

● Major Decisions

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| Case No | 88Hun-Ma22 |
| Case Name | Forests Survey Inspection Request case |
| Decision Date | 1989/11/04 |
| KCCR | 1 KCCR 176 |
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Forests Survey Inspection Request case,
1 KCCR 176, 88Hun-Ma22, September 4, 1989

A. Background of the Case

Even before the enactment of the Disclosure of Information Act, this case established for the first time that the right to know included the right to request disclosure of information held by the administrative agencies and confirmed a constitutional obligation of the state or local governments to comply with a citizen's legitimate request for information.

The complainant found that the land inherited from his father immediately after the Korean War became the state's property without his knowledge. In order to recover the title to the land, he repeatedly requested the respondent Supervisor of County of Ichon of the Kyong-ki Do (Province) for inspection and duplication of the old forests title records, private forests use surveys, land surveys, and land tax ledgers kept by the County. The respondent did not take any action on the land surveys and private forests use surveys. The complainant brought a constitutional complaint against this inaction for violating his right of property.

B. Summary of the Decision

The majority opinion of eight justices explicitly recognized the right to know and held that the complainant's inaction on the petitioner's request for inspection and duplication unconstitutionally violated this right.

Freedom of speech and press guaranteed by Article 21 of the Constitution envisages free expression and communication of ideas and opinions that require free formation of ideas as a precondition. Free formation of ideas is in turn made possible by guaranteeing access to sufficient information. Right to access, collection and processing of information, namely the right to know, is therefore covered by the freedom of expression. The core of right to know is people's right to know with respect to the information held by the government, that is, general right to request disclosure of information from the government (claim-right).

Right to know is given effect directly by the Constitution without any legislation implementing it. Therefore, if the complainant requested disclosure of information with legitimate interest in it, and the government failed to respond without any review, his freedom of speech and press, or freedom of expression of Article 21 or its component, right to know, was abridged.

However, the right to know is not absolute, and can be reasonably restricted. The limit on the extent of restriction must be drawn by balancing the interest secured by the restriction and the infringement on the right to know. Generally, the right to know must be broadly protected to a person making the request with interest as long as it poses no threat to public interest. Disclosure, at least to a person with direct interest, is mandatory.

In this case, the requested estate records have not been classified as secret or confidential and its disclosure does not implicate invasion of another's privacy. There is no reason for insisting non-disclosure of the requested documents themselves, or statutes or regulations. Therefore, the government's inaction on the complainant's request breached his right to know.

Justice Choe Kwang-ryool dissented on grounds that the complainant had a right to inspect and duplicate the above documents under Article 36 (2) of the Governmental Records rules (Presidential decree no. 11547) and had not first exhausted the procedures for judicial review of administrative inaction available to him on that matter.

C. Aftermath of the Case

Major newspapers generally praised the case for evincing the Court's commitment to active protection and promotion of people's rights until the then draft of the Disclosure of Information Act is actually enacted. On September 5, 1989, *The Dong-A Ilbo*, signified the case as proposing a clear standard on the scope and limit of disclosure that should be included in the Disclosure of Information Act, thereby precluding unconstitutional elements in advance. *The Hankyoreh Shinmun* on September 6, 1989 hailed it as the first case providing affirmative interpretation of the right to know as a **claim-right** and an important progress in light of the past laws related to press and publication.

Academic opinions were balanced. Some found the case rich in the justices' commitment to protection of basic rights but lacking in support of an established, constitutional theory. Others found it logically problematic in deriving from a liberty-right (freedom of speech and press) a much broader claim-right (right to know). Yet others praised it both for its revolutionary holding and an excellent reasoning.

The Court reconfirmed its position on the issue of the right to know in another case decided on May 13, 1991 (CC 90Hun-Ma133, the **Records Duplication Request** case). In this case, the Chief of the Uijongbu Branch of the Seoul Prosecutor's Office refused to allow a former defendant in a criminal trial to inspect and duplicate the records of the concluded trial. The Court found it unconstitutional.

In the wake of a series of constitutional cases concerning the right to know, the National Assembly enacted the Act on Disclosure of Information by Public Agencies on December 31, 1996 (Act 5242, effective January 1, 1998) that specifically recognized the right to request disclosure of information.

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