



**STATE OF HAWAII  
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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:** Ruthann Caudill  
**Agency:** Kauai County Council, County Services Division,  
Office of the County Clerk  
**Date:** July 13, 2018  
**Subject:** Reasonable Search (U APPEAL 18-20)

Requester seeks a decision as to whether the Kauai County Council, County Services Division, Office of the County Clerk (County Clerk) properly responded to her request for records under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's email to OIP dated February 7, 2018; three emails from Requester to OIP (one with attachments) dated February 20, 2018; a letter from the Kauai Deputy County Clerk (Deputy Clerk) to Requester dated February, 20, 2018; an email from Requester to the Kauai County Attorney and the Deputy Clerk dated February 20, 2018; and a letter from the County Clerk to OIP dated February 22, 2018.

**Decision**

The County Clerk's explanation of its search for responsive records shows that it was a reasonable search, which resulted in no responsive records being found. Therefore, the County Clerk's assertion that it does not maintain responsive records was proper.

## Statement of Reasons for Decision

In an email dated February 17, 2018, Requester sought access to copies of “public records that have been sent to or received from the Federal Advisory Council on Historic Preservation” by the Kauai County Clerk. The Deputy Clerk responded in a letter dated February 20, 2018, which stated a thorough review of records had been conducted but no responsive records were found.<sup>1</sup> The letter suggested that Requester contact the Kauai County Planning Department which may have responsive records.<sup>2</sup> Requester thereafter filed this appeal.

The UIPA provides that “[a]ll government records are open to public inspection unless access is restricted or closed by law.” HRS § 92F-11(a) (2012). A government record is defined as “information maintained by an agency in written, auditory, visual, electronic, or other physical form.” HRS § 92F-3 (2012). So long as an agency maintains the information in the form requested by a requester, the agency must generally provide a copy of that record in the format requested unless doing so might significantly risk damage, loss, or destruction of the original record. OIP Op. Ltr. No. 97-8 at 4, citing OIP Op. Ltr. No. 90-35 at 13. However, an agency’s disclosure obligation applies only to those records it actually maintains. It is not required to provide records that it does not maintain, including records that do not exist. See HRS §§ 92F-3 (definition of government record limited to records agency maintains) and 92F-11(c) (agency not required to create compilation or summary in response to UIPA request).

When a requester contests an agency’s response to a record request which states that no responsive records exist, OIP normally looks at whether the agency’s search for responsive records was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one “reasonably calculated to uncover all relevant documents” and an agency must make “a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” Id. at 5 (citations omitted).

In response to this appeal, the Clerk’s Office explained that on February 20, 2018, the Council Services Division’s Records Section conducted a thorough search of all records sent to or received from the Federal Advisory Council on Historic

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<sup>1</sup> The Notice to Requester (NTR) attached to the Deputy Clerk’s letter was incomplete. The Deputy Clerk’s response to the record request was nonetheless complete and in accordance with OIP’s administrative rules at chapter 2-71, HAR, because the Deputy Clerk’s letter contained all the information required under section 2-71-14, HAR.

<sup>2</sup> Section 2-71-14(c)(1), HAR, requires agency to inform a requester when it is unable to disclose a requested record because it does not maintain the record. This section also states that an agency may provide the name and address of another agency that it reasonably believes may maintain the record. The County Clerk did provide Requester with the information required by the rule.

Preservation. The search included a word search for “Federal Advisory Council on Historic Preservation” of all electronic records as well as a manual search of all indexes related to hard copy records (those not available electronically). No responsive records were found.

Based on the information provided by the Clerk’s Office, it does appear that appropriate staff conducted a reasonable search for records sent to or received from the Federal Advisory Council on Historic Preservation in the locations where any responsive records were mostly likely to have been found. OIP therefore finds that the County Clerk’s search for records was reasonable, and its response to Requester’s request was proper under the UIPA.

### 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  
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APPROVED:



Cheryl Kakazu Park  
Director