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August 22, 2019

VIA EMAIL

Mr. Zachary Bliss

Ms. Deanna Sako  
Director  
County of Hawaii  
Department of Finance

Re: Security Camera Footage – Waimea Center (U APPEAL 20-5)

Dear Mr. Bliss and Ms. Sako:

The Office of Information Practices (OIP) opened an appeal regarding the County of Hawaii Department of Finance's (FIN-H) response to Mr. Bliss's (Requester) request for a copy of "security camera video footage from County of Hawaii Vehicle Registration and Licensing Division, Waimea Center, 65-1158 Mamalahoa Hwy, Ste 1-A, Kamuela, Hawaii 96743, from June 24, 2019, from 9:00 to 12 pm" (Video Footage) under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA).

This appeal file was randomly assigned to OIP's experimental alternative appeal resolution track pursuant to House Resolution (H.R.) 104, Regular Session of 2019, in which the Hawaii House of Representatives requested that OIP conduct an alternative appeal resolution pilot program and prepare "short, informal, unenforceable guidance" for files assigned to the alternative appeal resolution track within two weeks of receiving the agency's final response. A copy of H.R. 104 is enclosed with this letter.

In this appeal, Requester asked to appeal FIN-H's response to his record request which stated that the Video Footage was no longer available. FIN-H provided OIP with a response to this appeal stating its position dated August 15, 2019 (Response), and OIP is now providing informal, unenforceable guidance through this letter.

FIN-H's Response explained that, in response to Requester's request for a copy of the Video Footage, on July 8, 2019, FIN-H's Division of Vehicle Registration and Licensing (DVRL) informed Requester that a copy of the video would be provided. On July 12, 2019, DVRL unsuccessfully tried to copy the video onto a thumb drive. On July 23, 2019, DVRL sought the assistance from the Hawaii County Department of Information Technology to copy the Video Footage onto a thumb

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drive. While attempting to copy the Video Footage onto a thumb drive, it was discovered that the video system had malfunctioned and had overwritten Video Footage. FIN-H explained that the specifications for the video surveillance system calls for the system to record on a continuous 30-day loop. DVRL expected the system to retain the video for the specified 30 days and was surprised at the loss. FIN-H asserted that it is unknown why this malfunction occurred. In a letter dated July 24, 2019, DVRL notified Requester that “[d]ue to unforeseen circumstances the tape is no longer available” but did not provide details as to what happened.

FIN-H explained that DVRL sent Requester an email on August 5, 2019, responding to Requester’s email inquiry asking what was meant by “unforeseen circumstances.” DVRL explained that the video footage was automatically overwritten. In an email dated August 7, 2019, DVRL responded to Requester’s further inquiry stating that the “NVR” video record was reportedly designed to maintain records for 30 days but for some unknown reason the system began overwriting prior to the 30th day of recording and before the copy could be made. The Response stated that when and why the premature recording over occurred is unknown but is being investigated, that the camera has been replaced due to this incident, and that policies for same day copying of videos upon receiving a UIPA request have been instituted and copying will occur before a decision is made as to whether the video is public.

The UIPA’s definition of “government record” includes records “maintained” by an agency in physical form. HRS § 92F-3 (2012). Agencies are required to make government records available for inspection and copying, except as provided by law. HRS § 92F-11(a), (b) (2012 and Supp. 2017). Based on the facts, OIP is inclined to find that FIN-H intended to provide Requester with a copy of the Video Footage and made two attempts to copy it to a thumb drive. OIP is further inclined to find that FIN-H no longer maintains the Video Footage, and it has no duty under the UIPA to provide access to a record is no longer maintains. OIP is therefore inclined to find that FIN-H has responded in compliance with the UIPA and has no further duties thereunder regarding this record request.

OIP previously found that, when an agency receives a request for a record that is public, it would be improper for the agency to avoid its UIPA disclosure obligations by intentionally or knowingly destroying the requested record. OIP Op. Ltr. No. 99-7 at 6, citing OIP Op. Ltr. No. 92-13 at 6 n. 1. Based on the facts here, OIP is inclined to further find that it is not known why the security camera system malfunctioned, but that the apparent destruction of the Video Footage while the record request was pending was not intentionally or knowingly done. Further, based on the fact that the malfunction is under investigation, the camera has been replaced, and policies for same day copying of videos upon receiving a UIPA request have be instituted, OIP is inclined to find that FIN-H has acted in good faith.

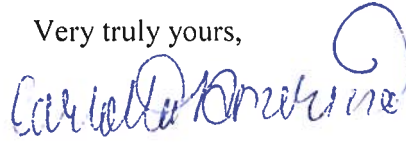
OIP’s inclinations as stated herein are informal guidance and are not binding on the parties to this appeal. By this letter OIP notifies Requester and FIN-H that if any party does not wish to accept this informal guidance as resolving this appeal, that party is requested to so notify OIP in writing within 20 business days of the date of this letter and OIP will issue a binding determination in accordance with its usual procedures at a future time. If OIP does not hear from either party within that time, OIP will close this file.

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

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If you have any questions concerning this matter, please contact OIP.

Very truly yours,



Carlotta Amerino  
Staff Attorney

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Enclosure

Cc: Naomi O'Dell, Administrator, FIN-H Division of Vehicle Registration and Licensing