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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Mr. Sam Monet
Agency: Department of Land and Natural Resources
Date: May 18, 2023
Subject: Records Relating to Request for Proposals (U APPEAL 20-33)

Requester seeks a decision as to whether the Department of Land and Natural Resources (DLNR) properly denied his request for records under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's email to OIP dated December 4, 2019, and enclosures; OIP's email to Requester dated December 4, 2019; Requester's email to OIP dated December 5, 2019, with attached email thread; OIP's email to Requester dated December 5, 2019, with attached email thread; OIP's letter to DLNR dated December 5, 2019, with enclosures; Requester's email to OIP dated December 6, 2019, with attached email thread; OIP's email to the Department of the Attorney General (AG) dated December 13, 2019; OIP's email to the AG dated December 20, 2019; and the AG's letter to OIP on behalf of DLNR dated January 10, 2020, with enclosures.

QUESTIONS PRESENTED

1. Whether Requester's abandonment of an earlier request for some of the same records meant DLNR had no duty to respond to the request at issue here since it partly encompassed the same records.

2. Whether DLNR properly responded that it could not provide the requested records because it maintained no records responsive to several of the requested categories of information and was not required under the UIPA to create a compilation or summary of the requested information. HRS § 92F-11(c) (2012).

3. Whether DLNR was authorized to withhold all the requested records, both those that it maintained in the form requested and those that would require a compilation or summary, under the UIPA's exception for information whose disclosure would frustrate a legitimate government function, section 92F-13(3), HRS.

BRIEF ANSWERS

1. No. A requester's abandonment of a request relieves an agency of further responsibility to respond to the specific request that was abandoned. HAR § 2-71-16. It does not, however, relieve the agency of further responsibility to respond to any future requests from the same requester, even if those requests overlap with the abandoned one. A requester is entitled to abandon one request and instead make a new request, which may be the same, may be narrower, or as in this case, may be broader.

2. No, with one exception. OIP found that a list of selection committee members and of proposal submitter names would be readily retrievable by DLNR in the form requested, and OIP concluded that unless an exception to disclosure applied (as discussed separately) DLNR must compile and disclose the requested information. However, OIP found that the requested list of meetings with related information would not be readily retrievable by DLNR, and thus concluded that DLNR had no duty under the UIPA to create such a list in response to Requester's request.

3. No. OIP concluded that the names of selection committee members could not be withheld under the UIPA's frustration exception and must be disclosed, and because a list of selection committee members is reasonably retrievable, DLNR was required to create and disclose such a list. However, OIP also concluded that DLNR was authorized to withhold the identities of proposal submitters to avoid the frustration of a legitimate government function, so DLNR was not required to create a compilation or summary of that information. OIP further concluded that DLNR was authorized under the frustration exception to withhold information in correspondence that would identify a proposal submitter (including the name and contact information for the submitter's attorney) and other information from the proposal (including references to other companies). Finally, OIP found that the information was reasonably segregable and concluded that DLNR must provide Requester with a redacted version of the correspondence.

FACTS

I. Request for Proposals for Ala Wai Small Boat Harbor

The Ala Wai Small Boat Harbor (Ala Wai Harbor) is managed by DLNR's Division of Boating and Ocean Recreation (DOBOR), which issued a Request for Proposals (RFP) to redevelop the harbor on April 5, 2019. Proposal submitters were required to apply to establish their development qualifications before then submitting a proposal. Requester submitted a proposal, but not a prior application for evaluation of his qualifications. No proposal was selected through the RFP process, and as of the time of the request at issue in this appeal and DLNR's response to it, DOBOR was planning to re-issue the RFP for harbor redevelopment at a future date.

II. Requester's UIPA Request and DLNR's Response

Requester made a request to DLNR¹ on November 16, 2019,² for records relating to a proposal submitted by Kumulipo Studios "under the Ala Wai Harbor RFP 2019"³ in four categories: (1) the names of all selection committee members; (2) the names and submission dates for all other entities submitting proposals; (3) a "list of all meetings" where proposal submitters and DOBOR Administrator Edward Underwood (Administrator) were present, "including dates, places, minutes, attendees;" and (4) all correspondence between the Administrator and any proposal submitter (November Request).

¹ The request stated it was for DLNR's Harbors Division, which does not administer the Ala Wai Harbor, but it was emailed directly to an employee within DOBOR, which does administer the Ala Wai Harbor. DLNR treated the request as being intended for DOBOR, and Requester has not argued that DLNR should instead have searched for Harbors Division records.

² Requester had made a previous request to DLNR on October 21, 2019 (October Request), for correspondence relating to extensions of the RFP submission date. DLNR granted that request in part but denied it in part with respect to the names of other RFP submitters. Requester abandoned the request and it is not part of this appeal.

³ Requester also asserted that he had "standing to make this request for documents and things relating to [the Ala Wai Harbor] RFP." The UIPA does not require a requester to establish standing to obtain government records, but by the same token it does not provide a requester with an elevated right to obtain government records based on the requester's level of involvement with the subject of the request. E.g., OIP Op. Ltr. No. 10-05 at 2. In any case, DLNR has not argued that Requester lacked standing to request the records at issue.

Requester and DLNR exchanged a series of emails on December 3 and 4, 2019, in which Requester asked why he had not received the requested names, and DLNR asserted that the “names of bidders are being kept confidential because we will restart the process,” citing to section 92F-13(3), HRS. DLNR also stated that names of selection committee members were being kept confidential, but did not cite to a UIPA basis or offer any other explanation.

DLNR sent Requester a Notice to Requester (NTR) on December 10, 2019, which referenced only the request for all correspondence between the Administrator and proposal submitters. The NTR stated that DLNR did not maintain any responsive records and thus could not grant the request; it did not indicate that any records responsive to that or any of the other categories were being withheld or redacted.

The NTR did not include any reference to the other requested categories (names of selection committee members, names of other proposal submitters, and information about meetings.) Although DLNR had advised Requester by email that it would not be providing the requested names of selection committee members and other proposal submitters, it did not respond either by email or in its NTR to the request for a list of meetings and related information.

III. Appeal and DLNR’s Response

On December 4, 2019, Requester appealed DLNR’s denial to OIP. DLNR responded to this appeal through its deputy AG on January 10, 2020 (Appeal Response). In its response, DLNR argued generally that much of the request “do[es] not describe records as required by HAR § 2-71-12(b)(2) but [is] instead akin to a discovery request[.]” With respect to the requests for a list of selection committee members and of proposal submitters and submission dates, DLNR asserted that it maintained no such lists, and in any case both sets of requested names could be withheld under the UIPA’s frustration exception, section 92F-13(3), HRS.⁴ With respect to the request for a list of meetings with related information, DLNR asserted that it maintained no such list, and the only potentially responsive record it had was a page on its website that, at the relevant time, included an “Applicant Briefing” by the Administrator in a list of “SIGNIFICANT DATES” for the RFP. With respect to the request for correspondence, DLNR’s NTR had stated it did not maintain any such correspondence, but DLNR’s Appeal Response included two letters from a proposal submitter’s counsel to the Administrator for OIP’s *in camera* review. DLNR argued that the letters, too, could be withheld under the UIPA’s frustration exception.

⁴ An agency may withhold from disclosure “[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function[.]” HRS § 92F-13(3) (2012).

DISCUSSION

As an initial matter, OIP notes DLNR's apparent argument that because Requester abandoned his October Request, DLNR had no duty to respond to his November Request that in part requested the same records. This argument reflects a fundamental misunderstanding of the record request process. A requester's abandonment of a request relieves an agency of further responsibility to respond to the specific request that was abandoned. HAR § 2-71-16. It does not, however, relieve the agency of further responsibility to respond to any future requests from the same requester, even if those requests overlap with the abandoned one.⁵ A requester is entitled to abandon one request and instead make a new request, which may be the same, may be narrower, or as in this case, may be broader.

I. Records DLNR Asserts It Does Not Maintain

DLNR argued that it does not maintain records responsive to several of the requested categories, and that it is not required under the UIPA to create a compilation or summary of the requested information because the information is not readily retrievable in the form requested. HRS § 92F-11(c). Specifically, DLNR asserted it did not keep either notes or minutes of meetings, and thus had no duty to search for records it knew were never created. DLNR did not specifically argue that it was not required to create a list of selection committee members or of proposal submitters, presumably relying on its argument that such information could be fully withheld under the UIPA's frustration exception, section 92F-13(3), HRS. DLNR also did not address the possibility that it might have other records of meetings, such as emails or calendar entries, or indeed the website page it acknowledged in its Appeal Response.

The UIPA generally does not require an agency to create records in response to a record request. E.g., Nuuanu Valley Association v. City and County of Honolulu, 119 Haw. 90, 97, 194 P.3d 531, 538 (Haw. 2008). It requires an agency to create a compilation or summary of information from agency records only when the information is "readily retrievable by the agency in the form in which it is requested[.]" HRS § 92F-11(c). Thus, to the extent the request would require DLNR to create a list of selection committee members, of entities submitting proposals, or of meetings and related information, the first question OIP must

⁵ Notably, the UIPA at one point specifically authorized an agency to not respond to subsequent requests from the same requester for the same records when it had properly responded to an earlier request within the same year. Act 100 of 2010, 2010 Haw. Sess. Laws 191. However, that provision was subject to a sunset clause and was automatically repealed on July 1, 2014, so it was not in effect at the time of this request. Id.

answer is whether such lists would be based on information contained in existing agency records and “readily retrievable” in the form requested.

A. Selection Committee Members

DLNR knew who was on the selection committee and noted that it maintained some emails that included the selection committee member names without identifying them as such. It would be unusual for a selection committee to include so many members that writing a list of their names would be burdensome, and DLNR has given OIP no basis to find that such is the case here. OIP therefore finds that a list of selection committee members would be readily retrievable by DLNR in the form requested.

However, DLNR also asserted that it was authorized to withhold those names under the UIPA’s frustration exception, section 92F-13(3), HRS. If DLNR is authorized to withhold the names, then the UIPA would not require it to create a compilation just to then withhold it in full. Thus, OIP will consider below whether DLNR was authorized under the UIPA’s frustration exception to withhold the selection committee member names.

B. Proposal Submitter Names

DLNR asserted that “[a]ny entity . . . which ‘submitted’ proposals cannot be identified from an agency standpoint aside from those actually received.” OIP understands this to be an argument that DLNR could not identify entities that submitted proposals other than those from which DLNR received a proposal. OIP finds that DLNR should reasonably have read the request as applying only to those proposals DLNR actually received, and DLNR did apparently know (and maintained records showing) what proposals it received and from whom. As with the selection committee members, OIP has no basis to find that writing a list of those entities would be burdensome. OIP therefore finds that a list of the entities submitting those proposals, together with the dates of submission to the extent they are readily apparent from the proposals, would be readily retrievable by DLNR in the form requested.

However, as with the list of selection committee member names, the UIPA would not require DLNR to create a compilation or summary when the information compiled may be fully withheld under a UIPA exception. OIP will consider below whether DLNR was authorized under the UIPA’s frustration exception to withhold the proposal submitter names.

C. List of Meetings and Related Information

OIP notes first that DLNR did maintain at least one record responsive to the request for a list of meeting dates with related information. The Appeal Response included as Exhibit F a screenshot of DLNR's website, showing that DLNR published a list of significant dates relating to the RFP, including an "Applicant Briefing in Honolulu – April 12, 2019, 10:00 a.m." DLNR acknowledged in its Appeal Response that the briefing, done by the Administrator for an audience that presumably included prospective proposal submitters, was a potentially responsive record. DLNR should also have acknowledged the existence of this record in its NTR and either provided it to Requester or, at a minimum, sought clarification as to whether Requester wanted a copy of the webpage including the significant dates list. HAR § 2-71-14.

DLNR asserted that it did not keep notes or meeting minutes, and thus was not required to search for records it knew were never created. DLNR did not address the possibility that other records, such as emails or calendar entries, might include the requested information, and did not specifically argue that a list of meeting dates, if any, would not be readily retrievable. Nonetheless, given DLNR's assertion that it was not keeping either meeting notes, minutes, or a list of meeting dates with related information as requested, it seems likely that the information would not be readily retrievable given the time required to search emails and calendar entries for information about such meetings and then create the requested compilation from them. DLNR's assertion that it did not keep notes or minutes of any meetings between the Administrator and proposal submitters is uncontested and OIP has no reason to doubt it. OIP therefore finds that the requested list of meetings between the Administrator and proposal submitters with related information would not be readily retrievable by DLNR, and OIP concludes that DLNR had no duty under the UIPA to create such a list in response to Requester's request. HRS § 92F-11(c).

II. Applicability of the Frustration Exception

A. Selection Committee Member Names May Not be Withheld

DLNR argued that the names of selection committee members could be withheld under the UIPA's exception for information whose disclosure would frustrate a legitimate government function, section 92F-13(3), HRS.⁶ In support of

⁶ Section 92F-12(a)(3), HRS, requires public disclosure of "[g]overnment purchasing information . . . except to the extent prohibited by section 92F-13." OIP has previously concluded that the phrase "except to the extent prohibited by section 92F-13" was intended to permit an agency to withhold government purchasing information where

this argument, DLNR asserted first that the leasing of small boat harbors is a legitimate government function of the agency, citing to sections 200-2.5 and -2.6, HRS, as authorizing DLNR to lease “fast and submerged lands” in small boat harbors generally and in the Ala Wai boat harbor specifically. OIP agrees with DLNR that the leasing of small boat harbors is one of DLNR’s legitimate government functions.

DLNR further argued that both the UIPA’s legislative history and prior OIP opinions have recognized that the UIPA’s frustration exception generally protects “information which, if disclosed, would raise the cost of government procurements or give a manifestly unfair advantage to any person proposing to enter into a contract or agreement with an agency[.]” Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 389, 846 P.2d 882, 892 (1993), citing S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093-1095 (1988). Here, too, OIP agrees that the UIPA’s frustration exception applies to information whose disclosure would raise the cost of government procurements. The question OIP must resolve is whether disclosure of the names of selection committee members would have that effect.

OIP has previously considered whether the names of agency personnel evaluating proposals in response to an RFP may be withheld under the UIPA’s privacy exception and found that the names do not carry a significant privacy interest and must be disclosed. OIP Op. Ltr. No. 91-14 at 9 (Opinion 91-14). However, DLNR’s argument here is not based on the UIPA’s privacy exception but its frustration exception: DLNR argues it must withhold selection committee member names “to avoid undue interference - including harassment, questions, lobbying, solicitation, influence, consideration, or other communications which could taint or influence the judgment of members.” Although the potential applicability of the frustration exception was not addressed in Opinion 91-14 regarding names of proposal evaluators, presumably because the agency did not raise it, it was addressed in the opinion OIP relied on in Opinion 91-14 as a precedent. OIP Opinion Letter Number 89-9⁷ (Opinion 89-9), cited in Opinion 91-14 and which DLNR also cited in its Response, concluded that the names of law school admission committee members could not be withheld under either the UIPA’s privacy or

disclosure would result in the frustration of a legitimate government function under section 92F-13(3), HRS. E.g., OIP Op. Ltr. No. 94-26 at 7.

⁷ OIP’s recently issued Opinion Letter Number F23-03, which reconsidered Opinion 89-9’s conclusion specifically with regard to a student member of the law school admission committee, does not affect Opinion 89-9’s analysis and conclusion regarding the applicability of the UIPA’s privacy and frustration exceptions to law school admission committee member names.

frustration⁸ exceptions. Supporting that conclusion, OIP found that “the disclosure of the members’ identities will not discourage candid discussion within the confines of the committee meetings . . . or result in the premature disclosure of the recommended outcome” and even though some people might try to influence the members, they should in any case refrain from engaging in activities that would compromise or seem to compromise their professional integrity. OIP Op. Ltr. No. 89-9 at 11.

OIP notes also that DLNR has given no indication that the selection committee members were anything other than DOBOR employees. According to DLNR, their names were included in some internal emails related to the RFP although they are not identified as selection committee members, and DLNR has not asserted that it retained a third party or parties to act as a selection committee for the RFP. Requester was clearly well aware of who the Administrator is and of the identities of other DOBOR employees with whom he corresponded. Thus, while Requester and others similarly situated may not know which specific DOBOR employees were members of the official selection committee, they could reasonably assume that the Administrator and other DOBOR employees involved in running the RFP process were likely to have input as to which proposal was selected. OIP therefore finds it unlikely that public knowledge of which specific employees were selection committee members will result in a substantial increase in harassment, questions, lobbying, solicitation, and influence beyond what they already experience as DOBOR employees involved in the RFP and other procurements. Consistent with Opinion 89-9, OIP concludes that the names of selection committee members may not be withheld under the UIPA’s frustration exception and must be disclosed. OIP further concludes that because a list of selection committee members is reasonably retrievable as discussed above, DLNR must create and disclose such a list.

⁸ OIP considered in Opinion 89-9 whether the names could be withheld under the deliberative process privilege, a form of the frustration exception OIP previously recognized but which has since been abrogated by the Hawaii Supreme Court’s decision in Peer News LLC v. City and County of Honolulu, (Peer News) 143 Haw. 472, 431 P.3d 1245 (2018). Since Opinion 89-9 found that the names were not protected by the frustration exception and must be disclosed, the Peer News decision does not alter and if anything provides additional support for that conclusion.

B. Proposal Submitter Names May Be Withheld

DLNR argued that the names of proposal submitters could be withheld under the UIPA's exception for information whose disclosure would frustrate a legitimate government function, section 92F-13(3), HRS. As with selection committee member names, OIP agrees with DLNR that the leasing of small boat harbors is one of DLNR's legitimate government functions and that the UIPA's frustration exception applies to information whose disclosure would raise the cost of government procurements.

OIP Opinion Letter Number 09-02 (Opinion 09-02) concluded that premature release of the identities of proposal submitters did indeed have the potential to frustrate the RFP process:

[R]evealing identities of prospective offerors and other prospective proposal information prior to completion of the specific procurement process at issue would frustrate the process by (1) raising the cost of government procurements, and (2) giving a manifestly unfair advantage to any person proposing to enter into a contract or agreement with an agency, or both.

OIP Op. Ltr. No. 09-02 at 4.⁹ In that opinion as in this appeal, the RFP process had not resulted in a final contract and it was anticipated that it might need to be redone. Thus, the agency was entitled to withhold the identities of prospective offerors and other prospective proposal information. Here, too, OIP concludes that DLNR may withhold the identities of proposal submitters to avoid raising the cost of government procurements and thus frustrating a legitimate government function. OIP thus also concludes that DLNR was not required to create a compilation or

⁹ In its opinions regarding the frustration exception's application to procurement information OIP has distinguished the RFP process from the bid process:

Unlike the competitive proposal process that protects proposals from premature disclosure and allows for ongoing discussions between the procuring agency and the offerors during the process, the competitive bidding process is governed by section 103D-302, HRS, which expressly states that there can be no negotiations after the receipt and opening of bids that must be opened publicly and thereafter be open to public inspection. **Thus, the potential for frustration of the procurement process by disclosure of information before a contract has been signed depends on the type of procurement process being followed.**

OIP Op. Ltr. No. F17-05 at 8-9 (emphasis added).

summary of the submitters, since the requested information could be fully withheld under the UIPA's frustration exception.¹⁰

C. DLNR May Redact Information Identifying Proposal Submitters from Correspondence

DLNR produced for OIP's *in camera* review two letters from a proposal submitter's counsel to the Administrator.¹¹ Although DLNR did not make an argument as to why the disclosure of the letters specifically would frustrate the RFP process, OIP assumes DLNR intended to encompass the letters in its general arguments regarding the UIPA's frustration exception.

The letters include information identifying a proposal submitter, information taken from the proposal, a request for confidentiality, and concerns and questions regarding the RFP process. In Opinion 09-02, OIP considered whether RFP protests could be withheld, and concluded that they must be disclosed after redaction of the proposal submitters' identities. OIP Op. Ltr. 09-02 at 4-5. Regarding the potential for frustration of the RFP process from disclosure of the protests, OIP wrote:

¹⁰ DLNR has not voluntarily disclosed the identities of proposal submitters for the RFP at issue here, and thus no question of waiver arises. OIP notes, however, that there may be times in which a procuring agency does voluntarily disclose the identities of proposal submitters or other information in connection with an ongoing RFP. In such a situation, that voluntary disclosure would likely constitute a waiver of any exceptions to disclosure that could potentially have applied to the information. E.g., OIP Op. Ltr. No. 98-5 at 17 n. 9.

¹¹ DLNR's NTR stated that it did not maintain any responsive records. Clearly this was incorrect, since at a minimum it maintained the letters provided for *in camera* review in its Response to this appeal. DLNR has not offered an explanation as to how it searched for responsive correspondence or why it did not identify the letters as responsive. OIP therefore concludes that DLNR failed to include required information in its NTR, namely the records to which it was denying access and the legal authority authorizing it to do so, and thus did not follow the UIPA's requirements for an agency's written response to a record request. HAR § 92F-14(b).

OIP notes also that both letters referenced a third letter dated October 24, 2019, sent by DLNR to a proposal submitter. This third letter was not identified as a responsive record either in DLNR's NTR or its Response. The November Request specifically sought correspondence between the Administrator and proposal submitters, and OIP notes the possibility that the third letter was signed by a DLNR employee other than the Administrator and was nonresponsive for that reason. If, however, the third letter was from the Administrator, it should have been identified as responsive and should be provided after redaction as allowed in this opinion.

The protests **describe alleged legal deficiencies in the RFP and, in OIP’s opinion, such claims constitute the very type of “government purchasing information” that the Legislature intended to be available to the public.** Haw. Rev. Stat. § 92F-12(a)(3) (Supp. 2008); S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); see Carl Corp. v. State Dep’t of Education, 85 Haw. 431, 460 (1997) ([a]fter describing the filing of protests by aggrieved participants in government procurement to be the “most effective enforcement mechanism in the [Procurement] Code,” the Supreme Court awarded attorney’s fees to a successful protestor when the contract had been awarded to another vendor in bad faith).

Id. at 4 (emphasis added). The correspondence at issue here is not a bid protest, but OIP finds that it also alleges deficiencies in the RFP process and raises questions about it, and as such is the type of “government purchasing information” intended to be available to the public.

Because the bid protests also included information such as proposal submitter identities that could be withheld under the UIPA’s frustration exception, OIP further explained:

Where a record contains both public information and information that may be withheld, an agency is required to segregate the portion of the record that it may withhold and make the rest of the record available, to the extent that the information is “reasonably segregable.” Specifically, OIP’s administrative rules provide in relevant part:

(a) When information in a requested record is not required to be disclosed under section 92F-13, HRS, or any other law, an agency shall assess whether the information is reasonably segregable from the requested record. If the record is reasonably segregable, the agency shall:

- (1) Provide access to the portions of the record that are required to be disclosed under chapter 92F, HRS

Haw. Admin. R. § 271-17 (a)(1) (1999) (emphasis added).

OIP has previously stated that an agency may withhold an entire record only where the record is not reasonably segregable. OIP Op. Ltr. Nos. 90-11 and 95-13.

Id. at 5. Based on OIP's review of the *in camera* records, OIP finds that the proposal submitter's identity and references to information from the proposal are reasonably segregable from the remainder of each letter. Thus, following Opinion 09-02, OIP concludes that DLNR may withhold information that would identify submitters (including the name and contact information for the submitter's attorney) and other information from the proposal (including references to other companies), but must provide Requester with the correspondence after redaction of that information.

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This decision constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES

/s/ Jennifer Z. Brooks
Jennifer Z. Brooks
Staff Attorney

APPROVED:

/s/ Cheryl Kakazu Park
Cheryl Kakazu Park
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