

The Open Government Act (Public Law 8-41) is one of the most powerful tools we have for holding our government accountable for its actions and for keeping informed about the decisions that our public officials make in our names and with our taxpayer dollars. The Act requires government agencies to conduct their meetings openly, to make public records available for inspection, and to respond to requests for information within 10 days. No ordinance, resolution, rule, regulation, order, or directive may be adopted except at a meeting that is open to the public, and for which notice has been given and an agenda established. Exceptions are made for emergency meetings and executive sessions that are reasonably and publicly justified, and there are provisions in place to protect whistleblowers and certain personal records.

The opening lines to the Open Government Act are striking: “The Legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this Commonwealth *exist to aid in the conduct of the people’s business*” (emphasis added).

It gets better. “The people of this Commonwealth do not yield their sovereignty to the agencies which serve them,” the Open Government Act proclaims. “The people, in delegating authority, 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 people insist on remaining informed so that they may retain control over the instruments they have created.” Section 14 of the Open Government Act specifically applied the Open Government Act to the CNMI Legislature.

Sadly, almost immediately after the Open Government Act was signed into law in 1994, it was the members of the 9th CNMI Legislature who made the first move to erode it: they passed another law that exempted the Legislature from the Open Government Act’s provisions. In a single sentence, Public Law 9-2 repealed Section 14 of the Open Government Act.

The obvious question that comes to mind immediately is: Why? After acknowledging the basic democratic principles that citizens do not yield their sovereignty to their public servants and that they have the right to be informed about the decisions made by their public officials, why did our lawmakers then disregard those principles and exempt themselves from the same provisions for transparency that they applied to every other agency? And why do our current lawmakers continue to resist growing pressure to fully apply the Open Government Act to themselves?

Put another way, what do our lawmakers have to hide?

The members of this 15th Legislature have taken incremental steps towards making themselves partially open to public scrutiny. They began with Public Law 15-19, which applies the Open Government Act to the public records of the Legislative Bureau. More recently and without public notice the members of the House quietly passed House Bill 15-269, which proposes to apply the Open Government Act to only the financial records of the Legislature. It further requires that requests for financial disclosure be made

directly to individual lawmakers, and gives only the lawmakers themselves the authority to release that information.

At best, HB 15-269 is a frivolous bill that pays token acknowledgment to citizens' growing concerns about what our legislators could possibly have to hide that they would actually exempt themselves from the Open Government Act. But many lawmakers have claimed that their financial records are already subject to public scrutiny because the Department of Finance keeps those records and is not exempt from the law. If that is true, then what is the point of this bill and what exactly does it change?

If this bill would change anything, it would actually be to undermine, rather than enhance, the Open Government Act because it would allow only the lawmakers and no one else -- presumably not even the Department of Finance nor the Legislative Bureau -- the authority to release information related to their financial records.

With warped logic and misinformation, HB 15-269 even attempts to justify why the Open Government Act should not fully apply to the Legislature. "The people of the Commonwealth must be able to freely communicate their thoughts and concerns as well as freely report misconduct or violations of law to their legislative leaders without fear of retaliation or being exposed to the public," the bill claims. "A blanket application of the Open Government Act to the Legislature would have a chilling effect on open communication between the people and their legislative leaders."

This is not the first time that the whistleblower excuse has been made to justify the Legislature's exemption from the Open Government Act. It is a flimsy excuse. The Open Government Act already has in place adequate provisions to protect citizens who report misconduct or violations of law. Section 19 of the Act clearly exempts from public inspection "information revealing the identity of persons who file complaints with or volunteer information to investigative, law enforcement, the Attorney General's Office, or penology agencies, if disclosure would endanger the person's life, physical safety, or property..." Any good lawmaker -- and anyone who reads and comprehends the Open Government Act -- would know that.

When the whistleblower excuse fails to adequately justify their exemption from the Open Government Act, our lawmakers have produced other flimsy excuses for putting themselves above the law.

Another common excuse that our lawmakers have given for exempting themselves from the Open Government Act is that they are somehow transparent enough. The CNMI Constitution already requires that the Legislature publish a journal and conduct open meetings, they point out. This is true, and it is good that such requirements are set in the Constitution because they are therefore more difficult for our legislators to change. But again, anyone who reads the Open Government Act would know that the Act requires more than just open meetings and open records -- it also requires *notice* for such meetings, and declares that no action may be taken, no resolutions or laws adopted,

unless they have been decided upon at open meetings for which there has been sufficient public notice.

“But it’s too expensive and too cumbersome,” some lawmakers claim, “to apply the Open Government Act to the Legislature.” They would have to pay to publish notices and agendas for all their sessions, for example, and might be subject to litigation by citizens who want information from them.

The “too expensive” excuse rings hollow and is particularly painful coming from elected officials who routinely spend tens of thousands of dollars a year on donations, travel, congratulatory advertisements, vehicle leases, and “official representation.” As for the litigation excuse: citizens would only sue their public officials if they refuse to furnish information that those citizens believe should be open for inspection. Then it would be up to the courts to determine whether or not those public officials have adequately justified their refusal to release that information. And what in the world is wrong with that?

Imagine that the Legislature would have to give public notice about when and where sessions would be held, and that they would have to set an agenda beforehand so that citizens interested in attending sessions and submitting comments on bills could be adequately prepared. Imagine that they would have to publicly justify their reasons for entering into emergency and executive sessions – and that they would have to make the minutes of those and all other sessions available for public inspection.

What, then, would become of all the special interest legislation? What would happen to all the poorly-conceived laws that are cyclically introduced, amended, and repealed, laws which worsen the daily lives of citizens and create an unstable business climate? How would our lawmakers be able to continue churning out frivolous resolutions and bills with minimal review or discussion?

Could it be that the Open Government Act would actually put a check on bad legislation and serve to enhance good, well-researched laws? Could it be that the only “chilling effect” that the Open Government Act would *really* have on our relationship with our legislators is that we might know what they do behind closed doors?

And therein lies what may be the real root of our lawmakers’ reluctance to apply the Open Government Act to themselves. In taking away an effective tool that citizens would have for keeping them transparent and accountable, our lawmakers grant themselves the ability to mislead their constituents, pass bad laws with minimal public scrutiny and criticism, and serve their own interests.

In recent weeks, several legislators have issued public statements proclaiming their commitment to transparency in government. Moreover, the preliminary results of a recent citizens’ survey indicate that at least 85% of our current legislators agree that the Open Government Act should apply to them; in fact, most of them have signed the initiative petition currently circulating that proposes to apply that Act in its entirety to

them. If our legislators are sincere about wanting to do the right thing, they should do it, and they should do it immediately. They should read and fully understand the original Open Government Act. They should scrap HB 15-269 and all other token gestures and incremental steps toward transparency. They should acknowledge that they do not have the right to decide what is good for us to know and what is not good for us to know. And they should pass a new law to apply the Open Government Act to the Legislature without reservations or exceptions.

Unless the next legislative session is rescheduled as so many legislative sessions often are, the Senate is due to vote on HB 15-269 on Tuesday, June 12. If others reading this letter believe that transparency is an essential ingredient for true democracy, and that the Legislature should be subject to the Open Government Act like every other public agency, I urge them to call or write their representatives and senators and tell them to do the right thing.

Finally, citizens wishing to sign the initiative petition to fully apply the Open Government Act to the Legislature may still do so. They may call me at 233-0770, email me at tinasablan@gmail.com, or drop by the 13 Fishermen area Monday through Friday, from 4:45pm to 6:30pm from now until early July.