

**IN THE SUPREME COURT OF GUAM**

**GUAM PUBLICATIONS, INC., DBA PACIFIC DAILY NEWS**

Plaintiff-Appellee

**vs.**

**GOVERNMENT OF GUAM RETIREMENT FUND**

Defendant-Appellant

**OPINION**

**Filed: December 3, 1999**

**Cite as: 1999 Guam 29**

Supreme Court Case No. CVA99-027

Superior Court Case No. CV2983-98

Appeal from the Superior Court of Guam.  
Argued and submitted on November 3, 1999  
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA Associate Justice, and JOAQUIN V. E. MANIBUSAN, JR., Designated Justice.

CRUZ, C.J.:

[1] This is an appeal by Defendant-Appellant, Government of Guam Retirement Fund (hereinafter, “GRF”) of the Superior Court’s grant of a summary judgment in favor of Plaintiff-Appellee, Guam Publications Inc., (hereinafter, “PDN”). The trial court held that PDN had the right to inspect certain documents in GRF’s custody. We affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

[2] According to the record, on October 27, 1998, PDN sent a written request to GRF for documents pertaining to former University of Guam employee Mae M. Muna’s, (hereinafter, “Muna”) contributions and withdrawals from the retirement fund. Specifically, PDN requested 1) The date Muna’s request for contributions was made; and 2) When the contributions were released to her. On November 13, 1998, John Rios, Director of GRF, responded that because the request pertained to personal information, it could not be granted without Muna’s consent. Subsequently, PDN requested and was denied Muna’s consent.

[3] In accordance with the provisions set forth in the Sunshine Act of 1987, 5 GCA § 10101, PDN sought “an order to obtain and an order to enjoin” GRF from withholding Muna’s records. The Superior Court in a Decision and Order filed on June 8, 1999 and in the related judgment of June 17, 1999 held that the information sought by PDN constituted public writings. Accordingly, the public and PDN, in particular, had the right to inspect and obtain a copy of the documents at issue. Following this Court’s denial of GRF’s Motion to Stay the Enforcement of the Judgment, GRF

provided the relevant documents to PDN. Despite providing the documents in controversy to PDN, GRF has decided to continue the suit.

### ANALYSIS

[4] Jurisdiction over this matter is vested in the Court pursuant to 7 GCA sections 3107 and 3108 (1994). The trial court's decision to grant summary judgement shall be reviewed *de novo*. *Iizuka Corp. v. Kawasho Int'l (Guam) Inc.*, 1997 Guam 10, ¶ 7. "A grant of summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Yasuda Fire & Marine Ins. Co. v. Heights Enter.*, 1998 Guam 5, ¶ 6 (citations omitted). Lastly, questions of statutory interpretation are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3.

[5] Embracing the principles of open government and disclosure, the Sunshine Act of 1987 is set forth in Title 5 of the Guam Code Annotated Chapter 10.<sup>1</sup> Section 10102 then sets forth a series of definitions. In relevant part, it provides:

§ 10102. Definitions.

Unless the context otherwise requires, the following terms and meanings apply to this Chapter:

(a) Agency means any authority of the government and includes a department, institution, board, bureau, commission, council, committee of territorial government, branch, autonomous instrumentality, or other public entity of the government of Guam, whether or not it is within or subject to review by another agency.

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<sup>1</sup> Section 10101 provides that this chapter of the GCA shall be known as the Sunshine Act of 1987. 5 GCA § 10101 (1993).

(b) Writings are written acts or records of the acts of the government of Guam and are either public or private.

(c) Public writings are:

(1) the written acts or records of the acts of the sovereign authority, of the official bodies and tribunals, and of public officers or employees, legislative, judicial and executive, of the territory of Guam; and

(2) public records kept in Guam, of private writings.

(3) all data, not otherwise privileged, produced, generated or stored by a governmental body in connection with procurement, unless the Policy Office determines that such material is a trade secret of the person or entity submitting the material. The terms used in this Subsection are to be interpreted in the same way as in Chapter 5 of this Code (Procurement). Public writings also include the scores by public school of the National Standardized Achievement Test and/or any locally standardized achievement test by public school. Individual test score results by student shall not be considered a public document or writing.

(d) Private writings are all other writings which are not public writings.

5 GCA § 10102 (1993).

[6] Re-enforcing the Sunshine Act's intent to allow the public access to information, Section 10103 articulates the Sunshine Act's main purpose. Entitled, "Right of Inspection of Public Writings," it provides in its entirety, "[e]very person has the right to inspect and take a copy of any **public writing** on Guam, except as otherwise expressly prohibited in law, and except as provided in § 10104 of this Chapter." 5 GCA § 10103 (1993) (emphasis added).

[7] Off-setting the general policy of disclosure, section 10104 of the Sunshine Act provides:

(a) None of the following documents may be inspected and copied pursuant to § 10103 of this Chapter unless permitted by any other law of Guam:

(2) the personnel file of any employee of the government without his consent, except that relevant material in said file shall be open to inspection after a final decision has been rendered in any tribunal which may have jurisdiction over the subject matter in the file. All information regarding salary, and the name, age, and mail

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address of each employee shall be public.

5 GCA § 10104 (a) (2) (1993).

[8] Notably absent from the list of exceptions are the items sought by PDN. Furthermore, although the language set forth in the Sunshine Act of 1987 is unique to Guam, some courts have addressed issues similar to the one at bar. In *State v. Bill*, 935 S.W. 2d 659 (Mo. Ct. App.1997), the Local Government Employees Retirement System and the state brought a declaratory judgment action for a determination as to whether they were obligated under their open meetings and records law to disclose information relating to the disbursement of benefits to particular government employees. Specifically, the information sought concerned the names of the employees who received a benefits disbursement as well as the amount of the disbursement. The statute at issue in that case exempted,

[i]ndividually identifiable personnel records, performance ratings or records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.<sup>2</sup>

*Id.* at 665.

[9] Furthermore, the court held that the information regarding the names of the employees who received the disbursement, as well as the amount of the disbursement, was subject to disclosure. *Id.* The court emphasized the strong “public interest in open government” as the primary rationale for its decision. *Id.* In doing so, it also de-emphasized the nature of the fund, ascribing little significance

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<sup>2</sup> V.A.M.S. Section 610.021 (13). Furthermore, we note that section 610.021 (3) provides in relevant part, “the term ‘personal information’ means information relating to the performance or merit of individual employees.” V.A.M.S. Section 610.021 (3).

to whether the money involved was public or private in origin. *Id.* However, the court did acknowledge that the public interest at the base of its ruling “may be at its greatest” where public funds are spent. *Id.*

[10] In the instant case, the statutes at issue are substantively similar to those in *State v. Bill*. The relevant statute in this case, the Sunshine Act of 1987 clearly favors the policy of general disclosure in recognition of the public’s interest in open government. In addition to the statutory similarities, the facts of the cases are also similar. Both cases deal with information concerning government action, the disbursement of funds that are public in nature, and the public interest in the access and disclosure of such information. Moreover, we note that PDN’s inquiry is extremely narrow in that it only seeks to determine whether Muna requested a disbursement and if so, when any disbursement was made. Therefore, this information is subject to disclosure pursuant to *State v. Bill*.

[11] Next, in *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (1991) the plaintiff sought an injunction barring the Governor from disclosing records relating to individuals that received state pension benefits. The statute at issue in *Sundlun* was the Access to Public Records Act (hereinafter, “APRA”). *Id.* at 800. The trial court held that the “APRA, like the federal Freedom of Information Act and the myriad open records statutes passed by other states, was intended to increase the public’s access to agency records.” *Rhode Island Federation of Teachers v. Sundlun*, 1991 WL 789779 (R.I. Super. 1991) at 2. It further commented that, “[i]n every case in which our Supreme Court has had occasion to review APRA, the Court has acknowledged that the Act’s essential purpose was disclosure.” *Id.* (citations omitted).

[12] In holding that the information sought would be subject to disclosure the court commented that “no public employee has a reasonable expectation of privacy with respect to the amount of

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public funds dispensed to him.” *Id.* at 10 (citations omitted). We agree. Just as an employee has no reasonable expectation of privacy with respect to the amount of public funds dispensed to him or her, we likewise hold that there is no expectation of privacy with regard to whether or when a request for disbursements was made as well as when, if ever, a disbursement was issued.

### CONCLUSION

[13] Summary judgment was proper in light of the fact that there is no genuine issue as to any material fact and our interpretation of the Sunshine Act of 1987 leads this Court to conclude that the moving party is entitled to judgment as a matter of law. The Sunshine Act applies to effectively compel GRF to disclose the relevant information. Based on the foregoing, the trial court’s grant of summary judgment is **AFFIRMED**.

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PETER C. SIGUENZA  
Associate Justice

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JOAQUIN V. E. MANIBUSAN, JR.  
Designated Justice

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BENJAMIN J. F. CRUZ  
Chief Justice