

**From:** [OIP](#)  
**To:** ["Carol Ho"omanawanui"](#)  
**Bcc:** [Canady, Liza](#)  
**Subject:** RE: Request for Guidance on the Sunshine Law as it applies to a Complaint Against a Trustee  
**Date:** Friday, April 26, 2019 9:40:00 AM

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Dear Ms. Ho'omanawanui,

The Office of Information Practices (OIP) received your email dated April 25, 2019, asking the below five questions. Please see my below responses in red.

1. A properly noticed meeting would allow the Trustees to discuss this complaint as well as the process to address the complaint, which may include a hearing. Could this matter be discussed in an executive meeting closed to the public? If so, which exception would apply under HRS § 92-5? Also, could HRS § 92-5(a)(2) apply to discussions relating to complaints against a Trustee (Board member) with the possibility of sanctions against a Trustee?

The trustees may discuss this complaint against Respondent Trustee, the process to address this complaint, and hold discussions relating to the complaints received with the possibility of sanctions in an executive meeting under section 92-5(a)(2), Hawaii Revised Statutes (HRS). However, please be advised that section 92-5(a)(2), HRS, permits the "individual concerned" to request and be granted an open meeting to discuss the issues regarding this individual.

2. Can the BOT utilize HRS § 92-2.5 to create a Permitted Interaction Group (PIG) to investigate the CEO's complaint against a Trustee, given that the CEO and the Respondent Trustee will be interviewed by the members of the PIG in connection with the Report the PIG will present to the BOT at the second stage meeting? We seek clarification on whether or not the PIG members, who will not consist of the Respondent Trustee (the Trustee who the complaint was made against), can interview, speak with, and question the Respondent Trustee as part of the PIG's investigation of the complaint. We are cognizant that a PIG cannot consist of a sufficient number of Trustees to constitute a quorum of the BOT (5), so we wish to keep the investigative PIG to a maximum of four Trustees. This will insure that there are a sufficient number of Trustees who have not participated in the investigation and who can therefore vote on the recommendations of the PIG without conflict.

The board may create a permitted interaction group (PIG) under section 92-2.5 (b), HRS, to investigate the complaint. Please note that while OIP has not issued a formal opinion as to this matter, if Respondent Trustee openly recuses himself from all discussion and voting, the PIG may proceed with four trustees. The four trustees then would investigate the matter, which would include interviewing and questioning Respondent Trustee. Otherwise, OIP advises that the PIG only have three trustees because with three trustees investigating and Respondent Trustee responding, it is clear that there are only four trustees participating in the process and there likely would not be any question as to five board members engaging in conduct in violation of the Sunshine Law.

3. Does the Respondent Trustee's potential interview/meeting with the PIG members add to the number of PIG members such that the quorum restriction may be implicated? So, if there were four Trustee-members of the PIG investigating another Trustee (Respondent Trustee) would the Respondent Trustee become the fifth Trustee member of the PIG thereby invalidating the PIG?

Please see my response to Question 2.

4. At the second meeting to present the PIG's findings and recommendations and the third meeting where the Trustees discuss and deliberate the PIG Report, can both of those meetings be held in Executive Session (ES)? The closest HRS section we can find to support an ES is § 92-5 (a) (2). We see no reason why the privacy rights of a Respondent Trustee are not protected as much as an officer or employee of OHA.

At the second meeting of the full board, the PIG's findings must be presented during the open portion of the meeting. If the PIG wishes, it may present a sanitized version of its findings. However, the deliberation and decision-making of the PIG may be done in an executive meeting under section 92-5(a)(2), HRS, at the third meeting of the full board. If, during the executive session, the board discusses and votes, the board must immediately thereafter announce in open session the board's decision along with the votes cast by individual members. See OIP Op. Ltr. No. 06-07 (finding that the votes cast by individual members in executive session were not protected from disclosure).

5. If the PIG recommends a hearing be held as provided for in the Trustee Code of Conduct Policy, can the hearing, in which the CEO (as Complainant) and the Respondent Trustee present their respective cases, also be held in ES under §92-5(a)(2)?

If the purpose of the hearing is to provide both Complainant and Respondent Trustee an opportunity to present their respective cases, it is not clear as to why an open hearing under section 92-5(a)(2), HRS, is necessary, as both parties may relay their respective cases to the PIG as part of the PIG's investigation, which would be conducted outside of a Sunshine Law Meeting.

Lastly, regarding your request to identify procedures within OHA's policy that could raise possible Sunshine Law violations, please identify the exact sections and page numbers you would like OIP to review, and explain the concerns that those specific sections raise.

I hope this information is helpful.

**Liza Onuma Canady**

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**From:** Carol Ho'omanawanui <carolh@oha.org>

**Sent:** Thursday, April 25, 2019 10:37 AM

**To:** OIP <oip@hawaii.gov>

**Cc:** Colette Machado <colettem@oha.org>; rgk@kleinlg.com; Raina Gushiken <rainag@oha.org>

**Subject:** Request for Guidance on the Sunshine Law as it applies to a Complaint Against a Trustee

Aloha OIP,

We write for guidance on the following issues confronting the Office of Hawaiian Affairs (OHA) Board of Trustees (BOT). We would appreciate your guidance not later than this Friday April 26<sup>th</sup> morning inasmuch as the BOT must file its next agenda by that time for a meeting scheduled for May 2nd. Sorry for any inconvenience this may cause and thank you for your timely assistance.

The OHA-BOT has an internal policy covering complaints made against a Trustee levelled by another Trustee or the CEO of OHA—see the attached policy. Presently, the CEO has complained about actions taken by one of the Trustees that appear to violate the Trustee Code of Conduct.

The policy, which covers the distribution of the complaint, investigation, and potential hearing process, may have several Sunshine Law violations and feel free to point them out. However, we seek guidance on the following issues:

1. A properly noticed meeting would allow the Trustees to discuss this complaint as well as the process to address the complaint, which may include a hearing. Could this matter be discussed in an executive meeting closed to the public? If so, which exception would apply under HRS § 92-5? Also, could HRS § 92-5(a)(2) apply to discussions relating to complaints against a Trustee (Board member) with the possibility of sanctions against a Trustee?
2. Can the BOT utilize HRS § 92-2.5 to create a Permitted Interaction Group (PIG) to investigate the CEO's complaint against a Trustee, given that the CEO and the Respondent Trustee will be interviewed by the members of the PIG in connection with the Report the PIG will present to the BOT at the second stage meeting? We seek clarification on whether or not the PIG members, who will not consist of the Respondent Trustee (the Trustee who the complaint was made against), can interview, speak with, and question the Respondent Trustee as part of the PIG's investigation of the complaint. We are cognizant that a PIG cannot consist of a sufficient number of Trustees to constitute a quorum of the BOT (5), so we wish to keep the investigative PIG to a maximum of four Trustees. This will insure that there are a sufficient number of Trustees who have not participated in the investigation and who can therefore vote on the recommendations of the PIG without conflict.
3. Does the Respondent Trustee's potential interview/meeting with the PIG members add to the number of PIG members such that the quorum restriction may be implicated? So, if there were four Trustee-members of the PIG investigating another Trustee (Respondent Trustee) would the Respondent Trustee become the fifth Trustee member of the PIG thereby invalidating the PIG?
4. At the second meeting to present the PIG's findings and recommendations and the third meeting where the Trustees discuss and deliberate the PIG Report, can both of those meetings be held in Executive Session (ES)? The closest HRS section we can find to support an ES is § 92-5 (a) (2). We see no reason why the privacy rights of a Respondent Trustee are not protected as much as an officer or employee of OHA.
5. If the PIG recommends a hearing be held as provided for in the Trustee Code of Conduct Policy, can the hearing, in which the CEO (as Complainant) and the Respondent Trustee present their respective cases, also be held in ES under §92-5(a)(2)?

Please let me know if you have any questions or need further information.

Mahalo,

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