goro Kakishima</td>
<td>Managing Director, Kanagawa Prefecture Federation of Chambers of Commerce</td>
</tr>
<tr>
<td></td>
<td>Setsuko Sakatoku</td>
<td>Manager, Kanagawa Prefecture Consumers Groups Liaison Office</td>
</tr>
<tr>
<td></td>
<td>Natsuo Sambe</td>
<td>Professor, Yokohama National University</td>
</tr>
<tr>
<td></td>
<td>Hiroko Shinozaki</td>
<td>Secretary-General, Kanagawa Prefecture Youth Groups Liaison Office</td>
</tr>
<tr>
<td></td>
<td>Takeshi Tanaka</td>
<td>Chairman, Kanagawa Prefectural Government Watch Group OB Club</td>
</tr>
<tr>
<td></td>
<td>Tadakazu Tanaka</td>
<td>Chairman, Kanagawa Prefecture Medical Doctors Association</td>
</tr>
<tr>
<td></td>
<td>Masanori Numao</td>
<td>Attorney at Law, Yokohama Bar Association</td>
</tr>
<tr>
<td></td>
<td>Takanobu Nogami</td>
<td>Secretary-General, Japan Federation of Labor Unions Kanagawa</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prefecture Branch</td>
</tr>
<tr>
<td>Chairman</td>
<td>Naohiko Harada</td>
<td>Professor, Waseda University; Professor Emeritus, Tokyo University</td>
</tr>
<tr>
<td></td>
<td>Shizuo Fujiwara</td>
<td>Professor, Kokugakuin University</td>
</tr>
<tr>
<td></td>
<td>Michiko Masuoka</td>
<td>Member, Kanagawa Prefecture Social Welfare Council Business</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Managers’ Committee</td>
</tr>
<tr>
<td>Vice Chairman</td>
<td>Takehiko Matsuoka</td>
<td>Chairman, Federation of Kanagawa Prefectural High School PTA’s</td>
</tr>
<tr>
<td></td>
<td>Yasukichi Miyagawa</td>
<td>Director &amp; Senior Editor, the Kanagawa Times Nobuteru Moritani</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professor, Sanno University</td>
</tr>
<tr>
<td></td>
<td>Hayao Yamamoto</td>
<td>Mayor, the City of Fujisawa</td>
</tr>
<tr>
<td></td>
<td>Motoko Yukawa</td>
<td>Vice Representative, Kanagawa Women’s Forum</td>
</tr>
</tbody>
</table>

*Names in the order of Japanese alphabet*  
*Roster as of March 31, 1998*
Appendix II(H): Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies Implementation Regulations

Form No. 2 (related to Article 3) (for public disclosure) (JAS A4 elongated size)
Notice of Consent to the Inspection, etc., of Public Documents

Date: __________________
To: Governor, Kanagawa Prefecture

Your request to inspect (to receive copies of) public documents dated _________________ is hereby consented to as follows. Please note, however, that the public document(s) contain(s) a portion(s) which cannot be disclosed.

Should you have any complaint about this Notice, you can file an appeal with the Governor of Kanagawa Prefecture within 60 days of the next day when you were made aware of the contents of this Notice.

Nature of the public document/s requested for inspection, etc.:

Non-disclosable portion/s and reason thereof: (Brief description of the portion/s which cannot be disclosed):

Applicable provisions: Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies Article 5 Item (1) - No. __________

Reason:

* Date and place of inspection (receipt of copies) of public document(s):
Please come to ___________________________________________________________________ between _________ and __________ a.m./p.m. on ________________.

If the above date is inconvenient for you, please notify the team (individual) in charge of this matter by telephone.

Section in charge: Department: Section:
Team (or individual):
Telephone number: Extension:

Note:
1. You must use the information obtained through your inspection (receipt of copies) of the public document(s) properly.
2. The section marked with * above is filled out if we request you to come in to inspect (receive copies of) the public document(s).
3. Please show this Notice to the person in charge of this matter when you inspect (receive copies of) the public document(s).
Appendix II(I): Kanagawa Prefecture Public Documents Disclosure Review Board Regulations  
(March 10, 1983 Kanagawa Prefecture Regulations No. 10)

Article 1 (Purpose)  
These regulations shall set forth the terms of reference, organization, operation, etc., of Kanagawa Prefecture Public Documents Disclosure Review Board established pursuant to the Ordinance concerning the Establishment of Annex Organizations (1953 Kanagawa Prefecture Ordinance No. 5).

Article 2 (Terms of Reference)  
The Kanagawa Prefecture Public Documents Disclosure Review Board (hereinafter referred to as “the Board”) shall, upon referral from administrative agencies, review and consider appeals to decisions made pursuant to the provisions in Article 7 of the Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies (1982 Kanagawa Prefecture Ordinance No. 42) and shall make reports thereof.

Article 3 (Board members)  
3-1 Members of the Board (hereinafter referred to as “the Board Members”) shall be appointed by the Governor from among those individuals who has knowledge and experience in public documents disclosure systems and in local government.

3-2 The term of the Board Members shall be 2 years, provided, however, that the term of substitute members shall be for the remaining term of their predecessors.

3-3 The Board Members may be re-appointed.

Article 4 (Chairman)  
4-1 The Board shall have Chairman, who shall be elected by and from among the Board Members.

4-2 The Chairman shall supervise the Board’s activities and shall represent the Board.

4-3 In case of absence of the Chairman, one of the Board Members appointed by the Chairman in advance shall act on behalf of the Chairman.

Article 5 (Meetings)  
5-1 The Board meetings shall be convened by the Chairman, who shall act as the chairman of the meetings.
5-2 No Board meeting shall be called to order unless the Chairman and two or more Board Members are in attendance.

5-3 Resolutions at the meetings shall require a majority vote by the Board Members in attendance. In case of a tied vote, the chairman of the meeting shall make decisions.

5-4 In case of absence of the Chairman, the Board Member who acts on behalf of the Chairman pursuant to the provisions in Article 4 Paragraph 3 shall be deemed to be the Chairman for the purpose of applying Paragraph 2 of this Article.

Article 6 (General affairs)
General affairs of the Board shall be handled by the Prefectural Residents Department Prefectural Government Information Section.

Article 7 (Delegation)
Any other necessary matters concerning the operation of the Board and with respect to the Board not covered by these Regulations shall be determined by the Chairman in consultation with the Board.

Supplementary Provisions
These regulations shall be effective as of April 1, 1983.
Appendix II(J): Kanagawa Prefecture Public Documents Disclosure Review Board
Review Process Guideline

Established and effective on November 26, 1983
Revised on December 21, 1985

Article 1 (Purpose)
This Review Process Guideline shall set forth matters necessary for the Kanagawa Prefecture Public Documents Disclosure Review Board to review the appeals referred thereto by administrative agencies pursuant to the provisions in Article 7 of the Kanagawa Prefecture Public Documents Disclosure Review Board Regulations (1983 Kanagawa Prefecture Regulations No. 10).

Article 2 (Principle of review of public documents of withheld disclosure)
The review by the Kanagawa Prefecture Public Documents Disclosure Review Board (hereinafter referred to as “the Board”) shall be conducted based on those public documents the request for inspection, etc., of which was denied by administrative agencies pursuant to the provisions in Article 7 of the Ordinance concerning the Disclosure of Public Documents by Kanagawa Prefectural Agencies (1982 Kanagawa Prefecture Ordinance No. 42; hereinafter referred to as “the Ordinance”).

Article 3 (Written explanation of reason for withheld disclosure)
3-1 If the Board receives a referral from an administrative agency pursuant to the provisions in Article 11 Item 1 of the Ordinance, the Board shall request the administrative agency to furnish a written explanation of the reason for withheld disclosure within a reasonable time period.

3-2 Upon receipt of the written explanation of the reason for withheld disclosure set forth in the preceding paragraph, the Board shall send a copy thereof to the respective appellant.

Article 4 (Written opinions on written explanation of reason for withheld disclosure)
4-1 The Board shall request appellants to furnish, within a reasonable time period, written opinions on the written explanations of the reasons for withheld disclosure set forth in the preceding Article.

4-2 Upon receipt of the written opinions set forth in the preceding paragraph, the Board shall send copies thereof to respective administrative agencies.

Article 5 (Hearings of opinions, etc.)
If the Board receives requests from appellants, staff of administrative agencies or other pertinent persons (hereinafter referred to as “the Appellants and Others”) to be given opportunities to make
oral statements of opinions or explanations, the Board must make its best effort to give such opportunities, in addition to the provisions in Article 11 Item 2 of the Ordinance.

**Article 6 (Advisors)**

Should the Appellants and Others request the presence of their advisors in making oral statements of opinions or explanations pursuant to the provisions in the preceding Article or in Article 11 Item 2 of the Ordinance, the Board may accept such presence of such advisors if it deems such request reasonable.

**Article 7 (Number of persons stating opinions, etc.)**

The number of persons making oral statements of opinions or explanations pursuant to the provisions in Article 5 above or in Article 11 Item 2 of the Ordinance shall be 5 or less, including the Appellants and Others, the Appellants’ agents and advisors, provided, however, that the number of 5 may be increased if the Board so deems it necessary.

**Article 8 (Hearings of opinions, etc., by appointed Board Members)**

If it so deems necessary, the Board may have Board Members appointed by the Board (hereinafter referred to as “the Appointed Board Members”) hear the oral statements of opinions or explanations by Appellants and Others given pursuant to the provisions in Article 5 above or in Article 11 Item 2 of the Ordinance, in which case, the Appointed Board Members shall prepare records briefly describing the opinions or the explanations given orally by the Appellants and Others pursuant to the provisions in Article 5 above or in Article 11 Item 2 of the Ordinance, and shall make reports to the Board.

**Article 9 (Hearings of opinions, etc., of the learned and experienced)**

If it so deemed necessary, the Board may hear opinions or explanations of the learned and experienced for specialized matters.

**Article 10 (On-site investigations)**

If it so deems necessary to review the cases referred to it by administrative agencies, the Board may conduct on-site investigations with respect to such cases.

**Article 11 (Closed meetings)**

Meetings of the Board shall not be open to the public.

**Article 12 (Preparation of minutes)**

12-1 The minutes of the Board meetings shall be in summary notes briefly describing the agenda discussed.

12-2 The minutes shall be finalized upon approval of the Board Members attending the respective meetings.
Article 13 (Subsidiary rules)

Any other matters necessary for the Board meetings not covered in this Guideline shall be determined by the Chairman in consultation with the Board.

Supplementary Provisions

This Guideline shall be effective as of November 26, 1983.
Appendix II(K): Twenty Significant Court Decisions Interpreting Information Disclosure Ordinances in Japan

(Cases were selected and original case notes written by Professor Masahiro Usaki.)

1. **Defendant**: Saitama Prefectural Public Document Center

**Subject Matter**: Minutes of an urban planning council meeting
(A request for the release of a portion of the minutes of a meeting of the Saitama Prefecture Local Urban Planning Council concerning plans to construct a garbage incinerator in Fujimi City.)

**Summary**: Saitama prefecture determined that requested documents came within exemptions to disclosure for information that is (1) forbidden to be disclosed by law, and (2) is concerned with administrative operations. Urawa District Court overturned this ruling, deciding that rules adopted by the Council which closed the meeting to the public did not have the effect of exempting minutes of the meeting from disclosure. Denying application of the second exemption, the Court stated that the agency’s subjective judgment alone was not sufficient to place the information within the exempt category of administrative operations; the court required the concrete existence of an objectively clear factor prohibiting disclosure. 35-6 Gyosaishu 699 (Urawa District Court, June 11, 1984).

2. **Defendant**: The Governor of Kanagawa Prefecture

**Subject Matter**: Condominium building plans
(A request for an application for construction and the attached blueprints for a planned condominium building in Zushi City, Kanagawa Prefecture.)

**Summary**: Kanagawa determined that the blueprints were exempt from disclosure under exemptions for personal and corporate information. In the first instance Yokohama District Court dismissed the suit, holding that the plaintiff did not have standing to sue under the Administrative Case Litigation Act due to the absence of a specific legal right relating to the requested documents. On appeal, Tokyo High Court overturned the lower court ruling on the ground that the Kanagawa ordinance establishes a legal right to request the disclosure of documents for each individual resident. On remand, Yokohama District Court held that the governor’s decision to withhold the documents was legal because (1) the architect’s know-how is embodied in the blueprints and their release would be detrimental to the architect (corporate information), and (2) after the sale of the apartments the blueprints would provide the means to identify information concerning individuals. 40-5 Gyosaishu 480 (Yokohama District Court, May 23, 1989). On appeal Tokyo High Court affirmed the lower court’s ruling on the same grounds. 42-5 Gyosaishu 959 (Tokyo High Court, May 31, 1991).

3. **Defendant**: The Governor of Tokyo
Subject Matter: Documents concerning an environmental impact assessment
(A request for materials used in the deliberations of a meeting of the first section of the Environmental Impact Assessment Deliberation Council concerning a Keio Railway construction project)

Summary: Tokyo prefecture withheld the requested files because the Council had passed a resolution to the effect that everything except for a digest of the meeting would not be made public, and therefore the information fell within the disclosure exception for consultative agency information. Tokyo District Court overturned the prefecture’s non-disclosure decision for one part of the deliberative materials, but turned down the appeal for release of documents corresponding to the minutes of the meeting. This was appealed, but Tokyo High Court upheld the lower court’s ruling. 41-9 Gyosaishu 1433 (Tokyo High Court, Sept. 13, 1990)

4. Defendant: The Governor of Osaka Prefecture

Subject Matter: Entertainment expenditures
(A request for documents regarding the governor’s entertainment expenditures in January and March of 1985)

Summary: The governor determined that requested invoices and receipts came within exemptions for corporate information, administrative operational information, survey, research, planning, and coordination information, and personal information. The Osaka Review Board issued a recommendation confirming non-disclosure. Plaintiffs filed suit with Osaka District Court and the Court overturned the non-disclosure decision. The governor’s first appeal was rejected by the Osaka High Court but his appeal to the Supreme Court was successful, resulting in a reversal and remand to the Osaka High Court for further proceedings. On remand the Osaka High Court held that where it was recognized that the expenditure was to be made public, the identity of the governor’s guests’ names should also be disclosed, but in the case of expenses paid for visits with the sick, or supporters or backers, it is permissible to withhold the names of the beneficiaries. 47-6 Gyosaishu 449 (Osaka High Court, June 25, 1996). The case is currently on appeal to the Supreme Court.

5. Defendant: The Manager of the Osaka Prefectural Waterworks

Subject Matter: Expenditures for advisory council meetings
(A request for the release of expenditure vouchers, bills, and expense requests for advisory council meetings held by the Osaka Waterworks division in order to put into operation the Prefectural Waterworks.)

Summary: The Osaka Waterworks denied the request on the ground that the documents came within exemptions for corporate information, investigative research, planning and investigations, and administrative operations. On appeal, the Review Board confirmed this decision. Plaintiffs filed suit in Osaka District Court and the Court invalidated the Governor’s determination and
ordered disclosure. On appeal, both Osaka High Court and the Supreme Court upheld the District Court decision. 48-2 Minshu 255 (Supreme Court, Third Division, Feb. 8, 1994).

6. Defendant: The Mayor of Naha City

Subject Matter: Construction plans for a Self-Defense Force facility
(A request for the release of the notification of construction plans and attached drawings for the Naval Self-Defense Force’s Tactical Submarine Center that were submitted to Naha City’s superintendent of construction by the head of the Naha Self-Defense Facilities Division)

Summary: The mayor of Naha made an initial determination to withhold the requested documents. This was appealed to the Naha Review Board, which recommended disclosure. The mayor reversed his position in accordance with this recommendation, but the Naha Self-Defense Facilities Division submitted a written opposition to disclosure on the ground that the requested documents included confidential national defense information. When the mayor announced he would reject the Self-Defense Force appeal, the state filed suit in Naha District Court seeking an injunction to stop release of the documents and a decision that the requested information was exempt from disclosure.

Naha District Court granted the injunction regarding some of the documents (21 out of 44), but the court dismissed the state’s suit for annulment of the decision to release the information, finding that the suit was not a lawful action to bring under the Administrative Case Litigation Law. 1547 Hanrei Jiho 22 (Naha District Court, March 28, 1995). The Naha Division of the Fukuoka High Court sustained the lower court’s decision. 47-9 Gyosaishu 808 (Fukuoka High Court, Sept. 24, 1996). The suit is currently on appeal to the Supreme Court.

7. Defendant: The Governor of Tochigi Prefecture

Subject Matter: Entertainment expenses
(A request for the release of the Tochigi governor’s expense documents)

Summary: The prefecture released documents indicating the total amount of entertainment expenditures, but did not release an item by item list of expenses or cash ledgers. Utsunomiya District Court upheld the decision not to release on the grounds that the information fell within the personal information and administrative operations exceptions to the disclosure requirement. Tokyo High Court sustained the finding that the information fell under the personal information exception, but ruled that the information did not fall under the administrative operations exception because the impediment to administrative operations was general and abstract, lacking specificity. On appeal by the governor, the Supreme Court partially remanded to the High Court, 1487 Hanrei Jiho 48 (Supreme Court, First Division, Jan. 27, 1994), and on remand the Tokyo High Court largely rejected the plaintiff’s request. (unpublished opinion) The case is currently on appeal to the Supreme Court.

8. Defendant: The Board of Education of Fukuoka Prefecture
**Subject matter:** The number of students dropping out of prefectural high schools
(A request for documents concerning the number of students that dropped out of prefectural high schools and the number of students repeating grades (for each school) during 1985.)

**Summary:** The Board of Education decided not to release the information on the grounds that it came within exemptions for personal information, deliberative and investigative research information, and administrative operations information. Following an appeal to the Review Board, the Board of Education decided to make partial disclosure. Plaintiff filed suit in Fukuoka District Court and the Court annulled the Board’s decision to withhold the documents. On appeal, Fukuoka High Court upheld the lower court ruling. 42-4 Gyosaishu 536 (Fukuoka High Court, April 10, 1992).

9. **Defendant:** The Governor of Tochigi Prefecture

**Subject Matter:** The financial affairs of a private university
(A request for the release of the application for issuance of monetary subsidies and attached documents filed in connection with the granting to Teikyo University of monetary subsidies from Tochigi prefecture.)

**Summary:** The governor released the application itself, but did not release that year’s budget for the university. After appeal to the Review Board the result was changed to the effect that broad categories of the university’s budget for the year would be released, but specific information would be withheld. In response, Teikyo University filed suit in Utsunomiya District Court demanding a temporary injunction stopping release of the information and a decision that the information is exempt from disclosure. The Court granted the injunction, but ultimately held that the information is not exempt. On appeal, the Tokyo High Court upheld the District Court decision. 48-7 Gyosaishu 513 (Tokyo High Court, July 15, 1997). The case is currently on appeal to the Supreme Court.

10. **Defendant:** The Governor of Kyoto Prefecture

**Subject Matter:** Information regarding the selection of a dam site
(A request for the release of a list of proposed locations for the Kamogawa Dam that was submitted to the Kamogawa River Conservancy Council.)

**Summary:** The governor decided that the list fell within the deliberative information exception to the disclosure requirement and should not be released. Plaintiffs filed suit in Kyoto District Court. The Court ruled that the governor’s determination was unlawful and ordered the release of the list. On appeal, Osaka High Court overturned the lower court’s ruling, finding that the list was developed in the context of a government deliberative process, was not dispositive of the issue and therefore non-disclosure was appropriate. 828 Hanrei Taimuzu 179 (Osaka High Court, March 23, 1993). The Supreme Court sustained the ruling below. 1512 Hanrei Jiho 22 (Supreme Court, Second Division, March 25, 1994).
11. **Defendant**: The Osaka Prefecture Election Administration Committee

Subject Matter: Copies of political funding reports
(A request under the Osaka Prefecture Public Documents Disclosure Ordinance to make copies of political funding revenue and expenditure reports)

**Summary**: Under article 21, section 2 of the Political Funds Regulation Law (*seiji shikin kisei ho*), any person may inspect political funding reports. The Prefectural Election Administration Committee denied plaintiffs’ request to make copies of the reports, citing the exemption for information denoted not to be released in a clear statement by a cabinet minister. The Committee’s decision was based on ministerial guidelines concerning the Law which indicated that the making of copies should not be allowed. Plaintiffs’ appeal to the prefectural Review Board was unsuccessful so they filed suit in Osaka District Court demanding disclosure. The Court upheld the Committee’s disposition, but this decision was overturned on appeal to Osaka High Court. The Committee’s appeal to the Supreme Court resulted in reversal of the High Court ruling and reinstatement of the District Court order rejecting the request for copies of the reports. 49-2 Minshu 517 (Supreme Court, Second Division, February 24, 1995).

12. **Defendant**: The Governor of Osaka Prefecture

Subject Matter: Geological investigations of a dam site
(A request for information concerning the prefecture’s plans to build a dam on the Aigawa river, including the results of a geological survey conducted by the prefecture.)

**Summary**: The governor granted partial disclosure of requested documents, but determined that the geological survey fell within the disclosure exception for deliberative process information and withheld the survey. This was appealed to the Review Board, which upheld the governor’s decision. Plaintiff filed suit in Osaka District Court, which also ruled in favor of the governor’s determination. On appeal Osaka High Court overturned the lower court and ordered disclosure, commenting that the information should be released because it consisted of objective and scientific fact and analysis and therefore was not exempt as information concerning a government deliberative process. 890 Hanrei Taimuzu 85 (Osaka High Court, June 29, 1994). The governor appealed to the Supreme Court, which upheld the high court’s ruling (unpublished opinion).

**Note**: This case is described in detail as Case Study Number One in the Appendix to this report.

13. **Defendant**: The Mayor of Higashikurume City

Subject Matter: A student’s cumulative guidance records
(A request by a person for the release of cumulative school guidance records concerning himself.)
Summary: The city’s superintendent of education withheld the requested records on the grounds that the information came within exemptions for personal information and administrative operations information. Following an appeal to the Review Board, the disposition of the superintendent was amended to allow release of one portion (the school registration and other objective written records). Plaintiff filed suit in Tokyo District Court. The Court decided that the exemption for personal information did not apply, however upheld non-disclosure under the exemption for administrative operations. Regarding personal information, the Court stated that even though disclosure might “damage the tranquillity of [the requester’s] private life,” the “privacy-type” exemption of the Tokyo ordinance did not apply. (The Tokyo ordinance exempts from disclosure any information from which a specific individual can be identified and which an individual would not normally want known by others.) Regarding the exemption for administrative operations, the Court held that because disclosure of the information could hinder the smooth and just execution of appropriate school guidance, the Superintendent’s decision to withhold the information was lawful. 1523 Hanrei Jiho 58 (Tokyo District Court, Jan. 1, 1994). On appeal, Tokyo High Court upheld the lower court ruling (unpublished opinion).

14. Defendant: The Governor of Tokyo

Subject Matter: Results of a consumer product safety test
(A request for the brand names of imported teas in which an agricultural pesticide had been detected, and the amounts of pesticide found in each tea.)

Summary: The governor decided not to release the requested information because it came within the exemption for corporate information. This decision was appealed to the Review Board, which recommended partial disclosure, withholding specific brand names. Plaintiff filed suit with Tokyo District Court, which ruled that in order for corporate information to be exempt from disclosure it must be objectively clear that release of the information would harm the competitive standing of the company in question. 1510 Hanrei Jiho 27 (Tokyo District Court, Nov. 15, 1994). The judgment was not appealed.

Note: This case is described in detail as Case Number Two in the Appendix to this report.

15. Defendant: The Governor of Hyogo Prefecture

Subject Matter: Personal medical information
(A request by a married couple for a medical treatment compensation report that was written and sent to the social insurance office by her obstetrician.)

Summary: The governor decided not to release the information because it fell within the personal information exception. On appeal, the prefectural Review Board issued a recommendation supporting the governor’s disposition. Plaintiffs filed suit with Kobe District Court, which rejected the request, holding that a request for information that concerns the requesters themselves does not come within the scope of the information disclosure system. On
appeal, Osaka High Court overturned the district court’s ruling and ordered disclosure on the
ground that release of information about oneself would not be a violation of privacy and there-
fore such information is not exempt from disclosure. 47-9 Gyosaishu 957 (Osaka High Court,
Sept. 27, 1996). This case is currently on appeal to the Supreme Court.


Subject Matter: Corporal punishment in schools
(A request by a mother for the release of a report entitled “Concerning Complaints by Mothers on
the Use of Corporal Punishment” that was submitted by an elementary school principal to a
member of the ward’s board of education)

Summary: The ward mayor denied the request on the grounds that (1) it was not possible to
confirm the existence or non-existence of corporal punishment, (2) the report was not on corporal
punishment, and (3) the information came within the personal information exemption to disclo-
sure. Plaintiff filed suit and Tokyo District Court, stating that it is appropriate to disclose infor-
mation regarding both children and teachers, ordered disclosure. On appeal, Tokyo High Court
upheld the lower court ruling, holding that the release of the information would not be a violation
of privacy, and therefore it did not fall within the personal information exception to disclosure.
50-1 Kominshu 85 (Tokyo High Court, March 12, 1997).

17. Defendant: The Governor of Miyagi Prefecture

Subject Matter: Government expenses for food and drink
(A request for information concerning government expenditures for food and drink from April
1993 to November 1994.)

Summary: The governor withheld information concerning advisory committee goals and pur-
poses, guests, and places of meetings on the grounds that it came within the personal information,
corporate information, and administrative operations information exemptions to disclosure.
Sendai District Court ordered disclosure, commenting that as much of the information as pos-
sible should be released because it tended to clarify the responsibilities of public officials in
connection with the performance of official duties. This included the identities of participants in
the events. 1575 Hanrei Jiho 31 (Sendai District Court, July 29, 1996). This decision was not
appealed.

Note: This case is described in detail in Part II of this report.

18. Defendant: The Governor of Miyazaki Prefecture

Subject Matter: Third sector company personnel and accounts information
(A request for materials regarding a shareholders meeting of the third sector company Phoenix
Resort KK. that were sent to the Miyazaki prefectural government, which is a shareholder of the
company.)
Summary: The governor withheld some requested documents on the grounds that the personnel files concerning directors and auditors and part of the business report fell within personal information and corporate information exemptions to disclosure. On appeal, the Review Board recommended expanding the scope of disclosure. Plaintiff then filed suit requesting disclosure of the remainder of the materials. Miyazaki District Court ordered partial disclosure of the withheld portions, including a proposal for dealing with losses. 1628 Hanrei Jiho 12 (Miyazaki District Court, Jan. 27, 1997). On appeal, Fukuoka High Court upheld the lower court’s ruling (unpublished opinion). The case is currently on appeal to the Supreme Court.

19. Defendant: The Governor of Mie Prefecture

Subject Matter: Industrial waste processing facility
(Documents related to an application for a permit to operate a waste processing company and a notification concerning the establishment of an industrial waste processing facility)

Summary: The governor withheld certain documents on the grounds that they came within exemptions for personal information, corporate information, and information concerning the execution of business and operations. Plaintiff filed suit in Tsu District Court, which ordered disclosure on the ground that the information concerned local welfare and disclosure could safeguard human life and health. (unpublished opinion).

20. Defendant: The Governor of Kagoshima Prefecture

Subject Matter: Government food and drink expenses
(A request for documents concerning spending on food and drink during 1994 and 1995 for the prefectural government’s secretarial division, the public finance division, and the prefecture’s Tokyo office.)

Summary: The governor determined that certain portions of the requested information, including the names of attendees at various events came within exemptions for personal and corporate information. Plaintiffs filed suit in Kagoshima District Court and the Court ordered release of the names of public officials and advisors attending these events, reasoning that if from the objective nature of the information there would be no harm to a person’s privacy the information would not fall within the personal information exception to the disclosure rule. The names of banks used by creditors, classifications of deposits, and bank account numbers were held to be exempt from disclosure as corporate information. 173 Hanrei Chiho Jichi 9 (Kagoshima District Court, Sept. 29, 1997). The case is presently on appeal to Kagoshima High Court.