

# IN THE SUPREME COURT OF GUAM

**GUAM RADIO SERVICES, INC.,  
d/b/a KOKU-FM HIT RADIO 100**

Plaintiff-Appellee

vs.

**GUAM ECONOMIC DEVELOPMENT AUTHORITY**

Defendant-Appellant

## OPINION

**Filed: January 12, 2000**

**Cite as: 2000 Guam 1**

Supreme Court Case No. CVA98-037

Superior Court Case No. CV2003-98

Appeal from the Superior Court of Guam  
Argued and submitted on August 12, 1999  
Hagåtña, Guam

Appearing for the Plaintiff-Appellee:

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice; and ALBERTO C. LAMORENA, III, Designated Justice

SIGUENZA, J:

[1] Guam Economic Development Authority, (hereinafter “GEDA”) appeals the Superior Court’s grant of summary judgment in favor of Guam Radio Services, Inc., doing business as KOKU-FM Hit Radio 100 (hereinafter “KOKU”). Upon ruling that GEDA is an instrumentality of the government of Guam, the Superior Court held that GEDA is subject to the Sunshine Act and that the files and records of GEDA are public writings. Accordingly, the trial court ordered the disclosure of documents listing the names of companies, individuals, or groups of individuals who are delinquent on their loans for the period beginning in January 1998 to the present, and documents indicating the extent of the delinquency. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

[2] On August 24, 1998, KOKU filed a complaint pursuant to the Sunshine Act of 1987 seeking disclosure of certain documents that contained the names of individuals and companies that were delinquent in paying their loans to GEDA and the length of the delinquency. GEDA moved to dismiss this complaint, arguing that the Sunshine Act did not apply to GEDA and that the information at issue was protected by a right of privacy. KOKU then filed its opposition and a counter motion for summary judgment. In a Decision and Order filed on December 9, 1998 and in the corresponding judgment entered on December 23, 1998, the Superior Court granted KOKU’s Motion for Summary Judgment and ordered GEDA to deliver the relevant documents.

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### ANALYSIS

[3] We have jurisdiction over this matter pursuant to 7 GCA §§ 3107 and 3108 (1994). The trial court's grant of summary judgment shall be reviewed *de novo*. *Iizuka Corporation v. Kawasho International, (Guam), Inc.* 1997 Guam 10, ¶ 7. Under Rule 56 of the Guam Rules of Civil Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." *Id.* To grant summary judgment, there must not be a genuine issue which establishes a factual dispute requiring resolution by a fact-finder. *Id.* (citation omitted). However, the dispute must be as to a material fact which is a fact that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. *Id.*

[4] At issue is whether GEDA must disclose to KOKU certain documents pertaining to loans made by GEDA that are currently delinquent. Specifically, KOKU seeks to obtain: 1) documents listing the names of companies, individuals, or groups of individuals who are delinquent on their loans for the period beginning in January 1998 to the present; and 2) documents indicating the extent of the delinquency. In conducting our *de novo* review, we necessarily reach the underlying questions of: 1) whether the Sunshine Act applies to GEDA; and if so, 2) whether the documents sought by KOKU are public writings subject to the Sunshine Act.

[5] GEDA argues that it is a public corporation and not an instrumentality of the government of Guam. Thus, GEDA contends that the Sunshine Act of 1987 does not apply to it. GEDA further argues that the information at issue does not fall within the ambit of public writings because the

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statutory definition of a public writing does not specifically include the written acts or records of a public corporation. In contrast, KOKU argues that GEDA is an agency within the meaning of the Sunshine Act of 1987. It further argues that the information sought in this case falls within the rubric of public writings and is therefore not protected under any privacy right.

[6] We begin our analysis by addressing the issue of the Sunshine Act’s scope of applicability. The Sunshine Act of 1987 is set forth in Title 5 of the Guam Code Annotated Chapter 10, sections 10101 through 10120. Section 10101 provides that this chapter of the GCA shall be known as the Sunshine Act of 1987. Section 10102 then sets forth a series of definitions. In relevant part section 10102 provides:

Unless the context otherwise requires, the following terms and meanings apply to this Chapter:

(a) Agency means any authority of the government and includes a department, institution, board, bureau, commission, council, committee of territorial government, branch, autonomous instrumentality, or other public entity of the government of Guam, whether or not it is within or subject to review by another agency.<sup>1</sup>

(b) Writings are written acts or records of the acts of the government of Guam and are either public or private.

....

(d) Private writings are all other writings which are not public writings.

5 GCA § 10102 (a) (b) and (d) (1993).

[7] Section 10102 (c) provides by implication some guidance as to whom the Sunshine Act applies. Section 10102 (c) states that “public writings” are:

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<sup>1</sup> We note that Black’s Law Dictionary defines the term, “public entity” as follows: “[p]ublic entity includes a nation, state or county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.” BLACKS LAW DICTIONARY 1229 (6th ed. 1990).

(1) the written acts or records of the acts of the sovereign authority, of the official bodies and tribunals, and of public officers or employees, legislative, judicial and executive, of the territory of Guam;

(2) public records kept in Guam, of private writings.

(3) all data, not otherwise privileged, produced, generated or stored by a governmental body in connection with procurement, unless the Policy Office determines that such material is a trade secret of the person or entity submitting the material. The terms used in this Subsection are to be interpreted in the same way as in Chapter 5 of this Code (Procurement). Public writings also include the scores by public school of the National Standardized Achievement Test and/or any locally standardized achievement test by public school. Individual test score results by student shall not be considered a public document or writing.

5 GCA § 10102 (c) (1) - (3) (1993).

[8] Section 10103 then articulates the Sunshine Act’s main purpose. Entitled, “Right of Inspection of Public Writings,” it provides in its entirety, “[e]very person has the right to inspect and take a copy of any **public writing** on Guam, except as otherwise expressly prohibited in law, and except as provided in § 10104 of this Chapter.” 5 GCA § 10103 (1993) (emphasis added).

[9] We note that the introductory sections in the Sunshine Act fail to delineate precisely to whom the Sunshine Act of 1987 applies. Thus, in determining whether the Sunshine Act applies to GEDA, we look to the language in the relevant sections and to the interplay among them in an endeavor to glean an understanding of the Sunshine Act’s applicability.

[10] As set forth above, the Sunshine Act’s introductory provisions indicate that the Sunshine Act grants citizens the right to inspect “public writings.” Although this grant of the right to inspect is quite clear, the possessor of these “pubic writings” and/or the entity to whom this right of inspection shall be applied is not apparent upon a plain reading of the relevant statutes. Indeed, the Sunshine Act is, in effect, silent as to whom the Sunshine Act applies.



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[11] In determining whether the Sunshine Act applies to GEDA, we recognize, a circularity in the statutory interplay. The absence of a clear provision setting forth a list of entities or a scope of applicability requires this Court to determine if the records sought are “public writings.” In our view, if records or documents sought by a party are in fact “public writings,” then by necessity, the Sunshine Act applies to that party exercising custody over such documents. Thus, whether the Sunshine Act applies to GEDA depends upon whether the documents at issue herein are “public writings” as set forth in section 10102 (c) (1)-(3).

[12] We look to section 10102 (c) (1) -(3) to decide whether the records or documents at issue are “public writings.” Of the three clauses in section 10102 (c), the subsection (c) (1) is the most relevant subsection because subsections 10102 (c) (2) and (3) deal with private writing and procurement records, respectively. For this reason, the disposition of this case rests squarely upon our determination of the applicability of subsection 10102 (c) (1) to the documents sought herein.

[13] In and of itself, GEDA is not a “sovereign authority.” Nor is it an “official tribunal.” Thus, our analysis turns on the question of whether GEDA is an “official bod[y] . . . of the territory of Guam.” *Id.* The Ninth Circuit has indirectly addressed a similar though substantively different issue regarding GEDA’s status in *Laguana v. Guam Visitor’s Bureau*, 725 F.2d 519 (9th Cir. 1984), and *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985).

[14] In *Laguana*, the court of appeals decided the issue of whether the appellant in the case therein was entitled to civil rights protection from patronage dismissals by virtue of her employment with GVB. *Laguana*, 725 F.2d at 519. As a preliminary issue, the court recognized that the Governor of Guam “lacked the independent authority to create the Guam Visitors Bureau as a governmental

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instrumentality.” *Laguana*, 725 F.2d at 521. Consequently, the court ruled that because GVB was not a public entity, the plaintiff was not a public employee entitled to protection from patronage dismissals. *Id.*

[15] In *Bordallo*, the court of appeals decided the two-fold issue of whether GVB was an agency or instrumentality of the government and whether the statutory section governing membership of GVB’s board of directors violated the Organic Act of Guam. *Bordallo*, 763 F.2d at 1099. The court found that the Legislature had expressly designated certain public corporations such as the Guam Airport Authority, the Guam Telephone Authority, and the Port Authority of Guam as instrumentalities of the government. *Bordallo, Id.* at 1103. Based on this fact, the court held that the explicit listing of such public corporations as “instrumentalities” to the omission of others, indicated a legislative intent to limit the designation of “governmental instrumentalities” to only those public corporations that were particularly designated as such. *Id.* Accordingly, the court affirmed the lower court’s ruling and held that there was no conflict with the Organic Act and that GVB was not an instrumentality of the government. *Id.* at 1103.

[16] Albeit within an entirely different context in comparison with the matter at hand, this Court has also previously addressed the issue of whether GEDA is a governmental instrumentality. In *GEDA and GVB v. Island Equipment Co., Inc.*, 1998 Guam 7, this Court decided the narrow issue of whether the doctrine of sovereign immunity applied to GEDA and GVB. *Island Equipment* relied heavily on two Ninth Circuit cases cited above, *Laguana*, and *Bordallo*. It summarized the two cases by stating, “[b]oth cases stand for the proposition that GVB is not a governmental entity and suggest that GEDA falls in the same category.” *Id.* at ¶ 6. Subsequent to this statement this Court remarked,



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“neither GEDA nor GVB is a governmental entity extended the protection of sovereign immunity.”

*Id.* This Court then stated “GEDA and GVB are non-governmental entities and the doctrine of sovereign immunity does not apply.” *Id.* at ¶ 9.

[17] In *Island Equipment* the sole issue to be determined was whether GEDA and GVB were entitled to sovereign immunity. A determination now that GEDA is indeed an official body under section 10102 (c) (1) will not affect the holding in *Island Equipment*. The comments in that case relative to the status of GEDA and GVB as governmental instrumentalities pertained only to the issue of sovereign immunity.

[18] Notwithstanding the foregoing cases, there is compelling evidence that the Legislature did in fact consider GEDA to be an instrumentality of the government in certain, admittedly limited respects, as evidenced in 12 GCA § 50103 (k) (1993). Title 12, Chapter 50 of the GCA encompasses the statutes concerning the creation, status, duties, and powers of GEDA. Relevant to this discussion, section 50103 (k) indicates that in at least one instance, the Legislature considered GEDA to be an “agency or instrumentality of the government.” This section provides:

(k) The Corporation shall act as a central financial manager and consultant for those agencies or instrumentalities of the Government requiring financial guidance and assistance. Such technical assistance by the Corporation shall include but not be limited to obtaining of funds through bond or other obligations, structuring such bond issuances, preparation and dissemination of financial and investment information, including bond prospectuses, development of interest among investment bankers and bond brokers, maintenance of relationships with bond rating agencies and brokerage houses and, generally, acting as the centralized and exclusive financial planner and investment banker for all the agencies and instrumentalities of the Government. **For purposes of this Subsection, 'agencies and instrumentalities of the Government' include but are not limited to such public corporations as the Guam Economic Development Authority, the Port Authority of Guam, the Guam Airport Authority, the Guam Telephone Authority, the Guam Power Authority, the Guam Memorial**

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Hospital Authority, the University of Guam, and all other agencies or instrumentalities of the Government given the power, now or in the future, to issue and sell bonds or other obligations for the purpose of raising funds.

12 GCA § 50103 (k) (1998) (emphasis added).

[19] Generally, courts have interpreted the legislative inclusion of certain entities to the omission of others in any statute as a indication of a legislative intent to omit or not include all other similarly situated entities. Similarly, the Legislature’s use of the limiting words, “[f]or purposes of this Subsection,” may properly be viewed as a manifestation of the Legislature’s conscious intent to so limit the designation of “agency” or “instrumentality of the government” to this particular subsection and this one specific instance. We do not oppose this position. However, we do note that section 50103 (k) evidences the fact that GEDA is, in certain legislatively defined circumstances, an agency or instrumentality of the government and as such we deem GEDA to be an “official body of the territory of Guam.” It bears emphasizing that the Sunshine Act neither includes or excludes *any* entity, be it an agency, public corporation, or instrumentality of the government, in terms of setting forth its applicability. Consequently, our determination that GEDA is an “official body of the territory of Guam,” in at least this respect, proves significant because the Sunshine Act provides for the disclosure of the written acts or records of an “official body of the territory of Guam.” See 5 GCA § 10102 (c).

[20] Adding support to the proposition that GEDA is indeed an “official body of the territory of Guam,” this Court in *Island Equipment*, commented that the Government Claims Act applies to GEDA by virtue of the fact that GEDA is a public corporation. See *Island Equipment*, 1998 Guam 7, ¶ 9. We note that 5 GCA § 6102 (1993) provides that:

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[t]his Chapter applies, except as provided in § 6104 of the Chapter, to the entire government of Guam, as specifically stated herein.

No government agency, whether denominated as a line department, an agency, or a public corporation, is excluded from the scope of this Chapter. The fact that an agency or instrumentality has or has not the right to sue or to be sued in its own name does not exclude such agency or instrumentality from the scope of this Chapter.

5 GCA § 6102 (1993).

[21] Section 6103 (a) of the Government Claims Act then provides that the “Government of Guam shall include all agencies, departments, instrumentalities, **public corporations**,<sup>2</sup> and all other entities of the government, no matter how designated, and whether or not such agencies may sue or be sued in their own name.” 5 GCA § 6103 (a) (1993) (emphasis added). Thus, under this section, GEDA as a public corporation is subject to the Government Claims Act.

[22] GEDA readily asserts that it is a public corporation. We agree. GEDA’s arguments before this Court regarding its status as a public corporation are consistent with this Court’s statement in *Island Equipment*. The fact that the Legislature deemed GEDA to be an “agenc[y] and instrumentalit[y] of the Government” combined with the fact that GEDA is a public corporation points definitively to the conclusion that GEDA is an official body of the territory under section 10102. GEDA is subject to the Government Claims Act, *because* it is a public corporation. Likewise, GEDA’s status as a public corporation indicates that is an “official body of the territory of Guam.” As such, it is subject to the Sunshine Act of 1987.

[23] Having held that the Sunshine Act applies to GEDA, the last issue pertains to the limitations

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<sup>2</sup> We note that Black’s Law Dictionary defines “public corporation” in relevant part as “an instrumentality of the state, founded and owned in the public interest . . .” BLACKS LAW DICTIONARY 1228 (6th ed. 1990).

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set forth on the right to inspect the public writings of GEDA. 5 GCA § 10104 (1993) provides:

§ 10104. Limitation on Right of Inspection.

(a) None of the following documents may be inspected and copied pursuant to § 10103 of this Chapter unless permitted by any other law of Guam:

(1) files involving the investigation of any person, real or legal, for the commission of any crime; provided, however, that this Section shall not affect the public or sealed nature of any documents filed with the courts in any action or proceeding.

(2) the personnel file of any employee of the government without his consent, except that relevant material in said file shall be open to inspection after a final decision has been rendered in any tribunal which may have jurisdiction over the subject matter in the file. All information regarding salary, and the name, age, and mail address of each employee shall be public.

(3) Tax returns and tax records (except for real property tax records and returns which shall be public).

(4) Police Blotters, accident reports, daily activity logs, and similar information not restricted by Subsection (a) of this Section shall be available to the public.

5 GCA § 10104 (1993).

[24] A plain reading of this statute demonstrates that no limitations are placed on the names of those delinquent on their loan payments.

### CONCLUSION

[25] The Sunshine Act applies completely and without exception to GEDA. As an official body of the territory of Guam, its written acts and or records are public writings under 5 GCA § 10102 (c)

(1). Based on the foregoing, the trial court's grant of summary judgment is hereby **AFFIRMED**.

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ALBERTO C. LAMORENA, III  
Associate Justice

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PETER C. SIGUENZA  
Associate Justice



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**CRUZ, CJ: DISSENTING:**

[26] The majority has found that GEDA is an official body of the territory of Guam, and therefore GEDA's written acts and records are public writings subject to 5 GCA § 10102 (c) (1) (1993)<sup>3</sup> of the Sunshine Act of 1987. I do not agree with this finding and dissent.

**I. GEDA IS NOT AN INSTRUMENTALITY OF THE GOVERNMENT**

[27] To support their decision, the majority distinguishes a previous decision rendered by this Court which on its face declares that GEDA is not a government entity or instrumentality. In *GEDA and GVB v. Island Equipment Co.*, 1998 Guam 7, this Court followed the 9th Circuit Court of Appeals' reasoning in *Laguana v. Guam Visitor's Bureau*, 725 F.2d 519 (9th Cir. 1984), and *Bordallo v. Reyes*, 763 F.2d 1098 (9th Cir. 1985), and held that GEDA is not an instrumentality of the government. The majority claims that the *Island Equipment* holding that GEDA is not an instrumentality of the government pertained only to the issue of sovereign immunity and is not applicable to this case.

[28] The majority's interpretation of *Island Equipment* is incorrect. *Island Equipment* held unequivocally that GEDA is not an instrumentality or entity of the government. *GEDA and GVB v. Island Equipment Co., Inc.*, 1998 Guam 7, ¶¶ 7 and 9. The *Bordallo* decision, upon which we relied in *Island Equipment*, stood for the general proposition that the Guam Visitor's Bureau (GVB)

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<sup>3</sup> Section 10102 (c) (1) states that "public writings" are:

the written acts or records of the acts of the sovereign authority, of the official bodies and tribunals, and of public officers or employees, legislative, judicial and executive, of the territory of Guam

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was not an instrumentality of the government. The *Bordallo* decision did not limit this finding and likewise our decision in *Island Equipment* is not limited to the issue of sovereign immunity only.

[29] The Sunshine Act defines agency as:

any authority of the government and includes a department, institution, board, bureau, commission, council, committee of territorial government, branch, autonomous instrumentality, or other public entity of the government of Guam, whether or not it is within or subject to review by another agency.

5 GCA § 10102 (a) (1994). Because this Court has already held that GEDA is not entity or instrumentality of the government, GEDA does not fit within the Sunshine Act's definition of agency and should not be subject to the Sunshine Act.

[30] Adding support to the position that GEDA is not an instrumentality of the government is the fact that GEDA's enabling statute does not expressly designate it as an instrumentality of the government. This statute provides:

[t]here is hereby created a public corporation to be known as Guam Economic Development Authority (hereinafter referred to as the Corporation), with functions, powers and responsibilities as hereinafter provided.

12 GCA § 50101 (1994). This Court in *Island Equipment* recognized this when we extended the 9th Circuit Court of Appeals' decisions in *Laguana* and *Bordallo* (Guam Visitor's Bureau was not an instrumentality of the government) to GEDA. The *Bordallo* decision is particularly enlightening.

[I]n creating certain public corporations, such as the Guam Airport Authority, the Guam Telephone Authority, the Guam Power Authority, and the Port Authority of Guam, **the Legislature had expressly designated each as a public corporation and as an instrumentality of the government. The Legislature also chartered other public corporations which were not designated as instrumentalities of the government. ...[B]ecause the Legislature had expressly designated four public corporations as instrumentalities of the government, it did not intend the same characterization to apply to other public corporations, not so designated.**

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Consequently, ...[GVB] was not a governmental entity since it had not been expressly designated as such.

*Bordallo* 763 F.2d at 1103 (emphasis added).

[31] A review of the current relevant statutes shows that the same situation exists today. The Guam International Airport Authority (12 GCA § 1102 (1996)), Guam Telephone Authority (12 GCA § 7103(1996)), Guam Power Authority (12 GCA 8103(1996)), and Port Authority of Guam (12 GCA §10102 (1996)) are still expressly designated as public corporations *and* instrumentalities of the government. On the other hand, in addition to GVB and GEDA, other public corporations without express designations as instrumentalities of the government include the Public Defender Service Corporation (12 GCA § 11103 (1996)), Guam Educational Telecommunications Corporation (12 GCA § 3102 (1993), and Guam Mass Transit Authority (12 GCA § 6201 (1996)). The Legislature continues to designate some public corporations as instrumentalities of the government and continues to omit such designations for other public corporations. Therefore, the finding in *Bordallo* still holds true, “[the Legislature] did not intend the same characterization to apply to other public corporations, not so designated.” *Id.* at 1103.

## II. THE SUNSHINE ACT DOES NOT APPLY TO PUBLIC CORPORATIONS

[32] GEDA is an expressly designated public corporation. 12 GCA § 50101. The Sunshine Act’s definition of agency (quoted above) does not include “public corporation.” 5 GCA § 10102 (a). Therefore, GEDA should not be subject to the Sunshine Act if the act’s plain meaning is interpreted. The Sunshine Act’s definition of agency, and omission of public corporation therefrom, is ignored



by the majority in their finding that GEDA is an official body of the territory.

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[33] To support their position, the majority cite the Government Claims Act, 5 GCA Chapter 6. The majority argue that GEDA is subject to the Government Claims Act because it is a public corporation which indicates that it is also an “official body of the territory of Guam” subject to the Sunshine Act. This leap of logic is untenable. The Sunshine Act does not expressly cover public corporations, whereas the Government Claims Act does expressly cover public corporations. Had the Legislature wanted public corporations to be covered by the Sunshine Act it would have expressly included them in the Act, just as the Legislature expressly included them in the Government Claims Act.

[34] The majority also find support in GEDA’s own enabling statute, in particular 12 GCA § 50103 (k). This section, they argue, is evidence that the Legislature, at least in limited respects, considered GEDA to be an instrumentality of the government. However, most critical is the limiting language within this section:

**[f]or purposes of this Subsection**, ‘agencies and instrumentalities of the Government’ include but are not limited to such public corporations as the Guam Economic Development Authority....

12 GCA § 50103 (k) (emphasis added). The majority recognized the Legislature’s “conscious intent” to limit this description of GEDA to this particular subsection and nevertheless claim that this section is evidence of Legislative intent to consider GEDA an agency or instrumentality of the government. The majority has relied upon nonexistent legislative intent to support its position that GEDA is an instrumentality of the government. Unlike the majority, I cannot avoid the plain meaning of this section and I do not find that it supports the contention that GEDA is an agency or instrumentality of the government for purposes of the Sunshine Act.

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### **III. CONCLUSION**

[35] Based upon the foregoing, I cannot join the majority. Although a general policy of disclosure may be in the public interest, we are bound by the relevant statutes and case law. When such statutes and case law are facially unambiguous, they cannot be ignored.

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BENJAMIN J. F. CRUZ  
Chief Justice