

1 **For Publication**

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6 **IN THE SUPERIOR COURT**
7 **FOR THE**
8 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8) **CIVIL CASE NO. 03-0413B**
9 WILLIAM H. RICHARDSON,)
10 Plaintiff,) **ORDER DENYING DEFENDANT’S**
11 v.) **MOTION FOR JUDGMENT ON THE**
12) **PLEADINGS**
13 COMMONWEALTH PORTS AUTHORITY)
14 Defendant.)

15 This matter came before the Court on the Defendant’s *Motion for Judgment on the Pleadings*
16 (“Motion”). The Plaintiff, William H. Richardson (“Richardson”) was represented by Sean Frink,
17 Esq. The Defendant, Commonwealth Ports Authority (“CPA”) was represented by Douglas F.
18 Cushnie, Esq. CPA moves to dismiss this action pursuant to Commonwealth Rules of Civil
19 Procedure 12(b)(6) and 12(b)(1). Richardson opposes this motion. After reading the moving papers
20 and upon hearing the arguments of counsel, the Court enters the following decision.

21 **FACTUAL AND PROCEDURAL BACKGROUND**

22 The underlying law suit alleges that Richardson requested documents pursuant to certain
23 provisions contained in the Open Government Meetings and Records Act, 1 CMC §§ 9901, *et seq.*,
24 (hereinafter referred to as “OGA”) and CPA refused production. As a result, Richardson filed a
25 *Motion to Compel* (“Plaintiff’s Motion”) with the Superior Court.¹ In its motion to dismiss, CPA’s

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28 ¹ The initial law suit by Richardson was a *Motion to Compel* in which Richardson requested production of 51 documents held by CPA. Initially, CPA did not respond to the document request. In a subsequent mediation hearing between the parties, the Court was apprised that CPA did comply with production of several documents and also informed Richardson that other documents had either been destroyed or were otherwise unable to be found. Hence, the *Motion to Compel* is now a moot issue. The remaining issue discussed in this opinion is whether the Court does or does not have subject matter jurisdiction over this case.

1 first argument is that Richardson has failed to state a claim upon which relief can be granted. Here,
2 CPA argues that Plaintiff’s Motion “has failed to allege the activating conduct which entitles it to
3 maintain an action in Superior Court.” See Motion at 2. Next CPA argues that this Court lacks
4 subject matter jurisdiction over this case for two reasons. First, CPA asserts that this complaint was
5 improperly filed. According to CPA, the statute under which this complaint was brought shows that
6 it was prematurely filed and, therefore, divests this Court of jurisdiction. The second jurisdictional
7 argument is that according to the Administrative Procedure Act, 1 CMC §§ 9101, *et seq.*, (“APA”),
8 Richardson has failed to exhaust his administrative remedies prior to availing himself of this Court’s
9 jurisdiction.

10 DISCUSSION

11 Motion for Judgment on the Pleadings

12 A motion for judgment on the pleadings is governed by Commonwealth Rule of Civil
13 Procedure 12(c), which states, “[a]fter the pleadings are closed but within such time as not to delay
14 the trial, any party may move for judgment on the pleadings.” Com. R. Civ. P. 12(c). The purpose
15 of a Rule 12(c) motion is to challenge the sufficiency of the opposing party’s pleadings, and the
16 Court applies the same standard as it does when considering a motion under Commonwealth Rule
17 of Civil Procedure 12(b)(6). *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir.
18 1998); *Ludahl v. Seaview Boat Yard*, 869 F. Supp. 825, 826 (W.D. Wash. 1994); 2 WILLIAM W.
19 SCHWARZER ET AL., CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL §
20 9:319 at 9-84 (2001). Accordingly, judgment on the pleadings is appropriate when, even if all
21 material facts in the pleading under attack are true, the moving party is entitled to judgment as a
22 matter of law. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir.
23 1989).

24 Motion to Dismiss Standard

25 A motion to dismiss under Rule of Civil Procedure 12(b)(6) tests the sufficiency of the
26 complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal of a claim under this
27 Rule is appropriate only where “it appears beyond doubt that the plaintiff can prove no set of facts
28 in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46,

1 78 S. Ct. 99, 102, 2 L. Ed. 2d 80, 85 (1957); *Navarro*, 250 F.3d at 732. Dismissal is warranted under
2 Rule 12(b)(6) where the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter*
3 *Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *see also Neitzke v. Williams*, 490 U.S. 319, 326,
4 109 S. Ct. 1827, 1832, 104 L. Ed. 2d 338, 348 (1989) (“Rule 12(b)(6) authorizes a court to dismiss
5 a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may be dismissed
6 where it presents a cognizable legal theory yet fails to plead essential facts under that theory.
7 *Robertson*, 749 F.2d at 534. In reviewing a motion to dismiss under Rule 12(b)(6), the court must
8 assume the truth of all factual allegations and must construe them in the light most favorable to the
9 nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002);

10 **The Open Government Act**

11 CPA’s arguments for its Motion rely on two provisions under the OGA, 1 CMC § 9917(a)
12 and (b). Section 9917(a) reads in pertinent part as follows: “[w]ithin 10 days of a request, all public
13 records shall be available for inspection by any person during established office hours unless public
14 inspection of such records is in violation of any Commonwealth or federal law” Section
15 9917(b) reads in pertinent part as follows: “[r]ecourse may be had to the Commonwealth Superior
16 Court by any person unlawfully denied access to public records.”

17 Because the crux of this case revolves around provisions of the OGA, it may be appropriate
18 at this time to remind CPA, its Board of Directors and its Executive Director, as well as others
19 similarly situated, of the purpose of the OGA. In 1992 the Commonwealth Legislature found that
20 there were a number of government agencies who were operating secretly. Meetings would be held
21 without notice and there would be no responses to requests for documents or inquiries regarding
22 what business was conducted at these meetings. Executive directors and board members of various
23 agencies were acting as if they were “above the law,” seemingly without anyone to look over their
24 shoulders and seemingly answering to no one. The Legislature responded to this state of affairs by
25 passing the Open Government Act which went into effect on January 21, 1994.

26 In its Legislative Declaration, the legislature found:

27 The people of the Commonwealth do not yield their sovereignty to the agencies
28 which serve them. 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

1 for them to know. The people insist on remaining informed so that they may retain
2 control over the instruments they have created.

3 1 CMC § 9901.

4 The above paragraph is probably one of the most profound legislative declarations in our
5 law, because it addresses every agency in government and all semi-autonomous agencies. The
6 Legislative Declaration also states:

7 The legislature finds and declares that all public commissions, boards, councils,
8 committees, subcommittees, departments, divisions, offices, and all other public
9 agencies of this Commonwealth exist to aid in the conduct of the *people's business*.
10 It is the intent of this chapter that their actions be taken openly and their deliberations
11 be conducted openly.

12 1 CMC § 9901 (emphasis added).

13 The Legislative Declaration coupled with the statute itself, gives the Court some direction
14 as to how the provisions of the OGA should be construed. It provides: “[t]he provisions requiring
15 open meetings and open records shall be liberally construed, and the provisions providing for
16 exceptions to the open meetings requirement and open records requirements shall be strictly
17 construed against closed meetings and non-disclosure of records.” *Id.*

18 **A. Failure to State a Claim**

19 CPA’s argument under failure to state a claim is that Richardson’s complaint “does not
20 allege that plaintiff was unlawfully denied access to public records.” Motion at 2. CPA further
21 argues that because Richardson has failed to allege the activating conduct, his claim should be
22 dismissed for failure to state a claim. *Id.* The Court does not agree with CPA’s argument. Instead,
23 the Court finds Richardson’s response persuasive when he asserts that the mere fact of stating that
24 no documents were received is sufficient to put forth a claim for OGA purposes. The papers filed
25 by Richardson contained all the necessary elements as required by Commonwealth Rule of Civil
26 Procedure 8(a). Richardson’s complaint contained a short statement of the grounds for this Court’s
27 jurisdiction; a short statement of the claim showing that he is entitled to relief; and a demand for
28 judgment for relief.

B. Lack of Jurisdiction by this Court

1. Improper Filing

1 involve the Federal Freedom of Information Act (“FOIA”). One of the cases that CPA cites in its
2 moving papers directly states that in cases involving the Federal Administrative Procedure Act, a
3 person must first deal with all administrative remedies before looking to the court. CPA goes on
4 to argue and include several cases that interpret the FOIA to bolster its argument. However, the
5 FOIA contains provisions that the CNMI OGA simply do not contain. A Washington State
6 Appellate Court, addressing the same issue raised by CPA, determined that courts have repeatedly
7 refused to apply FOIA cases when interpreting provisions in the Washington Public Disclosure Act,
8 WASH. REV. CODE §§ 42.17, *et seq.* (2005) (PDA),² that differ significantly from the parallel
9 provisions in the federal act. Thus, they distinguish those federal cases. The Washington Appellate
10 Court held in *Kleven v. City of Des Moines*, that:

11 FOIA requires that the requestor exhaust all administrative remedies by appealing
12 to the head of agency before commencing an action in federal court. The PDA
13 contains no similar exhaustion requirement. Those differences are significant for
14 purposes of our state statute. . . . As noted above, the applicable FOIA provisions
15 differ from the PDA provisions at issue here. For this reason alone, FOIA does not
16 provide any useful guidance in applying the PDA. Because [the federal cases] were
17 decided under significantly different statutory provisions and regulations, they are
18 not helpful.

19 44 P.3d 887, 891 (Wash. Ct. App. 2002).

20 This Court follows the same logic. Nothing in the OGA dictates that administrative remedies
21 must be exhausted before asking the court for help. As noted above, the intent behind the OGA is
22 that the court should view everything in favor of the party seeking information from an agency. It
23 is within the province of this Court to do everything in its power to ensure that agencies comply with
24 any lawful request for records. If the Legislature intended to have a person seeking records from
25 an agency exhaust all remedies within that agency, it could have specifically provided for that. It
26 did not. In this situation, that would be a case of the fox guarding the hen house.

27 Furthermore, the legitimate purposes of the OGA can be easily ignored by prolonged
28 administrative appeal strategies. This Court can think of many ways that a person’s request for
documents could take months to resolve administratively. In the meantime, the dictates of the OGA
would be ignored, delayed or side stepped. This Court believes that liberal construction of OGA

² The Washington Public Disclosure Act has provisions very similar to the provision of the CNMI Open Government Act.

1 means that the Act must be complied with immediately, or the Court system can be utilized, right
2 away. The legislative declaration certainly contemplates a speedy resolution, not rounds of appeals
3 and appeals from appeals.

4 **CONCLUSION**

5 As emphasized throughout this opinion, the purpose and intent behind the Open Government
6 Meeting and Recording Act is to allow the public to have access to records and information. That
7 intent is being thwarted here and the Court will not allow it. CPA's initial ignoring of Richardson's
8 attempt to obtain disclosure of documents and its filing of this motion by its technicality-smitten
9 attorney is an attempt to deny or delay access to records or make obtaining these records more
10 difficult than is necessary. Board members and executive directors should bend over backwards to
11 accommodate anyone lawfully requesting records. The Court finds that Richardson has complied
12 with his procedural obligations and further finds that the Court does have subject matter jurisdiction
13 over this case. As such, the Defendant's *Motion for Judgment on the Pleadings* and *Motion to*
14 *Dismiss* is **DENIED**. This matter is set for a status conference on April 28, 2005, at 1:30 p.m.

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16 **SO ORDERED** this 4th day of April 2005.

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20 /s/
21 KENNETH L. GOVENDO, Associate Judge