

IN THE  
**SUPREME COURT**  
OF THE  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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**THE NORTHERN MARIANA ISLANDS SCHOLARSHIP BOARD,**  
Petitioner

v.

**THE SUPERIOR COURT OF THE COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**  
Respondent,

**ROSELLE DEMAPAN CALVO,**  
Real Party In Interest.

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**SUPREME COURT APPEAL NO. CV-07-0010-OA**  
SUPERIOR COURT CIVIL CASE NO. 07-0026 CV

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**OPINION**

***Cite as: NMI Scholarship Board v. Superior Court, 2007 MP 10***

Submitted on April 4, 2007  
Saipan, Northern Mariana Islands

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**FOR PUBLICATION**

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice; and TIMOTHY H. BELLAS, Justice *Pro Tempore*

PER CURIAM:

¶ 1 The Commonwealth (“petitioner”) requests this Court to issue a writ of mandamus directing the trial court to vacate its order instructing the Northern Mariana Islands Scholarship Board (“board”) to produce records pursuant to the Commonwealth Open Government Act (“OGA”), 1 CMC §§ 9901-9918. We hold that petitioner has not satisfied the test laid out in *Tenorio v. Superior Court*, 1 N.M.I. 1, 9-10 (1989), and therefore deny the mandamus request.

### I.

¶ 2 The board administers the Commonwealth Honor Scholarship Program, which grants scholarships for students to attend college. 3 CMC § 1342. Roselle Demapan Calvo (“Calvo”) applied for a scholarship but was not selected as a recipient. Calvo appealed the decision to the board. Her appeal was denied. On January 25, 2007, she filed an action in the trial court.

¶ 3 Pursuant to the OGA, Calvo contacted the board requesting to inspect and/or make duplicates of documents relating to the 2006 scholarship applicants. The board rejected her request. Calvo renewed her request before the trial court, which granted it on March 28, 2007. Petitioner now requests a writ of mandamus vacating the trial court’s order.

### II.

¶ 4 “A Writ of Mandamus is an extraordinary writ, reserved for the most dire of instances when no other relief is available.” *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 16. It is by no means a procedural right, and shall not be used to second guess the trial court

every step of the way. With that in mind, we look to the five factors laid out in *Tenorio*, 1 N.M.I. at 9-10. The five factors are: (1) the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired; (2) petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) the lower court's order is clearly erroneous as a matter of law; (4) the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and (5) the lower court's order raises new and important problems, or issues of law of first impression. *Commonwealth v. Pua*, 2006 MP 19 ¶ 19. Not all five factors need be satisfied to justify the issuance of mandamus. "Rather, *Tenorio* provides a balancing test; the factors are cumulative and require this Court to determine the degree to which each is implicated." *Malite v. Superior Court*, 2007 MP 3 ¶ 9.

¶ 5 Petitioner claims that a writ of mandamus is needed to protect the documents at issue because the documents cannot be redacted once they are produced. However, the trial court's order allows the board to redact any information, the disclosure of which would violate Commonwealth or federal law, or is privileged under Commonwealth law or rules. Allowing the board to redact information it believes is privileged or private preserves the board's nondisclosure duty under 1 CMC § 9918(a). Indeed, the OGA envisions such redactions: "[t]he exemptions [from public disclosure] are inapplicable to the extent that the information, the disclosure of which would violate personal privacy or vital government interests, can be deleted from the specific records sought." 1 CMC § 9918(b).

¶ 6 Thus, the trial court's order implements the OGA's own safeguards. We cannot say that the release of redacted scholarship applications will injure current or future

applicants, much less in a way not correctable on appeal. This is especially true where, as here, the custodian of those applications may determine for itself what information should be redacted. The mandamus request is at best premature since the trial court has not ordered specific information to be released, reserving that judgment until it has reviewed the board's decision of what information to withhold. Without specific evidence of an impending release of private or privileged information, we find no grounds for a writ of mandamus.

¶ 7 Nor do we find petitioner's argument that the trial court lacks jurisdiction as a sufficient basis for mandamus relief. The procedure for judicial review of an agency action is set out at 1 CMC § 9112. Nowhere in that statute do we find the specific pleading and notice requirements petitioner urges. Nor does the statute preclude courts from ordering discovery, as petitioner would have us conclude. Rather, Commonwealth law provides broad latitude for the reviewing court to ensure agency actions are lawful. *See* 1 CMC § 9112(f). There is undoubtedly a line beyond which a trial court would be acting extra-jurisdictionally when reviewing agency decisions. However, nothing in the evidence before us rises to the level of a jurisdictional or due process defect sufficient to warrant a writ of mandamus.<sup>1</sup>

¶ 8 Finally, petitioner's argument that *Tenorio* factors four and five support mandamus relief is without merit. Petitioner claims that the trial court's order will guide future court decisions, resulting in repeated OGA requests. Even if we agreed with petitioner, this argument must fail. *Tenorio* factor four asks whether the lower court's

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1 That is not to say an appeal on these issues would be frivolous, or that we are unwilling to revisit their claims, but rather the evidence and arguments presented do not form a sufficient basis for mandamus. *See Sablan v. Superior Court*, 2 N.M.I. 165, 171 (1991) ("Whether we ultimately, upon a regular appeal . . . would conclude otherwise . . . is a matter which has little bearing on whether a writ should [be] issue[d].").

action was an oft-repeated error, or demonstrates persistent disregard for applicable rules. 1 N.M.I. at 10. Speculation into future court action is immaterial. Factor four requires evidence showing a course of conduct of related judicial error. *Id.* at 10. *Tenorio* factor five looks for important issues of first impression. *Id.* While the question presented appears to be a matter of first impression in the Commonwealth, that alone is insufficient to grant a writ of mandamus.

### III.

¶ 8 The *Tenorio* analysis, taken as a whole, does not support the issuance of a writ of mandamus. We, therefore, DENY petitioner's request.

SO ORDERED this 25th day of APRIL, 2007.

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/s/  
ALEXANDRO C. CASTRO  
Associate Justice

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/s/  
JOHN A. MANGLONA  
Associate Justice

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/s/  
TIMOTHY H. BELLAS  
Justice *Pro Tempore*