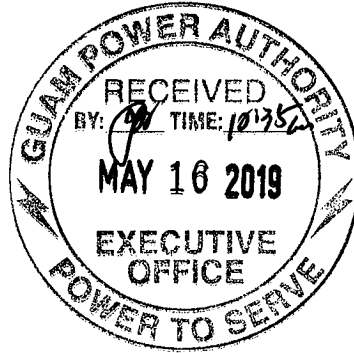


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3 671.472.1131

4 *Attorneys for Petitioner*



FILED
SUPERIOR COURT
OF GUAM

2019 MAY 15 PM 4:57

CLERK OF COURT

By: _____

5
6 IN THE SUPERIOR COURT OF GUAM
7 TERRITORY OF GUAM

8 JOAQUIN V. LEON GUERRERO

9 Petitioner,

10 v.

11 GOVERNMENT OF GUAM

12 JOSEPH T. DUENAS, CHAIR
13 CONSOLIDATED COMMISSION on
UTILITIES

14 Respondents.

7
Special Proceeding Number **SP 0088 - 19**

**MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR AN
ORDER TO SHOW CAUSE OR
ALTERNATIVE WRIT OF MANDATE**

15 **COMES NOW** Petitioner Leon Guerrero and submits this Memorandum of Law in Support of a
16 Petition for an Order to Show Cause or Alternative Writ of Mandate.

17 **I. JURISDICTION**

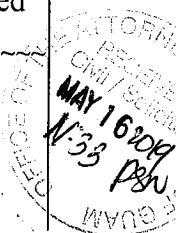
18 The Superior Court has Jurisdiction over this Matter pursuant to 5 G.C.A. §10111(a)(b),
19 7 G.C.A. §31202 and 48 USC §1421-1(b).

20 **II. THE PARTIES**

21 Petitioner is a natural born person and a citizen of Guam. Respondent Government of
22 Guam is a political entity created by the United States in order to govern and administer the
23 territory ceded to the United States in accordance with the provisions of the Treaty of Peace
24 between the United States and Spain, signed at Paris, December 10, 1898, and known as Guam.

25 *See 48 U.S.C. §1421.* Respondent Duenas is a natural person and the Chair of the Consolidated

Leon Guerrero vs. Government of Guam and Jos. Duenas
Memorandum
SP _____



1 Commission on Utilities Department. The Commission is an agency within the executive branch
2 of the Government of Guam and created pursuant to statute. Respondent Duenas has
3 administrative authority over the Commission.

4 **III. FACTUAL ALLEGATIONS**

5 On 02 May 2019, Petitioner made a request for production of certain documents from the
6 Commission. This Request was made pursuant to the Sunshine Act, 5 G.C.A. §10101, and was
7 properly served upon the Respondent and received by him on 02 May 2019. *See Attachment A.*
8 The records and documents requested are public in nature, minutes and recordings of an illegal
9 meeting and, therefore, properly disclosable and not otherwise protected.

10 The Commission has not complied with the request or otherwise responded.

11 Petitioner is beneficially interested in the performance of Respondents as he made the
12 request and, but for non-compliance with the law, would have received the requested documents.
13 Petitioner has exhausted all administrative remedies and there is no plain, speedy or adequate
14 remedy other than this application. Additionally, Respondents have the present ability to comply
15 with the law and perform their duty. It has been more than four days since the request.

16 **IV. MEMORANDUM OF LAW**

17 Discussing the federal counterpart to Guam's Sunshine Act, the Second Circuit Court of
18 Appeals stated that "the ultimate purpose was to enable the public to have sufficient information
19 in order to be able, through the electoral process, to make intelligent, informed choices with
20 respect to the nature, scope, and procedure of federal governmental activities." *Frankel v.*
21 *Securities and Exchange Commission, 460 F.2d 813, 816 (2 Cir. 1972).* This too is the purpose
22 of the Sunshine Act. A government exists only upon the consent of the governed. Since the
23 government is a creature of the people, it must respond to legitimate inquiry.

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


1 Chapter.” 5 G.C.A. § 10103(a). Petitioner Fisher has made a request for inspection or production
2 of public, disclosable documents, and the Government has not complied.

3 In situations like this, the public has recourse to the courts. “Any person may institute
4 proceedings for injunctive or declarative relief or writ of mandate in the Superior Court of Guam
5 to enforce that person's right to inspect or to receive a copy of any public record or class of
6 public records under this Chapter.” 5 G.C.A. §10111(b). Therefore, Petitioner’s application to
7 the court for a writ of mandate is appropriate and the court may grant the same. Furthermore,
8 “[t]he burden is on the agency to sustain its action. All records shall be presumed public and the
9 burden of establishing that a document or record is private shall be upon the agency or person
10 claiming that the document on record should not be disclosed or inspected.” *Id at (c)*.

11 Finally, the Petitioner should not have to bear the burden of attorney’s fees. It is as a
12 result of governmental misconduct that he has had to make this application. If the Respondent
13 had complied with the law, there would be no need to petition. Indeed, if a petitioner must bear
14 the cost, the courthouse doors will be shut to the majority of the people. The Guam legislature
15 knew this in enacting the law and said, “[t]he Court shall award court costs and reasonable
16 attorney fees to the plaintiff should the plaintiff prevail after initial filing of the complaint
17 pursuant to this Section. The costs and fees shall be paid by the public agency of which the
18 public official is a member or employee and shall not become a personal liability of the public
19 official.” 5 G.C.A. §10112(d).

20 **WHEREFORE** this Court should issue an order to show cause, a Writ of Mandate and
21 award Petitioner attorney fees.

22 **FISHER & ASSOCIATES**

23 By: 
24 Mr. Thomas J. Fisher, Esq.
25 Attorney for Petitioner

May 02, 2019

Joseph T. Duenas, Chairman
Consolidated Utilities Commission
PO Box 2977 - Hagatna, GU 96932

RE: FOIA Request for Minutes and Recordings of Executive Board Meetings to discuss Pay Raises and Bonuses

Mr. Duenas,

Like many other taxpayers, I was dismayed to learn the CCU has approved illegal pay raises and bonuses for management employees of both Guam Power Authority (GPA) and Guam Waterworks Authority (GWA). I am requesting under the FREEDOM of INFORMATION ACT (FOIA) any and all meeting minutes, notes, handouts and recording taking place in the Executive Board Meeting Session on the approval of Employee Pay Raises and Bonuses.

I am requesting as a stakeholder and rate payer to be notified by email of any CCU meeting to discuss pay raises and/or employee bonuses.

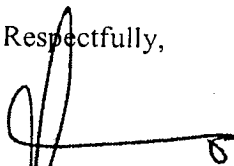
§ 10104. Electronic Communications.

(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.

Request sent via email to Point of Contact on CCU Web Site: l.sablan@gpagwa.com

I await your response to this request.

Respectfully,



Ken Leon-Guerrero, Spokesperson
Guam Citizens for Public Accountability
689-3000

CC: Media
Levin Camacho, Attorney General of Guam
Benjamin Cruz, Public Auditor
Clynt Rigell, Chairman Legislative Committee on Utilities
Media