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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative rules (HAR). This is a memorandum decision 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 DECISION**

**Requester:** Brittany Peet, Executive Director | Captive Animal Law Enforcement People for the Ethical Treatment of Animals Foundation (PETA)  
**Agency:** Department of Enterprise Services, City and County of Honolulu  
**Date:** April 20, 2018  
**Subject:** Hippopotamus Records (APPEAL 15-29)

Requester seeks a decision as to whether the Department of Enterprise Services of the City and County of Honolulu (ENT SVC-HON) properly denied access under Part II of the UIPA to veterinary records and "all" other records of a hippopotamus<sup>1</sup> named Louise owned by the Department of Enterprise Services, Honolulu Zoo (Zoo), and records pertaining to the acquisition or disposition of all hippos by the Zoo.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's letter to OIP with enclosures dated May 12, 2015; OIP's Notice of Appeal with enclosures to ENT SVC-HON dated May 14, 2015; email messages from OIP to the Department of the Corporation Counsel, City and County of Honolulu (CORP CNSL-HON) dated June 3, 2015, March 19, and April 5, 2018; a letter from OIP to ENT SVC-HON dated July 29, 2015; letters from CORP CNSL-HON to OIP dated December 10 (with exhibits) and 28, 2015; a letter from OIP to CORP CNSL-HON dated December 11, 2015; and an email message to OIP from CORP CNSL-HON dated April 5, 2018.

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<sup>1</sup> The terms "hippopotamus" and "hippo" are used interchangeably in this decision.

## Decision

The UIPA requires that all Hawaii State and county government records are public, unless an exception to disclosure in section 92F-13, HRS, applies. HRS § 92F-11(a), - (b) (2012, Supp. 2017). Section 92F-13(4), HRS, which allows an agency to withhold records made confidential by law, is inapplicable Louise's veterinary records because they are not protected by a confidentiality statute.

The "frustration" exception at section 92F-13(3), HRS, was not invoked by ENT SVC-HON and thus is inapplicable for this request. Nonetheless, for future requests for veterinary records, OIP notes the "frustration" exception may permit, but not require, the Zoo to withhold the veterinary records in instances when disclosure would result in the actual frustration of a legitimate government function. Such a determination must be made on a case-by-case basis.

ENT SVC-HON did not provide sufficient justification to withhold access to hippopotamus acquisition and disposition records, and to "all" other records about Louise the hippo. Having failed to meet its burden to justify denials of access, ENT SVC-HON is required under the UIPA to provide these records to Requester, subject to Requester's payment for search time and copying or inspection costs.

## Statement of Reasons for Decision

Requester made a written request dated February 9, 2015, for:

[a]ll records specific to Louise, including vet records, from January 1, 2014 until the date this request is processed, and any records pertaining to the acquisition and disposition of any hippos, including any discussions pertaining to the acquisition or disposition of any hippos, from January 1, 2014 until the date [t]his request is processed. We DO NOT need anything on Rosey.

(Emphasis in original). ENT SVC-HON responded with a Notice to Requester (NTR) dated April 16, 2015, denying access to the requested records.

### **I. Section 92F-13(4), HRS, is Not Applicable to Louise's Veterinary Records Because There is No Confidentiality Statute Prohibiting Disclosure of Zoo Veterinary Records**

The UIPA requires that agencies make government records available for inspection and copying, except as provided in section 92F-13, HRS. HRS 92F-11 (2012, Supp. 2017). ENT SVC-HON's NTR denied access to veterinary records of Louise the hippo

under "HIPAA,"<sup>2</sup> stating that the Zoo Director, as the custodian of all Zoo records and a licensed veterinarian, can protect the confidentiality of animal health records.

CORP CNSL-HON responded to this appeal on behalf of ENT-SVC-HON, and properly abandoned ENT SVC-HON's reliance on HIPAA. CORP CNSL-HON instead argued that Louise's veterinary records are protected under section 92F-13(4), HRS, which provides that agencies need not disclose government records which, pursuant to State or federal law, are protected from disclosure.<sup>3</sup>

In support of its position, CORP CNSL-HON explained that the "City and County of Honolulu, Department of Enterprise Services, Honolulu Zoo" owns Louise. CORP CNSL-HON asserted that the Zoo's Director is the custodian of all Zoo "veterinary records and those related to the health and welfare of the Zoo's animals[.]" and is also a licensed veterinarian.<sup>4</sup> CORP CNSL-HON asserted that the determination of whether it is appropriate to release Louise's veterinarian records is in the sole discretion of the Zoo Director.

Veterinarians are licensed in Hawaii in accordance with chapter 471, HRS. Section 471-10(b)(12), HRS, states that the Board of Veterinary Examiners may revoke or suspend the license of any veterinarian, fine a licensee, or both, for any cause authorized by law, including, "[c]onduct or practice contrary to the recognized principles of medical ethics of the veterinary profession as adopted by the Hawaii Veterinary Medical Association and the American Veterinary Medical Association."

The American Veterinary Medical Association (AVMA) is a "not-for-profit association representing more than 91,000 veterinarians working in private and corporate practice, government, industry, academia, and uniformed services. The AVMA acts as a collective voice for its membership and for the profession." See <https://www.avma.org/About/Pages/default.aspx>; accessed April 20, 2018. AVMA's Principles of Veterinary Ethics (AVMA Principles), at Principle V state that a "veterinarian shall respect the rights of clients, colleagues, and other health

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<sup>2</sup> "HIPAA" refers to the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the federal Department of Health and Human Services rules, 45 C.F.R. Parts 160 and 164, the Privacy Rule promulgated under HIPAA. Among other things, HIPAA and its Privacy Rule establish federal privacy standards for "protected health information" of individuals (human, not animal) that is maintained by "covered entities" as those terms are defined therein.

<sup>3</sup> OIP was not provided with a copy of the records at issue *in camera* review.

<sup>4</sup> At the time this appeal was filed, the Zoo Director was Baird Fleming, DVM. The current Zoo Director is Linda Santos. Available information online about Ms. Santos' appointment does not indicate whether she is a licensed veterinarian. However, even if Ms. Santos is not a veterinarian, there are other employees of the Zoo who are veterinarians.

professionals, and shall safeguard medical information within the confines of the law." AVMA's annotations to Principle V state:

A veterinarian shall respect the privacy rights of clients, colleagues, and other health professionals and shall safeguard medical information within the confines of the law.

- a. Veterinarians and their associates must protect the personal privacy of clients, and veterinarians must not reveal confidences unless required to by law or unless it becomes necessary to protect the health and welfare of other individuals or animals.
- b. Veterinary medical records are an integral part of veterinary care. The records must comply with the standards established by state and federal law.
  - i. Medical records are the property of the practice and the practice owner. The original records must be retained by the practice for the period required by law.
  - ii. The information within veterinary medical records is confidential. It must not be released except as required or allowed by law, or by consent of the owner of the patient.
  - iii. Veterinarians are obligated to provide copies or summaries of medical records when requested by the client. Veterinarians should secure a written consent to document that provision.
  - iv. Without the express permission of the practice owner, it is unethical for a veterinarian to remove, copy, or use the medical records or any part of any record for personal or professional gain.

CORP CNSL-HON argued that the Zoo need not disclose Louise's veterinary records because, under AVMA Principles, veterinary records are confidential and require the consent of the owner of the "patient" (the animal) prior to disclosure. CORP CNSL-HON further argued that Hawaii law expressly requires veterinarians like the Zoo's Director to ensure confidentiality in order to maintain the Zoo Director's veterinary license, and that section 92F-13(4), HRS, therefore applies.

CORP CNSL-HON provided a copy of a letter from AVMA to the Zoo Director dated May 20, 2015. In its letter, AVMA stated that, reading section 471-10(b)(12), HRS, together with Section V-b-ii of the AVMA Principles, information within veterinary medical records was confidential and must not be released except as required or allowed by law, or by consent of the owner of the patient. AVMA further stated that releasing veterinary records to a third party without permission of the animal's

owner or as otherwise required or allowed by law,<sup>5</sup> would be contrary to AVMA's Principles and therefore inconsistent with Hawaii's veterinary licensing statute.

OIP requested that CORP CNSL-HON supplement its response to this appeal, posing several questions in a letter dated December 11, 2015, pertaining to its argument regarding Louise's veterinary records. In a letter dated December 28, 2015, CORP CNSL-HON conceded that AVMA Principles and annotations are not state or federal law, but asserted that they have been incorporated by reference into section 471-10(b)(12), HRS, which is a state law. Accordingly, it is CORP CNSL-HON's position that, by requiring State licensed veterinarians to comply with the recognized principles of medical ethics of the veterinary profession as adopted by the Hawaii Veterinary Medical Association<sup>6</sup> and AVMA, section 471-10(b)(12), HRS, is a state statute that prohibits the Zoo Director, a licensed veterinarian, from disclosing confidential veterinary records absent consent of the animal's owner.

OIP disagrees. A plain reading of section 471-10(b)(12), HRS, shows that it is not a state law that requires confidentiality of veterinary records. Instead, it allows the Board of Veterinary Examiners to revoke or suspend a veterinary license, and to impose fines on a licensee for "[c]onduct or practice contrary to the recognized principles of medical ethics of the veterinary profession" as adopted by the Hawaii Veterinary Medical Association and AVMA. As such, section 471-10(b)(12), HRS, requires Hawaii veterinarians to follow AVMA Principles but does not incorporate or adopt those Principles into Hawaii law. The AVMA Principles themselves are not a state or federal law. Accordingly, section 92F-13(4), HRS, would not allow the Zoo to withhold the veterinary records because section 471-10(b)(12), HRS, is not a confidentiality statute.

Within ten business days of receipt of this decision, ENT SVC-HON (or the Zoo or CORP CNSL-HON) shall provide Requester with a revised NTR informing Requester of any applicable fees being charged in accordance with chapter 2-71,

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<sup>5</sup> OIP notes that a "release" pursuant to the UIPA would be "a release otherwise required or allowed by law[.]" as is discussed in section II, *infra*. In the absence of a UIPA provision expressly requiring disclosure of veterinary records, OIP believes it would be better to follow the doctrine of *generalia specialibus non derogant* (the provisions of a general statute must yield to those of a special one), and give greater weight to a specific confidentiality statute relating to veterinary records, if applicable, over the general disclosure principles set out by the UIPA. See *Territory v. Willis*, 26 Haw. 469, 473-75 (1922) (discussing writs of error issued by the Hawaii Supreme Court). However, as discussed *infra*, OIP does not believe that section 471-10(b)(12), HRS, is a specific confidentiality statute.

<sup>6</sup> CORP CNSL-HON did not argue that any principles adopted by the Hawaii Veterinary Medical Association apply here.

HAR, for access to Louise's veterinary records. ENT SVC-HON may charge for search time, but should not charge any fees for review and segregation of records since it has provided no justification for denying access to these records. If it does not maintain veterinary records about Louise,<sup>7</sup> it should inform Requester of this fact. HAR § 2-71-14(c)(1).

## II. Application of the "Frustration" Exception at Section 92F-13(3), HRS, to Zoo Veterinary Records

The UIPA expressly includes a requirement that the discussions, deliberations, decisions, and action of government agencies shall be conducted as openly as possible:

**[§92F-2] Purposes; rules of construction.** In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

...  
This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records; [and]
- (3) Enhance governmental accountability through a general policy of access to government records[.]

HRS § 92F-2 (2012).

In furtherance of the UIPA's spirit of openness, records of all Hawaii state and county agencies, including those of the Zoo, are presumed public:

- [§92F-11] Affirmative agency disclosure responsibilities.**
- (a) All government records are open to public inspection unless access is restricted or closed by law.

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<sup>7</sup> At the time OIP appeals are opened, agencies are advised that, for purposes of complying with the UIPA, they should not destroy a requested record that may be required to be made available for public inspection by OIP or the court. See OIP Op. Ltr. No. 92-13 at 6 n.1.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

HRS § 92F-11(a), -(b). In other words, under Hawaii's public records law, Zoo records are presumed public unless an exception to disclosure applies.

AVMA's Principle V.b.ii. states that information within veterinary medical records is confidential, **except as required or allowed by law**, or by consent of the owner. As established in section I, supra, AVMA Principles are not law but are referenced by Hawaii's veterinary licensing statute, section 471-10(b)(12), HRS. The UIPA is a law that requires disclosure of veterinary and other records maintained by government agencies unless an exception to disclosure applies. OIP therefore believes it would not be a violation of section 471-10(b)(12), HRS to disclose the requested veterinary records **as required by law** (the UIPA), subject to the exceptions to disclosure at section 92F-13, HRS. Cf. OIP Op. Ltr. No. 12-01 at 9-15 (finding that HIPAA is a federal law that generally prohibits disclosure of protected health information except when otherwise required by law; and the UIPA is a public records law that requires disclosure generally, but allows agencies to withhold protected health information (about humans) in order to avoid a clearly unwarranted invasion of personal privacy).

Although it is a disclosure statute, the UIPA recognizes that certain types of records may be withheld in appropriate circumstances. The UIPA does not require 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[.]" HRS § 92F-13(3) 2012). This exception to disclosure was not invoked by ENT SVC-HON or CORP CNSL-HON. OIP therefore declines to find that the "frustration" exception applies to Louise's veterinary records.

This conclusion is not meant to rule out the possibility that, if an animal's veterinary records are requested in the future, the "frustration" exception could apply. There may be instances in which disclosure of veterinary records of an animal owned by the Zoo could result in the frustration of one or more of the Zoo's legitimate government functions. For example, if the Zoo believes that public disclosure of certain veterinary records would jeopardize the professional licensure of a Zoo veterinarian, or have adverse effects on the Zoo's decision-making because the records contain predecisional, deliberative information,<sup>8</sup> the Zoo can assert that the "frustration" exception allows the Zoo to withhold all or part those particular veterinary records. A determination as to whether the "frustration" exception

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<sup>8</sup> The terms "predecisional" and "deliberative" are discussed in more detail in section III, infra.

applies must be made on a case-by-case basis, and cannot applied wholesale to all veterinary records.<sup>9</sup> If the Zoo asserts that the “frustration” exception applies to a future request, the Zoo must keep in mind the spirit of openness and government accountability embodied in the UIPA at section 92F-2, HRS, and the presumption that government records are public in section 92F-11, HRS. In addition, OIP notes there is a strong public interest in knowing that government owned Zoo animals are being treated humanely.<sup>10</sup> OIP also takes note of the fact that veterinarians employed by government agencies have a duty to the taxpaying public that veterinarians in private practices do not have.

Finally, OIP notes that the UIPA’s exceptions to disclosure in section 92F-13, HRS, are not mandatory. An agency may choose not to invoke any exceptions to disclosure upon receipt of a record request. OIP believes that it would not violate a veterinarian’s duties under Hawaii licensing statutes if the Zoo waives the UIPA’s exceptions to disclosure that may apply to the requested veterinary records because a plain reading of section 471-10(b)(12), HRS, in conjunction with AVMA’s Principle V and its annotations, would allow the Zoo Director to choose to consent to disclosure of the records as delegee of authority by Louise’s owner, *i.e.*, the Zoo.<sup>11</sup> CORP CNSL-HON’s letter dated December 28, 2015, confirmed that the Zoo has the authority to consent to disclosure of Louise’s veterinary records and has assigned and delegated this power to the Zoo Director. Nevertheless, that authority is not determinative here as it is apparent from ENT SVC-HON’s NTR and CORP

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<sup>9</sup> The Zoo does from time to time release veterinary information about animals. See Nina Wu, *Injured wallaby’s eye removed in surgery at the Honolulu Zoo*, Honolulu Star Advertiser, March 27, 2018, at B3; Kimberly Yuen, *Tiger euthanized at Honolulu Zoo*, Honolulu Star Advertiser, April 17, 2016, <http://www.staradvertiser.com/2016/04/17/breaking-news/tiger-dies-at-honolulu-zoo/>; Advertiser Staff, *Honolulu Zoo officials euthanize aging African lion*, August 7, 2007, Honolulu Advertiser, <http://the.honoluluadvertiser.com/article/2007/Aug/07/br/br9810423765.html>.

<sup>10</sup> The public interest in government records here is not applicable to treatment of privately owned animals by private practice veterinarians.

<sup>11</sup> AVMA has posted on its website its own research indicating that at least 32 states have statutory provisions requiring client authorization to release veterinary patient records. See <https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-confidentiality-patient-records.aspx>, accessed April 20, 2018.



CNSL-HON's responses to this appeal that the Zoo, as owner of Louise, has not consented to disclosure of Louise's veterinary records.<sup>12</sup>

### III. "All" Other Records About the Hippo Named Louise

The request for records included a request for "[a]ll records specific to Louise, including vet records." "Vet" (veterinary) records are discussed in section II, supra. The NTR did not expressly respond to the request for "all" other records, and CORP CNSL-HON's responses to this appeal discussed only veterinary records, and not "all" other records about Louise. CORP CNSL-HON's response stated "[t]his appeal

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<sup>12</sup> It does appear to be common practice that zoos do not routinely disclose veterinary records, although they may disclose veterinary information about animals. An article from the Chicago Tribune noted stated:

Seeking to defuse accusations that Lincoln Park Zoo has been hiding the facts behind a spate of recent animal deaths, zoo officials opened pathology reports on the nine deaths to reporters Wednesday.

The contents, though highly technical, seemed to validate the zoo's contention that its public summaries of the reports released earlier were accurate and did not withhold any damning details.

...

The zoo showed the reports on three elephants, two gorillas, a camel and the three monkeys to reporters from the Tribune and the Chicago Sun-Times--an unprecedented move, said to zoo President Kevin Bell. Bell had to seek cooperation from the San Diego Zoo to show the documents on the elephants, which were on loan from that zoo when they died.

"In the veterinary medical community, showing reports like these to the public simply is not done," said Bell.

The zoo let reporters look at the records and take notes while discussing them with a zoo veterinarian, but it declined to allow copies to be made.

Bell said that because the reports are filled with technical medical jargon and observations, making them public would invite wholesale misinterpretation of the facts, particularly by animal rights organizations that are using the recent deaths in an anti-zoo campaign.

"That's just a ridiculous claim," said Debby Leahy, director of captive animals and entertainment issues for People for the Ethical Treatment of Animals. "That's a defense mechanism from an entity that has something to hide."

William Mullen and Hal Dardick, *Zoo opens records on animal deaths*, Chicago Tribune, May 19, 2005, <http://www.chicagotribune.com/chi-0505190202may19-story.html>.

arises out of the Department of Enterprises Services, Honolulu Zoo's . . . denial of [PETA's] request for veterinary records related to Louise, the Honolulu Zoo's hippopotamus." In reviewing the evidence submitted for this appeal, the only possible response by the City to the request for "all" of Louise's other records was the portion of the NTR that denied access to "[d]rafts and communications that are predecisional and deliberative" under section 92F-13(3), HRS, on the basis that its legitimate government function of agency decision-making would be frustrated by disclosure."

"[P]redecisional and deliberative" are terms that fall within the deliberative process privilege (DPP). The DPP is a standard for resolving the dilemma of balancing the need for government accountability with the need for government to act efficiently and effectively. It is recognized under the UIPA's "frustration exception," which states that agencies need not disclose government records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function under section 92F-13(3), HRS. The policy purposes behind the DPP are: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies or decisions before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. OIP Op. Ltr. No. 90-3 at 11 (finding that revenue audit reports are public when prepared by or submitted to the Department of Transportation (DOT) that relate to persons either issued a permit to conduct commercial activities at State airports or who engage in such activities under lease agreements with DOT). For the DPP to apply, information to be withheld must be both predecisional and deliberative, and the privilege may be lost when a final decision chooses to expressly adopt or incorporate the information by reference. Id.

The DPP is a valid exception to disclosure, when proven to apply to the records being requested. It is not clear, however, that the portion of the NTR invoking DPP was even meant to apply to "all" other records about Louise. When an agency denies access to records, it is required to provide the requester with a description of the "specific record or parts of the record that will not be disclosed[.]" and the "specific legal authorities under which the request is being denied under section 92F-13, HRS, or other laws." HAR § 2-71-14(b). This information was not sufficiently provided on the NTR or in the responses to this appeal. As to "all" other records about the hippo Louise, aside from acquisition, disposition, or veterinary records which are discussed separately herein, ENT SVC-HON has failed to meet its burden to justify its denial of access. HRS § 92F-15(c); HAR § 2-73-14.

OIP therefore finds that, within ten business days of the date of this letter, ENT SVC-HON must provide Requester with a revised NTR informing Requester of any applicable fees being charged in accordance with chapter 2-71, HAR, for access to "all" other records about the hippo Louise. ENT SVC-HON is entitled to charge fees

for search time, but should not charge any fees for review and segregation of records since it has provided no justification for denying access to these records. If it does not maintain any other records about Louise, it should inform Requester of this fact. HAR § 2-71-14(c)(1).

#### **IV. Hippopotamus Acquisition and Disposition Records**

ENT SVC-HON's NTR did not specifically address the portion of the record request that sought "records pertaining to the acquisition and disposition of any hippos, including any discussions pertaining to the acquisition or disposition of any hippos[.]" Again, the NTR denied access to "[d]rafts and communications that are predecisional and deliberative" under section 92F-13(3), HRS, on the basis that its legitimate government function of agency decision-making would be frustrated by disclosure." OIP will presume this language was meant to respond to the "acquisition and disposition" portion of the record request, although again, the NTR is not clear.

As noted above, when an agency denies access to records, it is required to provide the requester with a description of the specific records or parts of the record that will not be disclosed, and the specific legal authorities under which the request is being denied under section 92F-13, HRS, and other laws. HAR § 2-71-14(b). ENT SVC-HON's NTR did not clearly explain what records it was withholding under section 92F-13(3), HRS, and did not mention hippo acquisition and disposition records at all. On appeal, CORP CNSL-HON's communications with OIP did not explain why section 92F-13(3), HRS, was cited in its NTR, and did not describe its responsive records that fall within this exception. Its responses to this appeal did not mention DPP or hippo acquisition and disposition records at all. Accordingly, ENT SVC-HON failed to meet its burden to justify its denial of access. HRS § 92F-15(c); HAR § 2-73-14.

OIP therefore finds that, within ten business days of the date of this letter, ENT SVC-HON must provide Requester with a revised NTR informing Requester of any applicable fees being charged in accordance with chapter 2-71, HAR, for access to "records pertaining to the acquisition and disposition of any hippos, including any discussions pertaining to the acquisition or disposition of any hippos" in accordance with chapter 2-71, HAR. ENT SVC-HON may charge for search time, but should not charge any fees for review and segregation of records since it has provided no justification for denying access to these records. If it does not maintain hippo acquisition and disposition records, it should inform Requester of this fact. HAR § 2-71-14(c)(1).

#### **Right to Bring Suit**

Requester is entitled to seek assistance from the courts when Requester has been improperly denied access to a government record. HRS § 92F-42(1) (2012). An

action for access to records is heard on an expedited 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).

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

This decision 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 rule does not allow for extensions of time to file a reconsideration with OIP.

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.

#### OFFICE OF INFORMATION PRACTICES



Carlotta Amerino  
Staff Attorney

APPROVED:



Cheryl Kakazu Park  
Director