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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

By: _____

IN THE SUPERIOR COURT OF GUAM

MARIA APURON,

Plaintiff,

vs.

OFFICE OF THE ATTORNEY GENERAL,

Defendant.

Special Proceedings Case No. SP0127-26

**DECISION AND ORDER RE SUNSHINE
ACT REQUEST**

The Court here considers whether Defendant Office of the Attorney General has complied with the Sunshine Act in responding to Plaintiff Maria Apuron's request for documents relative to employee leave requests. The Court finds that most of the requested information constitutes public records and shall be produced subject to redaction and/or further review for the applicability of other Sunshine Act exemptions.

I. Factual And Procedural Background

A. Apuron's June 24, 2026 Sunshine Act Request

On June 24, 2026, Apuron, an OAG employee, sent an email from her personal account to Attorney General Douglas B. Moylan and other OAG personnel. Entitled "Sunshine Act Request," her email requested seven items:

- a. Item (1) asked how many employees had used 80 hours or more of annual leave in each of four fiscal periods, starting from October 1, 2022, to present.
- b. Item (2) asked, for each of those years, how many employees had used 80 hours of annual leave or more continuously.
- c. Item (3) asked, for each budgetary division, who approves annual leave.

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- d. Item (4) asked the average time for approval of annual leave by division.
- e. Item (5) asked how many employees had used 80 hours or more of annual leave consistently within the same fiscal year.
- f. Item (6) asked how many of the employees who requested 80 hours or more of annual leave are classified as opposed to unclassified.
- g. Item (7) asked that a breakdown be provided per budgetary division.

Compl., att. (July 23, 2026).

B. CSC Action

On or about June 29, 2026, Apuron filed an action before the Civil Service Commission, challenging the OAG's denial of her requested leave. *See People's Opp'n* at 4 (Aug. 4, 2026). In that action, she intends to conduct discovery, including obtaining annual leave records and personnel documents. *Id.*

C. The July 1, 2026 Response of the Office of the Attorney General

On July 1, 2026, Deputy Attorney General N. Lee Miller of the OAG's Solicitors Division responded to Apuron's Sunshine Act request. Miller asserted that Apuron's "request improperly asks the Attorney General's Office to prepare reports or undertake analysis that it has not previously done." Compl., att. However, as to Item (3) — who approves annual leave requests — the OAG produced one document: an April 15, 2025 Memorandum from AG Moylan regarding "Law Office Leave Processing Procedure." *Id.* As to the remaining requests, Miller explained the OAG had no responsive documents. *Id.*

D. The July 9, 2026 Notice of Deficiency

On July 9, 2026, Jordan Lawrence Pauluhn, Esq., as counsel for Apuron, transmitted to Miller a letter captioned "Notice Of Deficiency." He restated Apuron's requests:

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- a. As to Items (1) and (2) — "Please produce a copy of each and every annual leave form or request submitted by any and all employees of the Office of the Attorney General from October 1, 2022 to present, including the final determination by the Attorney General or his designee approving or denying the request. Also produce the time sheets for each and every employee that took leave during the period from October 1, 2022 to present."
- b. As to Item (3) — "Please produce any and all documents indicating approval power for leave forms. This includes any memorandums, delegations of authority, or organizational charts indicating the approval authority for each division of the Office of the Attorney General as it concerns leave forms and leave requests."
- c. As to Item (4) — "Please produce any and all documents indicating the dates annual leave was requested by an employee and the dates the leave was ultimately approved. These documents include the leave forms themselves, time sheets, any communication (including emails and text messages) by or to any employee or officer of the Office of the Attorney General discussing an employee or employees' requested leave and the reasons for approving or denying such a request."
- d. As to Items (5), (6), and (7) — "Please produce any and all documents which show the names, job titles, division, and classification of officers or employees of the Office of the Attorney General who have taken annual leave from October 1, 2022 to present. These documents include, but are not limited to, summaries of leave balances and usage produced by the office, fiscal year audits of leave and leave balances, or other records showing all or part of the information requested."

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Id. Each of the four restated demands identified a described class of existing writings, expounding a defined custodian (the OAG), a defined temporal scope (October 1, 2022 to the present), and a defined subject matter (annual leave requests, approvals, timekeeping, approval authority, and employee classification). Moreover, Apuron stated that personal information included mailing addresses and medical conditions could be redacted. *Id.*

E. The July 14, 2026 Response

On July 14, 2026, Chief Deputy Attorney General Joseph A. Guthrie responded to Pauluhn's letter. *Id.* Guthrie characterized the Notice of Deficiency as a "July 9, 2026 Sunshine Reform Act of 1999 public records request" in which counsel "requested various documents on behalf of your client Maria Apuron." Guthrie's letter did not repeat the position that the request sought non-existent reports or analysis, and did not repeat the representation that the OAG had no responsive documents. It instead asserted that "Guam law protects against the disclosure of the documents you request, *See* 5 GCA § 10108 (a) and (c), and we are therefore statutorily prohibited from providing to you the protected personnel documents, and also cite the litigation exception as an additional and independent basis." *Id.* The letter added: "Please note that the leave form is a personnel document that Guam law prohibits the release." *Id.* The OAG produced no documents in response to the July 9, 2026 Notice of Deficiency.

F. Commencement of This Action

On July 23, 2026, Plaintiff filed her Complaint for Declaratory, Injunctive or Mandamus Relief, commencing this action. She seeks an order compelling production of the documents, plus attorney's fees and costs and a \$1,000 fine assessed against AG Moylan and other OAG officers.

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On July 27, 2026, the Court issued an Order to Show Cause directing the OAG to promptly disclose the public records or appear before the Court on August 10, 2026, and explain why the OAG should not be ordered to disclose. At the August 10, 2026 oral argument on the Order to Show Cause, Apuron offered further background. Apuron, an OAG employee, sought leave to take her daughter to college, but the OAG denied the request. Hr'g at 1:38 (Aug. 10, 2026). At some point, she did take leave, but the OAG terminated her health insurance benefits because she failed to pay the employee's premium share. *Id.* at 1:39. Apuron contends that her requests aim to understand how the OAG handles leave requests. *Id.* at 1:38. Apuron theorizes that approvals for leave have been done "vindictively" and deserve "meaningful public review." *Id.*

II. Law and Discussion

In an action involving a Sunshine Act request, the government agency has the burden to sustain its action. 5 GCA § 10111(c). "All records shall be presumed public and the burden of establishing that a document or record is private shall be upon the agency or person claiming that the document on record should not be disclosed or inspected." *Id.* Exemptions to disclosure are to be construed narrowly, and segregable portions of records shall be disclosed after redacting the exempted portions. *In re A.B. Won Pat Int'l Airport Auth.*, 2019 Guam 6 ¶ 40; 5 GCA §10103(b).

A. OAG's Objection as to the Form of the Initial Requests

The OAG objects to the language of Apuron's June 24 request, on the basis that it seeks the production of documents that the OAG would have to create. The Court agrees that the OAG does not have to create and produce new documents; however, Apuron's new counsel cured that defect in the July 9 letter. The July 9 letter did not seek information but rather identifiable

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records and documents. As to documents responsive to the July 9 letter, the Court finds this objection holds no merit.

B. Section 10108(c): The Test for Disclosure

The OAG asserts that the documents may not be produced under 5 GCA § 10108(c), which exempts from production “[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” 5 GCA § 10108(c). Apuron points to *Dobronski v. F.C.C.*, 17 F.3d 275 (9th Cir. 1994), in support of her interpretation of what can be withheld under this exemption. In that case, a member of the media and public sought to utilize the federal Freedom of Information Act to obtain one F.C.C. employee’s attendance and leave records. The F.C.C. claimed protection under an exemption for “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* at 277 (citing 5 USC § 552(b)).

To determine if the disclosure was “clearly unwarranted,” the Ninth Circuit examined four factors: (1) the plaintiff’s interest in the disclosure; (2) the public interest in the disclosure; (3) the degree of invasion of personal privacy; and (4) the availability of any alternate means of obtaining the requested information. *Id.* at 278. This four-factor balancing test developed in the Ninth Circuit and other federal courts following a U.S. Supreme Court interpretation that the federal FOIA’s exemption for personnel files did not create a blanket exemption for such files. *Dep’t of Air Force v. Rose*, 425 U.S. 352, 371 (1976).

Congressional concern for the protection of the kind of confidential personal data usually included in a personnel file is abundantly clear. But Congress also made clear that nonconfidential matter was not to be insulated from disclosure merely because it was stored by an agency in its “personnel” files. Rather, Congress sought to construct an exemption that would require a balancing of the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act “to open agency action to the light of public

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scrutiny.” The device adopted to achieve that balance was the limited exemption, where privacy was threatened, for “clearly unwarranted” invasions of personal privacy.

Id.

After balancing the four factors, the Ninth Circuit approved the disclosure, finding that it did not constitute a clearly unwarranted invasion of personal privacy. While recognizing an employee's right to privacy in leave forms, the court found that both private and public interests favor disclosure. The plaintiff “has a right to investigate whether government officials abuse their offices and the public fisc by improperly using sick leave to take unauthorized paid vacations.” *Id.* at 278. In addition the “public has a strong public interest in uncovering corruption in a government agency. Abusing sick leave can be a form of payroll padding that violates the public trust.” *Id.* at 278. Finally, the court did not find sufficient alternative means of obtaining the information.

The OAG attempts to distinguish *Dobronski* and federal FOIA on a few bases,¹ one being the obvious difference that while federal FOIA protects “*clearly* unwarranted invasions,” Guam’s Sunshine Act offers the same protection but omits the term “clearly.” The Court addresses this point first.

One federal court has remarked that the inclusion of the word “clearly” signaled Congress’ intention to ensure the exemption had limited applicability.

The legislative history suggests that use of the “clearly unwarranted” standard is the expression of a carefully considered congressional policy favoring disclosure. At the hearings on the bill various agency spokesmen urged deletion of either the word “clearly” or the entire “clearly unwarranted” phrase so that nondisclosure would have been permitted whenever disclosure would

¹ Another distinction includes how *Dobronski* pertains to just one person’s record. The Court addresses that later in this Decision and Order.

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result in any invasion of privacy. Congress, however, refused to delete language it considered critical in limiting the scope of the exemption.

Getman v. N.L.R.B., 450 F.2d 670, 674 n.11 (D.C. Cir. 1971). In other words, the term “clearly” emphasizes Congress’ intention and preference for disclosure.

Despite Guam’s omission of the word “clearly,” Guam’s Sunshine Act carries the same goals. The Sunshine Act provides public access to public information. 5 GCA § 10103 (“every person has the right to inspect and take a copy of any public document on Guam, except as otherwise expressly prohibited in law”); *Guam Pubs., Inc. dba Pac. Daily News v. Guam Ret. Fund*, 1999 Guam 29 ¶ 6. In fact, in a more recent amendment to section 10108(c), which added language stating that information regarding the salary and name of each employee and public official shall be public record, the Legislature reemphasized that the objective of the Sunshine Act was transparency. Pub. L. 32-020:2 (Apr. 11, 2013).

The addition of “clearly” before “unwarranted” therefore makes no material difference when it comes to whether this exemption applies. Congress wanted to ensure a preference for disclosure of public documents unless disclosure is clearly unwarranted; likewise, Guam law emphasizes transparency unless disclosure is unwarranted. More importantly, the omission of “clearly” does not detract from the four factors that *Dobronski* presents as the test for whether disclosure is unwarranted or not. The Court finds that the four-factor balancing test under the federal FOIA exemption for medical and personnel records helps this Court examine whether section 10108(c)’s exemption applies. It applies that test next.

C. Four factors for disclosure

1. Apuron’s interest

Before addressing this first factor—Apuron’s interest—the Court is reminded that the Sunshine Act provides that the purpose for which a record is requested may not be used to limit

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access to it. 5 GCA § 10110. The requester's interest therefore may not count against disclosure, and a requester need not justify her request at all. *See Nat'l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 172 (2004) ("A person requesting the information needs no preconceived idea of the uses the data might serve.").

With that said, Apuron presents a legitimate interest. She sought annual leave to accompany her daughter to college; the request was denied; and when she later took leave, the OAG terminated her health coverage for non-payment of her share of the premium. Her requests ask how leave requests are handled across the agency: who decides them, how long decisions take, and whether employees in the same circumstances are treated the same way. That is an inquiry into the conduct of a public office, not into the private affairs of her co-workers. Notably, *Dobronski* found a similar interest sufficient where the requester sought one official's leave slips to test whether the official was "improperly using sick leave to take unauthorized paid vacations." 17 F.3d at 278.

Apuron's request may be broader in scope than that presented in *Dobronski* but presents the same legitimate interest. Thus, the first factor favors disclosure.

2. Public interest

The second factor asks whether disclosure would serve the public's interest in knowing how its government operates. The federal cases describe the "core purpose" of freedom-of-information laws as shedding light on "an agency's performance of its statutory duties." *See U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773 (1989). The Guam Legislature has expressed the same purpose in mandatory terms: "every person has the right to inspect and take a copy of any public document on Guam, except as otherwise expressly prohibited in law." 5 GCA § 10103(a); *Guam Pubs., Inc.*, 1999 Guam 29 ¶ 6.

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The records Apuron seeks bear directly on how a government agency administers a public benefit. Annual leave is part of the compensation the government provides to its employees, and laws and administrative rules and regulations govern how leave accrues, is requested, and is approved. Records showing who within the OAG exercises approval authority, how long approvals take, whether requests from similarly situated employees are approved or denied, and whether leave is being used or withheld consistently across divisions reveal the agency's performance of a statutory function.

Moreover, in 2013, the Legislature amended section 10108(c) so that "[a]ll information regarding salary, and the name, and worksite mailing address of each employee and public official shall be public record." 5 GCA § 10108(c) (as amended by P.L. 32-020:2). Since the amendment allowed the public access to the name of every public employee and what each is paid, it is logical that the Legislature intended there be access to the records of leave relative to that compensation. Thus, the second factor favors disclosure.

3. Degree of Invasion of Personal Privacy

Third, the Court acknowledges that disclosing the leave forms invades privacy. As to sick leave requests, the leave forms reveal private medical information. For other leave requests, the invasion of privacy is less, but the underlying bases for leave may still contain personal information. Significantly, however, Apuron's July 11 request clarified that she accepted redacted documents—specifically, she agreed that the OAG could redact home addresses and medical information.

Not all information on a leave form invades one's personal privacy. The fact that a public employee requested leave on a given date, and whether that request was approved or denied, by whom, and when, is a record of the agency's administration of public time and public

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money. It is not information about the employee's private life; it is information about what the government did. The Ninth Circuit characterized leave slips of precisely this kind as containing only "minimal" personal information, because "[t]he records do not state the reasons why the [employee] took sick leave, merely the dates on which she took sick leave." *Dobronski*, 17 F.3d at 279. Redacted as Apuron conceded and as further ordered below, the OAG's leave forms and time sheets will contain limited personal information.

Finally, the Court has considered whether the number of employees affected changes this analysis. *Dobronski* concerned the records of a single official, whereas Apuron seeks records for every OAG employee who took annual leave over roughly four years. At its core, however, the intrusion on each employee is the same slight intrusion. If anything, the breadth of the request means no one employee will be singled out, unlike the concern in *Dobronski*. The third factor does not outweigh the interests favoring disclosure.

4. Availability of alternative means

Fourth, there appears to be no alternative means of obtaining the information. Apuron submitted a similar Sunshine Act request to the Department of Administration and received the information DOA could access. The OAG's files contain more than the information DOA maintains.

Furthermore, the OAG has not identified any alternative. It did not offer aggregate figures or summaries. In its July 1, 2026 response, the OAG declined to "prepare reports or undertake analysis that it has not previously done," and the Court has agreed that the Sunshine Act does not oblige it to do so. The one document the OAG did produce, the memorandum responsive to Item (3), describes who is authorized to approve leave; it does not show how, or how promptly, that authority is exercised. The Ninth Circuit rejected the same substitution in

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Dobronski, reasoning that general information about agency policy "will not enable [the requester] to evaluate" the specific question the records were sought to answer, and that accepting the substitution would invite "bureaucratic coverup." *Id.* at 279. Accordingly, the fourth factor favors disclosure.

5. Final Balancing

Balancing these interests, the Court finds that disclosing redacted leave forms is not unwarranted and serves a legitimate interest in reviewing how this government agency approves and uses leave.

D. Section 10108(a): Litigation Exemption

The OAG further invokes the pending-litigation exemption under 5 GCA § 10108(a). The OAG points to ongoing proceedings Apuron initiated before the CSC and claims that because she has raised leave issues before the CSC, she cannot also receive the documents under the Sunshine Act.²

The Court disagrees, and reestablishes three points already discussed. First, the purpose of Apuron's request is irrelevant. 5 GCA § 10110. Second, the Sunshine Act reinforces Apuron's right to inspect public documents. 5 GCA § 10103. Third, the Sunshine Act exemptions are to be construed narrowly. *In re A.B. Won Pat Int'l Airport Auth.*, 2019 Guam 6 ¶ 40.

The OAG's reading of section 10108(a) to limit the disclosure of records to CSC litigants is disfavored when looking at a larger picture. A person who has not brought litigation before the CSC would have access to the documents Apuron seeks under a Sunshine Act request; thus,

² For purposes of this Decision and Order, the Court assumes, without deciding, that an adverse-action appeal before the CSC is "litigation."

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withholding the documents from Apuron just because she filed a CSC action turns the statute on its head and improperly takes into account the purpose of the request. Notably, section 10113 states that the Sunshine Act shall not affect the rights of litigants, “including parties to administrative proceedings, [and] under the laws of discovery of Guam.” This provision indicates that a party to an administrative proceeding retains its rights under the Sunshine Act and, separately, under the rules of discovery in another proceeding.

The Court is also persuaded by the reasoning of California courts analyzing an analogous statute in that jurisdiction. As stated in *Cnty. of Los Angeles v. Super. Ct. (Axelrad)*, 98 Cal. Rptr. 2d 564, 572 (Ct. App. 2000), a “document is protected from disclosure under the pending litigation exemption only if the document was specifically prepared for use in litigation.” In so holding, the California appellate court remanded the matter to the trial court to determine in camera whether the withheld documents were specifically prepared for use in litigation.

Adopting these standards, the Court finds the OAG has not met its burden on most records sought in the July 9 letter. The majority of documents requested (such as leave request forms and the action taken upon them; time sheets; memoranda, delegations of authority, and organizational charts identifying who approves leave; and summaries, audits or reports of leave balances) are records generated in the ordinary course of the OAG’s business—not prepared for use in the CSC proceeding.

The Court recognizes that some documents may still qualify under the litigation exemption or other exemptions such as for privilege. *See* 5 GCA §10108(i). To the extent such communications or documents were created after Apuron’s CSC filing and pertain to that litigation, for which the Court cannot now assess whether an exemption applies, the Court will require the OAG to lodge those records for an in camera review or produce a privilege log.

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III. Conclusion and Order

For the reasons stated, the Court finds and declares that: (1) the July 9, 2026 letter reasonably describes identifiable records within the meaning of 5 GCA § 10103; (2) the OAG has not carried its burden under 5 GCA § 10111(c) of establishing that the records described in that letter are exempt from disclosure under 5 GCA § 10108(c), and the personal information those records contain can be protected by redaction under 5 GCA § 10103(b); (3) records created by the OAG in the ordinary course of administering employee leave do not “pertain to pending litigation” within the meaning of 5 GCA § 10108(a), and the OAG’s refusal to disclose them on that ground was not justified; and (4) the OAG has not identified any record to which a privilege preserved by 5 GCA § 10108(i) applies.

The Court therefore ORDERS the following:

1. **Production.** Within 14 days of this Decision and Order,³ the OAG shall produce to Apuron, redacted only as permitted by paragraph 5 below, all records in its possession, custody, or control responsive to the July 9, 2026 letter, including: (a) every annual leave request form submitted by any OAG employee from October 1, 2022, to the present, together with the approval, denial, or other final action endorsed on or attached to it; (b) the time sheets of every employee who took annual leave during that period, for the pay periods in which leave was taken; (c) all memoranda, delegations of authority, and organizational charts identifying the official or officials with authority to approve or deny leave for each division of the OAG; (d) all

³ The OAG asserts that compliance will require more than 400 hours of staff time. The Sunshine Act allows an agency four working days to respond and a further extension of up to ten days in unusual circumstances, including requests for voluminous records. 5 GCA § 10103. The 14-day period ordered here matches that timeframe. Also, the OAG has had notice of the substance of Apuron’s requests since July 9, 2026.

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records showing the date on which an annual leave request was submitted and the date on which it was acted upon; and (e) all summaries of leave balances or usage, fiscal-year leave audits, and other reports or compilations, already in existence, that show the names, job titles, divisions, or classifications of employees who took annual leave during that period. Nothing in this Order requires the OAG to create a record, compile data, or prepare a report that does not already exist.

2. **Communications.** Within the same 14-day period, the OAG shall conduct a reasonable search for e-mail, text messages, and other communications, sent or received by an OAG officer or employee between October 1, 2022, and the present, that discuss an employee's request for annual leave or the reasons for approving or denying it, and shall produce the communications, redacted as permitted by paragraph 5.

3. **Privileged records.** Any responsive record that the OAG withholds, in whole or in part, on the ground of attorney-client privilege, work product, or another privilege preserved by 5 GCA § 10108(i) shall be identified, within the same 14 days, on a privilege log filed in camera with the Court. For each record the log shall state the date; the author and each recipient, with their titles; the nature of the record; the number of pages; the privilege asserted; and facts sufficient to establish each element of that privilege, including the purpose of the communication and the basis for maintaining its confidentiality. A log entry that describes the record only generically, or that asserts a privilege over an official's administrative action on a leave request, will not sustain the OAG's burden. The Court may order any logged record to be lodged for in camera review.

4. **Records withheld under section 10108(a).** Relative to records not protected by section 10108(i), the OAG may withhold from production under paragraphs numbered 1 and 2 of this Conclusion only those records that were prepared for use in the CSC proceeding, or that

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record the OAG's deliberations, strategy, or communications concerning that proceeding, as discussed in this Decision and Order's section regarding the litigation exemption. Any record so withheld shall, within the same 14 days, be lodged with the Court for in camera review, accompanied by an index that identifies each record by date, author, recipients, and general subject matter, and by a declaration from a person with knowledge stating the facts on which the OAG relies to establish that the record was prepared for use in, or records deliberations concerning, the CSC proceeding. A record that is neither produced nor lodged within that time shall be deemed to have been withheld without justification. Following its review, the Court will issue a further order identifying which of the lodged records, if any, are exempt, and shall return any exempt record to the OAG without disclosing its contents. 5 GCA § 10111(e).

5. **Redaction.** In producing records under paragraphs numbered 1 and 2 of this Conclusion, the OAG may redact: home addresses; personal telephone numbers and personal e-mail addresses; dates of birth; social security numbers; bank account and other financial information; any medical information, diagnosis, or certification; and any stated reason for, or discussion of, a leave request to the extent it discloses the medical, family, or other personal circumstances of the employee or of a member of the employee's household. The OAG shall not redact the employee's name, position, division, or classification; the type of leave requested or taken; the dates and hours requested, approved, denied, or taken; the identity of the approving or denying official; the dates on which a request was submitted and acted upon; or the fact that a reason was given. Each redaction shall be marked on the face of the record so that its location and approximate extent are apparent. *See* 5 GCA § 10103(b).

6. **Certification.** If the OAG contends that no record exists that is responsive to any category described in paragraphs numbered 1 or 2 of this Conclusion, it shall, within the same 14

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days, file a declaration from a person with knowledge describing the search that was conducted, including the locations and custodians searched, and stating that no responsive record was located. The OAG's July 1, 2026 representation that it possessed no responsive documents shall not be relied upon in lieu of such a declaration.

7. **Costs and attorney's fees.** Apuron has prevailed in this action. The Court shall award her court costs and reasonable attorney's fees, to be paid by the OAG. 5 GCA § 10112(d). Apuron shall file a statement setting forth the costs and fees claimed, supported by counsel's declaration and contemporaneous time records, within 14 days of the entry of this Decision and Order; the OAG may respond within 14 days thereafter; and she may submit a Reply 7 days thereafter.

The Court makes no finding at this time as to the fine requested by Apuron under 5 GCA § 10112(a) and reserves that question.

SO ORDERED this 14 September 2026.


HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

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