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Attorneys for DEPARTMENT OF TAXATION,  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In re

OFFICE OF INFORMATION PRACTICES  
OPINION LETTER NO. F19-05.

S.P. NO. 19-1-0191 DEO

DEPARTMENT OF TAXATION, STATE  
OF HAWAII'S *EX PARTE* MOTION TO  
SEAL PORTIONS OF THE CERTIFIED  
ADMINISTRATIVE RECORD ON  
APPEAL; DECLARATION OF KRISTEN  
M.R. SAKAMOTO; EXHIBITS "A" –  
"B"; ORDER GRANTING *EX PARTE*  
MOTION TO SEAL PORTIONS OF THE  
CERTIFIED ADMINISTRATIVE  
RECORD ON APPEAL; CERTIFICATE  
OF SERVICE

JUDGE: Hon. Dean E. Ochiai  
TRIAL DATE: None

DEPARTMENT OF TAXATION, STATE OF HAWAII'S *EX PARTE* MOTION TO SEAL  
PORTIONS OF THE CERTIFIED ADMINISTRATIVE RECORD ON APPEAL

DEPARTMENT OF TAXATION, STATE OF HAWAII ("DOTAX"), by and through its  
attorneys, brings the instant *Ex Parte* Motion to seal portions of the Certified Administrative  
Record on Appeal, filed on July 12, 2019, on the grounds that said records contain confidential

information. This Motion is brought pursuant to Rule 7 of the Hawaii Rules of Civil Procedure, Rule 7.2 of the Rules of the Circuit Courts of the State of Hawaii; and Rules 10.4 and 10.5 of the Hawaii Court Records Rules; and is supported by the Declaration of Kristen M.R. Sakamoto, the record, and files herein.

This special proceeding arises from a request made by Ray Kamikawa, Esq. to DOTAX on April 15, 2016 for the following government records:

Assumptions, bases, computations, source data and documents, and analysis relied upon in connection with the Department of Taxation's revenue estimates contained in its testimonies (copies attached) for House Bill 2744, HD1, SD1 (Relating to Housing) and Senate Bill 2833, SD2, HD1 (Relating to the Low-Income Housing Tax Credit), both bills currently pending in the Hawaii State Legislature, Twenty-Eighth Legislative (2016).

(Transmittal of Certified Administrative Record on Appeal ("AR"), filed Jul. 12, 2019, at 3-11.)

On May 13, 2016, DOTAX denied the request for records and Mr. Kamikawa subsequently appealed to the Office of Information Practices (OIP). (AR at 12-14, 16-17.) On or about June 27, 2016, DOTAX submitted a written response to OIP, in which the contents of the records that were withheld were described in detail, as required by section 2-73-14, Hawaii Administrative Rules (HAR)<sup>1</sup>. (AR at 31-32.) On May 20, 2019, OIP issued Opinion Letter Number F19-05, concluding that the records were not protected under section 92F-13(3), Hawaii Revised Statutes (HRS), which protects documents that, if disclosed, would frustrate a legitimate government function, and section 92F-13(5), HRS, which protects working papers of legislative committees. (AR 61-75.) DOTAX thereafter initiated the instant proceeding to appeal OIP's decision. (Complaint, filed Jun. 19, 2019.)

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<sup>1</sup> Section 2-73-14, HAR, provides: "The agency shall respond to the notice of appeal within ten business days of receipt of the notice with a written statement to OIP that includes the following: . . . a list identifying or describing each record withheld, if applicable."

On July 12, 2019, OIP filed the Certified Administrative Record on Appeal, which includes, as part of the public record, DOTAX's June 27, 2016 written response to OIP in its entirety. (AR at 30-34.) As a result, the very information that DOTAX withheld from Mr. Kamikawa, and that is at issue in this proceeding (the assumptions, analysis, and methodology for the revenue estimates) has been made public. Because the sole purpose of this proceeding is to determine whether DOTAX's assumptions, analysis, and methodology for creating its revenue estimates are confidential, said information should have been submitted to the Court for *in camera* review and should remain confidential until a final determination is made. See Rule 10.5, Hawaii Court Records Rules ("Until such time as a court of competent jurisdiction orders otherwise, only the judge and the judge's staff, and the appellate courts and the appellate courts' staff, shall have access to documents or evidence submitted for *in camera* review.")

Accordingly, DOTAX requests that portions of pages 31 and 32 of the Certified Administrative Record on Appeal, which contain information that DOTAX has asserted is confidential, are sealed. For the Court's convenience, redacted versions of pages 31 and 32, which may be placed in the public record, are attached hereto as Exhibit "A," and a descriptive flysheet, which may be used for the sealed records, is attached hereto as Exhibit "B."

DATED: Honolulu, Hawaii, July 23, 2019.

CLARE E. CONNORS  
Attorney General

By:   
KRISTEN M.R. SAKAMOTO  
Deputy Attorney General

Attorneys for DEPARTMENT OF  
TAXATION, STATE OF HAWAII

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DECLARATION OF KRISTEN M.R.  
SAKAMOTO

DECLARATION OF KRISTEN M.R. SAKAMOTO

I, Kristen M.R. Sakamoto, hereby declare:

1. I am the declarant and make all of the statements herein on my personal knowledge, except as to those matters stated on information and belief, and as to those matters, believe them to be true, and if called as a witness, could and would testify competently thereto.

2. I am an attorney, duly licensed to practice law in the State of Hawaii. I am a Deputy Attorney General with the Tax and Charities Division of the State of Hawaii Department of the Attorney General and am one of the attorneys for the Department of Taxation, State of Hawai'i (DOTAX), in this matter.

3. On July 12, 2019, the Office of Information Practices (OIP) filed the Transmittal of Certified Administrative Record on Appeal.

4. On July 15, 2019, upon review of the Certified Administrative Record on Appeal, I contacted Stella Kam, Deputy Attorney General and attorney for OIP, by telephone and informed her that pages 31 to 32 of the record contain a detailed description of the documents that were withheld by DOTAX from disclosure and which form the basis of this proceeding.

5. On July 16, 2019, I contacted Ms. Kam by email to inform her that I would be filing an *ex parte* motion to seal the relevant portions of the record. I asked Ms. Kam to advise by July 19, 2019 if she had any objections to such a motion. I have not heard back from Ms. Kam.

6. Attached as Exhibit "A" is a true and correct copy of pages 31 and 32 of the Certified Administrative Record on Appeal, with redactions to the following portions:

- a. Page 31: All text under the heading, "Detailed description of the methodology and analysis used by the Department to estimate the revenue effects of SB 2833, SD2, HD1 and of HB 2744, HD1, SD1"; and
- b. Page 32: The first three paragraphs (above "Reasons for limiting disclosure of the methodology and analysis used by the Department to produce revenue estimates").

7. Attached as Exhibit "B" is a descriptive flysheet for pages 31 and 32 of the Certified Administrative Record on Appeal.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, July 23, 2019.



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KRISTEN M.R. SAKAMOTO  
Deputy Attorney General

Jennifer Brooks, Esq.  
June 27, 2016  
Page 2 of 5

**Detailed description of the methodology and analysis used by the Department to estimate the revenue effects of SB 2833, SD2, HD1 and of HB 2744, HD1, SD1**

REDACTED

REDACTED

**Reasons for limiting disclosure of the methodology and analysis used by the Department to produce revenue estimates**

The Department denied Mr. Kamikawa's request for "assumptions, bases, computations, source data and documents and analysis relied upon in connection with the Department of Taxation's revenue estimates..." because the Department believes the information is exempted from disclosure under section 92F-13(3), HRS. In part, section 92F-13(3), HRS, states that the UIPA does not require disclosure of "...government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." The OIP further expanded this exception and noted in OIP Op. Ltr. 04-15, that "the deliberative process privilege shields from disclosure 'recommendations, draft documents, proposals, suggestions, and other subjective documents' that comprise part of the process by which the government formulates decisions and policies." OIP Op. Ltr. 04-15 at 4.

The documentation requested by Mr. Kamikawa that reflects the "...assumptions, bases, computations, source data, and documents and analysis relied upon..." by Department staff while performing its revenue estimation function clearly falls within the exception provided in section 92F-13(3), HRS. The requested material reflects staff work product used to develop revenue estimates, which are necessary for the Legislature's consideration and deliberation so they can be assured that adoption of proposed legislation will not undermine the state's budget.

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INFORMATION PLACED UNDER SEAL  
PURSUANT TO COURT ORDER:  
PAGES 31-32 OF THE CERTIFIED  
ADMINISTRATIVE RECORD ON  
APPEAL

**\* \* \* CONFIDENTIAL INFORMATION \* \* \***

**PLACED UNDER SEAL PURSUANT TO COURT ORDER**



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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ORDER GRANTING *EX PARTE*  
MOTION TO SEAL PORTIONS OF THE  
CERTIFIED ADMINISTRATIVE  
RECORD ON APPEAL

ORDER GRANTING EX PARTE MOTION TO SEAL PORTIONS OF THE CERTIFIED  
ADMINISTRATIVE RECORD ON APPEAL

Upon review of the *Ex Parte* Motion to Seal Portions of the Certified Administrative Record on Appeal, the attached Declaration of Counsel, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Department of Taxation, State of Hawaii's *Ex Parte* Motion is GRANTED, hearing and notice are waived, and the Clerk of the Court is directed to:

1. Remove pages 31 and 32 of the Certified Administrative Record on Appeal, filed on July 12, 2019, from the public file and place said pages under seal.
2. Insert the documents attached as Exhibit "A" to the Department of Taxation, State of Hawaii's *Ex Parte* Motion to Seal Portions of the Certified Administrative Record on Appeal immediately after page 30 in the Certified Administrative Record on Appeal, filed on July 12, 2019.

DATED: Honolulu, Hawaii \_\_\_\_\_.

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2019, a copy of the foregoing was served via hand delivery to the following:

PATRICIA OHARA, ESQ.  
STELLA M.L. KAM, ESQ.  
Administration Division  
Department of the Attorney General,  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

Attorneys for THE OFFICE OF INFORMATION PRACTICES

DATED: Honolulu, Hawaii, July 23, 2019.



KRISTEN M.R. SAKAMOTO  
Deputy Attorney General