



DAVID Y. IGE  
GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF INFORMATION PRACTICES**

CHERYL KAKAZU PARK  
DIRECTOR

NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
Telephone: (808) 586-1400 FAX: (808) 586-1412  
E-MAIL: oip@hawaii.gov  
www.oip.hawaii.gov

November 26, 2019

VIA EMAIL

Mr. Andrew Ghali

Ms. Rosalynn Bee  
Real Property Assessment Division  
Department of Budget and Fiscal Services  
City and County of Honolulu

Re: Dispositions of Real Property Assessment Appeals (U APPEAL 20-26)

Dear Mr. Ghali and Ms. Bee:

The Office of Information Practices (OIP) opened an appeal regarding the response by the City and County of Honolulu (City), Department of Budget and Fiscal Services (BFS-HON), to Mr. Ghali's (Requester) request for records made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, Requester requested access to:

any records you possess of the disposition of every real property assessment appeal heard by the Board of Review for the fiscal years 2018 and 2019. I do not need copies of the exact correspondence sent to each appellant. A summary of each appeal, TMK, date heard, disposition, and date of disposition in tableau form is sufficient if easier to prepare.

I would prefer to receive this information electronically to save time, effort, and paper, as I expect that it should already be in electronic data form. . . .

Please let me know what . . . information you have available and in what format so that we can agree to the most simple, lowest effort and cost solution.

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

Mr. Andrew Ghali  
Ms. Rosalynn Bee  
November 26, 2019  
Page 2

resolution track within two weeks of receiving the agency's final response. A copy of H.R. 104 is enclosed with this letter.

Requester asked to appeal BFS-HON's response to his record request. BFS-HON's Notice to Requester (NTR) stated that BFS-HON was denying the request on the basis that the agency does not maintain the records. Thus, it appeared from the NTR that BFS-HON did not maintain any records pertaining to the disposition of real property assessment appeals heard by BFS-HON's Boards of Review (BOR). Requester stated his belief that "the information requested is (a) most definitely available and part of their regular business, and (b) is specifically called out as releasable under §92F-12(a)(5)."

BFS-HON provided its written statement dated October 24, 2019 (October 24 Letter) and its supplemental response via email correspondence dated November 7, 2019. Also, OIP contacted Ms. Bee by telephone on November 13, 2019 for clarification of BFS-HON's written responses. In its October 24 Letter, BFS-HON explained that it "does not maintain a summary of each appeal as requested" and cited section 92F-11(c), HRS, which provides that unless information is readily retrievable in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

OIP is now providing informal, unenforceable guidance through this letter.

#### Notice to Requester (NTR)

OIP differs from BFS-HON in the interpretation of the record request. BFS-HON's NTR did not cite section 92F-11(c), HRS, as its reason for denying the request, but indicated only that it did not maintain the records. The October 24 Letter states that the request "specifically demands a summary of approximately 4,500 cases closed in the time period specified." OIP is inclined, however, to find that Requester is requesting the disposition of every real property assessment appeal heard by the BOR, and he only seeks a summary as an alternative to receiving the underlying records, if the summary is "easier to prepare," as he does not "need copies of the exact correspondence." Requester confirmed to OIP that was his intent. OIP, therefore, is inclined to find that BFS-HON should have sought clarification under section 2-71-14(c)(3), Hawaii Administrative Rules (HAR), since the record request was long and perhaps subject to more than one interpretation.

#### Dispositions of Real Property Assessment Appeals Heard by BOR for Fiscal Years 2018 and 2019

There is no dispute that BOR's dispositions of real property assessment appeals are government records that must be disclosed upon request. Further, OIP is inclined to agree with Requester that section 92F-12(a)(5), HRS, pertaining to "real property tax information" is applicable. The UIPA lists categories of government records that agencies are required to make available to the public, notwithstanding the UIPA's exceptions to disclosure. One of these categories is "[l]and ownership, transfer, and lien records, including real property tax information[.]" HRS § 92F-12(a)(5) (2012). Additionally, section 8-12.7(i) of the Revised Ordinances of Honolulu (as amended) provides that "the director, on behalf of each board [of review], shall make available on the city's website all notices of hearings, decisions by the boards and all rules and regulations pertaining to the

boards.” (Emphasis added.) The October 24 Letter stated that “[i]f the OIP request<sup>[1]</sup> is modified and [Requester] would like copies of all the written decisions, appropriate fees and costs for providing access to the written decisions would be assessed in a timely Notice to Requester.”<sup>2</sup>

#### Property Owners’ Names Are Public

OIP observes that the names of the real property owners/taxpayers were redacted from the copies of the sample written decisions provided by BFS-HON for OIP’s review at OIP’s request. OIP has previously found that a real property owner’s name is “real property tax information.” OIP Op. Ltr. No. 11-01 at 4. Therefore, OIP is inclined to find that the names of real property owners in written decisions of the BOR are required to be disclosed under section 92F-12(a)(5), HRS.

#### “Readily Retrievable” Records (HRS § 92F-11(c))

BFS-HON indicated that a summary of the requested cases was “not a record that the City creates or maintains.” However, under the UIPA, an agency is required to prepare a summary of its records in response to a UIPA request if the information is “readily retrievable.” Thus, the issue is not whether the City or BFS-HON creates or maintains such a summary; the question is whether or not information in an agency database can be “routinely compiled” given the agency’s existing programming capabilities. OIP Op. Ltr. No. 92-7 at 11. OIP is unable to determine if the summary can be “routinely compiled,” as BFS-HON did not provide any information concerning its programming capabilities. Therefore, OIP is inclined to find that BFS-HON has failed to meet its burden to establish that the summary is not readily retrievable in the form requested. HRS § 92F-15(c) (2012).

OIP has learned that for real property tax cases, there are four grounds for appeal, and, according to BFS-HON, of the approximately 4,500 BOR cases closed in fiscal years 2018 and 2019, about 4,300 of them are cases in which the property owner is appealing the amount of the assessed value. The remaining cases are based on other grounds, for example, the classification of the property. See ROH § 8-12.3. BFS-HON informed OIP that “[w]ith additional effort and programming, it is possible to sort the query according to grounds for appeal.” OIP is further inclined to find that BFS-HON is indicating that the information sorted by ground for appeal is “readily retrievable,” so that if Requester wants to clarify his request to include only certain types of cases, BFS-HON would have the capability to provide those specific records.

#### Revised NTR, Clarified Record Request

Generally, OIP is inclined to recommend that BFS-HON and Requester communicate with each other in order to clarify what records are accessible and in what form, and how the requested

---

<sup>1</sup> The October 24 Letter incorrectly referred to Requester’s record request as an “OIP request” instead of a “UIPA request.”

<sup>2</sup> BFS-HON informed OIP that the “[w]ritten decisions are scanned and available in electronic form” but that it will take time to search for each appeal that closed in fiscal years 2018 and 2019.

Mr. Andrew Ghali  
Ms. Rosalynn Bee  
November 26, 2019  
Page 4

records may be made available at the lowest cost. OIP is inclined to recommend that BFS-HON send a revised NTR that includes whether the requested records are available in "electronic data form" within 10 days of the date of this letter, and also copy OIP. If, after receipt of the revised NTR, Requester is interested in only those cases in which the property owner disagrees with the assessed value of the property, as he has indicated to OIP, or otherwise wants to clarify his request, OIP is inclined to recommend that Requester submit a clarified record request to BFS-HON that so limits the scope of the request or otherwise clarifies it, in response to the revised NTR. Requester should provide OIP with a copy of his clarification.

OIP further notifies Requester that if BFS-HON does not choose to disclose or Requester is otherwise not satisfied with BFS-HON's response, Requester is requested to so notify OIP in writing within 30 business days of the date of this letter. If OIP does not hear from Requester within that time, OIP will close this file.

OIP's inclinations as stated herein are informal guidance and are not binding on the parties to this appeal. If either party chooses to request that OIP proceed under OIP's usual procedures, OIP will resolve this appeal according to our general "first-in-first-out" policy, and cases older than yours will be completed first. Depending upon the facts of each appeal, many, but not all, appeals are closed with the issuance of an OIP opinion letter, which could take a year or longer to complete because of OIP's backlog of cases.

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.

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

Very truly yours,



Mimi K. Horiuchi  
Staff Attorney

MKH:za  
Enclosure