



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway
Honolulu, Hawaii'i 96817**

December 18, 2017

VIA E-MAIL: request+z8aaukvnpd@foi.uipa.org

Ms. Anita Hofschneider
Honolulu Civil Beat

RE: UIPA Request dated December 4, 2017

Dear Ms. Hofschneider,

The Office of Hawaiian Affairs ("OHA") acknowledges receipt of your public records request dated December 4, 2017, submitted pursuant to the Uniform Information Practices Act ("UIPA"), Chapter 92F, Hawaii Revised Statutes ("HRS"). OHA received your request on December 4, 2017.

In your request, you requested the following information:

1. copies of emails sent between Robert Klein, attorney representing the Office of Hawaiian Affairs, and the Office of the Auditor between January 2017 and December 2017.

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a). The UIPA restricts access to five categories of government records as enumerated under HRS § 92F-13. Relevant here is HRS § 92F-13(3) which restricts the disclosure of "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function."

The Office of Information Practices ("OIP") has issued prior advisory opinions that have recognized that the disclosure of intra-agency and inter-agency memoranda or correspondence would frustrate the legitimate government function of agency

December 18, 2017

Ms. Anita Hofschneider

Page 2

decision-making by injuring the quality of the agency decisions. *See* OIP Op. Ltr. No. 89-9 at 9 (“[t]he deliberative process privilege rests most fundamentally on the belief that were agencies forced to ‘operate in a fishbowl’, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer.” Dudman Communications v. Dept. of Air Force, 815 F.2d 1565, 1567 (D.C. Cir. 1987) quoting S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965)); OIP Op. Ltr. No. 04-15 at 4.

Pursuant to HRS § 92F-13(3), OHA will not produce any emails in response to your request as such emails are communications that reflect or otherwise contain predecisional and deliberative recommendations, opinions, drafts, suggestions, proposals, discussions, and/or subjective documents between Robert Klein, attorney representing OHA, and the State of Hawaii, Office of the Auditor. Disclosure of such communications would frustrate OHA’s legitimate government function in having the frank exchange of ideas and opinions regarding issues directly relating to the audit being conducted by the Office of the Auditor of the OHA. *See* OIP Op. Ltr. 00-01 at 5 (“the disclosure of documents that are *both* predecisional and deliberative would frustrate decision-making functions, such as the resolution of issues”); OIP Op. Ltr. 04-15 at 4-5 (deliberative process privilege “protects the back-and-forth discussions that lead up to the agency’s decision”); OIP Op. Ltr. 90-8 at 11 (“disclosure of inter-agency . . . memoranda that are predecisional and deliberative would chill the candor and free exchange in the consultative process of agency decision-making.”).

Thank you for your inquiry.

‘O wau iho nō,

A handwritten signature in black ink, appearing to read 'Raina P.B. Gushiken', with a long horizontal line extending to the right.

Raina P.B. Gushiken
General Counsel