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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR). This is a memorandum opinion and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions but is binding upon the parties involved.

MEMORANDUM OPINION

Requester: Anonymous
Board: Honolulu City Council
Date: May 14, 2020
Subject: Amendment of Filed Agendas (S APPEAL 18-01, S APPEAL 18-02)

Request for Investigation

Requester asked for investigations into whether the Honolulu City Council (COUNCIL-HON) violated the Sunshine Law by adding items to the agenda at: (1) its regular meeting held on November 1, 2017 (Meeting); and (2) the City Council Committee on Budget (Budget Committee) Meeting held on November 15, 2017 (Budget Meeting). Requester further asked for an investigation into whether COUNCIL-HON violated the Sunshine Law by inadequately describing a gift resolution.¹

Unless otherwise indicated, this opinion is based solely upon the facts presented in Requester's email correspondence to OIP dated November 7, 26 (with attached appeal), and 29, 2017, and January 24, 2018; a letter with enclosures to OIP from

¹ Requester submitted two appeals, both of which seek a decision as to whether COUNCIL-HON violated the notice provisions of the Sunshine Law. HRS § 92-7 (2012). OIP's administrative rules for appeals allow OIP to consolidate appeals that have similar issues or facts. HAR § 2-73-15(g). Because the appeals involve similar issues, OIP is consolidating the two appeals.

the Department of the Corporation Counsel (CORP CNSL-HON), on behalf of COUNCIL-HON, dated December 20, 2017 (Response); and the filed agenda for the Meeting.

Opinion

COUNCIL-HON's amendments to the filed agendas, and consideration and action on items improperly added to the agendas, violated the Sunshine Law. HRS § 92-7(d) (2012) (adding an item to the agenda is not permitted if it is of reasonably major importance and action on the item by the board will affect a significant number of persons).

Statement of Reasons for Opinion

The Sunshine Law requires that boards give written public notice of any meeting, which shall include an agenda that lists all the items to be considered at the meeting. HRS § 92-7(a) (Supp. 2019). Further, the Sunshine Law sets forth limited circumstances in which a board may add items to a filed agenda, and in November 2017 when the meetings in question were held, stated in pertinent part:

No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons.

HRS § 92-7(d) (2012).²

The determination of whether an item to be added to an agenda is of "reasonably major importance" and action on the item will "affect a significant number of persons" is fact-specific and must be made on a case-by-case basis. OIP Op. Ltr. No. 06-05 at 3.

Boards "are constrained at all times by the spirit and purpose of the Sunshine Law, as stated in HRS § 92-1." Kanahele v. Maui County Council, 130 Hawaii 228, 248, 307 P.3d 1174, 1194 (2013). The purpose of the Sunshine Law is "to protect the

² The first clause of section 92-7(d), HRS, was amended in 2017 (effective on July 1, 2018) and now states that "[n]o board shall change the agenda, **less than six calendar days prior to the meeting**, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled[.]" 2017 Haw. Sess. Laws Act 64, § 2 at 333 (emphasis added).

people’s right to know.”³ HRS § 92-1 (2012). OIP followed an approach consistent with that purpose in OIP Opinion Letter Number 06-05 (Opinion 06-05), which discussed the Hawaii County Council’s (COUNCIL-H) amendment of its agenda by adding an item related to the previously agreed-to settlement of a lawsuit concerning a \$1 billion residential development project. OIP Op. Ltr. No. 06-05 at 2. OIP found that it could reasonably be argued that the specific issues added to the COUNCIL-H agenda were “minor” in the sense that they required Hawaii County (County) to agree to certain settlement conditions that COUNCIL-H could reasonably believe to be of relatively little consequence to the County and because the action taken on those specific issues would arguably result in minor consequences to the County. Id. at 3-4. However, when liberally interpreting the Sunshine Law to implement the State’s policy to conduct government as openly as possible, OIP found that the importance of an agenda item and the effect of a decision on that item could not be measured solely by looking to the distinct issue presented at that particular meeting or the consequences of the action taken on the item viewed in isolation. Id. at 4. Rather, the item’s importance and the potential consequence of any action taken on it must be viewed relative to the larger context in which it occurs, which in that instance was the settlement agreement as a whole. Id.

³ In October 2019, the Civil Beat Law Center for the Public Interest filed in the First Circuit Court a complaint alleging that COUNCIL-HON violated the Sunshine Law when its Public Safety and Welfare Committee amended its agenda in order to consider a resolution about the Honolulu Police Department’s (POLICE-HON) involvement in the protests at Mauna Kea. Civil Beat Law Center for the Public Interest v. City & County of Honolulu, Civ. No. 19-1-1695-10 (1st Cir. Ct.). Plaintiff filed a Motion for Partial Summary Judgment on January 24, 2020, which asked the Court to find that the defendants violated the Sunshine Law on July 25, 2019, by adding a Mauna Kea-related discussion to the committee’s agenda.

COUNCIL-HON and the City and County of Honolulu (City) argued that the added agenda item was not to discuss Mauna Kea, but rather was a narrowly directed request to POLICE-HON or a report to COUNCIL-HON on POLICE-HON’s involvement with protesters at Mauna Kea. Defendants further stated that any action on the resolution would not affect any member of the public, as it was a request from the City’s legislative branch to the administrative branch to prepare a report on a particular event and did not approve or disapprove any further action of the POLICE-HON, did not approve or disapprove any further funding, and did not take a city or policy position regarding Mauna Kea. Finally, the defendants stated that the resolution did not violate the purpose and spirit of the Sunshine Law, because it was not a legislative act, nor would approval or disapproval of it establish COUNCIL-HON policy. Defendants described the resolution as an internal request that could have been done by a phone call, email, or a short conversation in the hallway. On April 2, 2020, the First Circuit Court issued an order granting plaintiff’s motion for partial summary judgment.

I. November 1 Meeting: Resolution 17-278, CD1 – Committee Report 380

The filed agenda for the Meeting did not include Resolution 17-278, CD1, titled “Accepting a Gift to the City from Makana Pacific Development” (Resolution 17-278). Video of the Meeting provided to OIP shows that near the end of the nearly five-hour meeting, COUNCIL-HON Chair Ron Menor (Chair) stated that there were “sunshine items” that needed to be addressed.

CHAIR: Now, we have a sunshine item. We have sunshine items that we need to take up. So, Vice Chair Anderson for the appropriate motion.

VICE CHAIR ANDERSON: Pursuant to Sunshine Law Hawaii Revised Statutes chapter 92, I move that Committee Report 380 and Resolution 17-278, CD1, be added to the agenda.

COUNCILMEMBER PINE: Second.

CHAIR: Okay, for the explanation.

VICE CHAIR: Committee Report 380 relates to Resolution 17-278, CD1, accepting a gift to the City from Makana Pacific Development. And Mr. Chair, in case anyone is wondering what this is, it is a gift to include electrical work and lighting of a tree at Maunalua Bay Beach Park, valued at \$40,000.

CHAIR: Okay, thank you. Any testifiers in regards to this Sunshine item? Okay, we don’t have any testifiers. Discussion? Okay, are there any objections to the sunshining of this item? Noting no objections, are there any reservations? Noting no reservations Committee Report 380 has been added to the agenda. Now for the appropriate motion to adopt said Committee Report and Resolution. Vice Chair Anderson?

VICE CHAIR: Thank you very much Chair. I would also like to note that this gift also involves a system to support two photovoltaic panels with batteries that will power lights for a tree in the same vicinity valued at another \$58,000. Again, just in case anyone is wondering what these gifts are. I move the Committee Report 380 and Resolution 17-278, CD1, be adopted.

COUNCILMEMBER PINE: Second.

CHAIR: Okay, moved and seconded. Any testifiers? On this particular item, we don’t have any testifiers. Discussion? Further discussion? No discussion. Any objections, reservations? Noting none, Committee Report 380 and Resolution 17-278, CD1, have been adopted. All right, we have another sunshine item.

DVD: Video, Honoraries & Regular Council, November 1, 2017, Disc 2 of 2, at 11:42 (transcript prepared by OIP); Meeting video may also be viewed at Honolulu City

Council, 2017-11-01 REG COUNCIL, at 4:47:53, http://honolulu.granicus.com/player/clip/555?view_id=3 (last visited Apr. 30, 2020).^{4 5}

As an initial matter, OIP observes that COUNCIL-HON did not allow for oral testimony before considering Resolution 17-278. Specifically, COUNCIL-HON's motion to adopt Resolution 17-278 (and Committee Report 380) preceded the Chair's call for "any testifiers." The Sunshine Law requires a board to "afford all interested persons an opportunity to present oral testimony on any agenda item." HRS § 92-3 (2012). OIP has found previously that a board is required to allow oral testimony prior to its consideration of an agenda item. OIP Op. No. 06-01 at 2 n.2 ("if a board did not permit public comment until after it discussed or acted on an item the board would have failed to allow 'testimony' on the item as the Sunshine Law requires"). Thus, COUNCIL-HON's discussion of Resolution 17-278 before allowing for oral testimony did not meet the requirements of section 92-3, HRS.

As for the amendment of the agenda, CORP CNSL-HON contended that COUNCIL-HON's action on Resolution 17-278, CD1 was not of "reasonably [sic] importance nor does it affect a significant number of persons[,]" because "Council's action did not encompass approval of the installation of the lights, the building permits needed to install the electricity, or the location of the specific tree. . . . The action of Council was merely to accept a gift . . . [and] only affects the donor and no other persons."⁶ In contrast, Requester stated that the lighted tree is in a "highly visible area in Hawaii Kai right near the ocean[,]" and COUNCIL-HON's action is not only of major importance to the community but also "sets a precedent for similar actions throughout the island."

OIP finds that if COUNCIL-HON had not taken action at the Meeting to accept the gift, then the tree lighting process would not have moved forward. Following the Meeting, the City and County of Honolulu (City), Department of Parks and Recreation (DPR) issued a "Shade Tree Permit" dated November 16, 2017. The permit granted permission for "the installation of low voltage LED lights onto a City

⁴ The Vice Chair's reference to a gift valued at \$58,000 appears to refer to the original gift of a temporary trellis system to support two photovoltaic panels with batteries to power lights for a tree, which was later revised to instead include electrical work and lighting valued at \$40,000.

⁵ As referenced in the last sentence of the transcript, COUNCIL-HON also added items M-6320 and Resolution 17-310, discussed *infra*, to its agenda for the Meeting, in the same manner as described for Resolution 17-278.

⁶ The December 20, 2017 Response stated that COUNCIL-HON had been informed that the gift proposal would be amended and taken up by COUNCIL-HON in the future, and, therefore, the complaint regarding the resolution was moot. OIP reviewed COUNCIL-HON's agendas for its meetings held on January 31, 2018, and February 13 and 28, 2018, none of which appeared to include an amended Resolution 17-278.

ironwood tree[] located next to a parking lot at Joe Lukela Park” in Hawaii Kai, for the period from November 20, 2017 to January 2, 2018. The Response stated that COUNCIL-HON was not privy to the “shade permit” nor was it related to Resolution 17-278, CD1. However, but for COUNCIL-HON’s acceptance of the gift, DPR would not have issued the permit. If COUNCIL-HON had voted not to accept the gift, then it appears there would have been no need for a permit and no tree lighting.

Minutes of the Hawaii Kai Neighborhood Board Meeting held on November 28, 2017 (HKNB Meeting), reflect that there was considerable discussion on the topic of illuminating trees in parks, particularly the one at Maunalua Bay’s Joe Lukela Beach Park. City & County of Honolulu, Government, Hawaii Kai Neighborhood Board No. 1, <http://www.honolulu.gov/cms-nco-menu/site-nco-sitearticles/30285-hawaii-kai-nb-november-minutes.html>; then November 2017 Minutes PDF at 3-6 (last visited April 2, 2020). Participants included several residents who gave testimony in support of the tree lighting, HKNB board members and a member of another neighborhood board who expressed concern about the process by which the tree lighting was approved by COUNCIL-HON, and a representative of the Outdoor Circle who stated concern about the use of public lands for memorials. Id. Reportedly, participants at the HKNB meeting “argued about the tree for nearly two hours.”⁷

COUNCIL-HON’s action to approve Resolution 17-278, CD1, resulted in the lighting of a tree by a private entity in a public park near the shoreline, which was visible to many. Based on the clear community interest in the tree lighting and the possible impact of COUNCIL-HON’s action on the use of City parks in the future, OIP is of the opinion that the issue was of “reasonably major importance.” Therefore, OIP finds that Resolution 17-278, CD1, was an item of “reasonably major importance.” With regard to the number of people affected by the issue, OIP finds that COUNCIL-HON’s action affected those who lived near the lighted tree and those residents who resided outside the area but viewed it in passing. Also, as Requester noted, such action might set a precedent for similar actions throughout the island, which would affect an even greater number of COUNCIL-HON’s constituents. Thus, OIP finds that COUNCIL-HON’s action “affect[ed] a significant number of persons.” Accordingly, OIP concludes that COUNCIL-HON violated section 92-7(d), HRS, when it voted to add the Resolution to its agenda and took action on it at the Meeting.⁸

⁷ Chelsea Davis, [A glowing symbol of holiday hope sparks community disagreement](https://www.hawaiinewsnow.com/story/36958916/illuminated-tree-in-hawaii-kai-to-honor-loved-one-draws-criticism/), Hawaii News Now (Nov. 30, 2017, 12:02 AM), at 2, <https://www.hawaiinewsnow.com/story/36958916/illuminated-tree-in-hawaii-kai-to-honor-loved-one-draws-criticism/>.

⁸ Requester asked whether COUNCIL-HON must identify the nature of gifts on the agenda when it hears a resolution to accept a gift and asked that OIP “declare the

II. November 1 Meeting: Communication M-6320, Extension Request

Communication M-6320 (M-6320) is Hawaii City Plaza LP's request for an extension of ninety calendar days for COUNCIL-HON to act on Resolution 17-305. The request is dated October 26, 2017 and was date-stamped by the City Clerk on October 31, 2017, a day before COUNCIL-HON's Meeting. Resolution 17-305, is titled "Approving a Conceptual Plan for an Interim Planned Development-Transit Project for the Development of the Hawaii City Plaza Condominium Development Project," a controversial project located in Honolulu.⁹

As the Response explained, if COUNCIL-HON did not take action on Resolution 17-305 within sixty days after receipt of the application, the application would be deemed denied. Revised Ordinances of the City and County of Honolulu 1990 § 21-2.110-2(f). CORP CNSL-HON asserted that the matter was not of "major importance," because COUNCIL-HON took no action to either deny or approve the application and "merely allowed for further review and public discussion."¹⁰ The

Council's description inadequate and require that the Council provide more detailed descriptions of gift resolutions on future agendas." Requester stated that on the day of and before the start of the Meeting, COUNCIL-HON made a written announcement of its intent to add Resolution 17-278, CD1 to the agenda: "CR-380 and Resolution 17-278, CD1, Accepting a gift to the City from Makana Pacific Development. To be added to the Agenda." Because OIP has concluded that the resolution was not properly added to the agenda, OIP has already determined that it was not adequately noticed.

For guidance, however, OIP notes that the Sunshine Law requires that an agenda for a public meeting list each item a board intends to consider with sufficient detail to provide members of the public with reasonable notice so that they can decide whether to participate in the meeting. OIP Op. Ltr. No. 03-22 at 6. OIP agrees with Requester that an agenda must allow any member of the public to know what a board will consider at a forthcoming meeting without being required to refer to another source, such as the minutes of another meeting. OIP Op. Ltr. No. 07-02 at 4-5 (citations omitted). The Committee on Parks' discussion of Resolution 17-278, CD1 at its October meeting and the Committee Chair's announcement at that meeting of when the resolution would be discussed again, cannot substitute for an agenda that meets the Sunshine Law's notice requirements.

⁹ See Rick Daysog, Developer of luxury condo threatens boycott over permitting snag, Hawaii News Now (May 12, 2017, 2:31 AM - Updated Aug. 12, 2017, 11:17 PM), <https://www.hawaiinewsnow.com/story/35412120/developer-threatens-boycott-accuses-council-member-of-racism/>; Gordon Y. K. Pang, Council give OK to Keeaumoku condo tower project (Dec. 7, 2017), <https://www.staradvertiser.com/2017/12/07/business/council-gives-ok-to-keeaumoku-condo-tower-project/>.

¹⁰ CORP CNSL-HON stated that the public was afforded the opportunity to provide additional comments on Resolution 17-305 at a Committee on Zoning meeting held on December 5, 2017, and a COUNCIL-HON meeting held on December 6, 2017, at which Resolution 17-305 was approved.

Response further stated that “[w]ithout the additional time that was approved at the [Meeting], there would have been no further opportunity for additional public comment.”

In video of the Meeting, Councilmember Anderson stated he had “great concern” about the project but because the issue does warrant further discussion, he will vote to grant the extension of time but reserves the right to vote in opposition at a later date. Honolulu City Council, 2017-11-01 REG COUNCIL, at 4:50:55, http://honolulu.granicus.com/player/clip/555?view_id=3 (last visited Apr. 30, 2020). Also, Councilmember Manahan said he would be “voting with reservations,” noted that the developer had been “really rude to the Council, breaking decorum” at a previous meeting and “retained his right to vote no” depending on how the issue moves forward. Councilmember Elefante also noted his “very significant concerns” with the development. Two Councilmembers approved M-6320 with reservations. No Councilmember voted against M-6320.

OIP finds that M-6320 was of reasonably major importance and action thereon would affect a significant number of persons because, as CORP CNSL-HON stated, had COUNCIL-HON not taken action to approve the deadline extension, the application for the project would have been “deemed denied.” Although CORP CNSL-HON contended that COUNCIL-HON did not take any action on the project, COUNCIL-HON did in fact take action to approve the extension request in M-6320, and if it had not done so the application, and therefore the project, would not have proceeded. Thus, the larger context for item M-6320 and COUNCIL-HON’s action thereon was the entire project, which would have affected many, including those associated with the development project or who may work on the project in the future, constituents who live near the project, those who may buy or rent units in the project, and those who visit the area. Consequently, in accordance with the decision in Opinion 06-05, OIP concludes that COUNCIL-HON violated section 92-7(d), HRS, when it voted to add M-6320 to its agenda and took action on it at the Meeting.

III. November 1 Meeting: Resolution 17-310, Sponsorship Programs

Resolution 17-310 is titled “Urging the City Administration to Implement Sponsorship Programs for the Honolulu Zoo and Other City Facilities.” The Response stated that “[t]his matter merely reminds and encourages the use of sponsorship procedures as previously authorized in Ordinance 15-42 (Sponsorships In Honolulu Zoo) and Ordinance 17-16 (Sponsorship of City Facilities)[]” and was “not project specific, rather it merely conveyed a reminder to the City Administration to use the recently passed law on sponsorships.” CORP CNSL-HON asserted that the “matter was not of major importance and does not affect anyone.”

Resolution 17-310 mentioned several city facilities, including the Honolulu Zoo, Waikiki Park improvements, and a multimillion-dollar inclusive playground

proposed for Ala Moana Beach Park, and it discussed Kapolei Regional Park (KRP), a City park, in more detail. Resolution 17-310 stated in relevant part: (1) KRP has experienced numerous challenges; (2) a sacred, historical Native Hawaiian site is located at KRP; (3) residents have repeatedly volunteered to repair the sprinkler system at the site, which had experienced problems; and (4) despite continued vandalism within KRP, a community group's offer to donate a security system has not been accepted. COUNCIL-HON added the resolution to the agenda and adopted it unanimously.

Considering the larger context, *i.e.*, the various projects and proposals referenced in Resolution 17-310 as a whole, OIP is of the opinion that Resolution 17-310 was of "reasonably major importance" to COUNCIL-HON's constituents, including the residents and community group who had been attempting to help the City maintain its assets at KRP. Had they received the notice normally required by the Sunshine Law informing the public that the matter would be on the agenda, they might have attended the Meeting or otherwise participated in the process. CORP CNSL-HON's argument that the matter "does not affect anyone" appears to assume that Resolution 17-310 would have no direct legal impact on City administration. However, OIP finds that a COUNCIL-HON resolution asking the City administration to take certain actions, while not a mandate, does have its intended effect of signaling support for those actions and thus making them more likely to happen. Further, the proposals and projects for which COUNCIL-HON was thus stating its support affected a "significant number of persons," including not only the administration but also those who had already repeatedly offered their assistance to KRP and all park users.

OIP reviewed the Meeting agenda and minutes and noted the listing on the agenda of seven other resolutions "urging" or "requesting" the City administration, a City department, or the State Legislature to take a specified action. In some cases, there was written testimony or public oral testimony on those items, underlining the public interest in having the opportunity to weigh in on such resolutions and offering an example of how COUNCIL-HON's failure to list Resolution 17-310 on the agenda impaired "the people's right to know[.]" HRS § 92-1. OIP concludes that COUNCIL-HON violated section 92-7(d), HRS, when it voted to add Resolution 17-310 to its agenda and took action on it at the Meeting.

IV. Budget Committee Meeting: Resolution 17-328, Workforce Study

The Budget Committee amended its agenda at its Budget Meeting to add Resolution 17-328:

WORKFORCE STUDY. Requesting the City Administration, Oahu Transit Service, Inc., and the Honolulu Authority for Rapid Transportation to conduct a workforce study to assess the staffing requirements for the City's entire multimodal transportation system;

to consider and recommend methods to develop the local workforce, such as developing training opportunities for local workers and partnering with local community colleges to ensure that graduating students have adequate technical skills; and to consider and recommend policies and procedures for successful employee transfer, integration, and retention.

The Response stated that COUNCIL-HON was “merely requesting that the City Administration perform a review and study as to whether there are sufficient labor force and/or training opportunities that will provide the required staffing” for the City’s public transportation system. Further, “since this matter does not implement any action, it is not of major importance. As to whatever the recommendations that come from the work study may come before Council, public comment would be received at that time.”

Andrew Robbins, Executive Director of Honolulu Authority for Rapid Transportation (HART), Wes Frysztacki, Director of the Department of Transportation Services (DTS), Roger Morton, Executive Director of Oahu Transit Services, Inc. (OTS), and a member of the public testified at the Budget Meeting. The Budget Committee deferred action on Resolution 17-328 to allow DTS to thoroughly review the measure and make amendments if needed.

OIP disagrees with CORP CNSL-HON’s contention that Resolution 17-328 is “not of major importance.” As noted earlier in this opinion, an agenda item’s importance and the potential consequence of any action taken on it must be viewed relative to the larger context in which it occurs. OIP Op. Ltr. No. 06-05 at 4. OIP believes that a resolution requesting a workforce study to look for ways to merge the workforces of HART and OTS and to recommend methods to develop the local workforce is of reasonably major importance, because it could be the first step toward a major change in the workforce structure of the City’s transportation services. For the same reason, action on it would affect a significant number of persons, including current and future local workers in the transit system, unions, and the educational system. Accordingly, OIP concludes that the Budget Committee violated section 92-7(d), HRS, when it voted to add Resolution 17-328 to the agenda and discussed and voted to defer action on it.

Right to Bring Suit to Enforce Sunshine Law and to Void Board Action

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 with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. 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.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

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

SPECIAL NOTICE: During the COVID-19 pandemic, Hawaii's Governor issued his Supplementary Memorandum on March 16, 2020, which suspended the UIPA in its entirety. The suspension was continued until May 31, 2020, by the Governor's Sixth Supplementary Proclamation dated April 25, 2020. On May 5, 2020, the Governor's Seventh Supplementary Proclamation (SP7) modified the prior suspension of the UIPA in its entirety and now provides that the UIPA and Chapters 71 and 72, Title 2, HAR, "are suspended to the extent they contain any deadlines for agencies, including deadlines for the OIP, relating to requests for government records and/or complaints to OIP." SP7, Exhibit H.

The UIPA's part IV sets forth OIP's powers and duties including jurisdiction over the Sunshine Law in section 92F-42(18), HRS, which have been restored by SP7, except for the deadline restriction, and give OIP authority to resolve this appeal. Thus, for OIP's Sunshine Law opinions issued while SP7 is still in force, agencies will have a reasonable time to request reconsideration of an opinion to OIP, but a request for reconsideration shall be made no later than ten business days after suspension of the UIPA's deadlines are lifted upon expiration of SP7 after May 31, 2020, unless SP7 is terminated or extended by a separate proclamation of the Governor. Agencies wishing to appeal a Sunshine Law opinion to the court under section 92F-43, HRS, have a reasonable time to do so, subject to any orders issued by the courts during the pandemic, and no later than thirty days after suspension of

the UIPA's deadlines is lifted upon expiration of SP7 after May 31, 2020, unless terminated or extended by a separate proclamation of the Governor.

OFFICE OF INFORMATION PRACTICES



Mimi Horiuchi
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APPROVED:



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