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3 On December 12, 2009, Defendants moved for dismissal, arguing that this Court lacks
4 subject-matter jurisdiction. Docket # 12. In support thereof, they argue that FOIA applies only
5 to federal agencies, not state agencies or entities.

6 **Standard of Review**

7 *Fed. R. Civ. P. 12(b)(1)*

8 Rule 12(b)(1) is the proper vehicle for challenging a court's subject matter jurisdiction.
9 Valentín v. Hospital Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001). Under this rule, a wide
10 variety of challenges to the Court's subject matter jurisdiction may be asserted, among them
11 those based on sovereign immunity, ripeness, mootness, and the existence of a federal question.
12 Id. (citations omitted); see also Hernández-Santiago v. Ecolab, Inc., 397 F.3d 30, 33 (1st Cir.
13 2005) (discussing application of Rule 12(b)(1) challenge in cases where the court allegedly has
14 diversity jurisdiction). Justiciability is a component of a court's subject matter jurisdiction, and,
15 as such, must be reviewed following Rule 12(b)(1)'s standards. Sumitomo v. Quantum, 434 F.
16 Supp. 2d 93 (D.P.R. 2006). A court faced with a Rule 12(b)(1) motion should give it preference.
17 Dynamic Image Technologies, Inc. v. U.S., 221 F. 3d 34, 37 (1st Cir. 2000). A plaintiff faced
18 with a motion to dismiss for lack of subject matter jurisdiction has the burden to demonstrate
19 that such jurisdiction exists. See Lord v. Casco Bay Weekly, Inc., 789 F. Supp. 32, 33 (D. Me.
20 1992); see also SURCCO V. PRASA, 157 F. Supp. 2d 160, 163 (D. P.R. 2001).

21 **Applicable Law and Analysis**

22 For purposes of FOIA, "agency" means each authority of the Government of the United
23 States, whether or not it is within or subject to review by another agency..." 5 U.S.C. § 551(1).
24 Interpreting said section, this district has held that the term "agency" under FOIA does not
25 include state or local agencies such as the Puerto Rico Labor and Human Resources
26 Department, and Puerto Rico's Vocational Rehabilitation Administration. Toledo v. P.R. Labor

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3 and Human Resources Dept., 203 F. Supp. 127, 130 (D.P.R. 2002); see also Hernandez v. Esso
4 Std. Oil Co., 252 F.R.D. 118, 119 (D.P.R. 2008) (holding that FOIA is inapplicable to states,
5 territories, and their agencies). Similarly, other courts have found that insofar as FOIA applies
6 only to “agencies” as defined under 5 U.S.C. § 551(1), “[u]nder these definitions, ‘agency’ does
7 not encompass state agencies or bodies.” St. Michael’s Convalescent Hosp. v. California, 643
8 F.2d 1369, 1373 (9th Cir. 1981).

9 This Court further notes that Section 551(1) expressly provides that the term “agency”
10 does not include ...(C) the governments of the territories or possessions of the United States...”
11 Although Puerto Rico is commonly mis-perceived as a non-incorporated territory of the United
12 States, an uninterrupted and long-standing line of Supreme Court and First Circuit cases show
13 otherwise. See USA v. Vega-Figueroa, 984 F. Supp. 71, 75 (1997). Since 1953, the First Circuit
14 recognized that in 1952 Puerto Rico ceased being a territory of the United States subject to the
15 plenary powers of Congress. Mora v. Mejias, 206 F.2d 377 (1st Cir. 1953). Specifically, pursuant
16 to Public Law 600, the federal government’s authority over Puerto Rico emanates from the
17 compact entered into between Congress and the People of Puerto Rico. 48 U.S.C. § 731(b) 64
18 Stat. 319 (1950); see also Figueroa v. People of Puerto Rico, 232 F.2d 615, 620 (1st Cir. 1956).
19 As a result of said compact, dual sovereignty akin to that of a state exists between Puerto Rico
20 and the United States. The dual sovereignty doctrine in Puerto Rico has been consistently
21 recognized by the Supreme Court of Puerto Rico, the First Circuit and the United States
22 Supreme Court. Vega-Figueroa, 984 F. Supp. at 75 (citing Cordova & Simonpietri v. Chase
23 Manhattan Bank, 649 F.2d 36, 39-41 (1st. Cir. 1981); First Fed. S & L Assoc. of P.R. v. Ruiz
24 de Jesus, 644 F.2d 910 (1st Cir. 1981); People v. Castro-Garcia, 120 D.P.R. 740 (1988);
25 Examining Board of Engineers vs Flores, 426 U.S. 572, 594 (1976); Rodriguez v. Popular
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3 Democratic Party, 457 U.S. 1, 8(1982); United States v. Lopez Andino, 831 F.2d 1164 (1st Cir.
4 1987)).

5 As a result, albeit courts have recognized that “the legal relationship between Puerto Rico
6 and the United States is far from clear and fraught with controversy...,” Vega Figueroa, 984 F.
7 Supp. at 76 (citing Lopez Andino, 831 F.2d 1164 (1st Cir. 1987), the Supreme Court has
8 repeatedly held that Puerto Rico is to be treated as a state, and conferred ““the degree of
9 autonomy and independence normally associated with the states of the union.”” Examining
10 Board of Engineers, 426 U.S. at 594; see also Vega Figueroa, 984 F. Supp. at 76. Thus “Puerto
11 Rico, like a state, is an autonomous political entity...” Popular Democratic Party, 457 U.S. at
12 8; see also Examining Board of Engineers, 426 U.S. at 594. Based on the foregoing, this Court
13 finds that Puerto Rico’s Department of Treasury is a state agency, and insofar as FOIA does not
14 apply to state agencies, it is inapplicable in the case at bar.

15 In light of the foregoing, this Court finds that Plaintiff cannot assert claims under FOIA
16 against Defendants. Absent other federal claims, this Court lacks subject-matter jurisdiction
17 over the present case.

18 **Conclusion**

19 Based on the foregoing, Defendants’ motion to dismiss is **GRANTED**, and the instant
20 case is **DISMISSED without prejudice**.

21 **IT IS SO ORDERED.**

22 In San Juan, Puerto Rico, this 22nd day of February, 2010.

23 *S/ Salvador E. Casellas*
24 SALVADOR E. CASELLAS
25 Senior United States District Judge
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