

《Summary》

Between “the Right to Know of the People” and “Accountability of the Government”

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This article examines the purpose of the Act of Freedom of Information (hereafter “the Act”) by exemplifying the in camera inspection for the lawsuits on disclosure of administrative documents. Whereas the explicit purpose of the Act is “to achieve accountability of the Government to the citizens”, the implicit purpose is said to realize the right to know of the people.

On 15 January, 2009, the Supreme Court held that it could not use in camera inspection for the lawsuit of disclosure of administrative documents. The Court said that the in camera inspection was inconsistent with the basic principles of civil procedure that the party should examine and impeach the evidence. In addition, the in camera inspection is not permissible because the Act did not provide any provisions about the inspection after discussing its possibility.

The concurring opinion by two Justices clearly mentioned the right to know as the foundation for justifying the in camera inspection. The right to know, which is implicit under the Act, will support in camera inspection. It also leads the impartial and just lawsuit by examining the accurate evidence, which ensures the appropriate responsibility of the administration and more accountability of the government.

The article considers several possible challenges for justifying in camera inspection when there is no explicit provision under the Act. The first is how to interpret the original intent of the Act and whether the Court itself can expand its scope of the judicial review by using in camera inspection. The second is how to interpret the public trial provision of the article 82 of the Constitution. The final one relates the right to access to the Court. Considering the concurring opinions, the article implies that these constitutional issues do not necessarily prevent in camera inspection and will reinforce both the right to know of the people and accountability of the government.