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CHERYL KAKAZU PARK
DIRECTOR

December 3, 2019

VIA EMAIL

Ms. Chu Lan Shubert-Kwock

Re: Dismissal of Appeal (U APPEAL 20-23)

Dear Ms. Shubert-Kwock:

The Office of Information Practices (OIP) opened an appeal based on your request to OIP which indicated that the City and County of Honolulu Neighborhood Commission Office (NC-HON) denied access to records you requested under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, you made two written requests to NC-HON dated August 26, 2019, for access to the residence address of a neighborhood board member.

As explained in a letter to both parties to this appeal dated October 31, 2019 (October 31 Letter), this appeal was randomly assigned to OIP's experimental alternative appeal resolution track pursuant to 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.

The October 31 Letter set forth OIP's inclination that disclosure of the neighborhood board member's home address in this instance would be a clearly unwarranted invasion of personal privacy under section 92F-13(1), HRS, and that disclosure is not required. The October 31 Letter notified the parties that, if either party did not wish to accept the informal guidance as resolving this appeal, that party should notify OIP in writing within 20 business days and OIP would issue a binding determination in accordance with its usual procedures at a future time.

Having not heard that either party does not accept the informal guidance set forth in the October 31 Letter, and 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)).
- 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 October 31, 2019.
- 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)).

A person is entitled to seek assistance from the courts when that person has been improperly denied access to a government record. HRS §§ 92F-15, 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if the complainant is the prevailing party, the complainant is entitled to recover reasonable attorney's fees and costs. HRS § 92F-15(d), (f) (2012).

For any lawsuit for access filed under the UIPA, the person filing the action must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

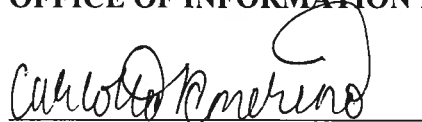
This dismissal constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision, in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). 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 letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

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If you have further questions, please do not hesitate to contact OIP.

OFFICE OF INFORMATION PRACTICES



Carlotta Amerino
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director

cc: Mr. James Skizewski, Neighborhood Commission Office