MAY 12 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina'Bente Singko na Lihesluran Guåhan
Twenty-Fifth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 53 (COR), "AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND TO ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS "THE SUNSHINE REFORM ACT OF 1999"", which I have signed into law today as Public Law No. 25-06.

The first "freedom of information" legislation passed by the government of Guam was introduced by myself and passed in the Eighteenth Guam Legislature. I have always been a proponent of open government.

This legislation includes provisions specifying that requests for information from the government may be made by e-mail. It also shortens the response time of government agencies to respond to "freedom of information" requests from the current 10 days to 4 days. Finally, the bill shifts the determination of specific items which are releasable to the public to i Liheslatura, through public hearing, and legislative action, after 150 days.

Guam's prior Sunshine law does not prohibit requests for public information through e-mail. An e-mail request would most certainly be a request in writing. Although most government agencies can handle e-mail requests for information, they may not be able to respond back to the
requester with the information through e-mail. To the extent that this is possible, e-mail requests and responses can be entertained.

The shortening of response time of requests for information from the usual 10 days to 4 days is certainly desirable. For simple matters, this is very achievable, and 4 days response time will speed up the process. For complicated or lengthy requests, 4 days will not be adequate.

I Liheslatura should have included in this legislation the necessary policy guidelines to be applied to the release of all information of the government. It is not productive to require agencies to make up lists of specific items, after a bill is passed, and attempt to justify the inclusion of each of the the specific items as releasable or non-releasable to i Liheslatura in a collection of public hearings. Adequate guidelines for non-releasable items should have been included in this current legislation, prior to its passage, rather than contemplating "remedial legislation" before the bill is even passed.

Very truly yours,

Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment:  copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
Legislative Secretary
April 30, 1999

The Honorable Carl T.C. Gutierrez
I Maga’lahen Guåhan
Ufisinan I Maga’la hi
Hagåtña, Guam 96910

Dear Maga’la hi Gutierrez:

Transmitted herewith are Substitute Bill Nos. 53 (COR) and 134 (COR) which were passed by I Mina’Bente Singko Na Liheslaturan Guåhan on April 28, 1999.

Sincerely,

JOANNE M.S. BROWN
Senator and Legislative Secretary

Enclosure (2)
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA’LAHEN GUAHAN

This is to certify that Substitute Bill No. 53 (COR), "AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND TO ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS "THE SUNSHINE REFORM ACT OF 1999," was on the 28th day of April, 1999, duly and regularly passed.

ANTONIO R. UNPINGCO
Speaker

Attested:

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga’lahen Guahan this 28th day of APRIL, 1999, at 5:46 o’clock P.M.

For Herman C. Flores
Assistant Staff Officer
Maga’lahi’s Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga’lahen Guahan

Date: 5-12-99
Public Law No. 25-06
AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND TO ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS "THE SUNSHINE REFORM ACT OF 1999."
BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. I Lihesluran Guåhan finds that:

(1) public access to information is a fundamental right of citizens and a necessity for an informed electorate, and the denial of that information to citizens and the media is therefore not acceptable in the government of Guam;

(2) the Sunshine Act of Guam and the Federal Freedom of Information Act have been valuable means through which any citizen can learn how the government operates;

(3) those same acts have led to the disclosure of waste, fraud, abuse and wrongdoing in the government, locally and nationally;

(4) while few requests for public information are filed in government of Guam agencies by the public and the media, those requests are not fulfilled as quickly or as often as possible;

(5) government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) government agencies should use new technology to enhance public access to agency records and information.

I Lihesluran Guåhan therefore intends to:

(1) foster democracy by ensuring public access to agency records and information;
(2) improve and expedite public access to agency records and information;

(3) shorten statutory time limits for agency response to requests for public information and ensure compliance with those statutory time limits; and

(4) maximize the usefulness of agency records and information by taking advantage of computer technology.

Section 2. Article 1 of Chapter 10 of Title 5 of the Guam Code Annotated is hereby repealed and reenacted to read as follows:

"ARTICLE 1.

SUNSHINE LAW.

Section 10101. Short Title.
Section 10102. Definitions.
Section 10103. Right of Inspection of Public Documents.
Section 10104. Electronic Communications.
Section 10105. Efficient Disclosure of Records.
Section 10106. Posting Guidelines.
Section 10107. Annual report.
Section 10108. Limitation on Right of Inspection.
Section 10109. Disclosure to Proper Officials.
Section 10110. Purpose of Request Irrelevant.
Section 10111. Court Proceedings.
Section 10112. Penalties for Nondisclosure.
Section 10113. Judicial Records.
Section 10101. Short Title. This Chapter shall be known, and may be cited, as the 'Sunshine Reform Act of 1999.'

Section 10102. Definitions. As used in this Chapter:

(a) 'Agency' means any authority of the government and includes a department, institution, board, bureau, commission, council, committee of Guam government, branch, autonomous instrumentality, public corporation funded by public taxes or funds, or other public entity of the government of Guam, whether or not it is within or subject to review by another agency.

(b) 'Director' means the person directly responsible for overseeing the daily operations of an agency, or the person serving in an acting capacity as director at the time of any request for copies of public records.

(c) 'Person' includes any natural person, corporation, partnership, limited liability company, firm or association.

(d) 'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency in any format, including an electronic format.

Section 10103. Right of Inspection of Public Documents.

(a) Every person has the right to inspect and take a copy of any public document on Guam, except as otherwise expressly
prohibited in law, and except as provided in §10108 of this Chapter.

(b) Public records are open to inspection at all times during the office hours of the agency and every person has a right to inspect any public record, except as hereafter provided. Any segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(c) Except with respect to public records exempt from disclosure by express provisions of the law, each agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided, unless impracticable to do so.

(d) Each agency, upon a request for a copy of public records shall, within four (4) working days from receipt of the request, comply with the request if the records requested are disclosable public records in the possession of the agency. If the records being requested partially contain information exempted from disclosure by this Chapter or by another law, the agency shall redact the exempt information only and release the non-exempt information in the records, citing the exemptions in law.
that require the information to be redacted. If the records in whole contain information not disclosable by this Chapter or another law, and contain no information that can be released, the agency shall notify the person requesting the records within four (4) working days from receipt of the request, and cite the exemptions in law that prohibit disclosure of the records.

(e) In unusual circumstances, the time limit prescribed in this Section may be extended up to ten (10) days, including Saturdays, Sundays and legal holidays, by written notice by the director of the agency or the director's designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. As used in this Section, 'unusual circumstances' means:

(1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) the need to search for, collect and appropriately examine more than ten (10) separate and distinct records which are demanded in a single request, or records that in total, are contained in five hundred (500) or more pages, or contain about two hundred fifty thousand (250,000) words, whichever is more.

Section 10104. Electronic Communications. (a)

An agency shall treat an electronic mail request for public
records the same as it treats paper and oral requests for records. The same deadlines apply to electronic mail requests as other requests, and to ensure that electronic requests are complied with quickly, the agency shall check its electronic mail every work day.

(b) In making any record available to a person under this Chapter, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible in electronic form, through electronic mail or on computer disk.

Section 10105. Efficient Disclosure of Records. (a) To ensure expedient disclosure of records by an agency, the Director of an agency shall require all personnel in charge of receiving any incoming mail, electronic mail, faxed documents or other communications to immediately notify the Director or his designee upon receipt of a request for records under this Chapter.

(b) Upon receipt of a request for records under this Chapter, the Director of an agency or his designee shall immediately assign the request to be fulfilled or responded to by an employee of the agency.

(c) Each agency shall organize paper and computer files so that documents can be retrieved and copied quickly for expedient disclosure of records under this Chapter.
Section 10106. Posting Guidelines. (a) Every agency shall establish written guidelines for accessibility of records and stating the procedures to be followed when making its records available in accordance with this Chapter. The guidelines shall include a mailing address, fax number and electronic mail address to which a person can send requests for copies of public records. The guidelines shall also include the records exempted from disclosure of which the agency is a custodian, as prescribed in Subsection (b) of this Section. A copy of these guidelines shall be posted in a conspicuous public place at the offices of each agency, and a copy of the guidelines shall be available upon request free of charge to any person requesting the agency's records. Each agency shall also make the guidelines and list of disclosable and non-disclosable documents available by computer telecommunications within one (1) year of the effective date of this Chapter.

(b) Every public officer in charge of an agency having custody of records shall, within sixty (60) days after the effective date of this Act, compile a list containing categorized descriptions of all writing in the custody of the agency which said agency considers non-public and non-disclosable as prescribed in §10108 of this Chapter, and submit the list to the Speaker of I Liha-luran Guåhan for approval by I Liha-luran Guåhan. The list for each agency shall be referred by the Rules Committee to the appropriate oversight committees, which shall hold a public hearing on each list before the list is put on I Liha-luran Guåhan's
session agenda for approval. Such approved list shall be used as a guide for determination of non-disclosable records by agency employees and may be amended by I Liheslaturan Guahan at any time. All documents not included on this list shall be considered public writings. If no such list is promulgated by the agency within (60) days, all documents and records shall be public unless non-public and non-disclosable pursuant to §10108. If a list is not approved by I Liheslaturan Guahan within ninety (90) days of submission thereof, it shall be deemed approved on the expiration of the ninety (90) days.

Section 10107. Annual Report. (a) On or before February 1 of each year, each agency shall submit to the Attorney General of Guam a report which shall cover the preceding fiscal year and which shall include:

(1) the number of determinations made by the agency not to comply with requests for records made to such agency under §10108 of this Chapter and the reasons for each such determination;

(2) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;
(3) the number of requests for records received by the agency and the number of requests which the agency processed;

(4) the median number of days taken by the agency to process different types of requests; and

(5) the number of full-time staff of the agency devoted to processing requests for records under this Section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall make each such report available to the public, including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(c) The Attorney General of Guam shall make each report which has been made available by electronic means available at a single access point. The Attorney General of Guam shall notify the Legislative Secretary of I Liheslaturan Guåhan, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(d) The Attorney General of Guam shall develop reporting and performance guidelines in connection with reports required by this Section by October 1, 1999, and may establish additional requirements for such reports as the Attorney General determines may be useful.
Section 10108. Limitation on Right of Inspection. Except as provided in §10109 of this Chapter, nothing in this Chapter shall be construed to require disclosure of records that are any of the following:

(a) Records pertaining to pending litigation to which the agency is a party, until the pending litigation has been finally adjudicated or otherwise settled.

(b) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General or law enforcement agencies.

Other provisions of this Subsection notwithstanding, law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or related investigation:

(1) The full name and village of residence of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
(2) The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. All information regarding salary, and the name, age, and mailing address of each employee and public official shall be public record.

(d) Information required from any taxpayer in connection with the collection of taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information, except that total amounts of money owed to or owed by a person, and penalties levied against and owed by a person, shall be public information and not exempt from disclosure.

(e) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library
and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this Subsection shall not apply to the records of fines imposed on the borrowers.

(f) Applications filed with any agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, credit unions and insurance companies. The exemption in this Subsection shall not apply to the records of loans or securities issued by an agency, the amount of money or credit issued to a person, information about the purpose and reasons for loans or securities issued by the agency, or identifying information about the person receiving the money or credit, including name, date of birth, occupation and place of residence.

(g) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination. The exemption in this Subsection shall not apply to cumulative test scores on academic tests administered by the Department of Education, but shall apply to individual students’ test scores.

(h) The home address and telephone number of any public official or government employee, unless the public official or employee gives expressed permission to disclose such information. The exemption in this Subsection shall not apply to
information provided by nominated board members, directors and other officials up for confirmation by I Lihteslaturan Guåhan.

Section 10109. Disclosure to Proper Officials. The exemptions of records as prescribed in this Chapter shall not apply to public officials who prior to the adoption of this act had legal access to the records.

Section 10110. Purpose of Request Irrelevant. This Chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

Section 10111. Court Proceedings. (a) Any person making a request in any agency for public records pursuant to §10103 shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of that Section.

(b) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in the Superior Court of Guam to enforce that person's right to inspect or to receive a copy of any public record or class of public records under this Chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the Court with the object of securing a decision as to these matters at the earliest possible time.
Whenever it is made to appear by verified petition to the Superior Court of Guam that certain public records are being improperly withheld from a member of the public, the Court shall order the officer or person charged with withholding the records to promptly disclose the public record or show cause why the person should not do so. The Court shall decide the case after examining the record in camera, papers filed by the parties and any oral argument and additional evidence as the Court may allow. The burden is on the agency to sustain its action. All records shall be presumed public and the burden of establishing that a document or record is private shall be upon the agency or person claiming that the document on record should not be disclosed or inspected.

Except as to cases the Court considers of greater importance, proceedings before the Superior Court, as authorized by this Section, and appeals therefrom, take precedence over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

If the Court finds that the public official’s decision to refuse disclosure is not justified under this Chapter, the Court shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, the Court shall return the item to the
public official without disclosing its content with an order supporting the decision refusing disclosure.

Section 10112. Penalties for Nondisclosure. (a) If the Court finds that the public official’s decision to refuse disclosure is "not" justified under this Chapter, the Court shall order the public official to pay a fine of One Thousand Dollars ($1,000.00). The fine shall be a personal expense for the responsible official and in no way shall the fine be paid by the agency or the government of Guam.

(b) There is created the ‘Government Ethics Fund’ to assist the Guam Ethics Commission in ensuring ethical conduct in the government of Guam. This fund shall "not" be commingled with the General fund and shall be kept in a separate bank account. Any fines collected under Subsection (a) of this Section shall be deposited in the Government Ethics Fund, are appropriated to the Guam Ethics Commission for ethical investigations, audits and analyses of financial disclosure forms. This appropriation is continuous, contingent on the annual submission of a detailed budget to I Liheslaturan Guåhan, not withstanding any other provision of law.

(c) Any officer or employee who acts arbitrarily or capriciously in withholding a public record from a requesting person shall be guilty of a misdemeanor.
(d) The Court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail after initial filing of the complaint pursuant to this Section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the Court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

Section 10113. Judicial records. The provisions of this Chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this Section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of Guam, nor to limit or impair any rights of discovery in a criminal case.”

Section 3. Effective Dates. This Act shall be effective immediately upon its enactment. The existing lists of non-public writings shall remain non-public for one hundred fifty (150) days, or until a new list is promulgated pursuant to this Law, whichever is shorter.

Section 4. Severability. If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.
MINA'BENTE SINGKO NA LIHESLATURAN GUHAHAN
1999 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO IMAGA’LAHEN GUHAHAN

This is to certify that Substitute Bill No. 53 (COR), "AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND TO ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS "THE SUNSHINE REFORM ACT OF 1999," was on the 28th day of April, 1999, duly and regularly passed.

ANTONIO R. UNPINGCO
Speaker

Attested:

JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga'lahen Guahan this 30TH day of April, 1999, at 5:46 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

______________________________
CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date:________________________

Public Law No.________________
AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND TO ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS "THE SUNSHINE REFORM ACT OF 1999."
BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Ilhetsluran Guåhan

finds that:

1. public access to information is a fundamental right of citizens and a necessity for an informed electorate, and the denial of that information to citizens and the media is therefore not acceptable in the government of Guam;

2. the Sunshine Act of Guam and the Federal Freedom of Information Act have been valuable means through which any citizen can learn how the government operates;

3. those same acts have led to the disclosure of waste, fraud, abuse and wrongdoing in the government, locally and nationally;

4. while few requests for public information are filed in government of Guam agencies by the public and the media, those requests are not fulfilled as quickly or as often as possible;

5. government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

6. government agencies should use new technology to enhance public access to agency records and information.

Ilhetsluran Guåhan therefore intends to:

1. foster democracy by ensuring public access to agency records and information;
(2) improve and expedite public access to agency records and information;

(3) shorten statutory time limits for agency response to requests for public information and ensure compliance with those statutory time limits; and

(4) maximize the usefulness of agency records and information by taking advantage of computer technology.

Section 2. Article 1 of Chapter 10 of Title 5 of the Guam Code Annotated is hereby repealed and reenacted to read as follows:

"ARTICLE 1.

SUNSHINE LAW.

Section 10101. Short Title.

Section 10102. Definitions.

Section 10103. Right of Inspection of Public Documents.

Section 10104. Electronic Communications.

Section 10105. Efficient Disclosure of Records.

Section 10106. Posting Guidelines.

Section 10107. Annual report.

Section 10108. Limitation on Right of Inspection.

Section 10109. Disclosure to Proper Officials.

Section 10110. Purpose of Request Irrelevant.

Section 10111. Court Proceedings.

Section 10112. Penalties for Nondisclosure.

Section 10113. Judicial Records."
prohibited in law, and except as provided in §10108 of this Chapter.

(b) Public records are open to inspection at all times during the office hours of the agency and every person has a right to inspect any public record, except as hereafter provided. Any segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(c) Except with respect to public records exempt from disclosure by express provisions of the law, each agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided, unless impracticable to do so.

(d) Each agency, upon a request for a copy of public records shall, within four (4) working days from receipt of the request, comply with the request if the records requested are disclosable public records in the possession of the agency. If the records being requested partially contain information exempted from disclosure by this Chapter or by another law, the agency shall redact the exempt information only and release the non-exempt information in the records, citing the exemptions in law
that require the information to be redacted. If the records in whole
contain information not disclosable by this Chapter or another
law, and contain no information that can be released, the agency
shall notify the person requesting the records within four (4)
working days from receipt of the request, and cite the exemptions
in law that prohibit disclosure of the records.

(e) In unusual circumstances, the time limit prescribed in
this Section may be extended up to ten (10) days, including
Saturdays, Sundays and legal holidays, by written notice by the
director of the agency or the director’s designee to the person
making the request, setting forth the reasons for the extension and
the date on which a determination is expected to be dispatched.

As used in this Section, ‘unusual circumstances’ means:

(1) the need to search for and collect the requested
records from field facilities or other establishments that are
separate from the office processing the request; or

(2) the need to search for, collect and appropriately
examine more than ten (10) separate and distinct records
which are demanded in a single request, or records that in
total, are contained in five hundred (500) or more pages, or
contain about two hundred fifty thousand (250,000) words,
whichever is more.

Section 10104. Electronic Communications. (a)

An agency shall treat an electronic mail request for public
records the same as it treats paper and oral requests for records. The same deadlines apply to electronic mail requests as other requests, and to ensure that electronic requests are complied with quickly, the agency shall check its electronic mail every work day.

(b) In making any record available to a person under this Chapter, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible in electronic form, through electronic mail or on computer disk.

Section 10105. Efficient Disclosure of Records. (a) To ensure expedient disclosure of records by an agency, the Director of an agency shall require all personnel in charge of receiving any incoming mail, electronic mail, faxed documents or other communications to immediately notify the Director or his designee upon receipt of a request for records under this Chapter.

(b) Upon receipt of a request for records under this Chapter, the Director of an agency or his designee shall immediately assign the request to be fulfilled or responded to by an employee of the agency.

(c) Each agency shall organize paper and computer files so that documents can be retrieved and copied quickly for expedient disclosure of records under this Chapter.
Section 10106. Posting Guidelines. (a) Every agency shall establish written guidelines for accessibility of records and stating the procedures to be followed when making its records available in accordance with this Chapter. The guidelines shall include a mailing address, fax number and electronic mail address to which a person can send requests for copies of public records. The guidelines shall also include the records exempted from disclosure of which the agency is a custodian, as prescribed in Subsection (b) of this Section. A copy of these guidelines shall be posted in a conspicuous public place at the offices of each agency, and a copy of the guidelines shall be available upon request free of charge to any person requesting the agency's records. Each agency shall also make the guidelines and list of disclosable and non-disclosable documents available by computer telecommunications within one (1) year of the effective date of this Chapter.

(b) Every public officer in charge of an agency having custody of records shall, within sixty (60) days after the effective date of this Act, compile a list containing categorized descriptions of all writing in the custody of the agency which said agency considers non-public and non-disclosable as prescribed in §10108 of this Chapter, and submit the list to the Speaker of I Liheslaturan Guåhan for approval by I Liheslaturan Guåhan. The list for each agency shall be referred by the Rules Committee to the appropriate oversight committees, which shall hold a public hearing on each list before the list is put on I Liheslaturan Guåhan's
session agenda for approval. Such approved list shall be used as a
guide for determination of non-disclosable records by agency
employees and may be amended by I Liheslaturan Guahan at any
time. All documents not included on this list shall be considered
public writings. If no such list is promulgated by the agency
within (60) days, all documents and records shall be public unless
non-public and non-disclosable pursuant to §10108. If a list is not
approved by I Liheslaturan Guahan within ninety (90) days of
submission thereof, it shall be deemed approved on the expiration
of the ninety (90) days.

Section 10107. Annual Report. (a) On or before February 1
of each year, each agency shall submit to the Attorney General of
Guam a report which shall cover the preceding fiscal year and
which shall include:

(1) the number of determinations made by the
agency not to comply with requests for records made to such
agency under §10108 of this Chapter and the reasons for
each such determination;

(2) the number of requests for records pending
before the agency as of September 30 of the preceding year,
and the median number of days that such requests had been
pending before the agency as of that date;
(3) the number of requests for records received by the agency and the number of requests which the agency processed;

(4) the median number of days taken by the agency to process different types of requests; and

(5) the number of full-time staff of the agency devoted to processing requests for records under this Section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall make each such report available to the public, including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(c) The Attorney General of Guam shall make each report which has been made available by electronic means available at a single access point. The Attorney General of Guam shall notify the Legislative Secretary of I Liheslaturan Guåhan, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(d) The Attorney General of Guam shall develop reporting and performance guidelines in connection with reports required by this Section by October 1, 1999, and may establish additional requirements for such reports as the Attorney General determines may be useful.
Section 10108. Limitation on Right of Inspection. Except as provided in §10109 of this Chapter, nothing in this Chapter shall be construed to require disclosure of records that are any of the following:

(a) Records pertaining to pending litigation to which the agency is a party, until the pending litigation has been finally adjudicated or otherwise settled.

(b) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General or law enforcement agencies.

Other provisions of this Subsection notwithstanding, law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or related investigation:

(1) The full name and village of residence of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
(2) The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime may be withheld at the victim’s request, or at the request of the victim’s parent or guardian if the victim is a minor.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. All information regarding salary, and the name, age, and mailing address of each employee and public official shall be public record.

(d) Information required from any taxpayer in connection with the collection of taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information, except that total amounts of money owed to or owed by a person, and penalties levied against and owed by a person, shall be public information and not exempt from disclosure.

(e) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library
and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this Subsection shall *not* apply to the records of fines imposed on the borrowers.

(f) Applications filed with any agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, credit unions and insurance companies. The exemption in this Subsection shall *not* apply to the records of loans or securities issued by an agency, the amount of money or credit issued to a person, information about the purpose and reasons for loans or securities issued by the agency, or identifying information about the person receiving the money or credit, including name, date of birth, occupation and place of residence.

(g) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination. The exemption in this Subsection shall *not* apply to cumulative test scores on academic tests administered by the Department of Education, but shall apply to individual students' test scores.

(h) The home address and telephone number of any public official or government employee, *unless* the public official or employee gives expressed permission to disclose such information. The exemption in this Subsection shall *not* apply to
information provided by nominated board members, directors and other officials up for confirmation by I Lihesluration Guåhan.

Section 10109. Disclosure to Proper Officials. The exemptions of records as prescribed in this Chapter shall not apply to public officials who prior to the adoption of this act had legal access to the records.

Section 10110. Purpose of Request Irrelevant. This Chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

Section 10111. Court Proceedings. (a) Any person making a request in any agency for public records pursuant to §10103 shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of that Section.

(b) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in the Superior Court of Guam to enforce that person's right to inspect or to receive a copy of any public record or class of public records under this Chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the Court with the object of securing a decision as to these matters at the earliest possible time.
(c) Whenever it is made to appear by verified petition to the Superior Court of Guam that certain public records are being improperly withheld from a member of the public, the Court shall order the officer or person charged with withholding the records to promptly disclose the public record or show cause why the person should not do so. The Court shall decide the case after examining the record in camera, papers filed by the parties and any oral argument and additional evidence as the Court may allow. The burden is on the agency to sustain its action. All records shall be presumed public and the burden of establishing that a document or record is private shall be upon the agency or person claiming that the document on record should not be disclosed or inspected.

(d) *Except* as to cases the Court considers of greater importance, proceedings before the Superior Court, as authorized by this Section, and appeals therefrom, take precedence over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(e) If the Court finds that the public official's decision to refuse disclosure is not justified under this Chapter, the Court shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, the Court shall return the item to the
public official without disclosing its content with an order supporting the decision refusing disclosure.

Section 10112. Penalties for Nondisclosure. (a) If the Court finds that the public official's decision to refuse disclosure is not justified under this Chapter, the Court shall order the public official to pay a fine of One Thousand Dollars ($1,000.00). The fine shall be a personal expense for the responsible official and in no way shall the fine be paid by the agency or the government of Guam.

(b) There is created the 'Government Ethics Fund' to assist the Guam Ethics Commission in ensuring ethical conduct in the government of Guam. This fund shall not be commingled with the General fund and shall be kept in a separate bank account. Any fines collected under Subsection (a) of this Section shall be deposited in the Government Ethics Fund, are appropriated to the Guam Ethics Commission for ethical investigations, audits and analyses of financial disclosure forms. This appropriation is continuous, contingent on the annual submission of a detailed budget to I Liheslaturan Guåhan, not withstanding any other provision of law.

(c) Any officer or employee who acts arbitrarily or capriciously in withholding a public record from a requesting person shall be guilty of a misdemeanor.
(d) The Court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail after initial filing of the complaint pursuant to this Section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the Court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

Section 10113. Judicial records. The provisions of this Chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this Section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of Guam, nor to limit or impair any rights of discovery in a criminal case."

Section 3. Effective Dates. This Act shall be effective immediately upon its enactment. The existing lists of non-public writings shall remain non-public for one hundred fifty (150) days, or until a new list is promulgated pursuant to this Law, whichever is shorter.

Section 4. Severability. If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.
§10101. Short Title. This Chapter shall be known and may be cited as the Sunshine Reform Act of 1999.

§10102. Definitions. As used in this Chapter:

(a) "Agency" means any authority of the government and includes a department, institution, board, bureau, commission, council, committee of territorial government, branch, autonomous instrumentality, public corporation funded by public taxes or funds, or other public entity of the government of Guam, whether or not it is within or subject to review by another agency.

(b) "Director" means the person directly responsible for overseeing the daily operations of an agency, or the person serving in an acting capacity as director at the time of any request for copies of public records.
(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency in any format, including an electronic format.

§10103. Right of Inspection of Public Documents. (a) Every person has the right to inspect and take a copy of any public document on Guam, except as otherwise expressly prohibited in law, and except as provided in §10108 of this Chapter.

(b) Public records are open to inspection at all times during the office hours of the agency and every person has a right to inspect any public record, except as hereafter provided. Any segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(c) Except with respect to public records exempt from disclosure by express provisions of the law, each agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(d) Each agency, upon a request for a copy of public records shall, within 4 working days from receipt of the request, comply with the request if the records requested are disclosable public records in the possession of the
agency. If the records being requested partially contain information exempted from disclosure by this Chapter or by another law, the agency shall redact the exempt information only and release the non-exempt information in the records, citing the exemptions in law that require the information to be redacted. If the records in whole contain information not disclosable by this Chapter or another law, and contain no information that can be released, the agency shall notify the person requesting the records within 4 working days from receipt of the request, and cite the exemptions in law that prohibit disclosure of the records.

(e) In unusual circumstances, the time limit prescribed in this section may be extended up to 10 days, including Saturdays, Sunday, and legal holidays, by written notice by the director of the agency or the director's designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. As used in this section, "unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine more than 10 separate and distinct records which are demanded in a single request, or records that in total are contained in 500 or more pages or contain about 250,000 words, whichever is more.

§10104. Electronic communications. (a) An agency shall treat an electronic mail request for public records the same as it treats paper and oral
requests for records. The same deadlines apply to electronic mail requests as other requests, and to ensure that electronic requests are complied with quickly, the agency shall check its electronic mail every work day.

(b) In making any record available to a person under this Chapter, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible in electronic form, through electronic mail or on computer disk.

§10105. Efficient Disclosure of Records. (a) To ensure expedient disclosure of records by an agency, the Director of an agency shall require all personnel in charge of receiving any incoming mail, electronic mail, faxed documents or other communications to immediately notify the Director or his designee upon receipt of a request for records under this Chapter.

(b) Upon receipt of a request for records under this Chapter, the Director of an agency or his designee shall immediately assign the request to be fulfilled or responded to by an employee of the agency.

(c) Each agency shall organize paper and computer files so that documents can be retrieved and copied quickly for expedient disclosure of records under this Chapter.

§10106. Posting Guidelines. (a) Every agency shall establish written guidelines for accessibility of records and stating the procedures to be followed when making its records available in accordance with this Chapter. The guidelines shall include a mailing address, fax number, and electronic
mail address to which a person can send requests for copies of public records. The guidelines shall also include the records exempted from disclosure of which the agency is a custodian, as prescribed in subsection (b) of this section. A copy of these guidelines shall be posted in a conspicuous public place at the offices of each agency, and a copy of the guidelines shall be available upon request free of charge to any person requesting the agency’s records. Each agency shall also make the guidelines and list of disclosable and non-disclosable documents available by computer telecommunications within one (1) year of the effective date of this Chapter.

(b) Every public officer in charge of an agency having custody of records shall, within sixty (60) days after the effective date of this act, compile a list containing categorized descriptions of all writing in the custody of the agency which said agency considers non-public and non-disclosable as prescribed in §10108 of this Chapter, and submit the list to the Speaker of I Liheslaturan Guahan for approval by I Liheslatura. The list for each agency shall be referred by the Rules Committee to the appropriate oversight committees, which shall hold a public hearing on each list before the Rules Committee puts each list on I Liheslatura’s session agenda for approval. Such list shall be used as a guide for determination of non-disclosable records by agency employees. All documents not included on this list shall be considered public writings. If no such list is promulgated, all documents and records shall be public.
§10107. Annual report. (a) On or before February 1 of each year, each agency shall submit to the Attorney General of Guam a report which shall cover the preceding fiscal year and which shall include:

1. the number of determinations made by the agency not to comply with requests for records made to such agency under §10108 of this Chapter and the reasons for each such determination;
2. the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;
3. the number of requests for records received by the agency and the number of requests which the agency processed;
4. the median number of days taken by the agency to process different types of requests;
5. the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(c) The Attorney General of Guam shall make each report which has been made available by electronic means available at a single access point.

The Attorney General of Guam shall notify the Secretary of I Liheslaturan
Guiåhan, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(d) The Attorney General of Guam shall develop reporting and performance guidelines in connection with reports required by this section by October 1, 1999, and may establish additional requirements for such reports as the Attorney General determines may be useful.

§10108. Limitation on Right of Inspection. Except as provided in §10109 of this Chapter, nothing in this Chapter shall be construed to require disclosure of records that are any of the following:

(a) Records pertaining to pending litigation to which the agency is a party, until the pending litigation has been finally adjudicated or otherwise settled.

(b) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General or law enforcement agencies.

Other provisions of this subsection notwithstanding, law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or related investigation:

(1) The full name and village of residence of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest,
the factual circumstances surrounding the arrest, the amount of bail set,
the time and manner of release or the location where the individual is
currently being held, and all charges the individual is being held upon,
including any outstanding warrants from other jurisdictions and parole
or probation holds.

(2) The time, substance, and location of all complaints or requests
for assistance received by the agency and the time and nature of the
response thereto, including, to the extent the information regarding
crimes alleged or committed or any other incident investigated is
recorded, the time, date, and location of occurrence, the time and date of
the report, the name and age of the victim, the factual circumstances
surrounding the crime or incident, and a general description of any
injuries, property, or weapons involved. The name of a victim of any
crime may be withheld at the victim’s request, or at the request of the
victim’s parent or guardian if the victim is a minor.

c) Personnel, medical, or similar files, the disclosure of which would
constitute and unwarranted invasion of personal privacy. All information
regarding salary, and the name, age, and mailing address of each employee
and public official shall be public record.

d) Information required from any taxpayer in connection with the
collection of taxes that is received in confidence and the disclosure of the
information to other persons would result in unfair competitive disadvantage
to the person supplying the information, except that total amounts of money
owed to or owed by a person, and penalties levied against and owed by a
person, shall be public information and not exempt from disclosure.

(e) Library circulation records kept for the purpose of identifying the
borrower of items available in libraries, and library and museum materials
made or acquired and presented solely for reference or exhibition purposes.
The exemption in this subsection shall not apply to the records of fines
imposed on the borrowers.

(f) Applications filed with any agency responsible for the regulation or
supervision of the issuance of securities or of financial institutions, including,
but not limited to, banks, savings and loan associations, credit unions, and
insurance companies. The exemption in this subsection shall not apply to the
records of loans or securities issued by an agency, the amount of money or
credit issued to a person, information about the purpose and reasons for loans
or securities issued by the agency, or identifying information about the person
receiving the money or credit, including name, date of birth, occupation and
place of residence.

(g) Test questions, scoring keys, and other examination data used to
administer a licensing examination, examination for employment, or
academic examination. The exemption in this subsection shall not apply to
cumulative test scores on academic tests administered by the Department of
Education, but shall apply to individual students’ test scores.

(h) The home address and telephone number of any public official or
government employee, unless the public official or employee gives expressed
permission to disclose such information. The exemption in this subsection
§10109. Disclosure to Proper Officials. The exemptions of records as prescribed in this Chapter shall not apply to public officials who prior to the adoption of this act had legal access to the records. An agency shall allow an inspection or copying of any public record or class of public records when requested by the Attorney General, an assistant Attorney General, or a U.S. attorney.

§10110. Purpose of Request Irrelevant. This Chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

§10111. Court Proceedings. (a) Any person making a request in any agency for public records pursuant to §10103 shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of that Section.

(b) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in the Superior Court of Guam to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.
Whenever it is made to appear by verified petition to the Superior Court of Guam that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to promptly disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties and any oral argument and additional evidence as the court may allow. The burden is on the agency to sustain its action. All records shall be presumed public and the burden of establishing that a document or record is private shall be upon the agency or person claiming that the document on record should not be disclosed or inspected.

Except as to cases the court considers of greater importance, proceedings before the Superior Court, as authorized by this section, and appeals therefrom, take precedence over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

If the court finds that the public official's decision to refuse disclosure is not justified under this Chapter, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

§10112. Penalties for Nondisclosure. (a) If the court finds that the public official's decision to refuse disclosure is not justified under this
Chapter, the court shall order the public official to pay a fine $1,000. The fine shall be a personal expense for the responsible official and in no way shall the fine be paid by the agency or the government of Guam.

(b) There is created the "Government Ethics Fund" to assist the Guam Ethics Commission in ensuring ethical conduct in the government of Guam. This fund shall not be commingled with the General fund and shall be kept in a separate bank account. Any fines collected under subsection (a) of this section shall be deposited in the Government Ethics Fund, are appropriated to the Guam Ethics Commission for ethical investigations, audits and analyses of financial disclosure forms. This appropriation is continuous, contingent on the annual submission of a detailed budget to I Liheslaturan Guåhan, not withstanding any other provision of law.

(c) Any officer or employee who acts arbitrarily or capriciously in withholding a public record from a requesting person shall be guilty of a misdemeanor.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

§10113. Judicial records. The provisions of this Chapter shall not be deemed in any manner to affect the status of judicial records as it existed
immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of Guam, nor to limit or impair any rights of discovery in a criminal case."

Section 3. Effective dates. This act shall be effective immediately upon its enactment.

Section 4. Severability. If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.
Bill No. 53 "An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as "The Sunshine Reform Act of 1999."

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To: Honorable Senator Mark Forbes  
From: Administrator  
Subject: Bill 53  

Thank you for giving us the opportunity to submit comments on Bill 53, AN ACT TO REFORM THE SUNSHINE ACT OF GUAM TO EXPEDITE PUBLIC INFORMATION REQUESTS AND ALLOW ELECTRONIC REQUESTS FOR INFORMATION, TO BE KNOWN AS “THE SUNSHINE REFORM ACT OF 1999.”

Upon the initial enactment of the “Sunshine Act”, the Guam Economic Development Authority did not submit its list of public writings within the time frame allotted due to its lack of knowledge of such after the fact. However, over time the Authority has complied with requests for information. Bill 53 gives the Authority the opportunity to submit its list of public writings. As we speak the Authority has already submitted an updated listing currently being reviewed by Legal Counsel and the subsequent adoption by our Board of Directors. The following is a sectional analysis of the proposed bill.

Section 10102. Definitions. We suggest the following be added.

(e) “Reasonably Described” Records. “A request for information must reasonably describe the records requested.” A description of a record is sufficient if it would enable a professional employee of the agency who is familiar with the subject area of the request to locate the record with a reasonable amount of effort. When a request is received which does not “reasonably describe” the records sought, the requestor should be notified of the defect and offered assistance in reformulating the request.

(f) “Confidential Commercial Information”. “Records provided to the Agency by a submitter that arguably contain information exempt from release under the Freedom of Information Act because disclosure could reasonably be expected to cause substantial competitive harm.”

(g) “Submitter”. “Any person or entity (i.e., limited to, corporations, state governments, and foreign governments) who provides confidential commercial information to the Agency.”

Section 10103. Right of Inspection of Public Documents.
The intent of Bill 53 has its merits, however, we are concerned with the Bill’s attempts to reduce the timeline to provide information. Such attempts will hamper our ability to coordinate and retrieve such information, particularly when we are dealing with voluminous files and records within four (4) days. The ten (10) day turn around time is consistent with federal standards and are not unreasonable.

Section 10106. Posting Guidelines. Sub-section (a) is fine, however Sub-section (b) we suggest that a minimum of 120 days be given to compile the list of public and non-public writings in conjunction with developing the procedures and guidelines as required by the Section. We are currently reviewing the U.S. Small Business Administration’s standard operating procedures on “Disclosure of Information Procedures” and “Privacy Act Procedures”. We intend to develop and model our procedures after the U.S. SBA since our organizations have similar programs.
Section 10108. Limitation on Right of Inspection. sub-section (c) employees “salary” be stricken and instead use the employee’s “grade and salary range”.

Section 10110. Purpose of Request Irrelevant. particularly if the record is otherwise subject to disclosure, however, for requests other than public record should be established in writing as to the purpose.

We thank you for the opportunity to provide the Authority’s comments and hope that you and your esteemed committee members consider the merits of our concerns. Si Yu’os Ma’ase.

cc: Board of Directors
Deputy Administrator
All Division Managers & Supervisors
March 10, 1999

Mr. Mark Forbes
Senator, 25th Guam Legislature
Chairman, Committee on Rules
155 Hesler Street
Hagatna, Guam 96910

Dear Senator Forbes:

I apologize for not being able to personally appear before your Committee to testify on Bill 53. The timing was unfortunate, as I had to be present for a Special Board Meeting scheduled for the same time.

Be that as it may, I am writing to you to expand on the written testimony that was submitted by Mrs. T. Ann Perez. I have been informed that there may have been issues discussed that may not have been clearly presented to you and your colleagues. Particularly, I would like to address the issue on the disclosure of information.

As you may be aware of, the Authority recently opposed a media request for certain loan information. Especially as a former banker, I knew it would be detrimental to the clients we serve. The specific information requested dealt with delinquent customers. Please note that I did not object to disclosing our delinquency ratios and a listing of our loan recipients; however, I did oppose the release of specific information on account names, number of days past due and amounts past due.

With that, the following reasons have been the rationale for the media’s release of confidential information:

1. Publicizing the information will force the borrowers to pay.
2. Since the loans are made from public funds, then the public has a right to know how the money is being used.
3. GEDA did it in the past.
Below you will find my arguments against the release of confidential information:

1. These loans are already difficult loans. If these loans were bankable loans, lending institutions would have granted them the funds and not GEDA. Please keep in mind that the Agency is tasked with the development of small business. Therefore, we also must take into consideration the fact that if the company is having difficulty paying their loan(s), they are at least using their cash to keep their business alive and keeping people employed. Thus, we are more tolerant and work closely with the business in working through their situations. Because of these reasons, GEDA has often been referred to as the lender of last resort.

2. Publicizing the information will do more harm than good, and will definitely not force the borrowers to pay. If the borrowers had the resources, they would have been making payments. But, for reasons such as the economic climate, the competitive environment, low level of capital, etc., borrowers have to manage their cash flow accordingly. As we are here to stimulate small business growth, we recognize these facts and try to be as tolerant as possible, while at the same time protecting the interest of the funds. But, the release of this information would expose critical credit information that will embarrass the company, make them less competitive and ultimately affect their ability to repay the debt.

   For example, if the information is released, the suppliers who provide these businesses with the cheapest source of financing, will terminate their lines of credit and demand payment of cash up front for services or products provided. These vendors/suppliers may even go as far as terminate their relationships. In addition, the individual/company that the business may have provided credit in the form of a receivable will probably delay payments in hopes of either avoiding payment completely or negotiate a discount. Lastly, their customers may seek the services/products from a competitor in fear of not being able to receive it from the company due to its financial situation. Its competitors, on the other hand, will probably go after the delinquent business’s customers passing on the fears of the company’s pending failure to provide services due to its financial situation.

   Suffice it to say, our loan customer whose information is released will, without a doubt, be adversely affected thus raising the probability of failure.

3. Unfortunately, the past Administrator under the prior Administration released this sensitive information to the media for reasons unknown to me. However, as a former banker, I am aware of the danger of doing so. As I mentioned above, releasing this type of information will be more detrimental to a company than most people realize.
I would like to now address the concerns over how the revolving grant funds are used. In order for GEDA to secure any revolving loan funds, we have to develop policies and procedures and underwriting guidelines acceptable to the grantor. We also must demonstrate that we have the internal controls that are adequate and effective to ensure the funds will not be misappropriated. For your information, we have a credit review committee comprised of all the managers that review all loan applications thoroughly. We also have a compliance function that routinely audits the loans to insure that the policies and procedures are being adhered to. Finally, we have external audits performed annually by both the Public Auditor and an independent accounting firm. These audits include a compliance review of our loan portfolio. Any violations/weaknesses identified are noted and cited in our management letter. The final audit reports are submitted to the Governor, the Legislature, the Department of Interior, and any other grantor. To date, there have never been any concerns raised regarding the management of our loan portfolio.

Finally, there are two federal regulations that deal with the disclosure of information. They are the Freedom of Information Act and the Privacy Act. These laws recognize the need for the freedom of information (similar to the Sunshine Act), however they also recognize the importance of keeping certain information confidential. Information specifically cited are those that may cause harm or a competitive disadvantage.

As we have always been considered the local version of the Small Business Administration (SBA), we are working right now to revise our standard operating procedures (SOPs) to pattern it after theirs. This is appropriate as our missions from a lending standpoint are similar and especially since we initially patterned our lending program after theirs. I have attached a copy of SBA’s SOPs and listed below are the sections relative to this issue.

Chapter 1 Subsection 4.c
Chapter 1 Subsection 6.a paragraph 6
Chapter 1 Subsection 6.a paragraph 9.a
Chapter 2 Subsection 10 paragraph 11.D.1.b (iii)
Chapter 2 Subsection 10 paragraph 11.F.1.b

With regard to the time to respond, please make a special note of section 40, no.3, subsection 6. As I mentioned in my previous testimony, I feel the 10 days are not an unreasonable time frame to respond to a request. It allows for an adequate cushion for any unexpected circumstances that may occur. It will also allow time for an adequate review of the information being submitted to ensure the agency has properly complied with the request. To limit the response time to four days will place an undue burden on the agency as all efforts to meet the timeline would have to be taken, including but not limited to the temporary suspension of on-going projects or services.
We, at GEDA, assure you that we make every effort to respond to any and all requests as soon as possible. Suffice it to say, I feel a 10 day response time is not unreasonable and does not place an undue burden on the requestor.

I humbly request your favorable consideration on the issues I have presented. GEDA is an agency that deals with investor confidence. We handle a great deal of proprietary and confidential information that needs to be protected in order to maintain the confidence level. It is imperative that we create regulations both administrative and legislative to maintain this environment. As I mentioned earlier, we would like to pattern ourselves similar to the SBA.

In closing, I thank you for the opportunity to expand on this issues presented. Should you have any questions, please do not hesitate to contact me immediately.

Si Yo'os Maase,

Economic Development Administrator

Attachments

cc: The Honorable Carl T.C. Gutierrez, Governor of Guam
    Senator Alberto A.C. Lamorena III w/attachments
    GEDA Board of Directors
March 9th, 1999

The Honorable Senator Mark Forbes
Minabente Singko Na Liheslaturan Guahan
Chairman of the Committee on Rules, Government Reforms, Reorganization and Federal Affairs

Dear Mister Chairman,

As promised, here are some written remarks concerning the proposed legislation which you authored: Bill #53--The Sunshine Reform Act of 1999.

Hit Radio 100 and I are in favor of this legislation which seeks to include e-mails as legitimate and bona fide requests for information, and in this fast-paced electronic world, it is not unreasonable for the Government of Guam's response time to be shortened from ten days to four days.

We favor this bill because it expands the categories of public information accessible to the public as well, and also holds agencies accountable for not releasing information in a timely manner.

The public's right to know should always be the top priority, not a government agency's efforts to hide information. The more we allow governmental entities, (territorial, state, or Federal), the power to decide what is 'safe' for us to know, the more we erode First Amendment Rights which are founded on the premise that the more you know about your world and what affects you, the freer you are to exercise and enjoy the freedoms guaranteed by the U.S. Constitution.

While national security, police 'sting' operations, and security sensitive matters should be eligible for protection, we would err greatly in letting Government entities decide what information should be accessible, and what information should not be accessible.

Mr. Chairman, as you know Guam Radio Services Inc., doing business as Hit Radio 100, successfully sued to obtain information on delinquent payments on GEDA loans. It took eight months from our request in June to get the information judges say we had a right to know.
The argument is occasionally advanced that information regarding GEDA loans might be embarrassing to people if revealed.

Mr. Chairman, while I doubt very much that is true, the idea that legitimate news of public importance should be held back for fear of embarrassing someone does not hold water.

I am sure that food companies may be embarrassed when we have to impart their recall information to the public.

However, imagine how embarrassed I would be if I hypothetically neglected to pass on information about bad baby food for fear of embarrassing the manufacturer to find later that a friend's baby became ill from the formula because I didn't report on the recall.

Should we let people die on the roads or have accidents, because we're afraid of embarrassing a car company with publishing or broadcasting its recall notice on models with bad brakes? Of course not.

Mr. Chairman, the reason why this case about GEDA not releasing names of delinquent loan payers is so important is because now, more than ever, the Government can not afford to withhold information about use of the public's money.

Every week, Mister Chairman, you and your colleagues have to hold budget hearings, and sometimes resort to subpoenas to get the information you need about money and decisions made about money by entities within the government of Guam.

If our lawmakers do not know of a monetary crisis before it happens, or of a possible funding source, it could result in the needless loss of time, services and people's jobs.

In these times of economic trouble, we, the people, need to know the whole story, and more importantly what the Government is doing so borrowers will make good on loans which are non-performing. It's taxpayer money. It's that simple.
On the suggestion of our legal counsel, attorney Phil Isaac of the Carlsmith Law Office, please consider the following changes.

Section 10111 makes provision for court proceedings in the event an agency fails to comply in a timely manner with a request for disclosure. That section contains no provision for attorneys' fees and costs to a prevailing plaintiff. Such a provision is included under following Section 10112 as Subsection (d).

But Section 10112 speaks of penalties for nondisclosure, it is not a procedural section under which one brings a court action.

Please remove Subsection (d) from Section 10112 and insert it more appropriately as Subsection (f) of Section 10111.

This would enable and encourage a member of the public to bring action in the event an agency refuses to disclose, or disclose in a timely manner, that which it ought to disclose.

With this change, if Gov Guam agencies erroneously withhold information and that action leads to court action, they should pay the bill, not the news media or private citizens.

Mr. Chairman, you might also consider that at confirmation hearings by the Legislature, nominees for directorships and trusteeships release all kinds of personal information including home telephone numbers, and home addresses, military records and other stats. This information is available to reporters and people who appear at the public confirmation hearings in written form. If you decide to exempt from disclosure personnel and medical files, home addresses and telephone numbers of government employees, consider that if and when these nominees ever become government employees, some of that information is already out in the public by virtue of the confirmation process.

Thank you for your consideration of this important matter.

Sincerely,

Gerard J. Lyons
News Director
Hit Radio 100
Bill Title (Preamble): To reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as the “The Sunshine Reform Act of 1999”.

Change in Law: Yes.

Bill’s Impact on Present Program Funding:

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Bill is for: X Operations  ___ Capital Improvement  ___ Other

**FINANCIAL/PROGRAM IMPACT**

**ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)**

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**ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)**

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Funds adequate to cover intent of the bill? YES/NO - If NO, ADD'L AMT REQUIRED 1/

Agency/Person/Date Contacted: 1/ 1/

**ESTIMATED POTENTIAL MULTI-YEAR REVENUES**

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ANALYST: [Signature]  DATE: [Date]

DIRECTOR: [Signature]  DATE: [Date]

Orlanda Guerrero  Joseph E. Rivera, Acting

FOOTNOTE(s):

1/ See attached comments on proposed legislation.
Bill No. 53 is an act to reform the Sunshine Act of Guam to expedite and improve public access to information requests and agency records; shorten time limits for agency response to requests for public information; and allow electronic requests for information. This Act shall be known as The Sunshine Reform Act of 1999. The proposed legislation primarily seeks to repeal and reenact Article 1 of Chapter 10 of Title 5 of the Guam Code Annotated relative to the Sunshine Act of 1987. The proposed legislation states that the agencies shall have four (4) days to comply with a request for government information instead of the current ten (10) days (with certain exceptions); it includes access to electronic information and stipulates that an agency has to provide the requested information on computer disk or electronic mail; revises the exemptions from public disclosure; agencies have sixty (60) days after its enactment to submit a list of non-public and non-disclosable information, following the new guidelines; every agency shall establish written guidelines for accessibility of records and state the procedures to be followed when making its records available; each agency may submit a report to the Attorney General of Guam on or before February 1 of each year to cover the preceding fiscal year; any person may institute proceedings for injunctive or declarative relief in the Superior Court of Guam to enforce his or her right to receive a copy of any public record; and if the court finds that the public official’s decision to refuse disclosure is not justified, the court shall order the public official to pay a fine ($1,000) which shall be a personal expense for the responsible official and shall not be paid by the agency or the government of Guam and the fines shall be deposited in the Government Ethics Fund to be separate from the General Fund.

The intent of the proposed legislation will entail a fiscal impact. However, the impact cannot be quantified at this time due to unavailability of data as it would be necessary to acquire from all departments/agencies (whether it be Executive, Judicial or Legislative), autonomous and semi-autonomous agencies information as to the anticipated costs such as personnel overtime/holiday/night differential pay, supplies and materials (i.e. diskettes and computers) and other operational expenses which may have to be absorbed relevant to the search for and collection of the requested public records and establishment of written guidelines and procedures for accessibility of records. Additionally, there is a fine ($1,000) assessed to the public official if the court finds that the public official’s decision to refuse disclosure is not justified. This fine shall be deposited in the created Government Ethics Fund which is separate from the General Fund.

Moreover, Bill No. 78 also seeks to add §10102(d) and 10103.1; to repeal and reenact §10106, 10107, 10108(b) and 10110 of Article 1 of Chapter 10 of Title 5 of the Guam Code Annotated (known as the Sunshine Act of 1987) which, if enacted, would affect the Sections indicated in this Bill.
The Department of Labor is currently seeking for individuals with 2/3 yrs exp., to fill the following positions:

10-CARPENTERS $11.25/Hr.
Constructs, assembles, and repairs structures and fixtures of wood, plywood, and wallboard. Studies blueprints, sketches, or building plans for information pertaining to type of materials required. Counts and/or specified number of materials, cuts, and shapes materials. Fastens carpentry and structural materials. Uses carpentry hand tools.

3-MASON $10.83/Hr.
Lays concrete block, mixed cement using hand tools and power tools. Smooths and rolls concrete to proper size, cuts, and shapes concrete to specified depth and workable consistency using hand tools. Paths floor to bring to surface and provides rolling large, smooth concrete. Lines, hoops, and forms. Finite, forms, fresno, straw bales, or straw to support mortar. Randomly moves rough or defective spot. Works with or without rough concrete, mixes cement, and mixes cement.

16-PLASTERS $9.37/Hr.
Applies coats of plaster over walls, floors, ceilings, and partitions of buildings, to provide finished surface according to blueprints, architect's directions, or oral instructions. Uses both hand tools and portable power tools. Spreads plaster over walls or partitions using trowel or hand tools and smooth plaster with trowel and float to obtain smooth finish. Uses striping and finishing tools to obtain uniform thickness.

18-REINFORCING METAL WORKER $9.92/Hr.
Frames and selects steel bars in concrete form to reinforce concrete. Determines number, size, shapes, and locations of reinforcing rods from blueprints, sketches, or oral instructions. Selects and places forms in form, unloading them together.

3 PLASTERS $9.57/Hr.
Duties: Apply coats of plaster to interior walls, ceilings, and produces finished surface according to blueprints, architect's directions, or oral instructions. Direct workmen to be deeded conformity and to erect scaffolds. Spread plaster over walls or partitions using trowel or hand tools and smooth plaster with trowel and float to obtain uniform thickness.

1 CEMENT MASON $10.83/Hr.
Duties: Lays concrete block, mixes cement using hoe, hand tools and power tools. Smooths and smoothens to proper size, cuts, and shapes concrete to specified depth and workable consistency using hand tools. Spreads plaster using trowel or hand tools and smooth plaster with float and float to obtain smooth finish. Maintains neatness and working area.

3 CARPETERS $11.25/Hr.
Duties: Construct, erect, install, and repair structures and fixtures of wood and wallboard. Studies blueprints, sketches, or building plans for information pertaining to type of materials required. Selects specified number of materials, cuts, and shapes materials. Installs ceiling, floor, and wall material using hand, power tools, or power tools and power tools. Lubricates and smoothens to proper size, cuts, and shapes concrete to specified depth and workable consistency using hand tools. Spreads plaster using trowel or hand tools and smooth plaster with float to obtain smooth finish. Maintains neatness and working area.

Interests applicants, please apply at Guam Employment Service Office, 125 Tun Jesus Cristobal St., Suite 100 Tamuning, Guam 96911.

The Committee will be conducting a second Public Hearing on the following bills:

BILL No. 3 "An act to add a new §15703 to Article 5, Chapter 1, Division 1, Part I of Title 5 GCA, relative to requiring the Governor of Guam to receive bills from the Guam Legislature at all times."

BILL No. 32 "An act to repeal §20017 et seq., Chapter 20, Division 3, Title 17 GCA and Chapter 19, Title 1 GCA and add a new Chapter 12, Title 5 GCA relative to creating the "Independent Budget Review Office" and consolidating the Office of the Public Auditor into the IRB within I Lihletuantu Gaiha."

BILL No. 33 "An act to amend Article 3, Chapter 1, Division 1 of Title 5 GCA to rename the "Bureau of Budget & Management Research" to "Department of Program Budgeting, Financial Management and Research" and repeal Chapter 4, Division 1 of Title 11 GCA and Chapter 4, Division 1 of Title 5 GCA to transfer and consolidate the duties, responsibilities and authorities of the Guam Finance Commission and Program Budgeting and Financial Management and into the Department of Program Budgeting, Financial Management and Research by adding sub-article 3.1 and 3.2 to Article 3, Chapter 1, Division 1, GCA."

BILL No. 34 "An act to repeal Chapter 85, Division 8, Title 5 GCA; Chapter 76, Division 2 of Title 21 GCA; Chapter 83, Division 8 of Title 5 GCA; Chapter 80, Division 8 of Title 5 GCA; Chapter 77, Division 2 of Title 21 GCA; Chapter 9, Division 1 of Title 12 GCA and add Article 7 of Title 5 GCA and repeal Article 8 of Title 12 GCA.""
GOVERNMENT MEETINGS


MASS TRANSIT AUTHORITY BOARD OF DIRECTORS: 6 p.m., Feb. 23, center's conference room, Hagåtña. Those with disabilities who need special accommodations, etc., should call Pens at 475-4682 or TDD 475-4601.

CIVIL SERVICE COMMISSION: 5:30 p.m., Feb. 23, CSC conference room, 490 Chalan Pago, Asan Heights. Grievance appeal of Bruce C. Girard vs. Dept. Care; general business; executive session. For more information call 475-1300/01.

COMMISSION ON DECOLONIZATION'S INDEPENDENCE TASK FORCE: 5:30 p.m., Feb. 23, 623 E. Sunset Blvd., Tyndall. For more information call 475-9222.

SOUTHERN GUAM SOIL & WATER CONSERVATION DISTRICT: Regular monthly meeting 6:30 p.m., Feb. 23, Southern Comfort North, Mariposa. All interested people welcome.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS, ARCHITECTS & LAND SURVEYORS: Special meeting 8:30 a.m., Feb. 23, board office. All members asked to attend. For more information call 646-3115.

COMMITTEE ON NATURAL RESOURCES: Oversight hearings 9:45 a.m., Feb. 23, 1 Lihuehulani Guam housing public hearing room, Hagåtña, 9 a.m., Division of Aquatic and Wildlife, Department of Agriculture. 9:45 a.m., GPA. For more information call the office of Sen. Joanne Brown, 472-3450/1.

CHAMORRO REGISTRY ADVISORY BOARD: Feb. 24 meeting postponed until further notice. For more information call Teresa Iofano, 475-4259.

ALCOHOLIC BEVERAGE CONTROL BOARD: 5 p.m., Feb. 24, Department of Revenue & Taxation director's conference room, 2nd floor, 15-1 Marine Ave., Tyndall. Those with disabilities who need special accommodations, etc., should call 475-1790.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS, ARCHITECTS & LAND SURVEYORS: Special meeting 8:30 a.m., Feb. 24, board office. All members asked to attend. For more information call 646-3115.

HOUSING CORPORATION AND REALTORS CORPORATION BOARD OF DIRECTORS: 5 p.m., Feb. 24, building 6-9000 E. Sunset Blvd., Tyndall. Agenda copies available upon request. For more information call 475-4927.

PLANNING COUNCIL: 2 p.m., Feb. 24, Governor's Cabinet conference room, 1RB complex, Adelup. Those with disabilities who need special accommodations, etc., should call 475-9770/1 or 475-9772.

GUMAB BOARD OF TRUSTEES: 3 p.m., Feb. 24, GMHA board room, 1st floor, Tamuning. Financial matters and committee reports. Executive session to follow. Those with disabilities who need special accommodations, etc., should call Toni Villacres, 647-2218.

GUAM BOARD OF COMMISSIONERS: 5 p.m., Feb. 24, CHURA conference room, 2nd floor, 15-1 Marine Ave., Tyndall. Those with disabilities who need special accommodations, etc., should call 475-1790.

GUAM SERVICE COMMISSION BOARD: 5:30 p.m., Feb. 24, CSC conference room, 490 Chalan Pago, Asan Heights. Continuation of grievance appeal of Bruce C. Girard vs. Dept. Care; new business; general business; executive session. For more information call 475-1300/01.

CIVIL SERVICE COMMISSION BOARD: 5:30 p.m., Feb. 25, CSC conference room, Building 15-601 Marine Drive, Tyndall. For accommodations call 475-9222.

CIVIL SERVICE COMMISSION: 5:30 p.m., Feb. 25, CSC conference room, Building 15-601 Marine Drive, Tyndall. For more information call 475-1300/01.

POLLUTION BLAZER

Arrests:

Monday

• Pete Raymond Guzman, 42, of Mangilao was arrested on a warrant of arrest. He was booked and released.

• Philip Mejia Ramirez, 22, of Yigo was arrested on a warrant of arrest. He was booked and released.

• Douglas Park, 27, of Yigo was arrested on charges of family violence, unauthorized use of a motor vehicle, and a warrant of arrest. He was booked and released.

• Michael James Richardson, 21, of Yigo was arrested on a warrant of arrest. He was booked and released.

• Lawrence Albert Richardson, 24, of Yigo was arrested on a charge of family violence. He was booked and released.

Sunday

• Aries Angeles Marasana, 19, of Dededo was arrested on charges of reckless endangerment, disorderly conduct, obstruction of a public road way, illegal parking, criminal facilitation and drug drug running without a permit. He was booked and released.

• Norman C. Silvay, 29, of Dededo was arrested on a charge of possession of a controlled substance. He was booked and released.

• Clarence Lawrence Quintanilla, 30, of Agana Heights was arrested on charges of violation of probation and public intoxication. He was booked and released.

• Linda Lou Hunt, 44, of Tamuning was arrested on charges of assault and disorderly conduct. She was booked and released.

• Susan Ichin, 21, of Agana Heights was arrested on a charge of criminal mischief. He was booked and released.

Names as spelled in the blotter are provided by the Tactical Operations Command of the Guam Police Department.
GOVERNMENT MEETINGS

GUAM BOARD OF DIRECTORS: 6 p.m., Feb. 25, GBA conference room, administration building, Tumon. For more information call 475-4607.

CIVIL SERVICE COMMISSION BOARD: 5:30 p.m., Feb. 25, CSC conference room, 490 Chalan Pokuaya, Agana Heights. Continuation of grievances appeal of Bruce C. Carillo vs. DepEd; new business.

COMMISSION ON DECOLONIZATION'S FREE ASSOCIATION TASK FORCE: 6:30 p.m., Feb. 25, 623 E. Sunset Blvd., Tumon. For more information call 475-9222.

Housing Corporation and Rental Corporation Board of Directors: 5 p.m., Feb. 26, Building 6-5000, E. Sunset Blvd., Tumon. Agenda available on request. For more information call 455-4702.

Planning Council: 2 p.m., Feb. 26, Governor's Cabinet conference room, R&B complex, Adelup, PL 24-171; assess construction plans, develop incentives for nonconforming structures, redistrict lots to IDs 3 and 8; other matters. Those with disabilities who need special accommodations, etc., should call 647-6113.

Guam Board of Trustees: 5 p.m., Feb. 26, GHAA board room, 1st floor, banking. Financial matters and committee reports. Executive session to follow. Those with disabilities who need special accommodations, etc., should call 647-6113.

Guam Bar Association: 5 p.m., Feb. 26, Guam Bar Association conference room. Those with disabilities who need special accommodations, etc., should call 646-5016.

Civil Service Commission Board: 5:30 p.m., Feb. 26, CSC conference room, 490 Chalan Pokuaya, Agana Heights. Continuation of grievances appeal of Bruce C. Carillo vs. DepEd; new business.


South Pacific Games: Special meeting 9 a.m., Feb. 26, 109 A St., Tumon. Agenda copies available at commission's office.

Commission on Licensure: Noon, Feb. 26, Health Professional Licensing Office, 1300 E. Sunset Blvd., Tumon. Those with disabilities who need special accommodations, etc., should call 475-0212.


Committee on Natural Resources: Public meeting 7 p.m., Feb. 26, Iheselotum Guahan public hearing room, Hagatna. For more information call the office of Sen. Joanne Brown, 472-3450/1.

Guam Cellular & Paging introduces Long Distance for home and business telephone service!

Say HELLO to the WORLD!

Enjoy the service and quality that cellular & paging customers have enjoyed for years. Guam Cellular & Paging will be providing long distance for your home or business telephone services. Let the island's leader in communications show you how you can take advantage of our new long distance service. Call us today!
Speaker Antonio R. Unpingco  
I Mina' Bente Singko Na Liheslaturan Guåhan  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Mr. Speaker:

The Committee on Rules, Government Reform, Reorganization and Federal Affairs, to which Bill No. 53 was referred, wishes to report its findings and recommendations TO DO PASS BILL NO. 53, as substituted, "An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as 'The Sunshine Reform Act of 1999.'"

The voting record is as follows:

| TO PASS | 13 |
| NOT TO PASS | 0 |
| ABSTAIN | 0 |
| TO PLACE IN INACTIVE FILE | 0 |

Copies of the Committee Report and other pertinent documents are attached. Thank you and si Yu'os ma'ase for your attention to this matter.

MARK FORBES

Attachments
MEMORANDUM

TO: Committee Members

FR: Chairman

SUBJECT: Committee Report - Bill No. 53, as substituted, "An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as 'The Sunshine Reform Act of 1999.'"

Transmitted herewith for your information and action is the report on Bill No. 53, as substituted, from the Committee on Rules, Government Reform, Reorganization and Federal Affairs.

This memorandum is accompanied by the following:
1. Committee Voting Sheet
2. Committee Report
3. Bill No. 53, as substituted
4. Public Hearing Sign-in Sheet
5. Fiscal Note/Fiscal Note Waiver
6. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

MARK FORBES

Attachments
Committee on Rules, Government Reform, Reorganization and Federal Affairs
I Mina' Bente Singko Na Liheslaturan Guåhan

Voting Record

Bill No. 53, as substituted, "An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as 'The Sunshine Reform Act of 1999.'"

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VOTING SHEET

Bill No. 53 (cor)
Resolution No. ______
Question: ____________________________

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TOTAL: 14

CERTIFIED TRUE AND CORRECT:

__________________________
Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence
Memorandum

To: Senator MARK FORBES

From: Clerk of the Legislature

Subject: Report on Bill No. 53 (COR)

Pursuant to §7.04 of Rule VII of the 25th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 53 (COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.

Attachment

[Signature]
Josephine Brennan-Badley

[Signature]

ACkNOWLEDGMENT RECEIPT

Received By: [Name]
Time: 11:05 am
Date: 4/26/99
Committee Report

on

Bill No. 53, as substituted

"An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as "The Sunshine Reform Act of 1999.""
I. OVERVIEW
The Committee on Rules, Government Reform, Reorganization and Federal Affairs held a public hearing on Wednesday, February 24, 1999 at 10:00 a.m. at 1 Liheslaturan Guahan. Public notice of the hearing was announced in the February 22nd, 23rd, and 24th, 1998 issues of the Pacific Daily News.

Senators present were:
- Senator Mark Forbes, Chairman
- Senator Vicente Pangelinan, Member
- Senator Frank Aguon, Jr., Member
- Senator Eloy Bermudes, Member
- Senator Kaleo Moylan, Member
- Senator Simon Sanchez, Member
- Senator Eddie Calvo, Member

Appearing before the Committee were:
- Ms. Bernadette Sterne, President, Micronesia chapter, Society of Professional Journalists
- Mr. Nate McGurk, Board Member, Micronesia chapter, Society of Professional Journalists
- Mrs. Jayne Flores, Board Member, Micronesia chapter, Society of Professional Journalists
- Mr. Jojo Santo Tomas, Reporter, Marianas Variety
- Mr. Gerry Lyons, News Director, Hit Radio 100
- Ms. T. Ann Perez, Deputy Administrator, Guam Economic Development Authority

Providing written testimony:
- Mr. Ed Untalan, Administrator, Guam Economic Development Authority (attached)
- Mr. Gerry Lyons, News Director, Hit Radio 100 (attached)

II. SUMMARY OF TESTIMONY
Ms. Bernadette Sterne, President of the Micronesia chapter, Society of Professional Journalists, testified before the Committee in favor of Bill No. 53. She said she supports the bill because journalists are often stifled in trying to provide the public with accurate, comprehensive, timely information by the non-compliance of government agencies. Ms. Sterne said the Act would help journalists accomplish their mission. She said computer information should be available to journalists and citizens alike, and said MSPJ supports the idea of forcing agencies to disclose information quickly. MSPJ has made this Act its top priority and will be watching the actions of senators on this Act.

Mr. Nate McGurk, Board Member of the Micronesia chapter, Society of Professional Journalists, testified before the Committee in favor of Bill No. 53. He said he seconds the testimony of Ms. Sterne.

Mrs. Jayne Flores, Board Member of the Micronesia chapter, Society of Professional Journalists, testified before the Committee in favor of Bill No. 53. She said she supports the bill because in the past, government agencies with information on computer printed out voluminous amounts of documents as a stalling tactic, forcing reporters to wade through the documents instead of searching through them on disk. With this new Act, agencies would be required to supply the documents in electronic form if so requested.

Mr. Gerry Lyons, News Director for Hit Radio 100, testified before the Committee in favor of Bill No. 53. He said Hit Radio 100 had to sue the Guam Economic Development Authority for loan
information that should be in the public domain. He also said loan applications to government agencies should not be exempted from the public domain.

Mr. Jojo Santo Tomas, Reporter for the Marianas Variety, testified before the Committee in favor of Bill No. 53. He suggested setting a lower document copying fee than is already in statute, adding that 50 cents per page is ridiculous.

Ms. T. Ann Perez, Deputy Administrator for the Guam Economic Development Authority, testified before the Committee in favor of Bill No. 53, with amendments. She suggested changing the four-day requirement of agencies to provide information to 10 days, adding that the Authority often deals with documents that take more than four days to sort through and copy.

Mr. Ed Untalan, Administrator for the Guam Economic Development Authority, submitted written testimony to the Committee in favor of Bill No. 53, with amendments. He said he supports the bill because it gives GEDA the opportunity to submit its list of public writings, which it didn’t do upon the initial enactment of the Sunshine Act. However, Mr. Untalan suggested several changes to the bill, including changing the four-day requirement of agencies to provide information to 10 days, because the agency deals with voluminous files.

### III. FINDINGS AND RECOMMENDATION

The Committee on Rules, Government Reform, Reorganization and Federal Affairs finds that Bill No. 53, as substituted, makes a strong move toward increasing government accountability, opening the government’s doors to the public, making government more responsive to the people, and moving government information into the electronic age.

The Committee further finds that Bill No. 53, as substituted, would require government agencies to provide public documents in four working days, instead of 10, which makes more sense in this age of instant communications. There are very few documents maintained by the government that take more than four working days to locate and copy, and this Act would allow for a 10-day extension for those few exceptions. The Act would also allow for electronic communications, allowing members of the public to request documents via electronic mail, requiring agencies to provide documents in electronic form if it is so requested and available in that form, and requiring agencies to publish reports on their responsiveness to requests under this Act on the Internet. Annual reports required of agencies by this Act will hold government accountable for its actions and responsiveness to the public.

Accordingly, the Committee on Rules, Government Reform, Reorganization and Federal Affairs, to which Bill No. 53 was referred does hereby submit its findings and recommendations to I Mina’ Bente Singko Na Lihslaturan Guahan TO DO PASS BILL NO. 53, as substituted, “An act to reform the Sunshine Act of Guam to expedite public information requests and allow electronic requests for information, to be known as ‘The Sunshine Reform Act of 1999.’”
MEMORANDUM

TO: Chairman
   Committee on Rules, Government Reform, Reorganization
   and Federal Affairs

FROM: Chairman
   Committee on Rules, Government Reform, Reorganization
   and Federal Affairs

SUBJECT: Principal Referral – Bill No. 53

The above bill is referred to your Committee as the Principal Committee. In accordance with Section 6.04.05. of the Standing Rules, your Committee “shall be the Committee to perform the public hearing and have the authority to amend or substitute the bill, as well as report the bill out to the Body.” It is recommended that you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

MARK FORBES

Attachment
AN ACT TO REFORM THE SUNSHINE ACT OF
GUAM TO EXPEDITE PUBLIC INFORMATION
REQUESTS AND ALLOW ELECTRONIC REQUESTS
FOR INFORMATION, TO BE KNOWN AS "THE
SUNSHINE REFORM ACT OF 1999."

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. I Lihesluran Guåhan

finds that:

(1) Public access to information is a fundamental right of citizens and a
necessity for an informed electorate, and the denial of that information to
citizens and the media is therefore not acceptable in the government of Guam;

(2) The Sunshine Act of Guam and the federal Freedom of
Information Act have been valuable means through which any citizen can
learn how the government operates;

(3) Those same acts have led to the disclosure of waste, fraud, abuse,
and wrongdoing in the government, locally and nationally;
(4) While few requests for public information are filed in government of Guam agencies by the public and the media, those requests are not fulfilled as quickly or as often as possible;

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) Government agencies should use new technology to enhance public access to agency records and information.

I Liheslaturan Guåhan therefore intends to:

(1) Foster democracy by ensuring public access to agency records and information;

(2) Improve and expedite public access to agency records and information;

(3) Shorten statutory time limits for agency response to requests for public information and ensure compliance with those statutory time limits; and

(4) Maximize the usefulness of agency records and information by taking advantage of computer technology.

Section 2. Repeal and Re-enact Sunshine Act. Article 1 of Chapter 10, Title 5, Guam Code Annotated, known as the Sunshine Act of 1987, is hereby repealed and re-enacted as follows:

"Article 1

Sunshine Law

§10101. Short Title.

§10102. Definitions."