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November 1, 2019

VIA EMAIL

Mr. Christopher P. Fishkin

Re: Notice of Dismissal of Appeal (S APPEAL 20-2)

Dear Mr. Fishkin:

The Office of Information Practices (OIP) opened the above referenced file based on your complaint dated September 26, 2019, which indicated that the Maui County Council (Council) violated the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS). Specifically, you alleged that the Council discussed Council business outside a meeting through one member's distribution of a press release dated August 29, 2019, to several other members.

OIP received your email dated October 31, 2019, withdrawing your complaint. Because you have withdrawn your complaint, OIP hereby dismisses this appeal in accordance with section 2-73-18(5), Hawaii Administrative Rules.

As required by section 2-73-13(a)(1), Hawaii Administrative Rules (HAR), you, the appellant, are hereby provided with notice that this appeal will not be heard. As checked below, OIP is dismissing this appeal because:

- A prerequisite for filing an appeal under this chapter has not been met (HAR § 2-73-18(1)).
- The appeal is determined to be frivolous (HAR § 2-73-18(2)).
- The issues are beyond OIP's jurisdiction (HAR § 2-73-18(3)).
- No violation of the law can be found when viewing the issues in the light most favorable to the appellant (HAR § 2-73-18(4)).

x The appellant requests that the appeal be dismissed (HAR § 2-73-18(5)).

 The appeal has been abandoned by the appellant's failure to respond to OIP within twenty days after the date OIP sent the appellant a request for a response, or other circumstances indicate the appeal has been abandoned (HAR § 2-73-18(6)). Specifically, you did not respond to OIP's letter dated June 6, 2014.

 The same issues on appeal have been previously addressed in a published OIP decision (HAR § 2-73-18(7)).

 An OIP decision on the appeal would be advisory or moot (HAR § 2-73-18(8)).

Record requesters may file a lawsuit for access under section 92F-15, Hawaii Revised Statutes (HRS), within two years of a denial of access to government records. 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).

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 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.

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Should you have further questions, please do not hesitate to contact the undersigned attorney at 586-1400.

OFFICE OF INFORMATION PRACTICES



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director

JZB:za

cc: Ms. Kelly T. King
Chair, Maui County Council