

1 **FOR PUBLICATION**

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3
4 **IN THE SUPERIOR COURT**

5 **OF THE**

6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7
8 **ROSELLE DEMAPAN CALVO,**)

Civil Action No. 07-0026E

9 **Plaintiff**)

10 **vs.**)

**ORDER CONDITIONALLY
GRANTING PLAINTIFF’S REQUEST
FOR DISCLOSURE UNDER THE
OPEN GOVERNMENT ACT**

11)
12 **THE NORTHERN MARIANA ISLANDS**)
13 **SCHOLARSHIP ADVISORY BOARD,**)
14 **by and through its Administrator Merissa**)
15 **Seman and its Board Members,**)

16 **Defendants.**)
17)

18 **I. INTRODUCTION**

19 THIS MATTER came for hearing on March 8, 2007 at 1:30 p.m.. Counsel Robert Tenorio
20 Torres appeared on behalf of Plaintiff Roselle Demapan Calvo (“Calvo”). Assistant Attorney General
21 Gregory Baka appeared on behalf of Defendants, The Northern Mariana Islands Scholarship Advisory
22 Board (hereinafter referred to as the “Scholarship Board”). After reviewing the parties’ written and oral
23 submissions this Court is prepared to render its ruling and order.

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1 **II. BACKGROUND**

2 According to the complaint filed by Calvo in the underlying action, Calvo applied for the CNMI
3 Honor Scholarship Program for the island of Saipan pursuant to Public Law 14-37. In October 2006,
4 Calvo learned that she was not selected as a recipient of the scholarship. Calvo filed an appeal of the
5 Scholarship Board’s decision not to award her the scholarship on October 2006. On December 5, 2006,
6 the Scholarship Board denied Calvo’s appeal. After a Scholarship Board meeting held on January 9,
7 2007, which Calvo attended, the Scholarship Board again denied Calvo’s appeal via a letter sent by Co-
8 defendant, Merissa Seman. Calvo filed an action for Judicial Review in this Court on January 25, 2007.

9 On January 11, 2007, Plaintiff initiated a written request pursuant to the CNMI Open
10 Government Act (“OGA”) to be allowed to inspect and/or make duplicates of certain documents relating
11 to the CNMI Honors Scholarship applicants of the Class of 2006.¹ Such request was refused entirely by
12 the Scholarship Board by and through its representative at the Commonwealth Attorney General’s
13 Office (“AGO”) in a letter dated January 25, 2007. Among the reasons for rejecting Calvo’s request, the
14 Attorney General’s Office cited Executive Order 94-3, Section 211(b), which determined that Public
15 Law 8-41— the CNMI Open Government Act — was inapplicable to the Scholarship Board. In
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17 ¹In pertinent part Calvo requested the following:

- 18 1. All documents of the Honors Scholarship applicants for Class of 2006, including but not limited to, all
19 applicants, transcripts, SATs, ACTs, extra-curricular activities, letters of recommendations (sic), and
20 evaluations of the difficulty of courses taken by the applicants during high school;
21 2. All analysis, calculations, computations (sic) worksheets used by the CNMI Scholarship Office in
22 determining the 29 applicants (sic) rank standings, including the names of those people that prepared this
23 analysis;
24 3. All correspondence, transmittals, and documents between the CNMI Scholarship Office and the Office of
25 the Governor concerning the Honors Scholarship applicants for the Class of 2006;
26 4. All board meetings, minutes, including executive meetings/sessions, from July 2006 through January 2007;
27 5. Copy of Public Law 14-37 used by the Board;
28 6. Copies of the published regulations pertaining to PL 14-37 used by the Board; and
29 7. Any and all other documents, materials, and/or things not mentioned above pertaining to the Class of 2006
30 Honors Scholarship evaluation performed by the Scholarship Board, Administrator and any staff employee, and
31 representative of the CNMI Scholarship.
32 See Exhibit “A” to Plaintiff’s Response to Objection By Scholarship Advisory Board Re: Open Government
33 Act Applicability.

1 addition, the AGO claimed that all of Calvo’s requests pertaining to applicants’ applications and
2 supporting documents, calculations, etc., were exempt from inspection per the OGA in light of 1 CMC
3 sections 9918(a)(1) and 9902(f), which exempt records containing “personal information in any files
4 maintained for students in public schools . . .,” and those “records which invade the right of privacy” of
5 an individual, respectively. *See* 1CMC §§ 9918(a)(1) and 9902(f).

6 At a status conference hearing held March 1, 2007, Calvo renewed her request for the materials
7 specified *supra*, note 1. The Scholarship Board objected to such a request and filed a written
8 memorandum in support of its objection. Calvo filed a written response to the Scholarship Board’s
9 written objection. The matter was taken under advisement on March 8, 2007. The Scholarship Board
10 has also lodged the materials in question with the Court, *in camera*. The Court has left the materials
11 sealed prior to making its ruling.

12 13 **III. DISCUSSION**

14 The Scholarship Board in its written objection appears to have discarded each of its legal
15 arguments proffered in its January 25 letter rejecting Calvo’s initial inspection request via the OGA.
16 The Scholarship Board originally relied on Executive Order 94-3, section 211(b) to support its argument
17 that the OGA was inapplicable to the Scholarship Board, and additionally argued that notwithstanding
18 the OGA’s inapplicability, that 1 CMC sections 9918(a)(1) and 9902(f) exempted the type of materials
19 Calvo was seeking to inspect from inspection under the OGA. Instead of formally presenting these
20 arguments to the Court in its objection, the Scholarship Board now admits that it is Calvo’s “right” to
21 “use the OGA as a discovery tool” and now grounds its objection in the argument that the OGA is
22 inapplicable to obtaining discovery because it is a “wholly separate method of obtaining documents
23 under the Commonwealth Rules of Civil Procedure,” and that “putative OGA violations are wholly
24 separate from substantive litigation discovery, with there own enforcement mechanisms.” *See*
25 Scholarship Board’s Notice of Objection, citing 1 CMC §§ 9915(b) and 9916.

1 Because, the Scholarship Board has not renewed its arguments contained in its January 25 letter,
2 the Court will consider such objections abandoned — as they are not properly presented for the Court’s
3 consideration— and consequently, will not entertain those objections in this opinion and ruling.
4 However, the Court will address the Scholarship Board’s argument that the OGA is not properly applied
5 in this case to obtain discovery materials in an action for Judicial Review. On such a premise, this Court
6 cannot deny relief per the OGA.

7 The Scholarship Board, in its memorandum, points to no statute, rule or case law, which
8 expressly excludes the Open Government Act as grounds for obtaining certain materials from
9 government entities when the purpose for applying for those materials is to obtain discovery in pursuit
10 of an action against a government entity. Indeed the only statutory sections cited by the Scholarship
11 Board refer to sections of the OGA which address the penalties of violating the OGA, particularly with
12 regard to attorney fees and costs, and to remedial pursuits of mandamus or injunction via the OGA.
13 Neither of these code sections expressly preclude the use of the OGA to obtain materials in support of
14 any legal action, nor do they limit the application of the OGA only to separate actions instituted
15 exclusively through the OGA. The OGA, however, does not require a party seeking relief under its
16 guidelines to file a separate lawsuit in order to effectuate its mandate.

17 Also, the Commonwealth Rules of Civil Procedure do not preclude the use of the OGA as
18 grounds for obtaining discovery in a civil action: “Parties may obtain discovery by one or more of the
19 following methods: deposition upon oral examination or written questions; written interrogatories;
20 *production of documents or things* Com. R. Civ. P., Rule 26(a) (*emphasis added*). Further,

21 [p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the
22 subject matter involved in the pending action, whether it relates to the claim or defense of
23 the party seeking discovery or to the claim or defense of any other party, including the
24 existence, description, nature, custody, condition, and location of any books, documents, or
25 other tangible things and the identity and location of persons having knowledge of any
discoverable matter. It is not a ground for objection that the information sought will be
inadmissible at the trial *if the information sought appears to be reasonably calculated to lead
to the discovery of admissible evidence.*”
Com. R. Civ. P., Rule 26(b)(1) (*emphasis added*).

1 As can be gleaned from the plain language cited above, the Commonwealth Civil Rules fail to restrict
2 discovery to materials made discoverable under the Commonwealth Civil Rules, and therefore, fail to
3 preclude the use of the OGA as a means of discovering information in any suit.

4 Finally, this Court has already determined that using the OGA is proper within the discovery
5 confines of an ongoing action — although without addressing the issue directly in its decision — by
6 allowing another Plaintiff in an action for judicial review to obtain the minutes of a closed session
7 meeting through the use of the OGA’s requirements. *See Malone v. The Northern Mariana Islands*
8 *Retirement Fund*, Civ. No. 06-0033 (N.M.I. Super. Ct. Nov. 15, 2006) (Order Granting Plaintiff’s
9 Request for Disclosure Under the Open Government Act). The Scholarship Board’s argument that
10 *Malone* would not apply simply because counsel for the Retirement Fund did not explicitly address the
11 issue in its memoranda in that particular case is also of no consequence.² The law simply does not make
12 any distinction between using the OGA as a means of discovering information in an ongoing action or as
13 an end in and of itself.

14 As stated in *Malone*, the underlying purpose and policy of the CNMI’s Open Government Act
15 has been made clear by the Legislative Declaration which introduces the act:

16 The legislature finds and declares that all public commissions, boards, councils, committees,
17 subcommittees, departments, divisions, offices, and all other public agencies of this
18 Commonwealth exist to aid in the conduct of the people’s business. It is the intent of this
chapter that their actions be taken openly and that their deliberations be conducted openly.

19 1 CMC § 9901.

20 Further, the Legislative Declaration mandates that its provisions be construed liberally in favor
21 of allowing inspection of public records and meetings and construed strictly against “closed meetings
22 and nondisclosure of records.” *Id.*

23 ²The Court will also note that for the record counsel for the Northern Mariana Islands Retirement Fund in *Malone*
24 was *not* James Hollman as the Scholarship Board insists. James Hollman was a Retirement Fund hearing officer who issued a
25 recommended decision in Mr. Malone’s administrative case.

1 The Open Government Act (“OGA”) is expansive in its coverage by including nearly all public
2 bodies and their actions under its scope. *See Id, supra. See also Richardson v. CPA*, Civil Case No. 03-
3 0431B (April 4, 2005) (Order Denying Defendant’s Motion for Judgment on the Pleadings). Actions
4 subject to public scrutiny under the OGA include all transactions “of official business of a public agency
5 by a governing body, including but not limited to receipt of public testimony, deliberation, discussion,
6 consideration, review, evaluation, and final action.” 1 CMC § 9902(a). Further, the OGA demands a
7 prompt response to all legal OGA records requests: “Within 10 days of a request, all public records shall
8 be available for inspection by any person... unless public inspection of such records is in violation of any
9 Commonwealth or federal law....” 1 CMC § 9917(a).

10 Here, the Scholarship Board falls within the scope of the OGA because they are a governing
11 board of a public agency of the Commonwealth. *See* 1CMC § 9902(e)(1); *see also* PL 14-37.
12 Moreover, the materials required for the Scholarship Board to perform its duties under PL 14-37, such
13 as the application materials requested by Calvo, are likewise fairly characterized as “public records”
14 pursuant to 1 CMC section 9902(f), and are therefore are subject to inspection by the public under 1
15 CMC section 9917, *unless* to allow inspection would violate Commonwealth or federal law. Liberally
16 construing the OGA, as instructed by its prefatory language, the Court must favor allowing inspection.
17 However, such inspection shall be made *subject to* CNMI and federal laws protecting the privacy of the
18 individuals involved, and all other privileges recognized by CNMI law. Consequently, this Court shall
19 order the Scholarship Board to disclose the materials requested by Calvo, but will allow the Scholarship
20 Board to redact any information, the disclosure of which it believes would violate CNMI or federal law,
21 or is privileged under CNMI law or rules. The Scholarship board, however, must accompany its
22 redactions with a “privilege log” explaining the specific legal ground for each redaction, and must
23 additionally provide the court with an unredacted copy of the materials for review.
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1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant Scholarship Board is ORDERED to comply with Plaintiff
3 Calvo’s request for disclosure of all public documents related to the applications of the Class of 2006
4 students for the CNMI Honor Scholarship .

5 Defendant is ORDERED to comply with the Plaintiff’s request on or before **April 5, 2007**.

6 In the event that Defendant claims that all or part of the materials requested are protected by an
7 applicable privilege, they must file such in writing, consistent with the above opinion, on or before
8 **April 5, 2007**.

9 IT IS FURTHER ORDERED, that the parties appear for a status conference in courtroom 223A
10 on April 12, 2007, at 1:30 p.m.

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12 So ORDERED this 28th day of March 2007.

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14 /s/
15 David A. Wiseman, Associate Judge
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