

From: [Logan Sandoval](#)
To: [OIP](#)
Subject: Logan Halas (land lock -access)
Date: Friday, April 22, 2016 9:46:14 AM
Attachments: [Notice to Requester.pdf](#)

Aloha Zoe,

In regards to our brief phone conversation attached are the two documents requested.

My property is currently lock land; which the City BFS has acknowledged via the 2016 tax assessment. The State Ombudsman office is presently investigating why the City is not providing us access of necessity to our kuleana parcel which has both access&water right & trying to charge us a fee for these legal recorded rights.

This easement area that the City created thru condemnation takings is 15ft wide & approx. 1,000 long. The City has appraised this area for \$300,000. Is it not clear at all how they are coming up with this ridiculous amount which why I have required a copy to better understand the methodology they are trying to use.

Our land lock property is a little over 2acres and is valued at 500,000 so it's very obvious the City is trying to hide improper calculations of their findings performed by the City Land Division of Design & Construction.

Should you have any questions; please let me know.

Mahalo,
Logan
808-392-4494

NOTICE TO REQUESTER

TO: Logan Johnasen Halas
(Requester's name)

FROM: The Department of Budget and Fiscal Services, Aaron Honda, 768-3949
(Agency, and agency contact person's name, telephone number, & email address)
ahondal@honolulu.gov

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: April 15, 2016

DATE OF THIS NOTICE: April 21, 2016

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Appraisal Report
- 2.
- 3.
- 4.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, OR Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

RECORDS OR INFORMATION WITHHELD

APPLICABLE STATUTES

AGENCY JUSTIFICATION

Appraisal Report

HRS 92F-13(3)

Deliberative process privilege. Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: 4/15/16 - hand delivery

TO: C&C Budget Fiscal & Service Dept & C&C Dept of Design & Construction-Land Division
Agency that Maintains the Government Record (appraisal # LAP16-012 A.S.) dated 3/4/16 doc

Agency's Contact Information

FROM: Logan Johnsen Halas / 808-392-4494 / smilelogan@gmail.com
Requester's Name or Alias

Requester's Contact Information

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

WOULD LIKE: (Please check one or more of the options below, as applicable)

- To inspect the government record
- A copy of the government record: (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

Pick up at agency (date and time): Monday 4/18/16 @ 10:00am

Mail (address): _____

E-mail (address): smilelogan@gmail.com

Fax (toll free and only if available; provide fax number): _____

Other, if available (please specify): _____

If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

Electronic Audio Other (please specify): _____

Check this box if you are attaching a request for waiver of fees in the public interest (See waiver information on next page).



DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

CHERYL KAKAZU PARK
DIRECTOR

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

April 27, 2016

The Honorable Nelson H. Koyanagi, Jr.
Director
Department of Budget and Fiscal Services
530 South King Street, Room 208
Honolulu, HI 96813

Re: Notice of Appeal from Denial of Access to General Records
(U APPEAL 16-34)

Dear Director Koyanagi:

The Office of Information Practices (OIP) has received an appeal from Ms. Logan Johnasen Halas with respect to Department of Budget and Fiscal Services, City and County of Honolulu's (B&F-HON) denial of her request for records made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, Ms. Johnasen Halas indicated that she made a written request to B&F-HON dated April 15, 2016, for access to an appraisal report.

Ms. Johnasen Halas provided OIP with a copy of B&F-HON's Notice to Requester dated April 21, 2016, in which B&F-HON advised Ms. Johnasen Halas that B&F-HON was withholding the requested records in accordance with sections 92F-13(3), HRS.

B&F-HON's response to this appeal is B&F-HON's opportunity to provide additional justification for its denial, or any additional information that B&F-HON would like OIP to consider regarding this appeal. Within ten business days of receipt of this notice, please provide OIP with a written statement that includes the information listed in the enclosed summary of appeal procedures. Please remember that the UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012).

Please provide OIP with an unaltered copy of the appraisal report for use in reviewing B&F-HON's denial of Ms. Johnasen Halas's request. See HRS § 92F-42(5) (2012). OIP would appreciate receiving the copy of the records no later than ten business days from receipt of this notice. For your information, OIP will destroy the records and any copies of the records in its possession upon completion of this matter. If you would prefer that the records and any copies of the records be

The Honorable Nelson H. Koyanagi, Jr.

April 27, 2016

Page 2

returned to you at the conclusion of this matter, please let OIP know. Even where OIP believes a record cannot be withheld under the UIPA, OIP will not disclose the record to the requester. If the record is to be disclosed, disclosure will be by the agency maintaining the record and not by OIP.

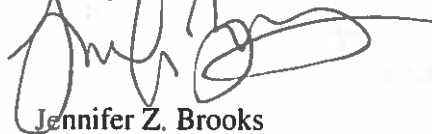
Please be advised that, for purposes of complying with the UIPA, B&F-HON should not destroy a requested record that may be required to be made available for public inspection by OIP or the court. See OIP Op. Ltr. No. 92-13 at 6 n.1.

Please also be advised that a record requester need not wait for OIP's decision on this appeal, and may file a lawsuit for access within two years after an agency denial. HRS § 92F-15 (2012).

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.

Thank you in advance for your cooperation and assistance in this matter. Please do not hesitate to contact me if you have any questions or require assistance in responding to this letter.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

JZB:za
Enclosures

cc: Ms. Logan Johnsen Halas (without enclosures)



DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

CHERYL KAKAZU PARK
DIRECTOR

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Appeal Procedures and Responsibilities of the Parties

This statement of appeal procedures provides an informational summary of the applicable procedures and the parties' responsibilities in an appeal before OIP pursuant to chapter 2-73, Hawaii Administrative Rules (HAR). The procedures described here are more fully set out in chapter 2-73 itself, which controls in the event of any inconsistency between its language and the language of this informational summary.

A party may contact OIP to request an extension of a deadline.

1. Agency response (HAR §§ 2-73-14 and -15)

The agency's written response is due ten business days after it receives the notice of appeal from OIP. Its written response must include:

- (1) a concise statement of the factual background;
- (2) a list identifying or describing each record withheld
- (3) An explanation of the agency's position, including its justification for denying access to records, with citations to the specific statutory sections and other law supporting the agency's position;
- (4) Any evidence necessary to support the agency's argument; and
- (5) Contact information for the agency officer or employee who is authorized to respond and make representations on behalf of the agency concerning the appeal.

If checked, the agency's response must include, for OIP's *in camera* review, an unredacted copy of

the records to which access was denied

the minutes of the relevant meeting

other records:

Where the agency claims that a record is protected by the attorney-client privilege, the agency may request to submit to OIP the record in redacted form in order to preserve this privilege. OIP will generally allow such a request where the application of the claimed privilege can be determined by review of the redacted record.

2. Other submissions to OIP (HAR § 2-73-15)

In addition to the information and materials submitted as part of the appeal, OIP may ask the person who filed the appeal, or any other parties participating in the appeal, to submit a written statement or statements. If OIP does so, OIP will also let all the parties know when the statement is due, whether there are any requirements as to the form it takes or what it includes, and when any response by the agency or other parties is due.

OIP can consider information or materials submitted by any person, not just parties to the appeal. However, if someone other than the person who filed the appeal and the responding agency wants to participate in the appeal as a party or in some other way, that person must submit a written request and must explain the reason for the request, and OIP will then determine whether to allow such participation.

Because an appeal before OIP is an informal proceeding, a party's or third person's communication with OIP can be *ex parte*, *i.e.*, outside the presence of the other party or parties. However, OIP does have the option to require the parties to copy each other on submissions.

3. OIP's Decision (HAR §§ 2-73-15, -17, -18, and -19)

OIP's written decision on the appeal will be sent to all parties when it is issued. There is no specific deadline set for OIP's decision on an appeal.

A party can request that OIP reconsider its decision. The deadline to request reconsideration is ten business days after the date the decision was issued. If a party misses the deadline for reconsideration or if OIP declines to reconsider the opinion, the party still has the option of appealing the decision to court. Section 92F-43, Hawaii Revised Statutes (HRS), sets out the standard for an agency's appeal of an OIP decision. For a record requester or Sunshine Law complainant, appeal to court is provided by section 92F-15, HRS (denial of general record request), section 92F-27, HRS (denial of a personal record request), or sections 92-11 and -12, HRS (Sunshine Law complaint).

In some instances, OIP may issue a notice dismissing all or part of an appeal, instead of issuing a written decision. The circumstances in which OIP can dismiss an appeal are listed in section 2-73-18. OIP may also ask (but will not require) the parties to mediate the appeal, or an issue within the appeal, as an alternative means to resolve the appeal.

000008

From: [OIP](#)
To: ["bfsmail@honolulu.gov"](mailto:bfsmail@honolulu.gov)
Cc: ["ahonda1@honolulu.gov"](mailto:ahonda1@honolulu.gov)
Bcc: [Brooks, Jennifer Z](#)
Subject: Notice of Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Wednesday, April 27, 2016 10:38:00 AM
Attachments: [0427 Ltr to B&F-HON.pdf](#)
[0427 Appeal Procedures & Responsibilities of Parties.pdf](#)
[0422 Email fr Johnasen Halas.pdf](#)
[0421 NTR fr B&F-HON to Johnasen Halas.pdf](#)

Director Koyanagi:

Please see the attachments listed below in regards to a request we received from Ms. Logan Johnasen Halas:

- A letter dated April 27, 2016 from the Office of Information Practices
- The Appeal Procedures and Responsibilities of the Parties
- Ms. Johnasen Halas' request to OIP
- B&F-HON's Notice to Requestor to Ms. Johnasen Halas

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street, #107
Honolulu, HI 96813
Ph (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>

000009

From: [OIP](#)
To: ["Logan Sandoval"](#)
Bcc: [Brooks, Jennifer Z](#)
Subject: Notice of Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Wednesday, April 27, 2016 10:39:00 AM
Attachments: [0427 Ltr to B&F-HON.pdf](#)
[0427 Appeal Procedures & Responsibilities of Parties.pdf](#)

Ms. Johnsen Halas:

Attached is a letter dated April 27, 2016 from the Office of Information Practices regarding your request for assistance from OIP. Also attached is the Appeal Procedures and Responsibilities of the Parties.

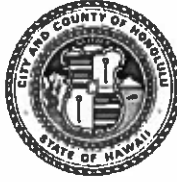
Please contact our office if you have difficulty opening the attachments.

Thank you,

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State of Hawaii
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Ph (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
 530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
 PHONE (808) 768-5193 * FAX (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
 MAYOR



DONNA Y. L. LEONG
 CORPORATION COUNSEL
 PAUL S. AOKI
 FIRST DEPUTY CORPORATION COUNSEL

May 11, 2016

VIA HAND DELIVERY

Jennifer Z. Brooks, Esq.
 Office of the Lieutenant Governor
 Office of Information Practices
 No. 1 Capitol District Building
 250 South Hotel Street, Suite 107
 Honolulu, Hawaii 96813

**Re: Notice of Appeal from Denial of Access to General Records
 (U APPEAL 16-34)
 Department of Budget and Fiscal Services
 City and County of Honolulu**

Dear Ms. Brooks:

This responds to your letter dated April 27, 2016, to Nelson H. Koyanagi, Jr., Director of the Department of Budget and Fiscal Services ("BFS"), City and County of Honolulu ("City") regarding the appeal of Ms. Logan Johnsen Halas with respect to BFS's denial of her request for records, specifically an appraisal report. BFS's Notice to Requester dated April 21, 2016, advised Ms. Johnsen Halas that BFS was not disclosing the appraisal in accordance with Section 92F-13(3), Hawaii Revised Statutes ("HRS"). You indicated in your letter that BFS may respond to this appeal by providing additional justification for its denial, or any additional information for the Office of Information Practices ("OIP") to consider regarding this appeal.

Brad and Logan Johnsen Halas are seeking an easement over the City's Kahaluu Flood Control maintenance road to provide legal access and water to the Johnsen Halas lot. The subject appraisal report was prepared by the City Department of Design and Construction ("DDC"), Land Division, at the request of BFS, to provide an estimate of value for the easement so that the purchase price of the easement could be negotiated. The DDC appraisal dated March 4, 2016, therefore provided a value range "as a guideline for negotiation purposes." Pursuant to your request, a copy of the confidential appraisal report is attached hereto for your *in camera* review. BFS requests that this confidential appraisal report be destroyed upon completion of this appeal.

Jennifer Z. Brooks, Esq.
May 11, 2016
Page 2

The appraisal contains predecisional and deliberative interdepartmental communications to aid BFS in its negotiations with the purchaser of the easement. Such material falls within the deliberative process privilege. Premature disclosure of the appraisal to the purchaser would definitely frustrate a legitimate government function in the City's attempt to negotiate a fair purchase price for the easement. The appraisal provides a guideline for negotiations. If the purchaser was given a copy of such materials prior to negotiating a purchase price, the City would lose any and all leverage in negotiating a fair purchase price.

In a recent Memorandum Opinion dated March 5, 2015, U Memo 15-8, regarding a request from the Aina Haina Community Association to BFS, OIP confirmed that BFS is not required to disclose internal communications between City departments when the communications contain predecisional and deliberative material that falls within the deliberative process privilege. When the requested records contain such internal communications, they may be withheld under the UIPA's exception to disclosure to avoid the frustration of a legitimate government function. HRS Section 92F-13(3).

As part of the decision-making process in selling the City's real property interests, BFS solicits an estimate of value from DDC, another City agency, for use in BFS's negotiations in reaching a purchase price. There is no City ordinance or State statute that expressly requires public disclosure of such communications. In the instant case, BFS received the subject appraisal prior to the decision on the purchase price for the easement. DDC's appraisal provided an estimated range of value for negotiation purposes, which was a direct part of the decision-making process. Such communications must be withheld from public disclosure, and especially cannot be disclosed to the proposed purchaser, when the City has not yet completed negotiations of a purchase price. Such disclosure would have a chilling effect upon BFS obtaining such an estimate of value for negotiation purposes, and would thus impede BFS's negotiation efforts. Disclosure of the appraisal at this point in the negotiation and decision-making process would frustrate the legitimate government function of negotiating and ultimately determining a fair purchase price for City assets. Therefore, BFS may withhold the appraisal from public disclosure under the "frustration of a legitimate government function" exception under HRS Section 92F-13(3). See OIP Opinion Letter Nos. 90-8 and 04-15.

Sincerely,



DON S. KITAOKA
Deputy Corporation Counsel

DSK:mw
Attach.
16-03113/497243

From: [Logan](#)
To: [OIP](#)
Subject: Re: Notice of Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Friday, May 13, 2016 7:16:26 AM

To The Office of Information Practices,

Aloha, Zoe was helping me with my inquiry below. Please let me know if any response from the City Budget & Fiscal Services has been received?

Mahalo,
Logan
392-4494

Sent from my iPhone

On Apr 27, 2016, at 10:40 AM, OIP <oip@hawaii.gov> wrote:

Ms. Johnasen Halas:

Attached is a letter dated April 27, 2016 from the Office of Information Practices regarding your request for assistance from OIP. Also attached is the Appeal Procedures and Responsibilities of the Parties.

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street, #107
Honolulu, HI 96813
Ph (808) 586-1400
Facsimile: (808) 586-1412
Email: oip@hawaii.gov
Website: <http://oip.hawaii.gov>

<0427 Ltr to B&F-HON.pdf>

<0427 Appeal Procedures & Responsibilities of Parties.pdf>

000013

From: OIP
To: ["Logan"](#)
Bcc: [Brooks, Jennifer Z](#)
Subject: RE: Notice of Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Friday, May 13, 2016 8:12:00 AM
Attachments: [0511 Ltr fr B&F-HON.pdf](#)

Ms. Johnsen-Halas:

Attached is the response from B&F-HON with the exception of the documents for in camera review.

Please contact our office if you have difficulty opening the attachment.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street, #107
Honolulu, HI 96813
Ph (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>

From: Logan [mailto:smilelogan@gmail.com]
Sent: Friday, May 13, 2016 7:16 AM
To: OIP <oiip@hawaii.gov>
Subject: Re: Notice of Appeal from Denial of Access to General Records (U APPEAL 16-34)

To The Office of Information Practices,

Aloha, Zoe was helping me with my inquiry below. Please let me know if any response from the City Budget & Fiscal Services has been received?

Mahalo,
Logan
392-4494

Sent from my iPhone

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Ms. Johnsen Halas:

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Please contact our office if you have difficulty opening the attachments.

Thank you,

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<0427 Ltr to B&F-HON.pdf>

<0427 Appeal Procedures & Responsibilities of Parties.pdf>

June 23, 2016

Via Hand Delivery

Jennifer Z. Brooks, Esq.
Office of the Lieutenant Governor
Office of Information Practices
No.1 Capital District Building
250 South Hotel St. Suite 107
Honolulu, Hawaii 96813

RE: Notice of Appeal from Denial of Access to General Records
U APPEAL 16-34
Department of Budget and Fiscal Services
City and County of Honolulu

Dear Ms. Brooks,

This responds to the letter dated May 11, 2016 from the Department Of Corporation Counsel on behalf Of Director Nelson H. Koyanagi Jr. of the Department of Budget and Fiscal Services ("BFS"), City and County of Honolulu ("City").

Since May of 2014 we have diligently communicated with BFS and many other various City Agencies to arrive at the point we are at today with establishment of our easement to a public road. While we do not agree that our request for release of this Appraisal report would frustrate BFS, you can only imagine how emotionally disturbing this process has been for my husband & I along with four other elderly property owners whom resolutely feel that negotiations are long overdue.

Upon your "in camera" review; we would like to request a written determination as to whether this document must be disclosed to us. We truly appreciate your consideration and time with this matter.

Sincerely,



Brad & Logan Johnsen Halas
(808) 392-4494 smilelogan@gmail.com
Po Box 869 Kaneohe, HI 96744

From: [OIP](#)
To: ["Logan"](#)
Bcc: [Brooks, Jennifer Z](#)
Subject: Response to 6/23 Letter
Date: Thursday, June 23, 2016 3:58:00 PM

Mr. and Ms. Johnasen Halas,

I received your June 23 letter regarding your pending appeal file, U APPEAL 16-34, in which you ask OIP for a written determination of whether the record at issue must be disclosed to you after OIP's in camera review of the record.

The purpose of a UIPA appeal to OIP is to determine whether an agency properly denied access to a record – in other words, whether the agency must disclose the record at issue to the requester. That determination is issued in the form of a written opinion, which is sent to the requester and the agency. You already have a pending appeal regarding this issue. Thus, you can expect to get a written determination at the conclusion of the appeal.

If you have further questions regarding the appeal process, please don't hesitate to contact me.

Jennifer Z. Brooks
Staff Attorney

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DAVID Y. IGE
GOVERNOR

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CHERYL KAKAZU PARK
DIRECTOR

January 2, 2019

VIA EMAIL

The Honorable Nelson H. Koyanagi, Jr.
Director
Department of Budget and Fiscal Services

Ms. Logan Johansen Halas

Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)

Dear Director Koyanagi and Ms. Johansen Halas:

As you are aware, the Office of Information Practices (OIP) has a pending appeal filed by Ms. Logan Johnasen Halas with respect to the denial by the Department of Budget and Fiscal Services, City and County of Honolulu (B&F) of her request for records made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, Ms. Johnasen Halas indicated that she made a written request to B&F-HON dated April 15, 2016, for access to an appraisal report.

In response to her record request and to this appeal, B&F asserted that section 92F-13(3), HRS, allowed B&F to withhold all or part of the requested records in order to avoid the frustration of a legitimate government function. Specifically, DOH-CAB argued that the deliberative process privilege (DPP) allowed it to withhold the requested records under the UIPA's frustration exception.

OIP has issued a long line of opinions applying the DPP since 1989, based on the federal Freedom of Information Act and related case law, protecting certain predecisional and deliberative government records from disclosure, including when appropriate, intra- and inter-agency communications comprising part of a process by which governmental decisions and policies are formulated. However, the Hawaii Supreme Court, in a 3-2 decision, recently overruled all OIP opinions which had recognized the DPP as a valid exception to disclosure allowing government agencies to withhold access to government records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function. In light the decision in Peer News LLC v. City and County of Honolulu, SCAP-16-0000114, a copy of which is enclosed, OIP will no longer recognize the DPP under the UIPA's frustration exception to disclosure. Agencies, including B&F,

The Honorable Nelson H. Koyanagi

Ms. Logan Johansen Halas

January 2, 2018

Page 2

that have relied on the DPP to withhold records in cases currently pending before OIP, are being allowed to submit supplemental arguments.

At this time, OIP asks B&F to review the enclosed decision, consult with your legal counsel if you deem it appropriate, and determine whether you would like to provide a new argument as to why the records subject to this appeal may be withheld from the requester under one or more subsections of section 92F-13, HRS. In the alternative, please provide the requester with an amended notice to requester informing her that you will be disclosing the records you previously sought to protect under the DPP. **If you choose to provide an amended notice to requester, please provide OIP with a copy** for purposes of resolving this appeal. **Please provide either your revised argument against disclosure or your amended notice to requester by February 1, 2019.** This additional time is being provided in consideration of the recent holidays and the fact that the legislative session is about to begin.

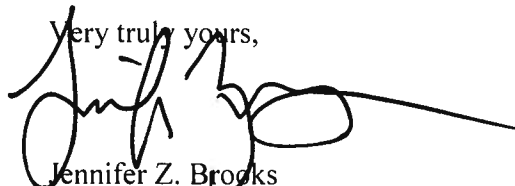
Please remember that the UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012). Please also be advised that a record requester need not wait for OIP's decision on this appeal and may file a lawsuit for access within two years after an agency denial. HRS § 92F-15 (2012). Even if the time for filing a lawsuit in this particular case may have passed, the requester can make a new request for the same records and file a lawsuit if the agency again denies the request.

OIP asks Ms. Johnasen Halas to confirm to OIP by February 1, 2019, whether she is still interested in receiving an opinion in this file. **If OIP does not hear back from you by February 1, we will assume you no longer interested in receiving an opinion and will close this file.**

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.

Thank you in advance for your cooperation and assistance in this matter. Please do not hesitate to contact me if you have any questions or require assistance in responding to this letter.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

JZB:za

Enclosure

From: [OIP](#)
To: ["bfsmail@honolulu.gov"](mailto:bfsmail@honolulu.gov)
Bcc: [Brooks, Jennifer Z](#)
Subject: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Wednesday, January 02, 2019 2:05:00 PM
Attachments: [0102 Ltr to B&F-HON.pdf](#)
[1043620989.pdf](#)

Director Koyanagi:

Attached is a letter dated January 2, 2019 from the Office of Information Practices regarding the above referenced file. Also attached is the Supreme Court's decision on deliberative process privilege (DPP).

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street, #107
Honolulu, HI 96813
Ph (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>

000020

From: [OIP](#)
To: ["smilelogan@gmail.com"](mailto:smilelogan@gmail.com)
Bcc: [Brooks, Jennifer Z](#)
Subject: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Wednesday, January 02, 2019 2:05:00 PM
Attachments: [0102 Ltr to B&F-HON.PDF](#)
[1043620989.pdf](#)

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Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>

From: [Logan Sandoval](#)
To: [OIP](#)
Subject: Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Thursday, January 03, 2019 8:47:39 AM

Dear Jennifer Z Brooks,
Aloha and Happy New Year. I am responding to confirm receipt of this email and attachments. Myself and other family member owners of our land locked kuleana property are still very **interested** in receiving an opinion on this withheld "Appraisal" report. As I mentioned before this negotiation process with B.F.S. And it's agencies have been delayed since 2014 and no faithful negotiation responses have been returned to my legal advisor. I will be relaying this new info with the State Ombudsman's office as well, as they are interested in supporting my complaint as well. Thank you for taking the time to followup on my request. Your time is truly appreciated. Please accept this email correspondence in addition to a formal letter I will send out in mail.

Sincerely,
Logan Johnasen Halas
808-392-4494

On Wed, Jan 2, 2019 at 2:05 PM OIP <oip@hawaii.gov> wrote:

Ms. Johnasen Halas:

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Thank you,

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State of Hawaii
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Honolulu, HI 96813

Ph (808) 586-1400

Facsimile: (808) 586-1412

Email: oiip@hawaii.gov

Website: <http://oiip.hawaii.gov>

From: [OIP](#)
To: "[Logan Sandoval](#)"
Bcc: [Brooks, Jennifer Z](#)
Subject: RE: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Thursday, January 03, 2019 9:09:00 AM

Ms. Johansen Halas,

Thank you for your quick response – your email is sufficient to confirm that you are still interested in obtaining these records and you do not need to go to the trouble of also sending a letter via postal mail. If the agency continues to maintain its denial of the records, I would expect to be working on the opinion for this file within the first few months of this year.

Aloha,
Jennifer Brooks

Jennifer Z. Brooks
Staff Attorney

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Website: <http://oiip.hawaii.gov>

From: Logan Sandoval <smilelogan@gmail.com>
Sent: Thursday, January 03, 2019 8:47 AM
To: OIP <oiip@hawaii.gov>
Subject: Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)

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Sincerely,

000024

Logan Johnsen Halas
808-392-4494

On Wed, Jan 2, 2019 at 2:05 PM OIP <oiip@hawaii.gov> wrote:

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Website: <http://oiip.hawaii.gov>

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
 530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
 PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

KIRK CALDWELL
 MAYOR



NELSON H. KOYANAGI, JR.
 DIRECTOR

MANUEL T. VALBUENA
 DEPUTY DIRECTOR

February 1, 2019

Ms. Jennifer Z. Brooks, Esq.
 Office of the Lieutenant Governor
 Office of Information Practices
 No. 1 Capitol District Building
 250 South Hotel Street, Suite 107
 Honolulu, Hawaii 96813

RECEIVED BY
 OFF OF INFO PRACTICES
 '19 FEB -5 AM 1:24

Dear Ms. Brooks:

Subject: Appeal from Denial of Access to General Records
 (U APPEAL 16-34)

On April 15, 2016, Ms. Logan Johnsen Halas provided written notice to the Department of Budget and Fiscal Services (BFS) requesting records pertaining to the grant of easement along the Kahaluu Flood Control maintenance road for legal access and utility purposes. Specifically, the written request to BFS was for access to an appraisal report. On April 21, 2016, in accordance with Section 92F-13(3), Hawaii Revised Statutes (HRS), BFS responded that as part of the deliberative process privilege (DPP) and in order to avoid the frustration of a legitimate government function, the request for the appraisal report could not be granted.

You recently informed this department that the Office of Information Practices (OIP) will no longer recognize the DPP under the HRS as a valid exception to disclosure under HRS Section 92F-13(3). OIP has informed BFS that cases that are currently pending on appeal that have relied on the DPP in accordance with the HRS will have the opportunity to submit revised arguments against disclosure to the requester.

In this case, the City is denying the request under HRS Section 92F-13(3) because the appraisal report is a government record that by its nature must be confidential in order for the government to avoid the frustration of a legitimate government function. The value of the easement Ms. Johnsen Halas is seeking is based on an appraisal report that was prepared by the City Department of Design and Construction (DDC), Land Division at the request of BFS. The purpose of the appraisal report is to provide an estimated range of values for the easement so that the purchase price could be negotiated. The appraisal report is to be used as the basis for BFS'

Ms. Brooks
February 1, 2019
Page 2

negotiation strategy for the purchase of the easement. As the City has not yet completed negotiations for a purchase price, it would frustrate a legitimate government function to prematurely disclose the appraisal report. By disclosing the appraisal report, it would reveal the high and low range of values that the City would negotiate for the easement and severely hinder BFS' ability in achieving a fair purchase price for the easement. The City would lose any and all leverage in the negotiating decision making process.

Accordingly, the City is denying the HRS Chapter 92F request based on the revised argument presented above. Should you have any questions, please contact Aaron Honda at 768-3949.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wendy K. Imamura', with a long horizontal flourish extending to the right.

Wendy K. Imamura
Purchasing Administrator

WKL:ah

From: [Logan Sandoval](#)
To: [OIP](#)
Subject: Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Friday, February 15, 2019 4:00:40 PM

Aloha Jennifer Brooks,

Wanted to share that I received a certified letter from Budget Fiscal Services dated 2/1/19 which is informing me that they will continue to deny access to this general “easement apprisel” record in accordance with section 92F-12(3), HAWAII Revised Statues.

Please keep in mind this easement Appraisal document was generated back in April 21,2016. It is now 2019 and BFS have not been even begun to engage with us in any good faith negotiations.

It’s absurd how BFS is trying to avoid frustration of a legitimate government function, when this government agency is acknowledging our land lock, hindering us the release of our building permit, making us pay the highest land tax without a home exemption, and allowing the Board of Water supply to charge us service fees for our water meter we have already paid into to have installed outside this easement area.

We have already stated to BFS which Hawai’i state laws they are breaking by not giving us right of access to our kuleana parcel, we have even shared with the City’s Corp Counsel how this historical access was changed over time. The City themselves cannot provide proof of payment from the Cashiers circuit court office for the condemnation taken from two of our family properties to create this easement area; and to top it all off we as adjacent property owners were not even offered the option to these leftover highway remnants before the City purchased these easement from the State for only \$20,000 and no re-surveying of area was done.

The BFS letter goes on to explain that by disclosing the appraisal report, it would reveal the high and low range of values created by the City DEPT of Design & Construction (DDC) and lose any any all leverage in negotiating process. This is totally unjust knowing the facts that our kuleana property which managed 100 lo’i patches with water rights has been raped of all cultural rights and practices; and that the City BFS are continuing to increase our land tax year to year but yet denying us access rights which truly decreases our land value and reasonable use of.

Even working with the City’s Subdivision DEPT of DPP, we found that the City themselves lacked “missing” maps in relation to getting the City to establish a Resolution. Supposedly these maps were found internally, but also were never released to me which makes me question how exactly was Subdivison DEPT pushed thru past transactions if just payment was not made during condemnation.

I feel it’s not fair to give us the highest appraisal amount based on the lot adjacent to us that has a two story house and already a recorded easement. We as agricultural land owners should be given the lowest value since the City has technically been over charging us in land taxes for over 30years.

Please let me know if you would like me to scan over a copy of this BFS letter dated 2/1/19 to you.

Yours truly,
Logan Johnsen Halas

On Thu, Jan 3, 2019 at 9:09 AM OIP <oiip@hawaii.gov> wrote:

Ms. Johansen Halas,

Thank you for your quick response – your email is sufficient to confirm that you are still interested in obtaining these records and you do not need to go to the trouble of also sending a letter via postal mail. If the agency continues to maintain its denial of the records, I would expect to be working on the opinion for this file within the first few months of this year.

Aloha,

Jennifer Brooks

Jennifer Z. Brooks

Staff Attorney

Office of Information Practices

State of Hawaii
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[250 S. Hotel Street, #107](#)

[Honolulu, HI 96813](#)

[Ph \(808\) 586-1400](#)

Facsimile: (808) 586-1412

Email: oiip@hawaii.gov

Website: <http://oiip.hawaii.gov>

From: Logan Sandoval <smilelogan@gmail.com>

Sent: Thursday, January 03, 2019 8:47 AM

To: OIP <oiip@hawaii.gov>

Subject: Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)

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808-392-4494

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Email: oiip@hawaii.gov

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From: [OIP](#)
To: "[Logan Sandoval](#)"
Bcc: [Brooks, Jennifer Z](#)
Subject: RE: Appeal from Denial of Access to General Records (U APPEAL 16-34)
Date: Tuesday, February 19, 2019 8:20:00 AM

Mr. Sandoval:

If you want to send a copy of the letter, we'll be happy to consider it in issuing our decision. However, BFS did confirm that they are continuing to deny access in their letter to OIP of February 1, so we are aware that they have not provided the requested records. I expect to be working on this opinion once my legislative work subsides (I'll be fully occupied with the Legislature for at least another month, unfortunately).

Aloha,
Jennifer Brooks

Jennifer Z. Brooks
Staff Attorney

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State of Hawaii
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Honolulu, HI 96813
Ph (808) 586-1400
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Website: <http://oiip.hawaii.gov>

From: Logan Sandoval <smilelogan@gmail.com>
Sent: Friday, February 15, 2019 4:00 PM
To: OIP <oiip@hawaii.gov>
Subject: Re: Appeal from Denial of Access to General Records (U APPEAL 16-34)

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From: Logan Sandoval <smilelogan@gmail.com>
Sent: Thursday, January 03, 2019 8:47 AM
To: OIP <oiip@hawaii.gov>
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Thank you,

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Website: <http://oiip.hawaii.gov>

T/c with Reid Yamashiro, Deputy Corp Counsel

Wednesday, March 13, 2019 10:39 AM

March 13, 2019

In response to my query as to whether the City believes section 171-17(e), HRS, applies, as well as the analysis based on it in OIP Op. Ltr. No. 91-10, Mr. Yamashiro pointed me to HRS section 46-66, which authorizes the counties to sell land, and chapter 37, Revised Ordinances of Honolulu, which sets out the procedures by which the City carries out a sale of land.

Regarding any significant differences that may distinguish the City's interest in protecting an appraisal from the state's, he noted that this is a negotiated sale rather than a sale at auction. I mentioned that section 171-17(e) applies to negotiated sales also. He will call back or email if he recollects another difference OIP should consider.

-JZB



**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

DAVID Y. IGE
GOVERNOR

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
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www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

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).

OPINION

Requester: Logan Johnsen Halas
Agency: Honolulu Department of Budget and Fiscal Services
Date: April 24, 2019
Subject: Appraisal Report for Possible Easement (U APPEAL 16-34)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Department of Budget and Fiscal Services of the City and County of Honolulu (City) (BFS) properly denied 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 April 22, 2016, and attached materials; a letter from BFS to OIP dated May 11, 2016, and attached materials; Requester's email to OIP dated June 23, 2016; OIP's letter to Requester and BFS dated January 2, 2019; Requester's email to OIP dated January 3, 2019; a letter dated February 1, 2019, from BFS to OIP; and OIP's notes of a telephone conversation with BFS's Deputy Corporation Counsel on March 13, 2019.

QUESTION PRESENTED

Whether an appraisal report prepared for the sale of an interest in county land must be disclosed to the public upon request under the UIPA.

BRIEF ANSWER(S)

Yes. Although appraisal reports relating to the sale of an interest in county land are not made public by statute, as appraisal reports prepared for State of Hawaii (State) lands are, OIP cannot logically conclude on the basis of that distinction that disclosure of appraisal reports would provide a manifestly unfair advantage to purchasers of interests in county land when disclosure of similar reports does not provide a manifestly unfair advantage to purchasers of interests in State lands. See HRS § 92F-13(3) (2012) (UIPA exception for records whose disclosure would frustrate a legitimate government function); HRS § 171-17(e) (Supp. 2018) (specifying that appraisal reports for State lands are public); OIP Op. Ltr. No. 91-10 (concluding it would be illogical to distinguish effect of disclosure of appraisal reports prepared to set lease prices, made public by statute, from those prepared to set permit prices, not addressed by statute, and therefore no UIPA exception applied to either). Thus, appraisal reports relating to the sale of an interest in county land do not fall under the UIPA's exception for records whose disclosure would frustrate a legitimate government function and they must be publicly disclosed upon request under the UIPA.

FACTS

Requester is an owner of a landlocked kuleana¹ lot, for which she and her family seek to purchase an easement over the City's Kahaluu Flood Control maintenance road for legal access and water to Requester's lot.² According to Requester, BFS appraised the easement value at \$300,000. Seeking to understand the basis for this appraisal, Requester asked BFS for a copy of the appraisal report prepared for it by the City Department of Design and Construction (DDC), which included market analysis and a value range "as a guideline for negotiation purposes."

In its response to this appeal, BFS initially argued that the appraisal report could be withheld under the UIPA's exception for records whose disclosure would

¹ "Kuleana' means 'a small area of land such as were awarded in fee by the Hawaiian monarch, about the year 1850, to all Hawaiians who made application therefor.'" Bremer v. Weeks, 104 Hawai'i 43, 46 n.5, 85 P.3d 150, 153 n.5 (2004) (citation omitted). The Hawaii Supreme Court has recognized kuleana owners' entitlement under section 7-1, HRS, to a right of way based on necessity, or ancient or historical use. See id. at 42-51 (discussion of prior cases recognizing kuleana owners' entitlement to a right of way).

² Requester's complaint to OIP also alleged that her lot is already entitled to access and water rights, and that BFS is trying to charge for what are legal recorded rights. The question of the lot's legal entitlement to access and water rights is beyond OIP's jurisdiction and thus is not considered in this opinion.

frustrate a legitimate government function for two reasons: first, the appraisal report contained predecisional and deliberative interdepartmental communications falling within the deliberative process privilege form of frustration, and second, its disclosure to Requester in particular would frustrate BFS's "legitimate government function of negotiating and ultimately determining a fair purchase price for City assets." See HRS § 92F-13(3).

OIP subsequently notified BFS that based on Peer News LLC v. City and County of Honolulu, 143 Haw. 472 (2018), OIP would no longer recognize the deliberative process privilege under the UIPA's frustration exception and offered BFS the opportunity to supplement its position in light of that decision. In response, BFS abandoned its argument that the appraisal could be withheld under the UIPA's frustration exception based on the deliberative process privilege. At the same time, BFS reiterated its other argument, that the appraisal report was created to provide the basis for BFS's strategy in negotiating a purchase price for the requested easement and disclosure of the range of values in the appraisal report would frustrate BFS's ability to achieve a fair purchase price for the easement. See HRS § 92F-13(3).

DISCUSSION

I. Law Regarding Appraisal Reports for Sale or Lease of State Lands

Both by statute and based on prior OIP precedent, it is clear that appraisal reports prepared for the sale or lease of State lands (including the negotiated sale of an easement) are open to the public. Section 171-17(e), HRS, currently provides that for State lands,

Complete appraisal reports, including all comparables relied upon in the appraisal reports, shall be available for study by the public.

HRS § 171-17(e) (Supp. 2018). Applying an earlier version of this provision, OIP wrote in OIP Opinion Letter Number 91-10:

Section 171-17(f), Hawaii Revised Statutes, which requires that all appraisal reports used in fixing the fair market rental of public land leases be available for public study, has remained unchanged since enacted by the First Legislature as part of Act 32, 1962 Haw. Sess. Laws 95, which created a comprehensive statutory scheme for the administration, management, and disposition of public lands of the State of Hawaii. See Act 32, 1962 Haw. Sess. Laws 95.

The legislative history of Act 32 indicates that "[e]very consideration has been given throughout the bill, particularly in the disposition sections, to adequately preserve the assets of the State by

authorizing only leases disposable by public auction.” H.R. Stand. Comm. Rep. No. 240, 1st Leg., 1962 Reg. Sess., Haw. H.J. at 356 (1962). Although the legislative purpose underlying subsection (f) of section 171-17, Hawaii Revised Statutes, is not clear, the First Legislature may have determined that requiring public access to appraisals used to negotiate lease rent upon public lands would further the Act's purpose to “preserve the assets of the State,” by subjecting lease rent negotiations to public scrutiny.

OIP Op. Ltr. No. 91-10 at 7.

In addition, when section 171-17(e), HRS, was most recently amended by Act 168 of 2014, the Senate Judiciary Committee observed that disclosure is fairer to the lessee:

The release of the initial appraisal commissioned by the Department of Land and Natural Resources to arrive at a proposed lease rent provides the lessee with the opportunity to review the report before making a decision to accept or reject the rent. This action is fair and allows the lessee to make an informed decision, which is always preferable[.]

S. Stand. Comm. Rep. No. 3077, 27th Leg., 2014 Reg. Sess. (March 21, 2014), https://www.capitol.hawaii.gov/session2014/commreports/HB1823_HD1_SSCR3077_.PDF.

II. Law Regarding Appraisal Reports for Sale of County Lands

By statute, “each county, subject to the approval of the council, may grant, sell, or otherwise dispose of any easement . . . by direct negotiation or otherwise. . . .” HRS § 46-66 (supp. 2018). The City’s procedures for disposal of real property are set out in Chapter 37, Revised Ordinances of Honolulu (ROH), but the easement at issue in this appeal, which is not an easement for access to the ocean, is not “real property” subject to chapter 37. See ROH § 37-1.1 (definition of real property “does not include . . . any easement other than an easement for access to the ocean.”) Nonetheless, the procedures set out in chapter 37, ROH, may be used for the sale of an easement for an easement that is not for access to the ocean. ROH § 37-1.10.

In other words, BFS was authorized but not required to follow the procedures set out in chapter 37, ROH, for the sale of the proposed easement discussed in the appraisal report at issue here. Those procedures include preparation of an appraisal report when so requested by the City Council. ROH § 37-1.9. Chapter 37 is silent on the question of disclosure of appraisal reports: it does not require either disclosure or nondisclosure of an appraisal prepared under section 37-1.9, ROH.

III. Disclosure of Appraisal Reports as a Frustration of a Legitimate Government Function

OIP has previously recognized that section 92F-13(3), HRS, the UIPA's exception for records whose disclosure would frustrate a legitimate government function, applies to information whose disclosure would likely raise the cost of government procurement. E.g. OIP Op. Ltr. No. 09-02 at 4. As a general rule, even when the government agency is the seller rather than the purchaser, OIP finds that it is still a legitimate function of a government agency to be a prudent steward of public assets, whether they comprise government funds, public lands, or other government property. See HRS § 92F-13(3). OIP also agrees with BFS that disclosure of the range of potential values for the easement, and the market analysis that produced that range of values, will impair BFS's ability to negotiate the highest possible purchase price. The market price for the easement, according to the appraisal report, could be anything within the range of values set out in the report. Disclosure of this range of values would tell Requester the lowest price BFS was willing to accept, and Requester would presumably be unwilling to offer anything higher than that, thus eliminating any room for BFS to negotiate a higher price for the proposed easement. However, given the statutory landscape and OIP's prior opinion regarding property appraisals, OIP cannot simply conclude from this that BFS may withhold that information to avoid frustration of a legitimate government function, but must also look to legislative intent behind the UIPA with specific regard to property appraisals, and to whether there are other equally legitimate government functions that would not be frustrated but rather promoted by disclosure of property appraisals.

OIP has previously found that disclosure of appraisal reports for **State** lands would not frustrate a legitimate government function. OIP Op. Ltr. No. 91-10 at 8-11. Because some of the reports at issue arguably did not fall under the statutory disclosure mandate of what was then section 171-17(f), HRS, OIP looked to whether the UIPA's frustration exception might apply. Id. The opinion noted that the UIPA's legislative history had provided two related examples of information falling under the UIPA's frustration exception:

Senate Standing Committee Report No. 2580, March 18, 1988, provides examples of government records the Legislature considered eligible for protection under this UIPA exception. Two examples in the Senate Standing Committee report merit examination in view of the nature of the government records at issue:

(b) Frustration of legitimate government function. The following are examples of records which need not be disclosed, if disclosure would frustrate a legitimate government function.

.....

(3) Information which, if disclosed, would raise the cost of government procurement or give a manifestly unfair

- advantage to any person proposing to enter into a contract or agreement with an agency [. . .]
- (4) Information identifying or pertaining to real property under consideration for future public acquisition, unless otherwise available under State law;

Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988) (emphases added).

Id. at 8. Observing that the appraisals at issue did not “identify property that is ‘under consideration for possible future public acquisition,’” and considering the statutory requirement to publicly disclose appraisals similar to those at issue, the opinion stated that it would be “illogical and contrary to common sense” to conclude that “disclosure of one appraisal and not the other . . . would frustrate a legitimate government function by giving permittees but not lessees a manifestly unfair advantage[.]” Id. at 10.

At the time the UIPA was created in 1988, appraisal reports regarding State lands, at least, had long been available to the public. See Act 32, 1962 Haw. Sess. Laws 95. Subsequent legislation and legislative history in this area shows the Legislature broadening the scope of what is explicitly public based on the assumption that it is preferable to allow a lessee of government land to make an informed decision to accept or reject a proposed rent.

In contrast, the City considered appraisal reports confidential at the time the UIPA was passed. The Governor’s Committee on Public Records and Privacy, which reviewed public access to various records before recommending the legislation that ultimately become the UIPA, did not make a recommendation one way or the other as to treatment of property appraisals but did mention then-Honolulu Managing Director Jeremy Harris’s belief that appraisals “should . . . remain confidential” based on the City’s then-current Rules and Regulations Governing the Accessibility, Maintenance and Storage of Public and Confidential Records of All City Agencies. Report of Governor’s Committee on Public Records and Privacy, Vol. I., p. 104, and Vol. III, p. 369, 374 (1987). Thus, at the time the UIPA was enacted, there was a conflict between the treatment of appraisal reports for sale of an interest in State land, which had long been public, and appraisal reports for sale of an interest in county land, which were not affirmatively public and at least in the City’s case were considered confidential.

The Legislature declared when it established the UIPA, “it is not the intent of the Legislature that this section [setting forth exceptions to access] be used to close currently available records, even though these records might fit within one of the categories in this section.” S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess. Haw. S.J. 689, 691 (1988); H.R. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988); see also OIP Op. Ltrs. No. F15-01 at 9, 02-04 at 7, and 90-36 at 12-13

(recognizing legislative intent that public records remain public upon enactment of UIPA). Consistent with that intent and as OIP has previously concluded, appraisal reports of State lands, which had long been public, remained public after passage of the UIPA. The question now before OIP is whether public disclosure of a county appraisal report would give a manifestly unfair advantage to the prospective purchaser and thus allow a county agency to withhold the appraisal report under the UIPA's frustration exception, even though the Legislature has determined that in the case of appraisal reports for State lands, mandatory disclosure of such reports is fair and allows for informed decisions.

OIP finds the only distinguishing feature between appraisal reports for State and county lands to be the lack of an explicit statutory disclosure requirement for appraisal reports for the sale or lease of an interest in county lands. In the absence of a meaningful factual difference between the relative standing and resources of the parties to the sale or lease of an interest in State versus county lands, OIP cannot conclude that public disclosure of the relevant appraisal reports regarding county lands would give a manifestly unfair advantage to prospective purchasers or lessees while public disclosure of the equivalent reports for State lands is required and is considered to be fair to all concerned. As with the appraisal reports prepared to set prices for prospective permits versus prospective leases that OIP considered in OIP Opinion Letter Number 91-10, it would be "illogical and contrary to common sense" to conclude that "disclosure of one appraisal and not the other . . . would frustrate a legitimate government function" by giving prospective county purchasers or lessees but not prospective State purchasers or lessees a manifestly unfair advantage. See OIP Op. Ltr. No. 91-10 at 10. To the contrary, OIP agrees with the Senate Judiciary Committee's observation regarding disclosure of appraisal reports related to leases of State lands that release of such appraisal reports allows a prospective purchaser or lessee of an interest in public lands to understand the basis for the price offered and to make an informed decision. OIP further notes that disclosure of appraisal reports serves the strong public interest in knowing whether sales and leases of government lands are being priced fairly based on a market assessment, rather than either giving sweetheart deals or overcharging purchasers or lessees.

For these reasons, OIP concludes that the disclosure of an appraisal report relating to the sale of an interest in City land would not frustrate a legitimate government function such that it may be withheld under the UIPA's frustration exception. See HRS § 92F-13(3). The City must therefore disclose the requested appraisal report.

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 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).

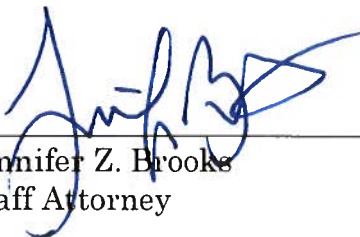
For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This 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-3(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



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director

000044

From: [OIP](#)
To: ["bfsmail@honolulu.gov"](mailto:bfsmail@honolulu.gov)
Bcc: [Brooks, Jennifer Z](#)
Subject: OIP Op. Ltr. No. F19-04 relating to U APPEAL 16-34
Date: Wednesday, April 24, 2019 3:42:00 PM
Attachments: [OIP Op. Ltr. No. F19-04 Johnasen Halas re BFS.pdf](#)

Director Koyanagi and Ms. Imamura:

Attached is Formal Opinion F19-04 regarding U APPEAL 16-34.

Please contact our office if you have difficulty opening the attachment.

Thank you,

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From: [OIP](#)
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Bcc: [Brooks, Jennifer Z](#)
Subject: OIP Op. Ltr. No. F19-04 relating to U APPEAL 16-34
Date: Wednesday, April 24, 2019 3:42:00 PM
Attachments: [OIP Op. Ltr. No. F19-04 Johnasen Halas re BFS.pdf](#)

Ms. Johnasen Halas:

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Thank you,

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