

Alicia G. Limtiaco  
Attorney General



Alberto E. Tolentino  
Chief Deputy Attorney  
General

## Office of the Attorney General

---

August 12, 2008

### INFORMATION AND GUIDANCE

Ref: AG 08-0164

TO: Government of Guam Boards and Commissions  
FROM: Deputy Attorney General  
SUBJECT: Open Government Law

This Memorandum provides a brief description of some of the procedures required by the Open Government Law, Title 5 G.C.A. Chapter 8. This memorandum is not definitive and specific questions regarding the Open Government Law should be referred to our office. These bullet points, however, should provide you with a general understanding of the scope of the Open Government Law, its requirements and the penalties for non-compliance.

1. **Scope.** The Open Government Law applies to all boards, commissions and agencies of the government of Guam and to all their meetings. 5 G.C.A. §§8102, 8103 and 8104.

2. **Meetings.** Every meeting at which a board, commission or agency might make an official decision is subject to the Open Government Law. 5 G.C.A. §8104(b). Therefore, all such meetings must be open to the public and notice must be given to either a popular print or broadcast media source.

3. **Regular Meetings and Special Meetings.** A regular meeting is a meeting that the board, commission or agency schedules by rule and holds on a regular basis, e.g. once a month. 5 G.C.A. §8106. All other meetings are Special Meetings. 5 G.C.A. §8107(b).

4. **Notice of Regular Meetings.** The board, commission or agency must give notice of a regular meeting twice: once five working days before the meeting and once forty-eight hours before the meeting. 5 G.C.A. §8107(a). That means giving notice in writing of the meeting through either the Pacific Daily News or the Marianas Variety or through TV or a popular radio station. Thus a regular meeting must have two written notices published in one newspaper. The Notice must also meet ADA requirements. To meet the ADA requirements, the Notice should say: "Individuals requiring special accommodations, auxiliary aids or services, may contact the following: [Name] at [Phone Number]." If it is a paid advertisement, the source of the funds must be identified in the advertisement.

When giving notice through the newspaper, the board should contact the newspaper and monitor publication of the notice. Newspapers are not always consistent in their performance, especially if no advertising space is purchased. However, the legal requirements are very specific and must be met.

5. **Notice of Special Meetings.** The board, commission or agency must give notice of a special meeting twice: once five working days before the meeting and again forty-eight hours before the meeting. 5 G.C.A. §8107(b). Notice must be given in writing at those times to both the Pacific Daily News and the Marianas Variety and all the TV and radio stations on Guam. Also, the notice shall be given in writing to every member of the board, commission or agency. The written notice must specify the time, place and subject of the special meeting. However, this does not mean that the agency must purchase advertising in either the print or broadcast media. The agency can conduct no business other than that described in the notice. Notice of a special meeting need not actually be published, but must be given to both newspapers. 5 G.C.A. §§8107(b) and 8108. The Notice must also meet ADA requirements. To meet the ADA requirements, the Notice should say: "Individuals requiring special accommodations, auxiliary aids or services, may contact the following: [Name] at [Phone Number]." If it is a paid advertisement, the source of the funds must be identified in the advertisement.

6. **Waiver of Notice of a Special Meeting.** If there is a critical emergency that demands the agency's attention it can obtain a waiver of the notice requirements for a Special Meeting by certifying the emergency in writing. 5 G.C.A. §8108. Examples of such emergencies include natural disasters that require immediate action, threats to the public safety such as overflowing sewers or outbreaks of infectious diseases. Procurement issues, financial issues, personnel issues and the regular business of an agency are not emergencies.

7. **Adjournment.** The board, commission or agency can adjourn a meeting, but it must do so in writing. The writing must then be distributed in the same way as notice of a Special Meeting. See 5 G.C.A. §§8109 and 8110. The notice must also be posted at the entrance to the meeting place at least 24 hours before the adjourned meeting resumes. *Ibid.*

8. **Executive Session.** Some matters can be discussed in Executive Session, as provided in Title 5 G.C.A. §8111, but specific procedures must be followed in order for this exception to apply. An executive session is part of a Board meeting, not a meeting in itself.

First, the Board can meet in Executive Session with representatives of the Office of the Attorney General and the Chief of Police when discussing "...a matter which poses a threat to the public health, safety and welfare." Second, the Board can meet with a representative of the AG or the Chief in discussing an employment matter. The "employment" exception applies only to discussing issues regarding the board or agency's own employees. It does not relate to licensing matters or taking action against a member of the public. The third exception permits the Board to discuss imminent or pending litigation with the Board's attorney. Section 8111(c).

There is a specific procedure that must be followed to go into executive session to discuss litigation. First, the executive session can occur only at a Board meeting that has been regularly

scheduled and noticed pursuant to the Open Government Law. 5 G.C.A. §8110(c)(5). The Board cannot go into executive session unless the attorney so recommends in writing. 5 G.C.A. §8110(c)(1). The Board must keep minutes of the executive session and the minutes must be open to the public. 5 G.C.A. §§8110(c) and (c)(6). The Board must also employ a professional court reporter to make a verbatim transcript of the executive meeting. 5 G.C.A. §§8110(c)(3) and (7). However, the transcript shall be sealed for six months. *Ibid.* After the meeting, the attorney must file an affidavit with the Board attesting to the fact that only litigation was discussed during the executive session.

The Board must vote after the executive session, not during it. 5 G.C.A. §8110(d). Therefore, regardless of what is said during the executive session, the vote is public, regardless of the reason for going into executive session.

9. **Transcripts, tape recordings and minutes of Board meetings.** The Open Government Law does not require that Board meetings be transcribed. It only requires that, if the Board goes into executive session to discuss litigation, the executive session be transcribed. 5 G.C.A. §8110(c)(7). That transcript remains confidential for six months, after which it becomes a public record unless the Board or another party obtains a court order directing that the transcript remain sealed.

However, the Board must keep minutes of its meetings and the minutes are public records. 5 G.C.A. §8113. The minutes must record all motions, proposals and resolutions offered and a tally of the individual votes. *Ibid.*

There are no specific provisions in the Open Government Law that deal with tape recordings of meetings. The Board is not legally required to make such recordings. However, 5 G.C.A. §10102(d) defines public records:

*Public records* includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency in any format, including an electronic format.

All public records, with a few exceptions, are open to the public. 5 G.C.A. §§10103 and 10104. Thus, we believe that if tape recordings are kept of the Board meetings they are public records since they contain information relating to public business and have been retained by the Board.

10. **Penalties and Court Actions.** Any action taken at a Board meeting in violation of the Open Government Law is void and therefore of no effect. 5 G.C.A. §8114. Any person may sue the board, commission or agency in Superior Court to have an action declared void. 5 G.C.A. §8115. Thus, if the Contractor's Licensing Board voted to suspend a contractor's license without giving the proper notice or if it did not meet in public or if the matter were improperly discussed in executive session, the contractor, or any resident of Guam, could sue the CLB in Superior Court and the court would reinstate the contractor.

This discussion is only a general guide and, once again, you should refer questions about the Open Government Law to our office.

A handwritten signature in black ink, appearing to read "J. Patrick Mason", with a long horizontal flourish extending to the right.

**J. PATRICK MASON**  
Deputy Attorney General