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4 *Attorneys for Petitioner*

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

8 THOMAS J. FISHER
9 Petitioner,

10 v.

11 LEEVIN CAMACHO
12 ATTORNEY GENERAL OF GUAM
Respondent.

Special Proceeding Number _____

**VERIFIED PETITION FOR AN
ORDER TO SHOW CAUSE OR
PEREMPTORY WRIT OF
MANDAMUS**

13
14 **COMES NOW** Petitioner Thomas J. Fisher and submits this Verified Petition and
15 Memorandum of Law in Support of a Petition for an Order to Show Cause or Peremptory Writ of
16 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 Camacho is the
22 current Attorney General of Guam and responsible for the operation and administration of the
23 Office of the Attorney General. *See 5 Guam Code Ann. §30101 et seq.*

24 The Office of the Attorney general is an agency within the executive branch of the
25 Government of Guam and created pursuant to statute.

1 **III. FACTUAL ALLEGATIONS**

2 On 26 May 2020, Petitioner made a request for production of certain documents from the
3 Office of the Attorney General (OAG). This Request was made pursuant to the Sunshine Act, 5
4 G.C.A. §10101, and was properly served upon the Respondent and received by him on 26 May
5 2020. *See Attachment A.* The records and documents requested are public in nature and
6 therefore properly disclosable and not otherwise protected.

7 The OAG has refused to disclose these documents.

8 Petitioner is beneficially interested in the performance of Respondent as he made the
9 request and, but for non-compliance with the law, would have received the requested documents.
10 Petitioner has exhausted all administrative remedies and there is no plain, speedy or adequate
11 remedy other than this application. Moreover, this Petition is specifically allowed by law. *See*
12 *10 Guam Code Ann. §10111.* Additionally, Respondent has the present ability to comply with
13 the law and perform his duty.

14 It has been more than four days since the request and respondent's actions are both
15 arbitrary and capricious.

16 On June 12th, 2020 the Respondent responded to Petitioner's request. This response was
17 untimely and merits all sanctions available at law. In the response, Camacho stated,

18 "After a review of thousands of records, we've identified many records responsive to
19 your request. Several are exempt from disclosure based on the deliberative process
20 privilege, the attorney-work product (sic) privilege, and the attorney-client
21 communications privilege under 5 GCA §10108(i); several are also exempt from
22 disclosure because they are draft documents under 5 GCA §10108(q). However, all
23 records responsive to your request that relate to employee payment enhancement s as a
24 result of the current public health emergency are also records pertaining to the pending
25

1 litigation that is Superior Court Case No. SP0064-20 and are exempt from disclosure
2 under 5 GCA §10108(a).” See letter, OAG to Fisher, 12 June 2020, p. 2, attachment B.

3 **IV. MEMORANDUM OF LAW**

4 The Respondent asserts several reasons not to produce;

5 1. the “deliberative process privilege” . . . under 5 Guam Code Ann.
6 §10108(i). This privilege does not exist under the laws of Guam, nor is it “expressly
7 protected” under Guam law. See 10 Guam Code Ann. §10108(i).

8 2. the “attorney- work product (*sic*)” privilege under 5 Guam Code Ann.
9 §10108(i). This privilege simply didn’t exist prior to 19 May 2020 since there was no
10 existing or imminent litigation to which the privilege could apply.

11 3. the records pertain to the pending litigation (SP No. SP0064-20) and are
12 exempt from disclosure under 5 GCA §10108(a). This is a deliberately false recitation of
13 the statutory exemption. See 5 GCA §10108(a) which exempts “[r]ecords pertaining to
14 pending litigation to **which the agency is a party**, until the pending litigation has been
15 finally adjudicated or otherwise settled.” It is self-evident that the OAG is not a party to
16 SP0064-20, a mandamus action against Guam, the Governor, GPD, and DOA.

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 V. VERIFICATION

21 As your Petitioner and as a beneficially interested party I verify the content of this
22 Petition to be true and do so under penalty of perjury of the laws of Guam

23 By: 
24 Mr. Thomas J. Fisher, Esq.

1 **VI. PRAYER**

2 **WHEREFORE** this Court should find an arbitrary and capricious act by Respondent,
3 issue an order to show cause or a peremptory writ of mandamus and award Petitioner attorney
4 fees and costs.

5
6 **FISHER & ASSOCIATES**

7
8 By: 
9 _____
10 Mr. Thomas J. Fisher, Esq.

ATTACHEMENT "B"



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96913

671.475.3324 extension 5015 ♦ Fax 671.477.4703 ♦ Email ag@oagguam.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

June 12, 2020

VIA EMAIL

fisherassociates@teleguam.net

Thomas J. Fisher, Esq.
Fisher & Associates
167 E. Marine Corps Dr.
Ste. 101, De La Corte Bldg.
Hagåtña, GU 96910

RE: May 26, 2020 FOIA Request

Håfa Adai Attorney Fisher:

Our office received your May 26, 2020 FOIA/Sunshine Reform Act request for the following:

- (1) All communications between the office of the Attorney General of Guam and the office of the Governor from March 2020 to date of response in whatsoever form, related to payment of employees of the Government of Guam; and
- (2) All communications among and between employees of the office of the Attorney General relating to or concerning payment of Government of Guam employees and/or made on social media platforms including but not limited to "WhatsApp", "Facebook" and similar platforms.

During a phone conversation on May 28, 2020, we discussed narrowing your request. You narrowed Part 2 by identifying a time frame beginning March 1, 2020. You did not narrow the broad reference to "all communications" and "relating to or concerning payment" but instead confirmed you are requesting for "all" communication (e.g., routine, non-routine) regarding any payment (e.g., made or to be made). You further clarified you would like communications between employees even if conducted on personal devices and using personal platforms. I informed you that based on the definition of "public record" in the Sunshine Reform Act, we would request from our employees, official communications (even if on personal devices/platforms) but we would not request personal communications.

During a second phone conversation on June 1, 2020, I asked if we could further narrow your search period to start on March 14, closer to the beginning of the public health emergency, which you declined. I also informed you we were exercising the ten-day extension to respond as permitted under 5 GCA § 10103(e)(2).

After a review of thousands of records, we've identified many records responsive to your request. Several are exempt from disclosure based on the deliberative process privilege, the attorney-work product privilege, and the attorney-client communications privilege, under 5 GCA § 10108(i); several are also exempt from disclosure because they are draft documents under 5 GCA § 10108(q). However, all records responsive to your request that relate to employee payment enhancements as a result of the current public health emergency are also records pertaining to the pending litigation that is Superior Court Case No. SP0064-20 and are exempt from disclosure under 5 GCA § 10108(a).

There are a handful of responsive records that are not exempt from disclosure, and those records are attached. Any redacted information within the attached records is accompanied by a notation justifying the redaction.

Once Superior Court Case No. SP0064-20 is finally adjudicated, we will provide all remaining public records not otherwise exempt from disclosure.

Should you have any questions, please contact me at generalcounsel@oagguam.org.

Sinseramente,



Si Stephanie E. Mendiola
General Counsel/Deputy Attorney General
Division of General Counsel

Attachment (4 pages)

WhatsApp Chat Excerpts

Communication between Leevin Camacho, Shannon Taitano, Rebecca Perez-Copper, Stephanie Mendiola, Fred Nishihira, Andrew Perez, Basil O'Mallan, James Canto II, Karl Espaldon, Carol Sanchez, Pauline Untalan, Camarine Hopkins

[3/20/20, 10:26:16 AM] Rebecca M. Perez: payroll statements and checks are ready for pickup , please have your division rep see Rena in Admin for pickup

[3/20/20, 10:52:32 AM] Carol Sanchez: Pernisha will get in afternoon

[3/20/20, 11:53:17 AM] Rebecca M. Perez: Carol - Pernish's check should be ready shortly, maybe just after noon.

[3/20/20, 11:53:45 AM] Carol Sanchez: We will come up once it's ready

[3/20/20, 11:53:55 AM] Carol Sanchez: She will be here waiting

[3/20/20, 1:05:47 PM] Carol Sanchez: Any word on if it's ready... she said that she also applied for direct deposit


[4/3/20, 10:05:18 AM] Rebecca M. Perez: Payroll is ready for pickup at Admin

[4/5/20, 12:05:10 PM] Rebecca M. Perez: DOA CIRCULAR 2020-011 MANDATORY DIRECT DEPOSIT.pdf • 2 pages document omitted

[4/5/20, 12:06:02 PM] Rebecca M. Perez: DAGs please circulate to your employees. Payroll will also get a list of employees who received paper checks on Friday

[4/5/20, 12:11:36 PM] Carol Sanchez: My entire team in direct deposit

[4/9/20, 10:49:25 AM] Rebecca M. Perez: DAGs please come to Admin between 9 and 10 tomorrow to sign timesheets.

thank you.  *Redacted info is non-responsive to request.

[4/14/20, 10:21:45 AM] David Rivera: According to Vivian the dp forms for all three prosecution employees were faxed last week wednesday to doris at doa payroll.

[4/14/20, 10:23:11 AM] Rebecca M. Perez: ok thanks dave, will follow up with our payroll

[4/17/20, 10:41:43 AM] Rebecca M. Perez: Basil and Karl - checks for Celine and Woody are ready at 9th floor.

[4/17/20, 10:53:05 AM] Drew Perez: I picked them up

[4/17/20, 10:53:29 AM] Drew Perez: I mean I picked up the check stubs

[4/22/20, 7:53:22 PM] Basil O'Mallan: I have a time sheet everyone must sign in and out for Prosecution

[5/1/20, 9:08:33 AM] Basil O'Mallan: [REDACTED]
Just need to know when I can pick up WDP's paycheck; [REDACTED]

[REDACTED] *Redacted info is non-responsive to request.

[5/1/20, 10:54:02 AM] Rebecca M. Perez: Paychecks /wage statements ready for pickup at Admin

[5/6/20, 1:34:31 PM] AG: May is the first month where there'll be 3 paychecks in a single month

[5/29/20, 12:22:22 PM] Rebecca M. Perez: payroll will be ready for pick up at 1:30pm

[5/29/20, 1:31:53 PM] Rebecca M. Perez: payroll [REDACTED]
ready for pickup at Admin

*Redacted info is pertaining to pending litigation,

[End] 5 GCA Sec. 10108(a).

WhatsApp Chat Excerpts
Communications between Rebecca Perez-Copper & Lorena Bato

[3/16/20, 9:03 AM] Lorena Bato: Payroll submitted

[3/20/20, 1:10 PM] Lorena Bato: Pernishas check is ready for pick up

[3/25/20, 9:29 AM] Lorena Bato: And payroll confirmed accepting the procedures

[3/27/20, 9:17 AM] Lorena Bato: consumer and csed picked up their timesheets

[3/27/20, 9:35 AM] Lorena Bato: CDAG, consumer and prosecution all submitted their time sheets signed

[3/28/20, 9:20 AM] Lorena Bato: I received confirmation email from Payroll that our Payroll for PPE 3/28/20 has been received.

[4/2/20, 9:50 AM] Lorena Bato: Litigation and Family has not picked up their timecards

[4/7/20, 2:31 PM] Lorena Bato: Letting you know I had just sent the email re Mandatory Direct Deposit

[4/8/20, 7:33 AM] Lorena Bato: Timecards for Supervisors/Leads have been prepared and in are [REDACTED].

*Information relates to physical location of sensitive documents and is redacted for security reasons.

[4/8/20, 9:29 AM] Lorena Bato: I emailed DOA payroll yesterday to see if any updates I need to know for this payroll, but no updates

[4/9/20, 11:06 AM] Lorena Bato: I emailed payroll the two DD's that I received, Vivian Nisperos and Bernie Alvarez

[4/9/20, 11:07 AM] Lorena Bato: Eight others are still pending.

[4/10/20, 11:01 AM] Lorena Bato: OAG Payroll has been submitted via email to DOA Payroll

[4/14/20, 10:57 AM] Lorena Bato: I sent payroll an email to confirm if they received the forms for the three from prosecution division.

[4/14/20, 10:58 AM] Lorena Bato: Also, I rcvd email form payroll that Pengelly, Woodrow form was not processed because [REDACTED].

*Information relates to personal banking situation of employee and is redacted under 5 GCA Sec. 101018(c) to prevent an unwarranted invasion of privacy.

[4/17/20, 10:16 AM] Lorena Bato: Hi Ma'am payroll is ready for pick up

[4/28/20, 4:46 PM] Lorena Bato: May 2020 Timecards for Solicitors, Litigation, Consumer and Family are all at the Admin. Front desk for pick up.

[4/28/20, 4:46 PM] Lorena Bato: Pros and CSED prepare their timecards

[5/1/20, 10:35 AM] Lorena Bato: Payroll is ready for pick up.

[5/12/20, 5:14 PM] Lorena Bato: PPE 5/9 sent to payroll

[5/15/20, 9:51 PM] Lorena Bato: Ma'am, payroll is ready, we picked up the check for pengelly

[5/29/20, 12:56 PM] Lorena Bato: Payroll [REDACTED] is ready for pick up

*Information relates to pending litigation and is redacted under 5 GCA Sec. 10108(a).

[6/2/20, 4:40 PM] Lorena Bato: Norma's check is



[End]