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GOVERNOR

**STATE OF HAWAII  
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CHERYL KAKAZU PARK  
DIRECTOR

March 23, 2017

VIA E-MAIL

Ms. Amy van Saun  
Attorney  
Center for Food Safety

Re: U APPEAL 16-06 (Onishi) and U APPEAL 16-07 (Tsuji)

Dear Ms. van Saun:

The Office of Information Practices (OIP) asked you in a letter dated February 10, 2017, to inform OIP, within twenty business days, as to whether you still wished to receive a decision from OIP on the above referenced appeals.

OIP's letter of February 10 explained that threshold issues have been raised by the House of Representatives (House) that are beyond OIP's jurisdiction to address. These include a claim under the Hawaii Constitution regarding immunity of legislators; and the doctrine of separation of powers which the House has asserted precludes OIP, as part of the executive branch, from compelling production of legislative documents. These are issues that cannot be decided by OIP as our jurisdiction is limited to what is set forth in sections 92-1.5 and 92F-42, Hawaii Revised Statutes (HRS). At most, a decision from OIP on your appeals would likely be of limited use to you as it would only be advisory, and would be premature as it would depend on a court's determination of the threshold issues raised by the House.<sup>1</sup>

Based on these facts, OIP's February 10 letter asked you to respond within twenty business days if you still wished to receive a decision. OIP did not receive a response from you. OIP is therefore dismissing U APPEAL 16-06 and U APPEAL 16-07 on the basis that a decision would be advisory or moot. Hawaii Administrative Rules (HAR) § 2-73-18(8). OIP also dismisses these appeals on the basis that you effectively abandoned the appeals. HAR § 2-73-18(6).

Record requesters may file a lawsuit for access under section 92F-15, HRS, within two years of a denial of access to government records. An action for access to records is heard on an expedited

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<sup>1</sup> OIP's February 10 letter also noted that Representative Clift Tsuji passed away on November 15, 2016. Any opinion regarding records previously maintained by Representative Tsuji may be moot or unenforceable if his records were not maintained by the House after his passing.

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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).

If a requester decides to file a lawsuit, the requester 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 these appeals 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 these appeals. OIP's role herein is as a neutral third party.

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

OFFICE OF INFORMATION PRACTICES



Carlotta Amerino  
Staff Attorney

APPROVED:



Cheryl Kakazu Park  
Director

CMA:za

cc: The Honorable Richard Onishi, Representative  
Mr. Richard Dvonch, House Chief Attorney  
Mr. Wintehn Park, Senate Majority Special Counsel