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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Ms. Blossom Feiteira
Board: Hawaiian Homes Commission
Date: January 29, 2026
Subject: Communications About Board Business Outside of a Meeting
(S APPEAL 24-08)

REQUEST FOR OPINION

Requester asked for an investigation into whether the Hawaiian Homes Commission (Commission) violated the Sunshine Law by discussing board business outside of a meeting.

Unless otherwise indicated, this opinion is based solely upon the facts presented in Requester's email to OIP dated January 30, 2024, with attached materials; OIP's letter to the Commission dated February 8, 2024, with attached materials; the Department of Hawaiian Home Lands' (DHHL) email to OIP on behalf of the Commission dated April 8, 2024, with attached materials; and Requester's email to OIP dated April 30, 2024, with attached materials.

QUESTIONS PRESENTED

1. Whether the discussion between the Chair and two other members of the Commission regarding board business on January 16, 2024, violated the Sunshine Law.

2. Whether the Chair’s text message to another member on January 24, 2024, violated the Sunshine Law.
3. Whether the Chair’s voicemail message to another member dated January 25, 2024, violated the Sunshine Law.
4. Whether the Commission’s actions in its meeting on January 26, 2024, must be voided.
5. Whether the Chair must “complete mandatory Sunshine Law training.”

BRIEF ANSWERS

1. Yes. OIP finds that the Chair and two other members discussed board business together in person outside of a meeting on January 16, 2024, and concludes that this discussion violated the Sunshine Law. See HRS § 92-2.5 (Supp. 2024) (setting out the limited circumstances in which the Sunshine Law permits board members to discuss board business outside a meeting).

2. Yes. OIP finds that a text message the Chair sent to another member on January 24, 2024, discussed board business and sought a commitment to vote. OIP therefore concludes that the text message violated the Sunshine Law. See HRS § 92-2.5(a) (Supp. 2024) (permitting two members to discuss board business “as long as no commitment to vote is made or sought”).

3. No. OIP finds that a voicemail message from the Chair to a member dated January 25, 2024, did not seek a commitment to vote and did not involve any other board members, and concludes that this voicemail did not violate the Sunshine Law. HRS § 92-2.5(a).

4. No. The power to void a board’s final actions is reserved to the courts. HRS § 92-11 (2012). OIP does not have the authority to void the Commission’s actions in its January 26, 2024, meeting.

5. No. OIP does not have the authority to require the Chair to “complete mandatory Sunshine Law training.”

FACTS

I. The Discussion Between the Chair and Two Other Commission Members on January 16, 2024

On January 16, 2024, the Commission held a meeting (January 16 Meeting) and voted on Item C-1, “Approval to Acquire The Courtyards at Waipouli, Kapaa,

Kauai, TMK (4) 4-3-01:14 and 21.” The vote on Item C-1 failed. The Commission thereafter took a recess from 1:40 p.m. to 2:20 p.m. It is undisputed that during that recess, Chairperson Kali Watson (Chair) continued to discuss Item C-1 with Commissioner Randy Awo (Awo) and Commissioner Dennis Neves (Neves) (January 16 Discussion) as they weighed opposing arguments and explored other options to acquire the Courtyards at Waipouli, including the possibility of a rent-to-own project involving that property. Neves and Awo later contacted the Commission’s Deputy Attorney General (AG) to inform the AG about their discussion with the Chair.

On January 20, 2024, four days after their conversation, the Commission posted notice of a Special Meeting scheduled for January 26, 2024 (January 26 Meeting), with the following agenda:

- I. ORDER OF BUSINESS
 - A. Roll Call
 - B. Approval of Agenda
 - C. Public Testimony on Agendized Items- see information below

- II. ITEM FOR DECISION MAKING
 - Office of the Chairman
 - C-1 Approval to enter into Option to Purchase agreement with K D WAIPOULI LLC, a Hawaii limited liability company, for 258,929 square feet of land (Lots 17-D-1 approx. 254,263 sf and 17-D-2 approx. 4,666 sf) located at 401 Papaloa Rd, Kapaa, Hawaii 96746 and known as the Courtyards at Waipouli -- TMK Nos. (4) 4-3-001-014 and 021 -- and improvements located thereupon and Convert to a Low-Income Housing Tax Credit Rent With Option to Purchase Project for the DHHL Kauai Island Waitlist

- III. ANNOUNCEMENTS AND ADJOURNMENT
 - A. Next Regular HHC Meeting –February 20 & 21, 2024 (Tue. & Wed.) Kapolei, O’ahu
 - B. Adjournment

Item II.C-1 of the January 26 Meeting’s agenda also sought approval to acquire the Courtyards at Waipouli, the same property that the Commission voted against acquiring at the January 16 Meeting, but the partnership with Lunalilo Trust was removed from the proposal.

II. The Chair's Text to Neves on January 24, 2024

On January 24, 2024, outside of a meeting, the Chair texted Neves about the upcoming January 26 Meeting, and asked for Neves's support. The text message (January 24 Text) stated:

Want you to be supportive of Friday's action. Very complicated but a way to get the poor guys off the waitlist into affordable units that they will own. It's a chance for 82 families on your island. Only other option currently available is Hanapepe which has limited demand. Kapaa is a choice area and a great neighborhood with tremendous amenities including easy access to the beach. Can't beat the sales price. Will make homestead awards up front with successorship rights also available. Sorry for the rush but [Low-income Housing Tax Credit] and [Hawaii Housing Finance and Development Corporation] application is only available once a year and only in February. Plus seller will sell the property to mainlanders to the detriment of DHHL beneficiaries. Talk to you tomorrow. Mahalo Kali.

Neves did not respond.

III. The Chair's Voicemail to Neves

On January 25, 2024, the Chair left Neves a voicemail (January 25 Voicemail) requesting a call to discuss the Courtyards at Waipouli acquisition. The voicemail stated:

Hey Dennis, Kali. Give me a call when you get time. I wanted to go over that Waipouli project. Got any questions on the approach also wanted to give you an update. We're gonna be eliminating that 15-year wait. We've got the lawyers and got some legislation going into eliminate that so that's actually good news. We can make awards immediately anyway, give me a call. I'd like to answer any questions you have. OK, talk to you soon, bye.

The Commission's letter to OIP dated April 8, 2024 (Response) explained that Neves did not return the Chair's call. Instead, he sought advice from the AG as to whether the voicemail and text message violated the Sunshine Law. The Response also explained that the AG advised that the voicemail likely did not violate the Sunshine Law, but the text message could be construed as seeking a commitment to vote and would likely violate the Sunshine Law.¹

¹ The explanation of the AG's advice to Neves was not marked as confidential.

IV. The Commission Informed the Public of the Communications Outside of Meetings

A few minutes after the January 26 Meeting started, Awo disclosed that he had a conversation with Neves and the Chair about Item II.C-1 and asked the AG about the legal ramifications of their actions. The Commission moved into executive session under section 92-5(a)(4), HRS, to consult with the AG about whether the January 16 Discussion violated the Sunshine Law and, if so, whether that violation disqualified them from voting on Item II.C-1, which was the same topic they had discussed during the January 16 Meeting recess. Although the January 26 Meeting agenda did not specifically list the potential Sunshine Law violation as a topic, it included Item II.C-1, which was the same topic discussed by the Chair, Awo, and Neves during the January 16 recess.

After the executive session, the Commission re-convened its open meeting and Awo summarized his January 16 discussion with the Chair and Neves, and explained that he sought advice from the AG about this conversation. Neves then read the January 24 Text out loud and stated he sought the AG's advice about this text.

On January 30, 2024, Requester filed an appeal asking whether: (1) the January 16 Discussion violated the Sunshine Law; (2) the Chair's text to Neves violated the Sunshine Law; (3) the Commission's vote on agenda item II.C-1 at the January 26 Meeting should be voided or stayed; and (4) the Chair should be "ordered to complete mandatory Sunshine Law training."²

² Requester did not assert that the Commission improperly entered executive session. See HRS §§ 92-4 (allowing executive sessions and setting out procedures), 92-5 (enumerating the purposes for which a board may hold an executive session). Requester stated her intention to "request UIPA access to the recordings and transcripts from the Executive Session," but she did not submit a written record request at the time of this appeal, nor was one included in the record. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), an agency's disclosure obligations arise only "upon request." HRS § 92F-11(b). Additionally, section 92-9(b), HRS, requires boards to publish minutes of open meetings within forty days of the meeting regardless of whether the board has received a record request, but does not require boards to publish the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meetings. HRS § 92-9(b) (Supp. 2024). Therefore, under the Sunshine Law the question of whether executive session minutes must be disclosed under section 92-9(b), HRS, arises only after someone has requested them from the board. Therefore, without a record request, this appeal will not address whether the Commission must disclose its executive session minutes under the UIPA.

DISCUSSION

The Sunshine Law requires that meetings of all Hawai'i state and county government boards be open to the public, subject to certain exceptions. HRS § 92-3 (Supp. 2024). The Sunshine Law generally prohibits board members from discussing "board business" between themselves outside of a properly noticed meeting. *Id.* The Sunshine Law defines "board business" to mean "specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future." HRS § 92-2 (Supp. 2024). In limited circumstances, board members may privately discuss "board business" as a permitted interaction, and such discussions are not considered meetings for the purpose of the Sunshine Law. HRS § 92-2.5(i) (Supp. 2024).

The Sunshine Law's provisions, including enforcement provisions, generally apply to a board as a whole rather than to its individual members. OIP Op. Ltr. No. F20-05 at 5. Therefore, OIP assesses whether a board as a whole has violated the Sunshine Law, rather than individual board members.

I. The January 16 Discussion Violated the Sunshine Law

The Response did not dispute that the January 16 Discussion took place outside of a meeting and admitted that "this exploratory exchange was not permitted under" section 92-2.5(a), HRS, but stated that the Chair "did not realize at the time" that the discussion was not a permitted interaction. Section 92-2.5(a), HRS, provides that two members of a board "may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board." HRS § 92-2.5(a).

As to whether the topic was the Commission's board business, OIP notes that the Commission had just voted against acquiring the Courtyards at Waipouli that same day, and the three commissioners were discussing other options to acquire that same property. Then four days later, on January 20, 2024, the January 26 Meeting notice was posted and the only substantive item on that agenda was Item II.C-1, another proposal to acquire the Courtyards at Waipouli.

OIP therefore finds that the matter of acquiring the Courtyards at Waipouli could be reasonably anticipated to arise before the Commission in the foreseeable future, given that the Chair immediately began seeking support in the matter following the vote failing in the January 16 Meeting and the Commission shortly thereafter scheduled a special meeting solely for the purpose of discussing this topic, and therefore finds that the topic was "board business." OIP further finds that the January 16 Discussion took place outside of a meeting, while the January 16 Meeting was in recess.

As to whether a permitted interaction authorized the discussion, it is uncontested that the January 16 Discussion involved three Commission members. OIP therefore concludes that the permitted interaction in section 92-2.5(a), HRS, which is limited to a discussion between two members of a board, did not apply to authorize this discussion. The Commission has not asserted that another permitted interaction applied, and OIP concludes that no permitted interaction listed in section 92-2.5, HRS, applied to the January 16 Discussion. Therefore, OIP concludes that the January 16 Discussion violated the Sunshine Law.

II. The January 24 Text Violated the Sunshine Law

Although the January 24 Text was a communication between only two members³, the Response acknowledged that the text message “could be construed” as seeking a commitment to vote that would not be permitted by the two-person permitted interaction in section 92-2.5(a), HRS. The January 24 Text opened with “Want you to be supportive of Friday’s action,” in apparent reference to the January 26 Meeting for which, as previously noted, the only substantive agenda item was the proposed acquisition of the Courtyards at Waipouli.

OIP has advised in published guidance that the:

limitation on making a commitment to vote does allow discussion of the two board members’ views and inclinations on an issue, but prohibits, for example, horse-trading of votes such as, “If you’ll agree to vote my way on this issue, I’ll give you my vote on your pet project next month.”

OIP, Quick Review: Who Board Members Can Talk to and When (Part 1) (Revised July 2018) at 3, <https://oip.hawaii.gov/wp-content/uploads/2018/07/23Jul13-Who-Bd-Members-Can-Talk-To-PART-1-rev-July-2018.pdf>.

³ The January 16 Discussion involved three members, and the subsequent January 24 Text and January 25 Voicemail involved only the Chair and one other member, with the third member from the January 16 Discussion apparently not privy to those further communications. OIP has already concluded that the January 16 Discussion was not authorized as a permitted interaction because it involved three members. Given these facts, OIP finds that the January 24 Text and January 25 Voicemail were communications only between the Chair and a second member, and were not part of a serial communication also involving the third member from the January 16 Discussion. See Right to Know Comm. v. City Council, City & Cnty. of Honolulu, 117 Hawai’i 1, 175 P.3d 111 (App. 2008); see also OIP Op. Ltr. Nos. 04-01 at 9 (stating that serial communications cannot be used to avoid Sunshine Law) and 05-15 (determining that section 92-2.5(a), HRS, does not allow a board member to discuss the same council business with more than one other council member through a series of one-on-one discussions).

In Kanahele v. Maui County Council, 130 Hawai'i 228, 307 P.3d 1174 (2013) (Kanahele), the Hawai'i Supreme Court (Supreme Court) found that the two-person permitted interaction at section 92-2.5(a), HRS, did not apply to memoranda distributed to members of the Maui County Council. Kanahele at 255, 307 P.3d at 1201. In Kanahele, members of the Maui County Council distributed fourteen memoranda amongst themselves that were in essence cover sheets for bills and contained descriptions of proposed bill amendments. Each memorandum concluded with the statement "I would appreciate your favorable consideration of [the proposed amendments]." Id. at 234-36, 307 P.3d at 1180-82. Kanahele found that the two-person permitted interaction did not apply to the memoranda because the memoranda were distributed to all members of the Maui County Council, rather than only to two members, and also because the memoranda sought a commitment to vote. Id. at 254, 307 P.3d at 1200. The Supreme Court noted that the memoranda were not simply "informational" but rather "advocated for the adoption of the proposals, by detailing the rationale and justifications for the proposals. Id. at 255, 307 P.3d at 1201. The Supreme Court also found that asking for "favorable consideration" of the proposals was "clearly equivalent to seeking an affirmative vote on the proposal." Id.

In this case, OIP finds that the January 24 Text concerned board business, took place outside of a properly noticed meeting, and involved only two members. However, OIP also finds that the January 24 Text, in which the Chair stated he wanted Neves to "be supportive of Friday's action" and explained why the proposal should be supported, was equivalent to seeking a commitment to vote, similar to the memoranda at issue in Kanahele. Accordingly, OIP concludes that the two-person permitted interaction found in section 92-2.5(a), HRS, did not permit the January 24 Text and therefore the January 24 Text violated the Sunshine Law. OIP notes that Neves declined to respond to the text message, and the Commission disclosed the contents of this text message during the January 26 Meeting.

III. The January 25 Voicemail Did Not Violate the Sunshine Law

Based on its review of the transcript of the voicemail from the Chair to Neves dated January 25, 2024, OIP finds that the January 25 Voicemail was a discussion of board business between two members outside of a Commission meeting. OIP further finds that no commitment to vote was made or sought in the January 25 Voicemail, and the two members did not constitute a quorum of the Commission. OIP therefore concludes that the January 25 Voicemail was a permitted interaction under section 92-2.5(a), HRS, and did not violate the Sunshine Law. OIP notes that Neves again declined to respond to the voicemail to limit the potential discussion of board business.

IV. OIP Cannot Void or Stay the Commission’s Vote on the Option to Purchase Agreement for the Courtyards at Waipouli

Requester asked OIP to void or stay the Commission’s vote on agenda item II.C-1, concerning an option to purchase agreement for the Courtyards at Waipouli, at the January 26 Meeting. OIP does not have the power to void final actions taken in violation of the Sunshine Law.⁴ OIP Op. Ltr. No. F24-03 at 32. “This power is reserved to the courts, as section 92-11, HRS, states that ‘[a]ny final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action.’” *Id.* (quoting HRS § 92-11 (2012)). Therefore, OIP cannot void or stay the Commission’s vote on agenda item II.C-1 in the January 26 Meeting.

V. Remedial and Mitigation Efforts

After the January 16 discussion between the Chair and two Commissioners, Neves informed the AG about the discussion. Additionally, after receiving the January 24 Text and the January 25 Voicemail, Neves contacted the AG to inform the AG about the communications from the Chair. OIP notes that Neves did not respond to the January 24 Text or the January 25 Voicemail and proactively contacted the AG. Upon the advice of the AG, the Commission acted to mitigate any material harm to the public that came from their interactions by disclosing the contents of the January 16 Discussion and the text message in open session.

Although Sunshine Law violations cannot be cured, OIP commends the Commission’s attempt to mitigate the potential harm caused by the January 16 Discussion by disclosing it to the public and other members at the January 26 Meeting.

OIP does not have the authority to force a member of a board to undergo training on the Sunshine Law. See HRS § 92F-42 (Supp. 2024) (enumerating the powers and duties of OIP). Therefore, OIP cannot order the Chair to “complete mandatory Sunshine Law training.” However, OIP recommends that all Commission members review OIP’s three-part Quick Review: Who Board Members Can Talk to and When training materials posted on OIP’s website, which provide more information on the circumstances in which board members are permitted to discuss board business with other board members outside of a meeting. OIP, Training Materials Index, <https://oip.hawaii.gov/training/> (scroll to Additional Sunshine Law Written Guidance, Who Board Members Can Talk to and When).

⁴ In the Notice of Appeal dated February 8, 2024, OIP notified Requester that OIP does not have the authority to void a board’s final action, and that if Requester wanted the Commission’s actions to be voided she would need to file a lawsuit in the circuit court within ninety days of the meeting at which final action was taken to have that action voided.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). 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

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APPROVED:

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