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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:** Fast Enterprises, LLC  
**Agency:** Department of Taxation  
**Date:** March 5, 2019  
**Subject:** Request for Proposal Information Designated as Confidential  
(U RFO-P 16-1 and U APPEAL 16-8)

Requester seeks a decision as to whether the Department of Taxation (TAX) properly denied its request for a proposal and accompanying documents submitted by Revenue Solutions, Inc. (RSI), in response to a request for proposals (RFP), under Part II of the UIPA. In addition, RSI asked for an opinion as to whether its proposal and accompanying documents may be withheld under the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in the following:

1. From U RFO-P 16-1: an email to OIP from Claude Bauer, RSI Proposal Response Specialist, dated September 22, 2015; an email with attachment to OIP from Deputy Attorney General Diane Erickson on behalf of TAX dated September 23, 2015; a letter from OIP to TAX dated September 28, 2015; an email from RSI to the Department of the Attorney General (AG) dated September 29, 2015; and an email with attachment from TAX to OIP dated October 12, 2015.
2. From U APPEAL 16-8: letters from the AG to RSI dated August 27 (with enclosure) and September 18, 2015; an email with attachments to OIP from

Mr. John Zimmerman of Fast Enterprises, LLC (Fast), dated October 2, 2015; a letter from OIP to TAX with enclosures dated October 6, 2015; and a letter to OIP from TAX with responsive records included for OIP's *in camera* review dated October 20, 2015.

## **Decision**

**Résumé Information:** Names and résumé information within the Proposal must be publicly disclosed as OIP has previously found that the UIPA's privacy and frustration exceptions at section 92F-13(1) and (3), HRS, do not protect this type of information in proposals for State contracts. OIP Op. Ltr. No. 93-5. Direct telephone numbers and email addresses of RSI employees and names and contact information of personal references may be withheld in order to avoid the frustration of a legitimate government function under section 92F-13(3), HRS.

**Confidential Commercial and Financial Information:** The AG prepared a version of the Proposal with proposed redactions. All portions of the Proposal that do not have proposed redactions, and the entire Best and Final Offer (BAFO), are public, as TAX is not invoking any exception to disclosure of those portions.

For the portions of the Proposal for which the AG proposed redactions, OIP finds there was no claim of frustration by TAX to any government function if the information is disclosed. There was also no argument as to how disclosure of the information proposed for redaction would cause substantial competitive harm to RSI. As explained below, the redacted information was mostly narrative. Some of it is in the public domain, and it did not contain the type of detailed proprietary information that may be withheld under section 92F-13(3), HRS, even assuming TAX had made a frustration argument. Detailed financial information may be redacted.

## **Statement of Reasons for Decision**

TAX put out a request for proposals, RFP 13-013-SW (RFP), for a tax system modernization project. Fast submitted a proposal and was the successful offeror. RSI also submitted a proposal (Proposal) and BAFO. RSI marked nearly the entire proposal and all of the BAFO as confidential. OIP understands it is common practice for submitters of proposals to designate portions of proposals as confidential in accordance with section 3-122-58, HAR, which states:

**§3-122-58 Public inspection.** (a) The existing contract file, except those portions the offeror designates in writing as trade secrets or other proprietary data to be confidential subject to subsection (b), shall be available for public inspection upon posting of award pursuant to section 103D-701, HRS. The contract file shall include but not be limited to the following:

- (1) The register of proposals prepared pursuant to section 3-122-51;
- (2) A listing of all vendors to whom copies of the request for proposals were distributed;
- (3) Name of successful offeror and dollar amount of offer;
- (4) The basis on which the award was made;
- (5) A copy of the request for proposals;
- (6) A copy of the successful offeror's proposal;
- (7) A copy of all unsuccessful offerors' proposals; and
- (8) A copy of the executed contract resulting from the request for proposals.

(b) If a person requests to inspect the portions of an offeror's proposal designated as confidential pursuant to section 3-122-46(9), the inspection shall be subject to written determination by the respective attorney general or corporation counsel for confidentiality in accordance with chapter 92F, HRS.

(c) If the attorney general or corporation counsel determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public inspection unless the offeror appeals pursuant to section 92F-42(1), HRS.

(d) When a purchasing agency denies a person access to a state procurement record, the person may appeal the denial to the office of information practices in accordance with section 92F-15.5, HRS.

#### HAR § 3-122-58.<sup>1</sup>

After award and execution of the contract to it, Fast made a UIPA request for:

all technical and cost proposals provided by all vendors, excluding Fast Enterprises, LLC, in response to the Hawaii Department of Taxation's

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<sup>1</sup> Section 3-122-58(c), HAR, states that an offeror may appeal the AG's designation of confidential material under section 92F-42(1), HRS. Section 92F-42, HRS, sets forth OIP's powers and duties, and section 92F-42(1), HRS, states that OIP's director shall

upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter.

HRS § 92F-42(1) (2012). While OIP can issue opinions regarding a granting of access (here, TAX's intended granting of access to RSI's Proposal and BAFO), OIP's appeal rules only allow the appeal to OIP of an agency's denial of access. HAR § 2-73-11. Section 3-122-58(c)(1), HAR, is not an OIP rule, and its language is not at issue in this appeal.

RFP 13-013-SW. Additionally, Fast requests all “Requests for Clarification” and “Best and Final Offers” including any responses to the “Requests for Clarification” and “Best and Final Offers” provided by all vendors, excluding Fast. Finally, Fast requests all documents relating to the evaluations of all proposals submitted including, but not limited to, any evaluator prepared notes or scores.

Only the documents submitted to TAX by RSI are subject to this appeal.

After providing an initial Acknowledgement, TAX responded to the record request by providing a Notice to Requester (NTR) indicating that no fees would be charged, and stating that TAX planned to withhold access to the portions of the Proposal and the BAFO that contained proprietary and/or confidential information in accordance with section 92F-13(3), HRS, which allows agencies to withhold records to avoid the frustration of a legitimate government function. In its NTR, TAX also cited to section 92F-13(1), HRS, which allows agencies to withhold records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. TAX also provided Fast with copies of the Proposal and technical documents from RSI, except the material RSI claimed was confidential. At the same time, in accordance with section 3-122-58, HAR, TAX asked the AG to review RSI’s Proposal and BAFO to determine what should be withheld from disclosure. The AG’s review is discussed in sections I and II, infra.

Fast filed an OIP appeal of the partial denial, and RSI filed an “appeal regarding confidential information[.]” As noted in footnote 1, *supra*, OIP’s appeal rules do not allow a person to appeal an agency’s intended disclosure of records, so OIP opened RSI’s request as a “request for opinion” (RFO). OIP has consolidated these cases as they are based on the same facts.

The UIPA contains a list of records and information that is always public, notwithstanding any other provision in the UIPA. Included in this list is “[g]overnment purchasing information including all bid results except to the extent prohibited by section 92F-13[.]” HRS § 92F-12(a)(3) (2012). Thus, unless protected from disclosure under section 92F-13, HRS, government purchasing information, “including all bid results,” even those of unsuccessful bidders, is subject to mandatory disclosure. HRS § 92F-12(a)(3); OIP Op. Ltr. No. 90-15 at 3-5. Section 92F-13, HRS, lists the UIPA’s five exceptions to the general requirement of public access. The two exceptions claimed by TAX are discussed below.<sup>2</sup>

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<sup>2</sup> Fast’s appeal argued that section 92F-13(4), HRS, which allows agencies to withhold records protected from disclosure by a State or federal law or court order, does not apply. Neither TAX nor the AG argued that this section applies.

## I. Résumé Information

The AG, in a letter to RSI dated August 27, 2015,<sup>3</sup> informed RSI that it had completed review of the Proposal and the BAFO, and TAX would withhold “résumé information” contained in the Proposal at section 5.6.5 under section 92F-13(1), HRS, and OIP Opinion Letter Number 89-2<sup>4</sup>, to protect individual privacy interests. OIP conducted an *in camera* review of the information contained in the Proposal at section 5.6.5 titled “Staff Resumes.” It contains résumé information for 15 RSI employees and each résumé consists primarily of: name, job title, a “proposed role” that is basically a job title should the RFP have been awarded to RSI, direct telephone numbers, summaries of work experience and detailed work experience, relevant expertise which could include proficiency in certain computer programs, education, training, certifications, and professional references which include email addresses and telephone numbers.

Privacy concerns were raised with respect to the names of contractor employees in a prior OIP opinion. OIP found that, even assuming there was a significant privacy interest in the names of prospective employees named in a company’s bid for a State contract, that privacy interest was outweighed by the public’s interest in knowing whether a would-be State vendor possessed qualified personnel for the services to be provided. OIP Op. Ltr. No. 93-5 at 8-10. Here, OIP conducted an internet search and found that at least some of the RSI employees named in the Proposal and their résumé information could be linked online to RSI, including on RSI’s website. Any privacy interest in their names and résumé information is therefore minimal. Accordingly, OIP must find that, even if there was a significant privacy interest in RSI employee names and résumé information, the public interest in disclosure outweighs it. The names and résumé information cannot be withheld under the UIPA’s privacy exception. Further, OIP previously found that “[g]enerally, the disclosure of a list of a vendor’s professional or skilled personnel submitted to the State would not result in the frustration of a legitimate government function.” OIP Op. Ltr. No. 93-5 at 11.

Direct business telephone lines and email addresses of RSI employees, as well as contact information of personal references, may be withheld from disclosure under section 92F-13(3), HRS. See OIP Op. Ltr. No. 07-11 at 8 n. 14 (finding in footnote 14 that an individual has no privacy interest in business contact information, but direct telephone numbers and email addresses may be withheld under the

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<sup>3</sup> Citing section 3-122-58(b) and (c), HAR, the AG’s letter to RSI stated that it was meant to serve as its “written determination” regarding confidentiality which may be appealed to OIP under section 3-122-58(c), HAR.

<sup>4</sup> OIP Opinion Letter Number 89-2 found, in relevant part, that résumé information of unsuccessful candidates in a report to the governor by a private executive search firm relating to selection of a special master could be withheld under section 92F-13(1), HRS.

frustration exception if the information helps the agency to perform its functions more efficiently and individuals would be less likely to provide direct contact information if it were made public). Names of personal references may also be withheld under section 92F-13(3), HRS, so as not to dissuade such individuals from providing references to government agencies.

## II. Confidential Commercial and Financial Information

Agencies may invoke the frustration exception “to protect trade secrets, proprietary information, confidential commercial and financial information (‘confidential business information’ or ‘CBI’), *if disclosure would frustrate a legitimate government function.*” OIP Op. Ltr. No. 02-07 at 8 (emphasis in original). Confidential business information is information that is commercial or financial in nature, and which, if disclosed, would either (1) impair the agency’s ability to get necessary information in the future, or (2) cause substantial competitive harm to the competitive position of the person from whom the information was obtained. See, e.g., OIP Op. Ltr. Nos. 97-4 and 98-2. If the agency wishes to disclose the information because it does not believe its legitimate functions would be frustrated by the disclosure, then the frustration exception does not apply.

Under the first prong of the CBI test, the disclosure of information that was provided in the course of bidding for a government contract does not generally impair the agency’s ability to get such information in the future. OIP therefore looks to whether the second prong may apply here. A disclosure would cause substantial competitive harm when the following facts exist: (1) the submitter faces actual competition, and (2) there is a likelihood of substantial competitive harm. OIP Op. Ltr. No. 98-2 at 12. As there were other proposals submitted in addition to RSI’s, OIP finds that RSI faces actual competition.

OIP Opinion Letters Number 94-14 and 97-4 found that substantial competitive harm would result from the disclosure of actual costs or pricing information or information that would enable competitors to estimate profit margins and production costs. Examples cited with approval include selling prices, inventory balances, profit margins, purchase activity, cost of goods, and freight charges. OIP Op. Ltr. No. 94-14 at 6. OIP has previously stated that “general or mundane information about an entity,” such as a description of operations or of a marketing plan, is not protected as confidential business information. OIP Op. Ltr. No. 92-17 at 12.

Trade secrets are also protected under the UIPA’s frustration exception. See OIP Op. Ltr. No. 92-17 at 14-17. For information to be considered a trade secret, not only must a business have made reasonable efforts to maintain secrecy, but the information in question must not be readily ascertainable by proper means. Id. at 14. A technique that is generally known within an industry does not qualify as a

trade secret. Id. at 15. The burden is on the party alleging the existence of a trade secret to establish that claim. Id. at 16.<sup>5</sup>

### **A. Frustration Exception Not Claimed by TAX for Portions of the Proposal, so Disclosure is Required**

RSI asserted that much of the Proposal and the BAFO are confidential because the information is proprietary, or because disclosure would result in a competitive disadvantage, or because it constitutes trade secrets. However, the AG's August 27, 2015, letter to RSI stated that it was not withholding, and proposed disclosure of, specified records for reasons that OIP summarizes as follows:

- The executive summary; the Proposal's part 5 (except for staff résumés as discussed in section I, supra); and the BAFO were proposed for disclosure because they were general in nature and did not contain detailed proprietary or confidential commercial information;
- Listing of subcontractors was proposed for disclosure because there was no authority to withhold;
- Portions of part 6 of the Proposal (discussed in section B. infra) were proposed for disclosure because they were general in nature or responded directly to portions of the RFP and so were required to be public under section 3-122-58(a), HAR, and section 103D-308,

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<sup>5</sup> Regarding trade secrets, the Report of the Governor's Committee on Public Records and Privacy (1987) (Governor's Committee Report), upon which the UIPA was based, states, in relevant part:

There are, however, two aspects of the trade secret area that deserve special attention. First, as one of the Committee members noted, this area needs to be defined explicitly and carefully. Trade secrets should not just become a term for everything a business doesn't want public. The term has been defined by judicial decisions and it should not be difficult to define this area for Hawaii. The major concepts seem to be a pattern, recipe, formula, process, device, or compilation of information which is used in business and which provides a competitive advantage[.]”

Vol. I Governor's Committee Report 122 (1987).

- HRS;<sup>6</sup> and
- The Proposal at part 9, Attachment 4, and all other items relating to pricing consisting of price proposal documents were proposed for disclosure because they consisted of the general cost proposal and details for: hardware detail, software detail, implementation services, other costs, maintenance, T&M rates, RIS – Option Call center Budgetary Estimate, and RSI Option Microsoft SQL Server replacing Oracle, based on OIP Opinion Letter Number 90-15.

The AG's September 18, 2015, letter to RSI clarified that it proposed to disclose:

- Exhibit A – Core Tax System Requirements
- Exhibit B – Data Warehouse and Analytics Requirements
- Exhibit C – Customer Support Requirements
- RFP13013SW RS Attachment 03 Proposal Exception Summary Form.

In essence, this means that TAX does not claim that disclosure of these portions of the Proposal and the BAFO could cause the frustration of a legitimate government function.

RSI's letter to OIP dated September 22, 2015,<sup>7</sup> listed sections of the Proposal and the BAFO that the AG did not redact but that RSI had marked as confidential. RSI asked that the State reconsider its decision to disclose the Proposal's sections 6.1.4 items j) and k); 6.1.5 Table 6-2; 6.1.7; 6.3 at pages 385-390 and portions left unredacted on pages 393-394 and 399 through the first paragraph on 400; all portions left unredacted in 6.4; 6.5.2 Tables 6-22 and 6-24; certain paragraphs and tables in 6.2, 6.2.1.3, 6.2.1.6, 6.2.1.12, 6.2.2.1, 6.2.3.1, all portions left unredacted in

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<sup>6</sup> This law states:

**§103D-308 Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the governmental body which issued the invitation, request, or other solicitation, in accordance with rules adopted by the policy board. The reasons therefor shall be made part of the contract file.

HRS §103D-308 (2012).

<sup>7</sup> RSI's letter to the AG dated September 14, 2015, and its letter to OIP dated September 22, 2015, contained similar tables, both referred as Table 1, which listed the Proposal section, page numbers, and justification for redacting information that the AG intended to disclose.



6.6; and 6.10 Table 6-28, as well as eight portions of the BAFO. OIP appreciates the time taken by RSI to explain why it believes these items are confidential. However, there has been no assertion by TAX that it would suffer the frustration of any legitimate government function if these portions are disclosed. To the contrary, TAX asserted there is no basis to withhold them under the UIPA, and that it intended to disclose them. Based on the language of section 92F-13(3), HRS, and the CBI discussion in OIP Opinion Letter Number 02-07, OIP must find here that the portions of the Proposal that the AG did not propose for redaction, and all of the BAFO, are public because disclosure would not result in the frustration of any of TAX's legitimate government functions.<sup>8</sup>

## **B. Proposed Redactions and the Frustration Exception**

The AG's letter to RSI dated August 27, 2015, noted that the UIPA's legislative history allows agencies to withhold "proprietary information and trade secrets, or commercial and financial information" under the frustration exception.

### **1. Financial Statements and Appendixes**

The AG's August 27 letter to RSI further stated that to protect "proprietary information and trade secrets, or commercial and financial information" it would withhold financial statements for RSI and its subcontractors under section 92F-13(3), HRS. The AG's letter to RSI dated September 18, 2015, clarified that certain information was "considered confidential and would not be disclosed," specifically:

- Appendix A – Revenue Primer Implementation Methodology
- Appendix B – HI Project Management Plan and Project Schedule
- Appendix C – Site Specific Retrofitting Approach
- Appendix J – HI DoTAX Preliminary Project Work Plan.

As noted above, the frustration exception may be invoked by an agency to prevent substantial competitive harm on the part of the submitter of information to the agency. The frustration suffered by TAX would be instances in which disclosure of financial or commercial information submitted to an agency (such as in the case of submissions in response to an RFP) would impair the agency's ability to obtain accurate information in the future, or would create unfair advantages in a competitive market. See e.g., OIP Op. Ltr. No. 02-07 (finding that an agency could withhold access to records containing CBI submitted by health care plan contractors to prevent frustration of its legitimate government function of making determinations and adopting fee schedules).

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<sup>8</sup> RSI was advised in a letter from OIP dated September 28, 2015, that OIP cannot prevent TAX from disclosing the information it believes it is legally authorized to disclose, and RSI should consult with its own attorney on whether to seek an injunction from the courts to prevent disclosure.

So, under the frustration exception, TAX can withhold detailed financial information such as selling prices, inventory balances, profit margins, purchase activity, cost of goods, and freight charges. OIP Op. Ltr. No. 94-14 at 6. It appears the Appendixes may contain the “financial statements” referred to in the AG’s letter to RSI dated August 27, 2015, but this is not clear as OIP only received redacted copies of these Appendixes with a significant number of redacted pages: Appendix A – 32 pages, B – 51 pages, C – 2 pages, and J – 88 pages.

Especially when the specific type of information at issue is not one that has been the subject of prior OIP opinions, an agency needs to provide specific and direct evidence of the potential for competitive harm in order to provide a basis for “beneficial scrutiny” of its allegations. OIP Op. Ltr. 94-17 at 14-15. No explanation was given as to why the Appendixes are confidential or why disclosure would cause substantial competitive harm. TAX’s response to U RFO-P 16-1 did not present an argument supporting nondisclosure of any portion of the Appendixes. TAX stated that it would “cooperate fully with [OIP], and will abide by OIP’s ruling.” OIP understands that the AG’s letters to RSI explaining what would and would not be disclosed was intended as TAX’s response for both cases.

RSI’s letter to OIP stated that it “agreed with the State’s assessment” that information redacted by the AG is confidential. However, RSI did not elaborate as to why the proposed redactions were proper. Its focus was on arguing that information TAX intends to disclose should be withheld.

OIP cannot find that Appendixes A, B, C, and J are protected as CBI under the frustration exception because OIP was only presented with the redacted versions. That being said, TAX may redact the portions of the Appendixes containing detailed financial information such as selling prices, inventory balances, profit margins, purchase activity, cost of goods, and freight charges, insofar as TAX claims disclosure would cause the frustration of a legitimate government function.

## 2. Proposal

Again, TAX’s response to U RFO-P 16-1 did not present an argument supporting nondisclosure. It stated that it would “cooperate fully with [OIP], and will abide by OIP’s ruling.” OIP understands that the AG’s letters to RSI explaining what would and would not be disclosed was intended as TAX’s response for both cases. A copy of the Proposal with the AG’s proposed redactions, and an unredacted copy of the Proposal for comparison, were provided for OIP’s *in camera* review. In this section, OIP is only discussing the portions of the Proposal that the AG redacted.<sup>9</sup>

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<sup>9</sup> As noted in section A, supra, anything left unredacted by the AG must be considered public under the UIPA because no frustration has been invoked by TAX.

OIP understands that the proposed redactions made by the AG to the Proposal were done to protect “proprietary information and trade secrets, or commercial and financial information.” OIP reviewed the following sections of the Proposal:

- 6-1 Business Solution Description – pages 174-190
- 6.1.4 Objectives – pages 190-200
- 6.1.6 Functional, Technical, Implementation Services, and Ongoing Services Requirements – pages 203-223
- 6.2 Functional Requirements Overview – pages 228-236
- 6.2.1. Functional Area 1: Core Tax System – pages 236-353
- 6.2.2. Functional Area 2: Data Warehouse Analysis – pages 353-368
- 6.2.3. Functional Area 3: Customer Support – pages 368-383
- 6.3 Technical Requirements – pages 383-413
- 6.4 Value Added Services – pages 414-423
- 6.5 Implementation Services – pages 423-441
- 6.6 Project Schedule – pages 442-449
- 6.9 Services – pages 450-465
- 6.10 Deliverables and Acceptance – pages 466-471.

OIP cannot find that disclosure of any portion of these sections would result in the frustration of a legitimate government function or that disclosure would result in substantial competitive harm, because no arguments against disclosure were provided and no detailed explanations showing substantial competitive harm were provided. There was no explanation as to how disclosure would allow competitors to take advantage of RSI’s experience, or assertions that the processes described differ from industry standards or how their disclosure would cause substantial competitive harm. OIP also finds that the proposed redactions are unwarranted for the following reasons.

First, headings and subheadings, and names of tables, figures and graphics, generally should not be redacted throughout the Proposal. Headings and table and figure names in the Proposal do not provide enough information to threaten the disclosure of CBI that would cause substantial competitive harm. In addition, in many instances sentences that merely refer to tables or figures, or to other parts of the Proposal, were redacted, such as “[r]efer to Section 6.2.1 above where ... are discussed in detail.” There is no harm in disclosure of these types of sentences and redaction was unwarranted.

In addition, much of the information in these sections of the Proposal appears narrative and general in nature and does not give closely held details that would appear to be damaging if disclosed. These sections describe features of various software and other products. An internet search by OIP of “software used by government tax departments” found several types of software discussed in these sections. In addition, internet searches of the various products mentioned showed that they have their own websites that describe their respective capabilities. Some

portions appear “advertorial,” or meant to market RSI services to those less familiar with technological terminology or workings, making statements such as “[n]o other solution in the industry comes close” or “[product x] offers a convenient way to enrich the tables.” The redacted sections do not show codes, formularies or other proprietary information. OIP has previously opined that information that is already publicly available or that is “well known within . . . industry” cannot be a trade secret. OIP Op. Ltr. No. 92-17 at 17. OIP therefore cannot find that the proposed redactions in these pages would cause substantial competitive harm if disclosed. See Op. Ltr. No. 92-17 at 17 (finding information that is publicly available or well-known is not protected under the frustration exception). OIP Opinion Letter Number 92-17 also stated, at page 12, that “general or mundane information about an entity,” such as a description of operations or of a marketing plan, is not protected as confidential business information.

Graphics of machinery, and tables and figures (one of which includes a partial reproduction of a TAX form), and many screen shots do not show proprietary information. One redacted sentence included a link to an internet website. Disclosure of these types of information would not cause substantial competitive harm.

In summary, TAX and the AG made no argument that a government function would be frustrated by disclosure of the redacted portions of the Proposal, and there were no detailed explanations showing substantial competitive harm (*e.g.*, a description of how disclosure would allow competitors to take advantage of RSI’s experience, or assertions that the processes described differ from industry standards). Further, some of the information is already in the public domain, and much of it is “general or mundane information about an entity,” and is not protected as confidential business information. For all these reasons, OIP finds the redactions to the Proposal unwarranted and thus TAX is required to disclose the unredacted Proposal.

### **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  
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