



The Vigilance Committee

GCIC, Inc. 414 West Soledad Avenue, Hagåtña, GU. 96910

Protect Public Trust; Defend the Open Government Law; Promote Transparency and Accountability with Social Distancing.

Paragraph 5 of Executive Order 2020-06 Encourages Abuse of Public Trust

FOR IMMEDIATE RELEASE

TVC 20-027

March 25, 2020

Hagåtña, Guam – In a letter sent to Governor Lou Leon Guerrero, the Vigilance Committee protested in the strongest manner paragraph 5 of Executive Order 2020-06.

"The recent executive order purportedly suspends the operation of seven (7) sections of the Open Government Law, and the practical effect guts completely the statute. The suspended sections require that the public be given notice of board and commission meetings, and because no one would know when a board or commission is meeting, any board and commission can meet without running the risk of public participation and thus your executive order has created a situation which encourages abuse of public trust," Armenta said. "In short, your executive order has *de facto* repealed the Open Government Law and opened the door for, what in light of violations of the law by the Consolidated Commission on Utilities (CCU) and the Guam Housing and Urban Renewal Authority (GHURA) Commissioners, allows intolerable mischief. "

While dealing with COVID 19 requires measures that would not be contemplated in ordinary circumstances, draconian measures that abolish, even temporarily, the public's right to know what it's government is doing cannot pass without the most strenuous objection of the Vigilance Committee.

Armenta further stated, "A simple modification of the first sentence of 5 GCA § 8103 would allow boards and commissions to conduct business while doing vigilance to the Open Government Law and at the same time maintain the requirements of 'social distancing'. This is how you can protect public trust; defend the Open Government Law; and promote transparency and accountability with social distancing. "

"Governor, we beseech you to revoke paragraph 5 of your Executive 2020-06 immediately," concluded Armenta.

Michelle Armenta is the president of the Vigilance Committee, a nonprofit organization dedicated to requiring compliance with the *Open Government Law* and the *Sunshine Reform Act* by public officials and government representatives; and to promote ways to improve the dissemination and disclosure of information to the general public. Should you have further questions or would like to request additional information, please email: stayvigilantgu@gmail.com.

Attached: Letter to Governor Lou Leon Guerrero.

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The Vigilance Committee

GCIC, Inc. 414 West Soledad Avenue, Hagåtña, GU. 96910

March 25, 2020

Transmitted via Electronic Mail

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The Honorable Lourdes A. Leon Guerrero

I Maga'hågan Guåhan [Governor of Guam]

Office of the Governor

Ricardo J. Bordallo Governor's Complex

Adelup, Guam 96910

Ref: TVC 20-026

Subject: Sunshine Law Request

Hafa Adai Governor Leon Guerrero,

The stated purpose of the Vigilance Committee is to require compliance with the Open Government Law and the Sunshine Reform Act by public officials and government representatives; and to promote ways to improve the dissemination and disclosure of information to the general public, including, but not limited to, the following: detecting violations; causing the enforcement thereof; and working on strengthening the laws of disclosure on all fronts.

On behalf of the Vigilance Committee, we must protest in the strongest manner paragraph 5 of your Executive Order 2020-06, which states:

“5. Suspension of Certain provisions of the Open Government Law. The application of Sections 8103, 8107, 8108, 8109, 8110, 8114 and 8115 of Title 5 of the Guam Code Annotated are temporarily suspended until April 13, 2020. To ensure the public is well-informed in this time of emergency, public agencies shall document their meetings in minutes and continue compliance with Section 8113.1, Title 5 of the Guam Code Annotated. Actions taken at meetings of public agencies without compliance with all provisions of the Open Government Law shall not be effective until compliance with Section 8113.1, Title 5 of the Guam Code Annotated.”

While your executive order purportedly suspends the operation of seven (7) sections of the Open Government Law the practical effect is to gut completely the Open Government Law. The effect of the suspension of 5 GCA § 8115. Penalties and Court Jurisdiction. and § 8114. Action Voided. is that every board or commission can violate every section of the Open Government Law, including § 8113.1. Reporting Requirement. and § 8111. Executive Sessions. with impunity.

With the suspension of 5 GCA § § 8107, 8108, 8109 and 8110 (each of which requires that the public be given notice of board and commission meetings because no one would know when a board or commission is meeting your executive order's reference to § 8113.1. Reporting Requirements.) is at best illusory since no one could be aware of what should have been reported. Coupled with the suspension of 5 GCA § 8114. Action Voided. any board and commission can meet without running the risk of public participation and thus your executive order has created a situation which encourages abuse of public trust.

Because of the interplay of the operation of the sections of the Open Government Law which you have suspended here's the situation you have created:

- Every board and commission can meet this afternoon without giving notice to anyone.
- Every board and commission can meet this afternoon and proceed to executive session conduct such business as it would have in the absence of the law.
- Every board and commission can meet this afternoon and exercise all the powers available to it, including raising salaries, levying fines, adjudicating cases or any of the other myriad of powers entrusted to it by law or rule.
- Because you suspended the operation of 5 GCA § 8114. Action Voided. these otherwise void acts would be completely legal.
- Because you have suspended the operation of 5 GCA § 8115. Penalties and Court Jurisdiction. the public is without recourse and there are no civil or criminal penalties of board members and commissioners who were if not for your executive order would be subject to punishment.
- Because you have suspended the operation of 5 GCA § 8115. Penalties and Court Jurisdiction. there are no civil or criminal penalties of board members and commissioners who were if not for your executive order would be subject to punishment for not reporting to you and the Speaker, and for not posting on the Office of Public Accountability (OPA) website.
- In short, your executive order has *de facto* repealed the Open Government Law and opened the door for, what in light of violations of law by the Consolidated Commission on Utilities (CCU) and the Guam Housing and Urban Renewal Authority (GHURA) Commissioners, allows intolerable mischief.

While dealing with COVID 19 requires measures that would not be contemplated in ordinary circumstances, draconian measures that abolish, even temporarily, the public's right to know what it's government is doing cannot pass without the most strenuous objection of the Vigilance Committee, reference 5 GCA § 8102 of the Open Government Law:

The Legislature declares it is the policy of this Territory that the formation of public policy and decisions is public and **shall not be conducted in secret**. The people of Guam do not yield their individual rights to the public agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed** so that **they may retain control** over the instruments they have created.

Governor, you used a meat axe instead of a scalpel in dealing with the Open Government Law. A simple modification of the first sentence of 5 GCA § 8103 would allow boards and commissions to conduct business while doing vigilance to the Open Government Law and at the same time maintain the necessary “social distancing” necessary.

5 GCA § 8103. Open Meetings. (a) Every meeting of a public agency shall be open and public, and any person shall be permitted to attend any public agency meeting, except as otherwise provided in this Chapter....

An executive order modifying the highlighted language would be enough. Something like:

Notwithstanding the provisions of the first sentence of 5 GCA § 8103 boards and commissions shall enforce social distancing rules.

Governor, we beseech you to revoke paragraph 5 of your Executive 2020-06.

Nothing above shall consent to the acquiescence of the appearance of *supra* of the operation of Executive Order 2020-06. The Vigilance Committee reserves all rights to take any effort necessary to object in the strongest manner paragraph 5 of Executive Order 2020-06.

Therefore, pursuant to the authority granted by the Sunshine Reform Act, I hereby request a copy of any and all public records, citing specific sections of the Organic Act of Guam, laws, and rules and regulations, which grant you, the Governor Guam, the authority to suspend the Open Government Law in part or in whole.

I hereby request that the public records requested herein be transmitted via electronic mail to stayvigilantgu@gmail.com. Your assistance and consideration to this request is greatly appreciated. Should you have any further questions, you may contact me at 671-788-5532.

Respectfully submitted,

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Michelle Armenta
President, The Vigilance Committee, Inc.