

# Open Government Act, RPPL No. 9-32 2014

PALAU

[http://www.paclii.org/cgi-bin/sinodisp/pw/legis/num\\_act/ogarn9322014275/ogarn9322014275.html?stem=&synonyms=&query=confidential%20sources](http://www.paclii.org/cgi-bin/sinodisp/pw/legis/num_act/ogarn9322014275/ogarn9322014275.html?stem=&synonyms=&query=confidential%20sources)

## AN ACT

To create a more open and transparent government so that the people of the Republic may hold their elected government representatives accountable, and for other related purposes.

### **THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:**

#### Section 1. Short Title.

This Act shall be known as and may be cited as "The Open Government Act."

#### Section 2. Presidential Statement of Introduction.

Pursuant to Article VIII, Section 12: "The President may introduce measures in the Olbil Era Kelulau." The President finds and declares that all government entities, whether quasi or whole, exist to serve the people in the conduct of the people's business. It is the intent of this Act: that the actions of the government be conducted openly, that all deliberations be transparent, and that all public government documents be open for public inspection. Indeed, this Act is intended to provide a legal framework for the rights that are already guaranteed to the people of the Republic in Article V, Section 12 of the Constitution of the Republic, which states that: "A citizen has the right to examine any government document and to observe the official deliberations of any agency of government."

It is a fundamental aspect of a democracy that government governs the people only with the consent of the people. The people, therefore, in consenting to be governed 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 President hereby finds that the people of the Republic insist upon being informed of the workings of the government so that they may retain control over the instruments of government that they have created for governance with their consent.

Accordingly, it is the intent of the President of the Republic that, as introduced, the provisions contained in this bill, which is modeled on the Commonwealth of Northern Marianas Islands Public Law No. 8-41 (effective Jan. 21, 1994), in providing for an open government and open access to the documents of the government the law shall be liberally interpreted, and that the provisions providing for exceptions to the open meeting requirements and open records requirements the law shall be strictly interpreted against closed meetings and the non-disclosure of records.

#### Section 3. Legislative Findings.

The legislature finds that having an open and transparent government is important to ensure the public is involved in the government to the fullest extent possible, consistent with the constitutional mandate for an open government. At the same time, the legislature recognizes the balance that must

take place with privacy constraints and the realities imposed by financial administration and practicalities in operating government bodies.

#### Section 4. Definitions.

(a) As used in this Act, unless the content indicates otherwise, the following definitions shall apply:

(1) "Action" means any transaction of official business by a governing body.

(2) "Final action" means a collective positive or negative decision by a governing body on a particular issue with substantive relevance to the public or a vote by a majority of the members of a governing body, when sitting as a body or entity and making decision or voting upon a bill, motion, proposal, resolution, order, report, or ordinance.

(3) "Governing body" means any government entity created under the Constitution of the Republic, by treaty, by law, by regulation, or by executive order, including quasi-government entities, such as, for example, Palau Public Utilities Corporation, Palau National Communications Corporation, National Development Bank of Palau, and any subdivisions of a government entity or quasi-government entity.

(4) "Notice" means to publish the time and place where a governing body will meet along with a brief description of the matter that is to be discussed or the final action that may take place, and to announce such notice over at least one (1) radio station and post such notice at the Palau Supreme Court and the Olbil Era Kelulau at least twenty-four (24) hours before the time that the meeting is scheduled to commence.

(5) "Public record" means any written or printed report, book, paper, map, or plan of a governing body, which is the property thereof and in or on which an entry has been made or is required to be made by law, or which any public officer or employee of a governing body has received or is required to receive for filing, but shall not include records that invade the right of privacy of any person or business entity as defined in this Act.

#### Section 5. Meetings shall be open and public.

(a) All meetings of a governing body shall be open and public, and all persons shall be permitted to attend any meeting of the governing body, unless otherwise provided by this Act or other law.

(b) The minutes of all meetings of any governing body that are open and public shall be available upon request.

(c) A meeting of a governing body, and the minutes of that meeting, shall not be required to be open and public where the matter under discussion relates to information that shall not be disclosed to the public under Section 8.

#### Section 6. No conditions to attendance may be required.

(a) A governing body shall not require registration or any other prerequisite information to be filed

with the governing body before permitting a member of the public entry to an open and public meeting of a governing body.

(b) This Section shall not preclude voluntary sign-in sheets.

Section 7. Notice.

(a) A governing body shall give notice of any regular meeting.

(b) A governing body shall apprise a member of the public of any regular meeting upon request.

(c) For purposes of this section, "regular" meetings shall mean recurring meetings or proceedings held in accordance with a schedule declared by statute, rule or regulation of the governing body, and any meeting in which a final action may take place.

Section 8. Exceptions.

The following information shall not be made available to the public:

(a) information properly classified as secret in the interest of national defense or foreign policy as follows:

(1) information may be classified as secret in the interest of national defense where the disclosure of the information would compromise the current ability of the Republic of Palau or the United States to provide for the defense of the Republic of Palau;

(2) information related to negotiations with another country or another foreign entity that has its principal place of business in another country.



(b) information related solely to internal operation procedures and practices of the governing body the release of which would potentially risk circumvention of law or regulations;

(c) information specifically exempted by other statutes;

(d) a trade secret or privileged or confidential commercial or financial information obtained from a person or legally established corporation or entity in the Republic of Palau;

(e) a privileged inter-agency or intra-agency memorandum or letter;

(f) a personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy; provided that disclosure of a government employment contract or contract of an independent contractor working for a government, including any contracts that are performed as part of the execution of a foreign aid grant, are deemed to not be an invasion of personal privacy;

- (g) information compiled for law enforcement purposes, the release of which
  - (1) could reasonably be expected to interfere with law enforcement proceedings,
  - (2) would deprive a person of a right to a fair trial or an impartial adjudication,
  - (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
  - (4) could reasonably be expected to disclose the identity of a  **confidential source** ,
  - (5) would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
  - (6) could reasonably be expected to endanger an individual's life or physical safety;
- (h) information contained in or related to examination, operating, or condition reports about financial institutions that the Financial Institutions Commission regulates or supervises;
- (i) attorney client privileged communications or attorney work product;
- (j) judicial deliberations; or
- (k) information related to informal negotiations or discussions that take place as a part of the decision making process of a governing body prior to a meeting where a final action is made; however, any negotiations or discussions that take place during a meeting in which a final action is taken shall be conducted in accordance with Section 5; and
- (l) information related to a declared and confirmed State of Emergency in accordance with the Constitution of the Republic.

#### Section 9. Records and government documents open to public.

- (a) Within ten (10) days of any request, all public records produced by a governing body shall be available by any person during regular business hours, unless the disclosure will take more time to produce due to exceptional circumstances or the volume of information requested, is in violation of the Constitution of the Republic, other law of the Republic, or is exempted under this Act.

(b) All governing bodies shall develop procedures in order to promptly comply with the ten (10) days requirement. The person requesting access to public records shall bear the reasonable cost associated with the production.

#### Section 10. Penalties; Remedies.

(a) Any person who seeks the disclosure of public records or government documents, or is wrongfully denied access to a meeting of a governing body may undertake any legal action necessary for the purpose of stopping violations or preventing threatened violations of this Act by members of a governing body.

(b) Each member of a governing body who attends a meeting of a governing body where action is taken in violation of any provision of this Act, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for all subsequent offenses. The civil penalty shall be assessed by a judge of the Palau Supreme Court in a successful action to enforce this Act. A violation of this Act shall not constitute a criminal offense and the assessment of this civil penalty shall not give rise to any disability or legal disadvantage based upon conviction of a criminal offense.

(c) Any person responsible for the failure to timely disclose a public record shall be jointly and severally personally liable in the form of a civil penalty in the amount of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for all subsequent offenses. The civil penalty shall be assessed by a judge of the Palau Supreme Court in a successful action to enforce this Act. A violation of this Act shall not constitute a criminal offense and the assessment of the civil penalty shall not give rise to any disability or legal disadvantage based upon conviction of a criminal offense.

(d) Any person who prevails against a governing body in any action in the Palau Supreme Court to enforce a violation of this Act shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

(e) Any governing body that prevails in defense of a civil action for a violation of this Act may be awarded reasonable expenses and attorney fees if the Palau Supreme Court also finds that the commencement of such civil action was frivolous and advanced without reasonable cause.

#### Section 11. Severability.

If any provision of this Act is found to be invalid or unconstitutional by a court of competent jurisdiction, then the offending part or portions may be severed from the rest of the bill and the remaining parts or portions shall continue in full force and effect.

#### Section 12. Effective date.

This Act shall take effect upon its approval by the President of the Republic of Palau, or upon its becoming law without such approval.

**PASSED: July 10, 2014**

**Approved this 23rd day of July, 2014**

/s/

**Tommy E. Remengesau, Jr.**  
**President of the Republic of Palau**