

JAN 08 2001

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Singko na Liheslaturan Guåhan  
Twenty-Fifth Guam Legislature  
Suite 200  
130 Aspinal Street  
Hagåtña, Guam 96910

THE LEGISLATIVE SECRETARY

RECEIVED

2:06 P.M.


8 Jan 2001

Dear Legislative Secretary Brown:

Enclosed please find Bill No. 510 (COR), "AN ACT TO *AMEND* SECTION 10108(h) OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO LIMITATION OF RIGHT OF INSPECTION FOR SUNSHINE ACT REQUESTS," " which I have **signed** into law as **Public Law No. 25-184**.

This legislation corrects the difficulty of releasing private phone numbers and addresses of professionals who are licensed to practice their profession by government licensing boards. While the legislation requires the release of this personal information for those who are nominated to be members of boards and commissions, it allows those who are professionally licensed to keep this information private.

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 Antonio R. Unpingco  
Speaker

CC 30


MINA/BENTE SINGKO NA LIHESLATURAN GUAHAN  
2000 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

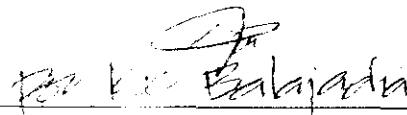
This is to certify that Bill No. 510 (COR) AN ACT TO AMEND SECTION 10108(h) OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO LIMITATION OF RIGHT OF INSPECTION FOR SUNSHINE ACT REQUESTS," was on the 20<sup>th</sup> day of December 2000, duly and regularly passed.

  
ANTONIO R. UNPINGCO  
Speaker

Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by I Maga'lahaen Guahan this 20 day of December, 2000,  
at 5:30 o'clock P.M.

  
Assistant Staff Officer  
Maga'lahaen's Office

APPROVED:

  
CARL T. C. GUTIERREZ  
I Maga'lahaen Guahan

Date: 1-08-01

Public Law No. 25-184

**MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**2000 (SECOND) Regular Session**

**Bill No. 510 (COR)**

As amended.

Introduced by:

S. A. Sanchez, II

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

E. B. Calvo

M. G. Camacho

Mark Forbes

L. F. Kasperbauer

A. C. Lamorena, V

C. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

J. C. Salas

A. R. Unpingco

**AN ACT TO AMEND SECTION 10108(h) OF TITLE 5  
OF THE GUAM CODE ANNOTATED, RELATIVE  
TO LIMITATION OF RIGHT OF INSPECTION FOR  
SUNSHINE ACT REQUESTS.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3           enacted Public Law Number 25-06, "Sunshine Reform Act of 1999," in order  
4           to allow members of the public to inspect all non-exempt public records,  
5           which are defined as "any writing containing information relating to the

1 nominated board members, directors and other officials up for  
2 confirmation by *I Liheslaturan Guåhan*."

6

# I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

2000 (SECOND) Regular Session

Date: 12/20/00

## VOTING SHEET

Bill No. 570 (COR)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	11				
BERMUDES, Eulogio C.	11				
BLAZ, Anthony C.	✓				
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.					✓
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

14      0      0      0      1

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN  
2000 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Bill No. 510 (COR) AN ACT TO AMEND SECTION 10108(h) OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO LIMITATION OF RIGHT OF INSPECTION FOR SUNSHINE ACT REQUESTS," was on the 20<sup>th</sup> day of December 2000, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2000,  
at \_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

\_\_\_\_\_  
**CARL T. C. GUTIERREZ**  
*I Maga'lahen Guahan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

**MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**2000 (SECOND) Regular Session**

**Bill No. 510 (COR)**

As amended.

Introduced by:

S. A. Sanchez, II

F. B. Aguon, Jr.

E. C. Bermudes

A. C. Blaz

J. M.S. Brown

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A. R. Unpingco

**AN ACT TO AMEND SECTION 10108(h) OF TITLE 5  
OF THE GUAM CODE ANNOTATED, RELATIVE  
TO LIMITATION OF RIGHT OF INSPECTION FOR  
SUNSHINE ACT REQUESTS.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3           enacted Public Law Number 25-06, "Sunshine Reform Act of 1999," in order  
4           to allow members of the public to inspect all non-exempt public records,  
5           which are defined as "any writing containing information relating to the

1 conduct of the public's business prepared, owned, used, or retained by any  
2 state or local agency in any format, including an electronic format." The Act  
3 intended to: (1) foster democracy by ensuring public access to agency records  
4 and information; (2) improve and expedite public access to agency records  
5 and information; (3) shorten statutory time limits for agency response to  
6 requests for public information and ensure compliance with those statutory  
7 time limits; *and* (4) maximize the usefulness of agency records and  
8 information by taking advantage of computer technology.

9       It was not *I Liheslaturan Guåhan's* intention to allow disclosure of home  
10 addresses and telephone numbers of any person whose occupation is subject  
11 to regulation or licensure by the government of Guam. This information has  
12 no bearing on the operations of the government entities, other than giving  
13 them the ability to contact such individuals at their residences. The disclosure  
14 of such information may be deemed as an "unwarranted invasion of privacy"  
15 and, for this reason, they should *not* be disclosed regardless of the purpose for  
16 which the record is being requested.

17       **Section 2.** Section 10108(h) of Article 1, Chapter 10, Division 1 of Title 5  
18 of the Guam Code Annotated is hereby *amended* to read as follows:

19               “(h) The home address and telephone number of any person  
20 whose occupation is *subject to* regulation or licensure by the government  
21 of Guam, or of any public official or government employee, *unless* such  
22 person gives expressed permission to disclose such information. The  
23 exemption in this Subsection shall *not* apply to information provided by



1 nominated board members, directors and other officials up for  
2 confirmation by *I Liheslaturan Guáhan*."



FILE

**MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**TWENTY-FIFTH GUAM LEGISLATURE**  
155 Hesler Street, Hagåtña, Guam 96910

December 14, 2000

( DATE )

Memorandum

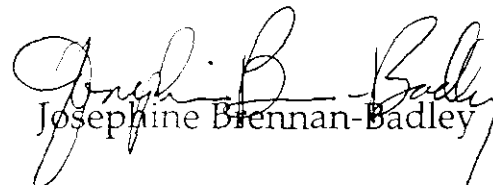
To: Senator Simon A Sanchez, II

From: Clerk of the Legislature

Subject: Report on Bill No. 510(COR)

Pursuant to §7.04 of Rule VII of the 25<sup>th</sup> Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 510(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.

  
Josephine Brennan-Badley

Attachment

**I MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**Committee on Health, Human Services and Chamorro Heritage**  
**Kumiten Salut, Setbision Tinaotao yan Irensian Chamoru**  
**Sinadot Simon A. Sanchez II, Ge'Hilo'**

---

December 12, 2000

Speaker Antonio R. Unpingco  
*I Mina' Bente Singko Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guåhan 96910

Dear Mr. Speaker:

*I Kumiten Salut, Setbision Tinaotao yan Irensian Chamoru* has completed its evaluation of Bill No. 510 and hereby issues the enclosed Committee Report.

A public hearing was held on the measure on December 7, 2000.

Committee Members voted as follows:

To pass	_____
Not to pass	_____
Abstain	_____
Inactive File	_____

Consequently, the Committee submits its recommendation to "DO PASS" Bill No. 510.

Your kind attention to this matter is immensely appreciated.

Saina Ma'åse' yan Magof Ha'ånen Yu'os,

  
SIMON A. SANCHEZ II

**I MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**Committee on Health, Human Services and Chamorro Heritage**  
**Kumiten Salut, Setbision Tinaotao yan Irensian Chamorro**  
*Sinadot Simon A. Sanchez II, Ge'Hilo'*

---

December 12, 2000

**MEMORANDUM**

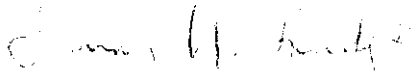
**TO: Committee Members**

**FROM: Chairperson**

**SUBJECT: Committee Report for Bill No. 510 (COR) – An act to amend subsection (h), §10108 of Article 1, Chapter 10 of Title 5 of the Guam Annotated ('Sunshine Reform Act of 1999'), relative to limitation of right of inspection.**

Attached hereto is the Committee Report for your review and consideration. Please call me if you need clarification or additional information. Then, please mark and sign the accompanying Voting Sheet.

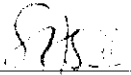
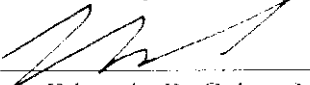
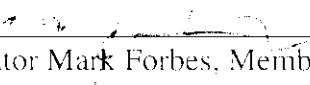
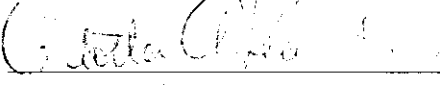
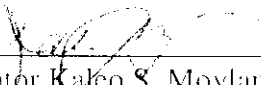
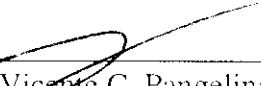
Saina Ma'åse' yan Magof Ha'ånen Yu'os,



SIMON A. SANCHEZ II

*I Mina' Bente Singko Na Liheslaturan Guahan*  
*Kumiten Salud, Setbision Tinaotao Yan Irensian Chamoru*  
**VOTING SHEET**

**Bill No. 510** – An act to amend subsection (h), §10108 of Article 1, Chapter 10 of Title 5 of the Guam Annotated ("Sunshine Reform Act of 1999"), relative to limitation of right of inspection.

	To Pass	Not to Pass	Abstain	Inactive File
 _____ Senator Simon A. Sanchez II, Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Joanne M.S. Brown, Vice Chairperson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Frank B. Aguon, Jr., Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Anthony C. Blaz, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Senator Eduardo B. Calvo, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Marcel G. Camacho, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Senator Mark Forbes, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Lawrence F. Kasperbauer, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Senator Alberto C. Lamorena V, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Senator Carlotta A. Leon Guerrero, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Senator Kaleo S. Moylan, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Senator Vicente C. Pangelinan, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*I Mina' Bente Singko Na Liheslaturan Guåhan  
Kumiten Salut, Setbision Tinaotao yan Irensian Chamoru*

**Committee Report  
Bill No. 510 (COR)**

"An act to amend subsection (h), §10108 of Article 1, Chapter 10 of Title 5 of the Guam Annotated ('Sunshine Reform Act of 1999'), relative to limitation of right of inspection".

**Simon A. Sanchez II, Chairperson  
Joanne M.S. Brown, Vice Chairperson**

**Members**

**Frank B. Aguon, Jr.  
Anthony C. Blaz  
Marcel G. Camacho  
Lawrence F. Kasperbauer  
Carlotta A. Leon Guerrero  
Vicente C. Pangelinan**

**Eulogio C. Bermudes  
Eduardo B. Calvo  
Mark Forbes  
Alberto C. Lamorena V  
Kaleo S. Moylan**

## I. OVERVIEW

Bill No. 510 proposes to restrict disclosure of certain personal information about persons whose occupation are subject to licensure by the government of Guam.

The Bill was introduced November 17, 2000 and publicly heard on December 7, 2000.

## II. COMMITTEE FINDINGS

*I Liheslaturan Guåhan* enacted Public Law 25-06 ('Sunshine Reform Act of 1999') in order to allow members of the public to inspect all non-exempt public records, which are defined as "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 an format, including an electronic format." It was not *I Liheslaturan Guåhan's* intention to allow disclosure of home addresses and telephone numbers of any person whose occupation is subject to regulation or licensure by the government of Guam. This information has no bearing on the operations of the government entities, other than giving them the ability to contact such individuals at their residences. The disclosure of such information may be deemed as an "unwarranted invasion of privacy" and, for this reason, they should not be disclosed regardless of the purpose for which the record is being requested.

In May 2000, the Guam Board of Medical Examiners initiated communication with the Attorney General's Office to clarify if personal information was protected. Two opinions were issued by the AG indicating that such information may not be protected. This Bill will provide for non-disclosure of such information.

No one appeared at the hearing to provided testimony on the Bill. However, written correspondences on the subject matter are attached to this Report.

## III. COMMITTEE RECOMMENDATIONS

The Committee on Health, Human Services and Chamorro Heritage thus recommends to the full body for **Bill No. 510 "TO PASS"**.

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN RECEIVED  
2000 (SECOND) Regular Session

Received by: [Signature]  
4:30 P  
11/17/00

Bill No. 510 (COR)

Introduced by:

S. A. Sanchez, II [Signature]

AN ACT TO AMEND SUBSECTION (h), §10108 OF ARTICLE 1, CHAPTER 10 OF TITLE 5 OF THE GUAM CODE ANNOTATED ('SUNSHINE REFORM ACT OF 1999'), RELATIVE TO LIMITATION OF RIGHT OF INSPECTION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative findings and intent. *Liheslaturan Guåhan* enacted Public Law 25-06 ('Sunshine Reform Act of 1999') in order to allow members of the public to inspect all non-exempt public records, which are defined as "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." The Act intended 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)



1 maximize the usefulness of agency records and information by taking  
2 advantage of computer technology.

3 It was not *I Liheslaturan Guåhan's* intention to allow disclosure of home  
4 addresses and telephone numbers of any person whose occupation is subject  
5 to regulation or licensure by the government of Guam. This information has  
6 no bearing on the operations of the government entities, other than giving  
7 them the ability to contact such individuals at their residences. The disclosure  
8 of such information may be deemed as an "unwarranted invasion of privacy"  
9 and, for this reason, they should not be disclosed regardless of the purpose for  
10 which the record is being requested.

11 Section 2. Subsection (h), Section 10108 of Article 1, Chapter 10, of Title  
12 5 of the Guam Code Annotated is hereby *amended* to read as follows:

13 "(h). The home address and telephone number of any person  
14 whose occupation is subject to regulation or licensure by the  
15 government of Guam or of any public official or government employee,  
16 *unless the public official or employee such person* gives expressed  
17 permission to disclose such information. The exemption in this  
18 Subsection shall *not* apply to information provided by nominated board  
19 members, directors and other officials up for confirmation by *I*  
20 *Liheslaturan Guåhan.*"

*I MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN*

**Committee on Health, Human Services and Chamorro Heritage**  
*Kumiten Salut, Setbision Tinaotao yan Iremsian Chamorro*

TESTIMONY RECORD for  
PUBLIC HEARING, December 7, 2000, 9:30 AM, Legislative Session Hall, Hagåtña, Guam  
**Bill 510** (COR) An act to amend subsection (h), §10108 of Article 1, Chapter 10 of Title 5 of the Guam Annotated ('Sunshine Reform Act of 1999'), relative to limitation of right of inspection.

NAME ORGANIZATION WRITTEN or ORAL Testimony?  
[please circle one or both]

MAILING ADDRESS CONTACT NUMBER(S) FOR or AGAINST?  
[please circle one]

NAME ORGANIZATION WRITTEN or ORAL Testimony?  
[please circle one or both]

MAILING ADDRESS CONTACT NUMBER(S) FOR or AGAINST?  
[please circle one]

NAME ORGANIZATION WRITTEN or ORAL Testimony?  
[please circle one or both]

MAILING ADDRESS CONTACT NUMBER(S) FOR or AGAINST?  
[please circle one]

NAME ORGANIZATION WRITTEN or ORAL Testimony?  
[please circle one or both]

MAILING ADDRESS CONTACT NUMBER(S) FOR or AGAINST?  
[please circle one]

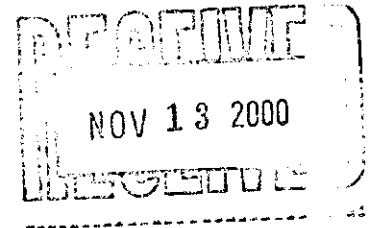
NAME ORGANIZATION WRITTEN or ORAL Testimony?  
[please circle one or both]

MAILING ADDRESS CONTACT NUMBER(S) FOR or AGAINST?  
[please circle one]



**GUAM BOARD OF MEDICAL EXAMINERS**

November 13, 2000



Senator Simon A. Sanchez, II  
Chairman  
Committee on Health, Human Services and Chamorro Heritage  
Mina Bente Singko Na Liheslaturan Guåhan  
Suite B-103 Orlean Pacific Plaza  
885 S. Marine Drive  
Tamuning, Guam 96911

Dear Senator Sanchez:

The Guam Board of Medical Examiners recently received an opinion from the Attorney General regarding disclosure of personal information. The Board requested information on the legal obligation to disclose agency documents that contain the home addresses, home telephone numbers, and social security numbers of licensed physicians pursuant to a request under the Sunshine Reform Act of 1999.

In the Attorney General's September 6, 2000 response, "because of the protection of personal data of government employees within the Act, it seems probable that the Guam Legislature would not now vote for a law that required disclosure of the personal data of licensee physicians if the consequences of the present Act were now presented to them. Because of the protection shown to government employees, it could be argued that the Legislature did not intend to require such disclosures of GBME files, but the courts broadly construe the disclosure language of their public information acts and narrowly construe exemptions . . ."

The GBME is concerned about the disclosure of personal data of licensed physicians and seek your assistance in amending the Act to include licensed physicians.

The Board would be happy to discuss this matter further with you at your earliest convenience. Please contact the Board Office at 475-0251/2

Sincerely,

  
ROBERT LEON GUERRERO, MD  
Chairman, Guam Board of Medical Examiners

**I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN**  
**Committee on Health, Human Services and Chamorro Heritage**  
**Kumiten Salud, Setbision Tinaotao yan Irensian Chamorro**  
*Sinadot Simon A. Sanchez II, Ge'Hilo'*

---

October 10, 2000

Mr. John F. Tarantino  
Attorney General of Guam  
Ste 2-200E, Judicial Center Bldg.  
120 W. O'Brien Drive  
Hagåtña, Guam 96910

ATTN: Deborah Rivera, Acting Deputy Attorney General

REF: GBME 00-0555 and GBME 00-0885

Dear Mr. Tarantino:

My office reviewed the opinions above and I would like to eliminate the dilemma posed by the interplay of Public Law 25-06 (Sunshine Reform Act) and Public Law 24-208 (Physician Practice Act).

The two opinions indicate a problem exists in the disclosure/protection of certain personal information about physicians. We would appreciate receiving from you suggested amendatory language to correct the problem.

Thank you for your attention and assistance.

*Put respetu',*

  
SIMON A. SANCHEZ II

Y

RECEIVED

OCT 13 00  
Jane 8:05AM  
ATTORNEY GENERAL'S OFFICE



CARL T.C. GUTIERREZ  
Maga'låhi  
Governor

MADELEYNE S. BORDALLO  
Tihenle Gubetnadora  
Lt Governor

Ufisinan Hiniråt Abugao  
Hagåtña, Guåhan  
Office of the Attorney General  
Hagåtña, Guam

JOHN F. TARANTINO  
Hiniråt Abugao  
Attorney General

ROBERT H. KONO  
Atkådi Sigundo  
Chief Deputy

*copy → Ben Sanchez*

May 24, 2000

Memorandum (Informational)

Ref: GBME 00-0555

To: Chairperson, Guam Board of Medical Examiners

From: Attorney General *ML*

Subject: Request for Information under Sunshine Reform Act of 1999

Buenas. I understand the Board received a request for information on two licensees on Monday, May 22, 2000. Since under the recently enacted Sunshine Reform Act (5 GCA §§10101-10113), government agencies have four business days to respond, and there are other significant changes to this law, I am providing a quick answer as to what in a licensee's file may be disclosed to a requesting party.

Attached for your review is a copy of the current Sunshine Reform Act. As with the prior Sunshine Act, government agencies were allowed to submit listings of exempted documents under the new law, but the Legislature disapproved every single listing submitted by every agency. (Actually, it appears that the Department of Public Health and Social Services did not submit a listing anyway.) Hence, much more information must be disclosed now under the Sunshine Reform Act than under the prior law.

Basically, §§10103 (a) and (c) of the new Sunshine Reform Act provide that all Board documents must be disclosed upon request unless expressly prohibited by law. Therefore, we need to examine other laws besides §§10103(a) and (c) to see if disclosure may be prohibited.



Commonwealth Now!

Memo to Chairperson, GBME

May 24, 2000

Page 2

Generally, licensee files contain two different types of information — applications and disciplinary actions — and, therefore, I will examine these other laws by discussing each category of file separately below:

1. **Applications:** Applications generally consist of personal statistics and information, educational records and transcripts, and information from other licensing jurisdictions in which the applicant was licensed.

I have glanced over the new Physicians Practice Act and don't see anything in the Act itself which would expressly make anything in application files non-disclosable.

The federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g) pertaining to the confidentiality of educational records was made applicable only to educational institutions receiving federal funds, and hence, not applicable to professional boards such as yours. In any event, once a student released those records via an application for licensure, educational records no longer would come under this federal act.

As for personal statistics and information, §10108(c) of the Sunshine Reform Act provides that "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" are to be considered non-disclosable. However, licensure applicants are not "personnel" in any sense of the word. Therefore, even personal information such as an applicant's home telephone number, home address, and social security number must be disclosed if contained in the applicant's file, however distasteful such disclosure would seem.

Also, I see nothing which would prevent the disclosure of any disciplinary actions from other jurisdictions which are a part of the application file.

In conclusion, everything within a licensee's application file must be disclosed upon request under the Sunshine Reform Act.

2. **Disciplinary Actions:** Disciplinary actions involve several different phases, beginning with the receipt and investigation of a complaint, to formal action taken by the Board, to court action on appeal.

Whenever the Board discusses a matter at any phase level, the Open Government Law applies, and according to this Law, all meetings are open to the public except when the agency meets in executive session. However, according to the Open Government Law, since agencies are restricted from taking action during executive session, all voting and decision-

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making must take place during the public portion of a meeting, unless there are other laws which provide exceptions to the agency.

The Sunshine Reform Act itself provides in §10108 that nothing in the Act shall require the disclosure of records concerning pending litigation in which the agency is a party until finally adjudicated or settled, and concerning complaints to, or investigations conducted by, an agency, but if there are other laws outside of the Sunshine Reform Act which restrict their disclosure, then those outside laws would apply. So, we need to rely upon laws other than the Open Government Law or the Sunshine Reform Act in deciding what in a licensee's disciplinary file must be disclosed.

Turning to the Physicians Practice Act, we note several sections addressing what is confidential and, hence, not disclosable:

(a) Section 12213(c)(1) provides:

**(c) Protected Communication.**

1. Every communication made by or on behalf of any person, institution, agency, or organization to the Board or to any person(s) designated by the Board relating to an investigation or the initiation of an investigation, whether by way of report, complaint or statement, shall be privileged. No action or proceeding, civil or criminal, shall be permitted against any such person, institution, agency or organization by whom or on whose behalf such a communication was made in good faith. [Emphasis added.]

We are unable to decide for sure whether this section merely means that the complainant is protected against court action for having made the complaint, or whether the information within the complaint itself is confidential. However, with regard to privileges generally, the contents of a privileged communication would remain private unless the person to whom the privilege applies agrees to disclosure. Hence, I would suggest, at least initially without further opportunity to look into the matter, that this section prevents the public disclosure of complaints.

(b) Section 12209(b) provides:

**(b) Letter of Concern.** The Board is authorized to issue a confidential letter of concern to a licensee when, though evidence does not warrant formal proceedings, the Board has noted indications

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of possible errant conduct by the licensee that could lead to serious consequences and formal action. In its letter of concern the Board is authorized, at its discretion, to request clarifying information from the licensee. [Emphasis added.]

Letters of concern as described herein being confidential, do not require disclosure under the Sunshine Reform Act.

(c) Section 12210(e) provides:

**(e) Informal Conference.** Notwithstanding any provision of law, the Board is authorized at its discretion to meet in informal conference with an accused licensee who seeks, or agrees to, such a conference. Disciplinary action taken against a licensee as a result of such an informal conference and agreed to in writing by the Board and the accused licensee should be binding and a matter of public record. However, license revocation and suspension shall be dealt with in open hearing. The holding of an informal conference shall not preclude an open hearing if the Board determines such is necessary. [Emphasis added.]

This means that the Board can meet informally with a licensee concerning disciplinary matters, outside of the Open Government Law requirements, without notice and call of meeting, with any number of Board members. The right way of conducting an informal meeting is for the Board to decide to conduct such an informal conference for a particular and limited purpose, during the course of a regularly scheduled meeting, and then to assign certain members or all members of the Board or other support personnel such investigators to attend and conduct such an informal meeting. However, no decisions may be made at these informal meetings. Any decisions based upon the results of the informal meeting must be made at a *formally called and noticed meeting of the Board and done in the open*. Any written report of an informal meeting would appear to become public information.

(d) Section 12210(h) provides:

**(h) Board Action Reports.** All the Board's final disciplinary actions and license denials, including related findings of fact and conclusions of law, shall be matters of public record. ... Voluntary



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surrender of and voluntary limitation(s) on the medical license of any person shall also be matters of public record ...

According to (h) the final results of a disciplinary action (orders, findings of facts, conclusions of law, etc.) are public records, seemingly to imply that matters leading up to these final results are the opposite of public records. However, we find nothing in the Physicians Practice Act, except as otherwise noted for complaints and letters of concern, nor in other laws, which would indicate that matters leading up to the final results of a disciplinary action are non-disclosable.

In conclusion, all parts a disciplinary action are open to the public and disclosable except for complaints and letters of concern.

Based upon the foregoing, I see some conflicts in the application of the sections pertaining to public or private matters as quoted above and as contained in the Physicians Practice Act. For example, the borderline between informal meetings which are public matters may cross over into the issuance of a letter of concern which is confidential. We can cross this hurdle when a specific problem presents itself.

Please advise if there are any other types of information not covered above.

This memorandum is informational only and is not issued as an opinion of the Attorney General. For further information concerning this matter, please provide us with our file number referenced above. Dangkolo na agradesimiento.

OFFICE OF THE ATTORNEY GENERAL

By:

  
DEBORAH RIVERA  
Acting Deputy Attorney General

Attachment



Carl T.C. Gutierrez  
Maga'låhi  
Governor

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Office of the Attorney General  
Guam

*copy -> San Sanchez*

September 6, 2000

Memorandum (Informational)

PCF No: GBME 00-0885

To: Chairman, Guam Board of Medical Examiners  
From: Attorney General  
Subject: Disclosure of personal information

Håfa Adai!

We are in receipt of your memorandum of August 24, 2000, in which you request information on the legal obligation to disclose agency documents that contain the home addresses, home telephone numbers, and social security numbers of licensed physicians pursuant to a request under the Sunshine Reform Act of 1999. The Board is concerned about the use to which a requestor could put such information, which will hereinafter be referred to as personal data, and its effect upon physicians' legitimate expectations of privacy in domestic lives.

**REQUEST:** Does the Sunshine Reform Act of 1999 allow the Guam Board of Medical Examiners to create two files for each licensed physician, one containing non-personal data that must be disclosed upon request and another containing personal data that is exempt from disclosure?

**ANSWER:** No. If a licensing agency requires that a licensed medical doctor disclose personal data and the agency retains that information in his files, segregating the personal data from all other files will not remove it from the reach of the Sunshine Act.

**REQUEST:** Does the federal Privacy Act apply to Guam and if its does, does it apply to the disclosure of personal data?

**ANSWER:** The federal Privacy Act does not apply to Guam and thus provides no bar to disclosure of personal data.



Commonwealth Now!

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**REQUEST:** Is there a common-law right of privacy that would allow the GMBE to withhold personal data?

**ANSWER:** There is a common-law right of privacy but the Legislature can abrogate the common law if one's civil rights are not violated, and the Legislature has done so in enacting the Sunshine Reform Act of 1999.

**REQUEST:** Do the confidentiality of peer review data exempt the personal data of licensed physicians from disclosure required under the Act?

**ANSWER:** As the personal data of licensed physicians does not relate to the quality of his medical practice, the peer review law does not exempt personal data from required disclosure.

**REQUEST:** Does the Sunshine Reform Act require disclosure of personal data?

**ANSWER:** The Sunshine Reform Act does require disclosure of personal data.

#### STATEMENT OF FACTS:

In Guam Public Law 25-06 the Legislature enacted the Sunshine Reform Act of 1999 ("the Act") in order to allow members of the public to inspect all non-exempt public documents, which are defined as "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 electronic format," 5 G.C.A. § 10102(d).

Section 1 of P.L. 25-03 states the purposes of the Act: to foster democracy; to expose waste, fraud, abuse, and wrongdoing within the government; to create the opportunity for an "informed electorate." However, limitations may not be made on access to a non-exempt public record based upon the purpose for which the record is being requested.

#### DISCUSSION:

It is difficult to discern how learning the home address and telephone number of a licensed physician would serve the ostensible goals of the Act. The information seems to have no bearing upon the operation of the GMBE. The only apparent use of such information would be the ability to contact the licensed physician at his home. The Legislature seems to be aware of this consequence with respect to government employees and officials. Section 10108(c) protects personnel and medical files from disclosure if disclosure would be an "unwarranted invasion of privacy," and section 10108(h) goes on to expressly prohibit disclosure of documents that would reveal home addresses and telephone numbers of government employees and officials.

However, as just noted, the purpose of the request is immaterial to the requestor's right to inspect the document, 5 G.C.A. § 10110. It would appear that the definition of a public document and the express exemptions to its disclosure must control the disposition of a request to inspect it.

Our review of the Act reveals no provision that would allow an agency to segregate personal data into separate files that would fall outside of the broad definition of a public document. The "retention" aspect of the statutory definition would keep the file within the category of "public

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document," even though the agency does not use the information and the physician prepares the document in which it is contained. Furthermore, how an agency organizes its files does seem to fall within the area of the public's business and right to know.

A review of the various state freedom of information acts show that a majority of the states were concerned about protecting personal data from required disclosure. All the cases are collected and organized in an annotation, *What constitutes personal matters exempt from disclosure by invasion of privacy exemptions*, 26 A.L.R.4th 666. Personal information is expressly protected from disclosure if the disclosure would be an "unwarranted invasion of privacy." Other jurisdictions accord greater recognition to the privacy interests of individuals, but Guam law is limited to the above-mentioned provisions.

Some state courts have applied the provision in determining requests for names and addresses. In Dunhill v. Director, District of Columbia Department of Transportation, (D.C.App. 1980), it was held that names, addresses, dates of birth, gender, and expiration dates of drivers' licenses must be disclosed. The names and addresses of applicants to operate check cashing businesses are not exempt, American Broadcasting Co. v. Siebert, 442 N.Y.S.2d 855 (1981).

The federal Privacy Act does not protect the personal data from mandatory disclosure under the Guam Sunshine Act. It applies only to federal agencies. State and local agencies are not covered, Davidson v. Georgia, 622 F.2d 895 (5<sup>th</sup> Cir.). Recipients of federal funds are not covered, Unt v. Aerospace Corp., 765 F.2d 1449 (9<sup>th</sup> Cir.). Entities that are outside the executive branch are not covered, such as a federal grand jury, Standley v. Department of Justice, 835 F.2d 216 (9<sup>th</sup> Cir.).

The common law right of privacy does not seem to override the requirements of territorial law. Most jurisdictions that recognize the common-law right of privacy do so by way of construing the privacy provisions of their public information acts, see e.g., State of Hawai'i Organization of Police Officers v. Society of Professional Journalists, 927 P.2d 386 (Hawai'i 1996). It is generally recognized that the legislature may abrogate common law rights under the doctrine of legislative supremacy.

Finally, it seems that the confidentiality of peer review information under 6 G.C.A. § 413 does not exempt personal data from the disclosure requirement. The purpose of the law is to make undiscoverable in lawsuits the comments made during peer review meetings. The address and social security number of a physician obviously does not relate to the quality of performance in delivering medical services.

Because of the protection of personal data of government employees within the Act, it seems probable that the Guam Legislature would not now vote for a law that required disclosure of the personal data of licensee physicians if the consequences of the present Act were now presented to them. Because of the protection shown to government employees, it could be argued that the Legislature did not intend to require such disclosures of GBME files, but the courts broadly construe the disclosure language of their public information acts and narrowly construe exemptions. Consequently, we are not prepared to opine that the plain meaning of the Act does not require disclosure of the personal data relating to physicians. Perhaps the consequence simply never occurred to the Legislature in the course of its enactment.

Given the legitimate concern of the GBME about disclosing personal data about licensed physicians, if the regulations permit, simply expunging such information from the files and suspending collection of such data for future licensees may be the only course until the Act is amended.

In conclusion, it appears that upon proper request the GBME must disclose documents that contain the personal data related to a licensed physicians.

This memorandum is for informational purposes only and is not an opinion of the Attorney General. For faster response to any questions about this memorandum, please include the above reference number.

Put Respetu.

OFFICE OF THE ATTORNEY GENERAL

By:

*Monty R. May*  
MONTY R. MAY  
Assistant Attorney General

**MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN**  
**2000 (SECOND) Regular Session**

Bill No. \_\_\_\_\_

Introduced by:

S. A. Sanchez, II *SAS II*

**AN ACT TO AMEND SUBSECTION (h), §10108 OF  
ARTICLE 1, CHAPTER 10 OF TITLE 5 OF THE GUAM  
CODE ANNOTATED ('SUNSHINE REFORM ACT OF  
1999'), RELATIVE TO LIMITATION OF RIGHT OF  
INSPECTION.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative findings and intent.** *Liheslaturan Guåhan* enacted Public Law 25-06 ('Sunshine Reform Act of 1999') in order to allow members of the public to inspect all non-exempt public records, which are defined as "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." The Act intended 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)