

FIRST REGULAR SESSION, 1992

AN ACT

To require, with certain narrow exceptions, that all government meetings shall be open to the public; and to require that all public-records shall be open to inspection; and for other purposes.

BE I T ENACTED BY THE EIGHTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Short Title. This Act may be known and cited as "The Open
2 Government Act of 1992."

3 Section 2. Legislative Declaration. The Legislature finds and declares that all
4 public commissions, boards, councils, committees, subcommittees, departments,
5 divisions, offices, and all other public agencies of this Commonwealth exist to aid in
6 the conduct of the people's business. It is the intent of this Act that their actions be
7 taken openly and that their deliberations be conducted openly.

8 The people of this Commonwealth do not yield their sovereignty to the
9 agencies which serve them. The people, in delegating authority, do not give their
10 public servants the right to decide what is good for the people to know and what is
11 not good for them to know. The people insist on remaining informed so that they
12 may retain control over the instruments. they have created.

13 The provisions requiring open meetings and open records shall be liberally
14 construed; and the provisions providing for exceptions to the open meeting
15 requirements and open records requirements shall be strictly construed against
16 closed meetings and nondisclosure of records.

17 Section 3. Definitions. As used in this Act unless the context indicates
18 otherwise:

1 (a) "Public agency" means:

2 (1) Any Commonwealth board, commission, committee,
3 department, education institution, or other Commonwealth agency
4 which is created by or pursuant to statute, constitution, or covenant,
5 except the judiciary;

6 (3) Any municipality. or political subdivision of the
7 Commonwealth;

8 (3) Any subagency. of a public agency which is created by or
9 pursuant to statute, ordinance, or other legislative act.

10 (b) "Governing body" means the multimember board, commission,
11 committee, council, or other policy or rulemaking body of a public agency.,
12 or any committee thereof when the committee acts on behalf of the
13 governing body, conducts hearings, or takes testimony or public comments.
14 Agencies of Commonwealth government with no apparent governing body,
15 such as the Attorney General's Office and the Department of Public Safety,
16 are nonetheless subject to the provisions of this Act when they have a policy
17 or rulemaking body with the power to carry out actions on behalf of the
18 agency, conduct hearings, or take testimony or public comments.

19 (c) "Action" means the transaction of the official business of a public
20 agency by a governing body including but not limited to receipt of public
21 testimony, deliberations, discussions, considerations, reviews, evaluations,
22 and final actions.

23 (d) "Final action" means a collective positive or negative decision, or
24 an actual vote by a majority of the members of a governing body when
25 sitting as a body or entity, upon a motion, proposal, resolution, order, or
26 ordinance.

1 (e) "Meeting" means meetings at which action is taken.

2 (f) "Public record" means any written or printed report, book or
3 paper, map or plan of the Commonwealth or its respective political
4 subdivisions, boards, commissions, agencies, which is the property thereof,
5 and in or on which an entry has been made or is required to be made by law,
6 or which any public officer or employee has received or is required to
7 receive For Filing, but shall not include records which invade the right of
8 privacy of an individual or business entity.

9 Section 4. Right to Privacy. A person's "right to privacy", "right of
10 privacy", "privacy" or "personal privacy", as these terms are used in this Act, is
11 invaded or violated only if disclosure of information about the person:

12 (a) would be highly offensive to a reasonable person, and

13 (b) is not of legitimate concern to the public.

14 The provisions of this Act dealing with the right to privacy in certain public
15 records do not create any right to privacy beyond those rights that are specified in
16 this Act as express exemptions from the public's right to inspect, examine, or copy
17 public records.

18 Section 5. Meetings declared open and public. All meetings of the
19 governing body of a public agency shall be open and public and all persons shall
20 be permitted to attend any meeting of the governing body of a public agency,
21 except as otherwise provided by this Act. The governing body shall afford all
22 interested persons an opportunity to submit data, views, or arguments, in writing,
23 on any agenda item. The governing body shall also afford all interested persons an
24 opportunity to present oral testimony on any agenda item. The governing body-
25 may provide for reasonable administration of oral testimony by rule.

1 Section 6. Conditions to attendance not to be required. A member of the
2 public shall not be required, as a condition to attendance at a meeting of a
3 governing body, to register his or her name or other information, to complete a
4 questionnaire, or otherwise fulfill any condition precedent to attendance. 'This
5 Section shall not preclude voluntary sign-in sheets.

6 Section 7. In terrup tions - Procedure. In the event that any meeting is
7 interrupted by a group or groups of persons so as to render the orderly conduct of
8 such meeting unfeasible and order cannot be restored by the removal of
9 individuals who are interrupting the meeting, the members of the governing body
10 conducting the meeting may order the meeting room cleared and continue in
11 Session or may adjourn the meeting and reconvene at another location selected by
12 majority votes of the members. In such session, final disposition may be taken
13 only on matters appearing on the agenda. Representatives of the press and other
14 news media, except those participating in the disturbance, shall be allowed to
15 attend any session held pursuant to this Section. Nothing in this Section shall
16 prohibit the governing body from establishing a procedure for readmitting an
17 individual or individuals not responsible for disturbing the orderly conduct of
18 meeting.

19 Section 8. Ordinances, rules, resolutions, regulations, etc., to be adopted at
20 public meetings - Sanction - Notice. No governing body of a public agency shall
21 adopt any ordinance, resolution, rule, regulation, order, or directive, except in a
22 meeting open to the public and then only at a meeting, the date of which is fixed by
23 law or rule, or at a meeting of which notice has been given according to the
24 provisions of this Act. Any action taken at meetings failing to comply with the
25 provisions of this Act shall be null and void.

1. Section 3. Times and places for meeting - Emergencies - Exceptions. The
2 governing body of a public agency shall provide the time For holding regular
3 meetings by ordinance, resolution, bylaws, or by whatever other rule is required
4 for the conduct of business by that body. Unless. otherwise provided for in the act
5 under which the public agency was formed, meetings of the governing body must
6 be held within the boundaries of the territory over which the public agency was
7 formed: meetings of the governing body must be held within the boundaries of the
8 territory over which the public agency exercises jurisdiction. If at any time any
9 regular meeting falls on a holiday, such regular meeting shall be held on the next
10 business day. If by reason of typhoon, flood, or fire, law enforcement or other
11 emergency, there is need for expedited action by a governing body to meet the
12 emergency, the presiding officer of the governing body may provide for a meeting
13 site other than the regular meeting site and notice requirements of this Act shall
14 be suspended during such emergency. In the event of an emergency meeting the
15 governing body shall:

16 (a) state in writing the reasons for its finding that an, emergency
17 exists;

18 (b) take a vote whereby two-thirds of all members to which the board
19 is entitled agree that an emergency exists;

20 (c) file an emergency agenda and the findings on emergency in the
21 official records of the governing body.

22 Section 10. Schedule of regular meetings - Publication in Commonwealth
23 Register - "Regular" meetings defined. Commonweal th agencies which hold
24 regular meetings shall file in the Commonwealth Register a schedule of the time
25 and place of such meetings. For purposes of this Section "regular" meetings shall

1 mean recurring meetings held in accordance with a period schedule declared by
3 statute or rule.

3 Section 11. Notice.

4 (a) The governing body of a public agency shall give written public
5 notice of any regular, special or rescheduled meeting. The notice shall
6 include an agenda which lists all of the items to be considered at the
7 forthcoming meeting, the date, time, and place of the meeting. Where
8 possible, such notice shall appear in at least one newspaper of general
9 circulation in the Commonwealth.

10 (b) The governing body of a public agency shall file a copy of the
11 meeting notice in its office at least seventy-two hours before the meeting.
12 The notice shall also be posted at the Executive Branch Administrative
13 building; and at the site of the meeting, whenever feasible. No governing
14 body shall change the agenda, once filed, by adding items thereto without a
15 recorded vote of the majority of the members to which the governing body
16 is entitled.

17 (c) The governing body of a public agency shall maintain a list of
18 names and addresses of persons who request notification of meetings and
19 shall mail a copy of the notice to such persons at their last recorded address
20 no later than the time the agenda is filed under subsection (b) of this
21 Section.

22 Section 12. Special meetings. A special meeting may be called at any time by
23 the presiding officer of the governing body of a public body or a public agency or
24 by a majority of the members of the governing body by delivering personally or
25 by mail written notice to each member of the governing body; and to each local
26 newspaper of general circulation and to each local radio or television station, or

1 cable television station which has on file with the governing body a written
2 request to be notified of such special meeting or of all special meetings. Such
3 notice must be delivered personally or by mail at least twenty-four hours before
4 the time of such meeting as specified in the notice. The call and notice shall
5 specify the time and place of the special meeting and the business to be transacted.
6 Final disposition shall not be taken on any other matter at such meetings by the
7 governing body. Such written notice may be dispensed with as to any member who
8 at or prior to the time the meeting convenes files with the clerk or secretary of
9 such governing body a written waiver of notice. Such waiver may be given by
10 telegram. Such written notice may also be dispensed with as to any member who is
11 actually present at the meeting at the time it convenes. The notices provided in
12 this section may be dispensed with in the event a special meeting is called to deal
13 with an emergency involving injury or damage to persons or property or the
14 likelihood of such injury or damage, when time requirements of such notice would
15 make impractical and increase the likelihood of such injury or damage.

16 Section 13. Executive Sessions.

17 (a) Nothing contained in this Act may be construed to prevent a
18 governing body from holding an executive session during a regular or
19 special meeting:

20 (1) To consider the selection of a site or the acquisition of real
21 estate, or office or building space by lease or purchase when public
22 knowledge regarding such consideration would cause a likelihood of
23 increased price.

24 (2) To consider the minimum price at which real estate, or
25 office or building space will be offered for lease when public
26 knowledge regarding such consideration would cause a likelihood of

1 decreased price. However, a final action leasing of public property.
2 shall be taken in a meeting open to the public.

3 (3) To receive and evaluate complaints or charges brought
4 against a public officer or employee. However, upon the request of
5 such officer or employee, a public hearing or a meeting open to the
6 public shall be conducted upon such complaints or charges.

7 (4) To evaluate the qualifications of an applicant for public
8 employment or to review the performance of a public employee.
9 Howe\er, discussion by a governing body of salaries, wages, and other
10 conditions of employment, to be generally applied within the agency,
11 shall occur in a meeting open to the public, and when a governing
12 body elects to take final action hiring, setting the salary of an
13 individual employee or class of employees, or discharging an
14 employee, that action shall be taken in a meeting open to the public.

15 (5) To evaluate the qualifications of a candidate for
16 appointment to office. However, any interview of such candidate and
17 final action appointing a candidate to elective office shall be in a
18 meeting open to the public.

19 (6) To consult with the governing body's legal counsel.

20 (7) To consider a matter which may infringe on a person's
21 right to privacy as guaranteed by the Commonwealth Constitution and
22 as further defined in Section 4 of this Act, including but not limited to
23 confidential medical, or financial information.

24 (b) Before convening in **executive** session, the presiding officer shall
25 publicly announce the purpose of excluding the public from the meeting
26 place and the time when the executive session will be concluded.

1 (c) A governing body may hold an executive meeting closed to the
2 public upon affirmative vote, taken at an open meeting, of two-thirds of the
3 members present. A meeting closed to the public for executive deliberations
4 shall be limited to the matters exempted by this Section. The vote of each
5 member on the question of holding a meeting closed to the public shall be
6 recorded and entered into the minutes of the meeting.

7
8 (d) No chance meeting or electronic communication shall be used to
9 circumvent the spirit or requirements of this Section to make a decision or
10 deliberate toward a decision upon a matter over which the board has
11 supervisor control, jurisdiction, or advisory power.

12 Section 14. Legislative Branch: Applicability. This Act shall apply to the
13 Commonwealth Legislature. The respective rules and procedures of the Senate and
14 the House of Representatives shall be in compliance with this Act.

15 Section 15. Minutes. The minutes of all regular and special and executive
16 meetings of such boards, commissions, agencies or authorities shall be promptly
17 recorded and such records shall be open to public inspection within thirty days
18 after the approval of the minutes of the meeting, provided, that minutes of
19 executive meetings may be withheld so long as their publication would defeat the
20 lawful purpose of the executive meeting, but not longer. The minutes of a meeting
21 should be immediately prepared for adoption at the next meeting. One copy of all
22 approved minutes shall be transmitted to the Archives of the Northern Marianas
23 College.

24 Section 16. Violations - Personal liability Penalty -Attorney Fees and costs.

25 (a) Each member of the governing body who attends a meeting of
26 such governing body where action is taken in violation of any provision of
this Act applicable to him or her, with knowledge of the fact that the

1 meeting is in violation thereof, shall be subject to personal liability in the
2 form of civil penalty in the amount of one-hundred dollars for the first
3 offense and one thousand dollars for subsequent offenses. The civil penalty
4 shall be assessed by a judge of the Commonwealth Trial Court and an action to
5 enforce this penalty may be brought by any person. A violation of this Act
6 does not constitute a crime and assessment of the civil penalty by a judge
7 shall not give rise to any disability, or legal disadvantage based on conviction
8 of a criminal offense.

9 (b) Any person who prevails against a public agency in any action in
10 the courts for a violation of this Act shall be awarded all costs, including
11 reasonable attorney fees, incurred in connection with such legal action.
12 Any public agency which prevails in any action in the courts for a violation
13 of this Act may be awarded reasonable expenses and attorney fees upon final
14 judgment and written Findings by the trial judge that the action was
15 frivolous and advanced without reasonable cause.

16 Section 17. Violations - Mandamus or injunction. Any person may
17 commence an action either by mandamus or injunction for the purpose of stopping
18 violations or preventing threatened violations of this Act by members of a
19 governing body.

20 Section 18. Public records: available for inspection; cost of copies. Within
21 ten days of request, all public records shall be available for inspection by 'any
22 person during established office hours unless public inspection for such records is
23 in violation of any other Commonwealth or federal law. Provided that except where
24 such records are open under any rule of court, the Commonwealth Attorney
25 General or designated Assistant Attorney General and the responsible attorneys for
26 federal agencies may determine which such records in their offices may be

1 withheld from public inspection when such records pertain to the preparation of
2 the prosecution or defense of any action or proceeding, prior to its commencement.
3 to which the Commonwealth is a party, or when such records do not relate to a
4 matter in violation of law and are deemed necessary for the protection of a
5 character or reputation of any person.

6 Copies of public records shall be given by the officer having the same
7 custody to any person demanding the same and paying a reasonable charge for
8 duplication. Charges shall not exceed the amount necessary to reimburse the
3 agency for its actual cost incident to such copying. No charge or fee shall be
10 charged for the mere inspection of public records. Recourse may be had to the
11 Commonwealth Trial Court by any person unlawfully denied access to public-
12 records. Cost of suit and reasonable attorney fees shall be awarded to the
13 prevailing party in such a suit.

14 Section 19. Certain personal and other records exempt.

15 (a) The following are exempt from public inspection and copying:

16 (1) Personal information in any files maintained for students
17 in public schools, patients or clients of public- institutions or public-
18 health agencies, welfare recipients, prisoners, probationers, or
19 parolees.

20 (2) Personal information in files maintained For employees,
21 appointees, or elected officials of any public agency other than
22 names, present and past position titles, grades, salaries and duty
23 stations.

24 (3) Information required of any taxpayer in connection with
25 the assessment or collection of any tax.

1 (4) Specific intelligence information and specific investigative
2 records compiled by investigative law enforcement, the Attorney
3 General's Office, and penology agencies, and Commonwealth agencies
4 vested with the responsibility to discipline members of any
5 profession, the nondisclosure of which is essential to effective law
6 enforcement or for the protection of any person's right to privacy.

7 (5) Information revealing the identity of persons who file
8 complaints with or volunteer information to investigative, law
9 enforcement, the Attorney General's Office, or penology agencies, if
10 disclosure would endanger the person's life, physical safety, or
11 property; provided, that if at the time the complaint is filed the
12 complainant indicates a desire for disclosure or nondisclosure, such
13 desire shall govern.

14 (6) Test questions, scoring keys, and other examination data
15 used to administer a license, employment, or academic examination.

16 (7) Preliminary drafts, notes, recommendations, and intra-
17 agency memorandums including lawyers work product and lawyer
18 legal opinions in which opinions are expressed or policies
19 formulated or recommended except that a specific record shall not
20 be exempt when publicly cited by an agency in connection with an?
21 agency action.

22 (8) Records which are relevant to a controversy to which an
23 agency is a party but which records would not be available to another
24 party under the rules of pretrial discovery for causes pending in the
25 courts.

1 (9) Records, maps, or other information identifying the
2 location of archaeological and specially protected environmental sites
3 in order to avoid the looting, destruction or depredation of such sites.

4 (10) Any library record, the primary* purpose of which is to
5 maintain control of library materials, or to gain access to
6 information, which discloses or could be used to disclose the identity
7 of a library user.

8 (1 1) The residential addresses and residential telephone
9 numbers of the customers of a public utility contained in the records
10 or lists held by the public utility of which they are customers.

11 (12) Juvenile, delinquency or dependency. records.

12 (13) Department of Public Safety internal investigation
13 records.

14 (b) The exemptions of this Section are inapplicable to the extent that
15 information, the disclosure of which would violate personal privacy or vital
16 governmental interests, can be deleted from the specific records sought. No
17 exemption may be construed to permit the nondisclosure of statistical
18 information not descriptive of any readily identifiable person or persons.

19 (c) Inspection or copying of any specific records exempt under the
20 provisions of this Section may be permitted if the Court of the
21 Commonwealth finds, after a hearing with notice thereof to every person in
22 interest and the agency, that the exemption of such records is clearly
23 unnecessary to protect any individual's right of privacy or any vital
24 governmental function.

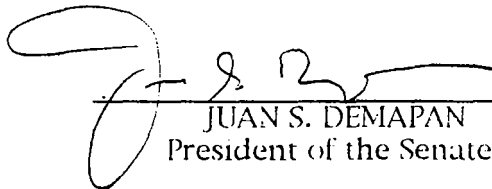
25 (d) Agency responses refusing, in whole or part, inspection of any
26 public record shall include a statement of the specific exemption

1 authorizing the withholding of the record (or part) and a brief explanation
2 of how the esemption applies to the record withheld.

3 Section 20. Severability. IF any provisions of this Act, or its application to
4 any person or circumstances is held invalid, the remainder of this Act, or the
5 application of the provision to other persons or circumstances is not affected.

6 Section 21. Effective Date. This Act shall take effect upon its approval by the
7 Governor or upon its becoming law without such approval.

CERTIFIED BY:



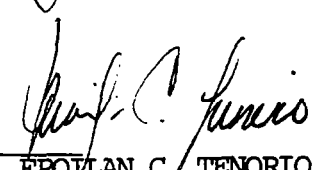
JUAN S. DEMAPAN
President of the Senate

ATTESTED BY:



EDWARD U. MARAPITA
Senate Legislative Secretary

Approved this 21st day of January, 1994.



~~LORENZO I. DE LEON GUERRERO~~ FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands