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CH. 13 PUBLIC OFFICIAL DISCLOSURE ACT

CHAPTER 13  
PUBLIC OFFICIAL DISCLOSURE ACT

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**§ 13101. Title.**

This Chapter shall be known and may be cited as the Public Official Disclosure Act.

**SOURCE:** GC § 1800, as added by P.L. 12-153. Amended by P.L. 29-020:3 (Oct. 10, 2007)

**§ 13102. Definitions for Purposes of This Act.**

(a) The term *official* means any person elected to any public office in Guam and any person appointed, with legislative concurrence *or* by the Guam Legislature, to any public office, to include, but *not* limited to:

- (1) all elected officials;
- (2) officials appointed by *I Maga'lahi* whose appointment is subject to the consent of *I Liheslaturan Guåhan*, except ex-officio and student members of Boards and Commissions in their capacity as members of such Boards and Commissions; and
- (3) the chief executive officers, by whatever title they may be known, of all agencies and instrumentalities of the government of Guam whether *or* not confirmation by *I Liheslaturan Guåhan* is required.
- (4) all individuals who are given or delegated authority by an elected official or appointed official to have *sole* authority to enter into contracts for procurement or approved change order. Exempt are classified employees who do administrative processing but *do not* have discretion on awards.

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(b) The term *candidate* means a candidate to any public office.

(c) The term *gift* means something of value voluntarily transferred from one party to another without compensation *or* monetary consideration.

(d) The term *fund* means a sum of money *or* other material resources available for the use of an official *or* candidate *or* anyone acting on his behalf.

(e) The term *asset* means an item of value owned *or* in which exists a beneficial interest.

**SOURCE:** GC § 1801, as added by P.L. 12-153. Amended by P.L. 23-105:2; P.L. 24-14:47; 24-91:2; P.L. 29-020:3 (Oct. 10, 2007). Subsection (a)(4) added by P.L. 30-079:1 (Jan. 22, 2010).

**§ 13103. Report to be Filed With the Election Commission.**

(a) Each official *shall* file with the Election Commission, on *or* before April 22 of each calendar year, a written report containing the financial information required by this Chapter covering the preceding calendar year (or other year *if* the individual official files a Guam Income Tax Return covering a period other than the calendar year). Each official *shall* also file a written felony conviction report within thirty (30) days of conviction of a felony in court, *or* within thirty (30) days of enactment hereof, regardless of whether an appeal may be *or* has been filed, and regardless of whether the case has been sealed. Each candidate who is not an official *shall* file with the Election Commission on the date he files his petition for candidacy, a written report containing the financial information required by this Chapter covering the preceding calendar year (or other year *if* the individual official files a Guam Income Tax Return covering a period other than the calendar year), and a written report itemizing any and all of his felony convictions, whether public *or* under seal, that have not been dismissed upon successful appeal, vacated by a court, *or* cleared by a grant of executive pardon. The felony conviction report is a statement describing each offense for which a felony conviction was entered in a court of law, within *or* without the United States, sealed *or* not, including the address of the court, date of conviction, and sentence imposed. The Executive Director of the Election Commission *shall* grant extensions for the filing of financial reports herein required by officials; provided, however, that such extension shall *not* exceed one hundred eighty (180) days beyond April 22 of each calendar year.

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(b) The reports required to be filed under Subsection (a) of this Section *shall* be verified in the manner permitted by 6 GCA § 4308 (Unsworn Declaration Under Penalty of Perjury).

(c) All reports filed pursuant to this Section *shall* be maintained by the Election Commission as public records available for inspection. Copies of the reports *shall* be furnished to the public, upon the payment of reasonable copying fees. The Executive Director of the Election Commission *shall* issue a certificate certifying that an official *or* candidate has filed his reports as required by this Chapter.

(d) *If* an official *or* candidate dies after he has been granted an extension for filing the financial disclosure report, the Executive Director of the Election Commission *shall* have a statement placed in the file of the official *or* candidate that states: 'Unable to file Financial Disclosure Report as a result of death on \_\_\_\_\_ (date of death).

**SOURCE:** GC § 1802; added by P.L. 12-153. Amended by P.L. 13-11; P.L. 17-7; P.L. 22-109:10; P.L. 29-020:3 (Oct. 10, 2007).

**§ 13104. Contents of Report.**

(a) The financial report of the official *or* candidate as required in this Chapter *shall* include a complete account of the official's *or* candidate's gross income and that of his spouse and dependent children. For the purpose of this Chapter, gross income *shall* be defined as set forth in Section 61 of the Internal Revenue Code of 1954, as amended (26 U.S.C 61). The report of income *shall* specifically indicate, though not to the exclusion of other items listed in Section 61, the following information:

(1) The names and addresses of all persons and organizations from whom was received by the official *or* candidate *or* on his behalf with his knowledge and consent, any honorarium *or* compensation for services, including fees, commissions, salaries, and similar items, and the amount of such honorarium *or* compensation for services, if not money, the substance of the honorarium *or* compensation and the appraised value thereof;

(2) Gross income derived from business enterprises including the amount thereof, the nature of his interest in the business, and the names and addresses of such business;

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(3) An itemization of all gains derived from dealings in real property, including the names and addresses of seller and purchaser and a brief description of the transaction which too place;

(4) The sources from which were derived income from interest and the amounts thereof;

(5) The sources from which rents were derived and the amount thereof;

(6) The sources from which royalties were derived and the amounts thereof;

(7) The sources from which dividends were derived and the amounts thereof;

(8) The names and addresses of all persons and organizations from whom he received assistance in the discharge of indebtedness and the aggregate amount of appraised value thereof;

(9) Itemization of income *or* benefits derived from distribution of the official's *or* candidate's share in any partnership or professional group, and the names and addresses of all persons and organizations from whose payments such distributions are made; provided, however, that no such names and addresses need be furnished when the distribution to the official *or* candidate from any such person *or* organization in said year is less than One Thousand Dollars (\$1,000), *or* when said disclosure is derogation of a privilege granted by law.

(10) Itemization of income derived from an estate *or* trust in which the official *or* candidate has an interest and the nature of that interest.

(b) The report *shall* list all gifts to the official or candidate which in aggregate value exceed One Hundred Dollars (\$100) in the year from a particular source. Included in the report *shall* be the name and address of the donor, the amount *or* value of his gifts, and a description thereof. The report *shall* also contain the name and address of a donor to the official *or* candidate, his spouse and/or his dependent children when the amounts or values of such gifts given in the course of a calendar year from a particular source exceed Five Hundred Dollars (\$500), and *shall* describe each such gift and the value thereof;

(c) The report *shall* list assets held by the official *or* candidate, by his spouse *or* dependent children, *or* by any of them jointly. The list *shall*

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include the value of each asset and a brief description thereof, but household furnishings and personal effects need *not* be reported.

(d) The report *shall* include the names and addresses of each person and organization to whom the official *or* candidate, his wife, *or* dependent children, *or* any of them jointly owe an aggregate amount in excess of Five Thousand Dollars (\$5,000), and include a statement of the total aggregate indebtedness of the official *or* candidate and such family members.

(e) The report *shall* include a statement of any funds established by the official *or* candidate *or* on his behalf, to assist him in defraying expenses which may be incurred by reason of his being an official *or* candidate. The report *shall* set forth the names and addresses of all persons contributing to the funds, the amount of each contribution, and the amount of each expenditure from such funds, and the purpose of each such expenditure.

**SOURCE:** GC § 1803, as added by P.L. 12-153. Amended by P.L. 29-020:3 (Oct. 10, 2007).

**§ 13104.1. Contents of Reports Filed by Appointees to or Members of Boards and Commissions.**

Notwithstanding any other provision of Public Law, all appointees to Boards and Commissions of the government of Guam, as defined by § 13102(5) of this Chapter, *shall* be required to disclose and submit a financial report containing only information where conflicts of interest or possible conflicts of interest exist at the time of appointment *or* as may be expected to exist during their tenure of service on the Board *or* Commission to which they are being appointed. Such information *shall* include conflicts of interest *or* possible conflicts of interests with the appointee's *or* member's place of employment, any entity in which the appointee *or* member serves as a director *or* consultant to and any entity to which the appointee *or* member *or* a family member of the appointee *or* member owns an interest of five percent (5%) *or* more in. A family member *shall* be defined as any relative by blood *or* marriage *or* cohabitation in lieu of marriage; within two (2) degrees of consanguinity. In the event that any conflicts of interests, as defined herein, arise subsequent to a member's appointment, the member *shall*, within thirty (30) days of the knowledge of such conflicts of interest, file an amended report with the Guam Election Commission *or* by the next filing deadline, whichever is sooner. For purposes of this Subsection, 'conflicts of interest' *shall* be defined under the provisions of § 15205 of Title 4, Guam Code Annotated. In the event that no conflicts of interests *or*

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possible conflicts of interest exist, the report *shall* state that 'no conflict exists.' The Election Commission *shall* prepare separate disclosure reports specifically for Board and Commission members. In the event that any Board or Commission is required to approve the purchase of any item from any SOURCE in which any of its members may have a conflict of interest as described herein, such member *shall* disclose for the record, the nature of such conflict and *shall* append a copy of the minutes of such meeting to the financial disclosure report.

**SOURCE:** Added by P.L. 24-091:3 (Oct. 7, 1997). Amended by P.L. 29-020:3 (Oct. 7, 2007).

**2015 NOTE:** This provision contains a reference to “all appointees to Boards and Commissions of the government of Guam, as defined by § 13102(5) of this Chapter.” This reference appears to be subsection 5 of § 13102(a), which sets forth the definitions for terms contained in Chapter 13. Subsection 5 was added to the Guam Code Annotated when P.L. 23-105:2 (July 8, 1996) amended § 13102(a) to read:

§13102. Definitions for Purpose of this Act.

(a) The term official means any person elected to any public office in Guam and any person appointed, with legislative concurrence or by the Legislature, to any public office, to include but not limited to:

(1) the Governor, the Lieutenant Governor, members of the Legislature, Judges of the Superior Court, Justices of the Supreme Court, both full time and part time, village Mayors and Vice Mayors, and elected members of the Territorial Board of Education.;

(2) the directors and their deputies, the division chiefs, and executive directors, regardless of specific titles by which the foregoing persons are designated, of every territorial agency;

(3) the Executive Director of the Legislature, and the staff or management assistants in the offices of the Governor and Lieutenant Governor, other than persons employed in clerical, secretarial or similar positions;

(4) the hearing officers of every territorial agency;

(5) members of every board or commission whose original term of office is for a period exceeding one year and whose functions are not solely advisory;

(6) the members of the Guam Ethics Commission and the Executive Director of that Agency shall file the required reports with the Legislative Secretary;

(7) The administrative director and deputy director of the courts;

(8) The Suruhanu;

(9) The Public Auditor; and

(10) The President, Vice President and Assistant Vice Presidents of the University of Guam and the Guam Community College.

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However, P.L. 24-014:47 (Mar. 21, 1997) repealed and reenacted § 13102(a), and removed subsections (3) through (10) from the Guam Code Annotated. When this provision was added by P.L. 24-091:3 (Oct. 7, 1997), it referred to “appointees to Boards and Commissions of the government of Guam, as defined by § 13102(5) of this Chapter.” Since its enactment, this provision referred to a statutory provision that no longer existed, as subsection (5) of § 13102(a) had already been repealed by P.L. 24-014:47. Although P.L. 29-020:3 (Oct. 7, 2007) amended Chapter 13 of this title, the amendment did not address the discrepancy in this provision.

To date, “§ 13102(5)” does not exist in Guam law. Consequently, there is no definition of “appointees to Boards and Commissions of the government of Guam” for purposes of enforcing this provision.

**§ 13105. Election Commission.**

On *or* before May 1, of every calendar year, the Election Commission *shall* cause to have published in a newspaper of local circulation for a period of three (3) consecutive days a report containing therein the names of all officials who have not filed their reports as required by this Chapter at least fifteen (15) days preceding the election for which the candidate has filed.

**SOURCE:** GC § 1804, as added by P.L. 12-153. References changed from Territorial Auditor to Election Commission pursuant to P.L. 17-7:3. Amended by P.L. 29-020:3 (Oct. 7, 2007).

**§ 13106. Failure to File: Punishment.**

(a) Any official *or* candidate who fails to file a financial report required by this Chapter, *or* who knowingly and willfully files a false financial report under this Chapter *shall* be guilty of a misdemeanor. The Election Commission *shall* report to the Attorney General for appropriate action the name of any official *or* candidate who fails to file a financial report required by this Chapter, *or* who in its professional judgment has knowingly filed a false report. This Section *shall* not be construed to permit prosecution of a person who unintentionally filed an erroneous report, which report *shall* be subject to correction.

(b) Any official *or* candidate who fails to file a felony conviction report required by this Chapter, *or* who knowingly and willingly files a felony conviction report that contains false *or* misleading information, *shall* be guilty of a third degree felony, punishable by a period of incarceration of *not less than* ninety (90) days and *not more than* three (3) years, with a maximum fine of Five Thousand Dollars (\$5,000) for each non-disclosed felony conviction. The statute of limitations for this offense *shall* be five (5) years from the end of the pertinent period of government service *or*

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candidacy.

**SOURCE:** GC § 1805, as added by P.L. 12-153, amended by P.L. 13-187. References changed from Territorial Auditor to Election Commission pursuant to P.L. 17-7:3. Amended by P.L. 29-020:3 (Oct. 7, 2007).

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