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

May 21, 2018

VIA E-MAIL: request+b2cdb9ump3@

Ms. Anita Hofschneider

RE: UIPA Request dated May 15, 2018

Dear Ms. Hofschneider,

This acknowledges receipt of your email dated May 15, 2018, which the Office of Hawaiian Affairs ("OHA") received on May 15, 2018. In your email, you made a request for government records pursuant to Hawai'i Uniform Information Practices Act 9 ("UIPA"), Hawai'i Revised Statutes ("HRS") Chapter 92F.

In your email, you requested the following:

Thanks for getting back to me. I'd like to still see the trustee allowance reports from 2013 up to the latest available quarter in 2018. I understand it will take time to gather the records. Do you have an estimate for how long it will take?

I will formulate a separate request for the CEO expense information.

See Attachment (email request).

You made an initial request for "trustee allowance expense reports submitted between 2013 and 2018" and for "expense reports submitted by the chief executive officer" in a UIPA request that the OHA acknowledged receiving from you on February

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14, 2018. At that time, the OHA responded to you by providing you with a Notice to Requester, dated February 21, 2018 ("Notice"). See Notice attached hereto. You did not respond or otherwise provide the prepayment within twenty business days as requested in the Notice. As such, pursuant to Haw. Admin. Rules § 2-71-16(b), you were presumed to have abandoned your February 14, 2018 request, and the OHA had no further duty to process your request.

Since February 21, 2018, events have occurred such that pursuant to the relevant statutory and legal authorities discussed below, the OHA will not be producing the "trustee allowance reports from 2013 up to the latest available quarter in 2018" or "the CEO expense information" that you have requested in your second UIPA request dated May 15, 2018.

Relevant Statutory and Legal Authorities

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. ("HRS") § 92F-11(a). The UIPA restricts access to five categories of government records as enumerated under HRS § 92F-13. Relevant here are the following UIPA exceptions to the disclosure of government records:

- (1) HRS § 92F-13(1) which restricts disclosure of "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) HRS § 92F-13(2) which permits agencies to withhold access to government records "pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent such records would not be discoverable";
- (3) HRS § 92F-13(3) which restricts disclosure of "records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function"; and
- (4) HRS § 92F-13(4) which provides that "[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure."

Under the UIPA, an individual has a significant privacy interest in “[i]nformation identifiable as part of an investigation into a possible violation of criminal law, except to the extent disclosure is necessary to prosecute the violation or to continue the investigation.” HRS § 92F-14(b)(2).

Under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, an individual possesses a substantial privacy interest in information that identifies an individual of suspected wrongdoing, who has neither been arrested nor charged with an offense. The disclosure of the name of an individual who is merely suspected of criminal activity would constitute a clearly unwarranted invasion of personal privacy under the UIPA. *See* Office of Information Practices (“OIP”) Op. Ltr. No. 92-19 (Oct. 7, 1992); OIP Op. Ltr. No. 95-21 (Aug. 25, 1995); *see also* *Baez v. U.S. Dep’t of Justice*, 647 F.2d 1328, 1338 (D.C. Cir. 1980) (the disclosure of the names of third persons who had been investigated by the F.B.I. would constitute an unwarranted invasion of privacy); *Kiraly v. F.B.I.*, 728 F.2d 273, 277 (6th Cir. 1984) (The agency could properly withhold the names of those being investigated for suspected criminal activity. The disclosure of such information could subject a person to embarrassment, harassment, and even physical danger).

Based upon federal court decisions under the FOIA and HRS § 92F-14(a), an individual’s significant privacy interest in information identifying the individual in a criminal investigation is not outweighed by the public interest in disclosure.

Furthermore, the OHA is not required by the UIPA to disclose “[g]overnment records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function.” HRS § 92F-13(3).

Examples of records that may be excluded from public disclosure under HRS § 92F-13(3) include law enforcement records where disclosure could reasonably be expected in some particular, discernable way to interfere with pending law enforcement proceedings. The OIP has relied upon FOIA’s Exemption 7 for guidance in construing the UIPA exception for law enforcement records:

Exemption 7(A) of FOIA permits the withholding of records or information compiled for law enforcement purposes to the extent the disclosure could reasonably be expected to interfere with enforcement proceedings. The application of this Exemption requires the agency to establish that: (1) a law enforcement proceeding is pending or prospective; and (2) disclosure of the

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documents, would, in some particular, discernable way, disrupt, impede, or otherwise harm the enforcement proceeding.

See OIP Op. Ltr. No. 95-21 (citing *North v. Walsh*, 881 F.2d 1088, 1097(D.C. Cir. 1989)).

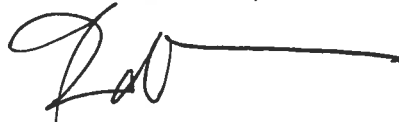
The Records You Requested Will Not Be Disclosed in Accordance with the UIPA Exceptions under HRS §§ 92F-13(1), 92F-13(2), 92F-13(3), and 92F-13(4) and the Legal Authorities Cited Above

The OHA has been served with a Subpoena from the Attorney General's office for the records that you have requested. The OHA has a legitimate government function to comply with the Subpoena for records that may consequently implicate or otherwise identify individuals as targets and witnesses. Disclosure of the information you requested could potentially subject witnesses or others providing information to reprisal and harassment; stigmatize witnesses or suspects of an investigation and unwarrantedly place the individuals in the position of having to defend themselves in the public forum; and chill the willingness of individuals to provide information. See *North*, 881 F.2d at 1097-98.

Disclosing the information and records you requested would frustrate OHA's legitimate government function to comply with the Subpoena and to protect the privacy interests of the OHA Trustees, OHA employees, and other individuals who may be witnesses and/or targets.

For the foregoing reasons and authorities, the OHA will not produce the documents you requested.

'O wau iho nō,



Raina P.B. Gushiken

Assistant Senior Legal Counsel

Attachments as noted

c: Robert G. Klein, Esq. (w/attach.)