

NOTICE TO REQUESTER

TO: request+xuwa3srftr@foi.uipa.org_____
(Requester's name)

FROM: Dept. of the Corporation Counsel, Ryan H. Ota, 808 768-5125, rota1@honolulu.gov_____
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: August 28, 2019 (by email dated August 27, 2019 at 5:01 p.m.)_____

DATE OF THIS NOTICE: September 11, 2019_____

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

1. Please see attached
- 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

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.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
- Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: by email _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On September 11 _____, 2019 ____.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs

from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

| | | |
|------------------------------|---|------------|
| Fees: Search | Estimate of time to be spent: _____ hours (\$2.50 for each 15-minute period) | \$ |
| Review & segregation | Estimate of time to be spent: _____ hours (\$5.00 for each 15-minute period) | \$ |
| Fees waived | <input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request) | <\$ _____> |
| Other | _____ | \$ |
| | (Pursuant to HAR §§ 2-71-19 & 2-71-31) | |
| Total Estimated Fees: | | \$ |

For public or personal record requests:

| | | |
|-------------------------------|---|----|
| Costs: Copying | Estimate of # of pages to be copied: _____ @ \$ _____ per page, pursuant to HRS § 92-21) | \$ |
| Delivery | Postage | \$ |
| Other | _____ | \$ |
| Total Estimated Costs: | | \$ |

TOTAL ESTIMATED FEES AND COSTS from above: \$

- The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.
- PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$
- UNPAID BALANCE FROM PRIOR REQUESTS** (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$

Payment may be made by: cash
 personal check payable to _____
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oiip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

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: 08-27-2019

TO: **City Department of the Corporation Counsel**
Agency that Maintains the Government Record

cor@honolulu.gov
Agency's Contact Information

FROM: request+xuwa3srfr@foi.uipa.org
Requester's Name or Alias

request+xuwa3srfr@foi.uipa.org
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.

Corp counsel's opening brief in Special Proceeding no. 19-1-0157 JPC, titled "In re Office of Information Practices Opinion Letter No. F19-04", filed August 14.

I 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): _____

Mail (address): _____

E-mail (address): request+xuwa3srfr@foi.uipa.org

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).

FEES FOR PROCESSING PUBLIC RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

| | |
|------------------------------------|-----------------------|
| Search for a Record | \$2.50 for 15 minutes |
| Review and Segregation of a Record | \$5.00 for 15 minutes |

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

WAIVER OF FEES IN THE PUBLIC INTEREST

As an alternative to the \$30 fee waiver (not in addition to), the agency may waive the first \$60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

COSTS

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances*, the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at oip.hawaii.gov or from OIP.

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City and County of Honolulu

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2019 AUG 14 PM 2:20

N. MIYATA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In re

OFFICE OF INFORMATION PRACTICES
OPINION LETTER NO. F19-04

S.P. NO. 19-1-0157 (JPC)
(Agency Appeal)

COMPLAINANT DEPARTMENT OF
BUDGET AND FISCAL SERVICES, CITY
AND COUNTY OF HONOLULU'S
OPENING BRIEF; CERTIFICATE OF
SERVICE

Judge: Honorable Jeffrey P. Crabtree

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COMPLAINANT DEPARTMENT OF BUDGET AND FISCAL SERVICES,
CITY AND COUNTY OF HONOLULU'S OPENING BRIEF

Complainant DEPARTMENT OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU ("City"), by and through the City's attorneys, PAUL S. AOKI, Acting Corporation Counsel, and RYAN H. OTA, Deputy Corporation Counsel, respectfully submits its Opening Brief in this agency appeal.

I. BACKGROUND FACTS

By Request to Access a Government Record under the Uniform Information Practices Act ("UIPA"), which is codified as Hawaii Revised Statutes ("HRS") Chapter 92F, dated April 15, 2016 ("Request"), Ms. Logan Johnsen Halas ("Halas"), requested access to an appraisal report relating to the estimated value of an easement over City property maintained by the Department of Budget and Fiscal Services ("BFS") that would provide access to Halas' property, which was performed by BFS' sister agency, the Department of Design and Construction ("DDC"). *See* Record on Appeal ("ROA") at 3. The sole purpose of the appraisal report was to provide BFS "a guideline for negotiations" by determining a range of values that the easement was worth. *See* ROA at 11.

BFS responded to the Request by issuing a Notice to Requestor dated April 21, 2016 ("NTR") which denied the Request in its entirety pursuant to HRS § 92F-13(3) relying on the deliberative process privilege and stating that the record must be confidential in order to avoid the frustration of a legitimate government function. *See* ROA at 2.

By email dated April 22, 2016 to the Office of Information Practices ("OIP"), Halas initiated a review of the NTR. *See* ROA at 1.

OIP requested that BFS provide an unaltered copy of the appraisal report and any additional justification for denying the Request by letter dated April 27, 2016. *See* ROA at 4.

On May 11, 2016, the City, through the Department of the Corporation Counsel, provided the appraisal for OIP's *in camera* review and reiterated the City's position that the appraisal was to be used "as a guideline for negotiation purposes" and that disclosure of the appraisal prior to the sale would frustrate a legitimate government purpose. *See* ROA at 10-11.

By letter dated June 23, 2016, Halas formally requested a written determination "as to whether this document must be disclosed to us." *See* ROA at 15.

By letter dated January 2, 2019, OIP informed BFS that the Hawaii Supreme Court had recently invalidated the deliberative process privilege in *Peer News LLC v. City and Cty. of Honolulu*, 143 Hawaii 472, 431 P.3d 1245 (December 21, 2018). OIP also required Halas to confirm that she was still interested in receiving a written opinion. *See* ROA at 17-18.

Halas confirmed that she was still interested in obtaining the opinion from OIP by email dated January 3, 2019. *See* ROA at 21.

By letter dated February 1, 2019, BFS continued to deny Halas the requested record because to do so would frustrate a legitimate government purpose pursuant to HRS § 92F-13(3). *See* ROA at 25.

On March 13, 2019, OIP had a telephone call with Mr. Reid Yamashiro, Deputy Corporation Counsel with the City and County of Honolulu. OIP's inquiry focused on the applicability of HRS § 171-17(e) and the analysis in OIP Op. Ltr. No. 91-10. Mr. Yamashiro informed OIP of HRS § 46-66 and Chapter 37 of the Revised Ordinances of Honolulu 1990 ("ROH"). *See* ROA at 35.

On April 24, 2019, OIP issued OIP Op. Ltr. No. F19-04 (“OIP Decision”) which held that, “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). That the City must therefore disclose the requested appraisal report.” *See* ROA at 42.

On May 23, 2019, BFS filed the Complaint to Initiate Special Proceeding to appeal the OIP Decision.

II. STANDARD OF REVIEW

HRS § 92F-43(a) requires an agency to seek judicial review within 30 days of the decision issued by OIP by filing a complaint to initiate special proceedings in the appropriate judicial circuit. The Request was made to the City and County of Honolulu which is located within the first judicial circuit and thus this venue is appropriate.

HRS § 92F-15(b), in relevant part, states, “Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous” The Hawaii Supreme Court has held that,

The legislature has provided that OIP's interpretations of the UIPA in an action to compel disclosure should generally be considered precedential. HRS § 92F-15(b). Nevertheless, our precedents and the UIPA itself make clear that we are not bound to acquiesce in OIP's interpretation when it is "**palpably erroneous.**" Peer News LLC v. City & Cty. of Honolulu, 138 Hawai'i 53, 67, 376 P.3d 1, 15 (2016); HRS § 92F-15(b). This is to say that "judicial deference to an agency's interpretation of [even] ambiguous statutory language is 'constrained by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose, and history.'" Kanahele v. Maui Cty. Council, 130 Hawai'i 228, 244, 307 P.3d 1174, 1190 (2013) (quoting Morgan v. Planning Dep't, Cty. of Kaua'i, 104 Hawai'i 173, 180, 86 P.3d 982, 989 (2004)).

Peer News LLC v. City & Cty. of Honolulu, 143 Haw. 472, 485, 431 P.3d 1245, 1258 (December 21, 2018).

Palpable is “a term used to describe a thing that is obvious, easily felt or readily detected.” *Black's Law Dictionary*, Free Online Legal Dictionary, 2nd Ed.

III. QUESTION PRESENTED FOR DECISION

The OIP Decision concluded “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 ROA at 42. This conclusion is palpably erroneous for a number of reasons. First, it is palpably erroneous as it contradicts the factual findings of the OIP Decision. Second, it is palpably erroneous as it applies the standards set forth for the disclosure of appraisals relating to the disposition of state lands to the City. Third, it is palpably erroneous as it violates the “home rule” principle which provides the City with the ability to govern its own affairs unless subject to the general rules of the state.

IV. DISCUSSION

Halas’ Request stems from her attempt to purchase an easement from the City over the Kahaluu Flood Control maintenance road. In order to access the market value for the easement, BFS requested that DDC perform an appraisal for the purpose of having a guideline for negotiations with Halas. The easement is not being auctioned off or otherwise marketed to the public for sale, but only being offered to Halas to provide legal and utility access to her property, and as such, the appraisal was specifically related to the value of the easement in conjunction with Halas’ property. The appraisal has no other use or purpose.

A. OIP DECISION CONTRADICTS ITS OWN FACTUAL FINDINGS.

OIP candidly admits that,

It is still a legitimate function of a government agency to be a prudent steward of 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.**

See ROA at 40. (Emphasis added).

Furthermore, OIP also admits that “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.” *See* ROA at 42.

The palpable error is made when OIP recognizes the City’s duty to be a prudent steward of government property yet undermines that ability by requiring the City to disclose an appraisal that will “impair BFS’s ability to negotiate the highest possible purchase price” and “eliminating any room for BFS to negotiate a higher price for the proposed easement.” *See* ROA at 40. These are the exact examples of where disclosure would frustrate a legitimate government function by disclosing information that would give parties negotiating against the City a manifestly unfair advantage. As noted by OIP, persons “would presumably be unwilling to offer anything higher than [the lowest price BFS would accept].” *See* ROA at 40.

It is even more palpable when there is no statutory requirement to do so. OIP clearly recognized the lack of statutory requirement as a distinguishing factor, but justifies its position by stating,

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 considered to be fair to all concerned.

See ROA at 42.

However, in justifying its position, OIP did not provide any comparison to the difference in pricing schemes that the government agencies face. HRS Chapter 171 does require disclosure of the appraisals regarding State lands, but also sets forth the pricing protocol as well. HRS § 171-17(a) provides that the appraisal will constitute the minimum upset price in the case of sale by auction, and HRS § 171-17(b) provides that the sale price shall be no less than the appraisal value for lands disposed of by drawing or negotiation. This is a meaningful factual difference between the State and the City in terms of what purpose the appraisal serves. For the former, it sets the floor prices that prospective purchasers will be paying and that the State has the opportunity to negotiate higher prices or to sell at a higher auctioned price. For the latter, the appraisal provides its negotiation guidelines in the form of a range of values, and disclosure would inform the sole purchaser the lowest price the City would accept, effectively removing the ability to negotiate prices upwards, thereby frustrating a legitimate government function.

B. OIP DECISION APPLIES WRONG LEGAL STANDARD.

The OIP Decision relies heavily upon HRS § 171-17 and OIP Op. Ltr. No. 91-10 as the basis for requiring the City to disclose the appraisal report. However, both authorities relate to land owned by the State which the legislature has already determined that it be the policy to disclose appraisals, whereas the City's appraisal does not have that legislative requirement. Furthermore, the OIP Decision noted that the applicable legal requirements relating to selling an easement right by the City was subject to HRS § 46-66. *See* ROA at 39. This is a critical distinction because the analysis performed by OIP must be different. In the case of State lands, the legislature set forth its policy to disclose appraisals done for disposition of State lands while remaining silent on county lands. When OIP's directive statute was promulgated, HRS Chapter 92F, this different standard between the disposition of State and City lands was known

and yet the UIPA remained silent. “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.” *See* ROA at 41.

The City would agree that the State would be precluded from claiming the frustration of a legitimate government purpose when the legislature has mandated the disclosure of the appraisals for the disclosure of State lands, but the City does not have the same requirement. The City’s circumstances must be considered without regard to HRS § 171-17 because the City’s appraisals serve a different purpose. To the extent that it produces a market value for property, the appraisals are similar. However, unlike the State appraisal which sets the minimum price, the City’s appraisal is specifically used as a tool by BFS to negotiate a fair price for the parties relating to a specific property. Furthermore, the appraisals at issue in OIP Op. Ltr. No. 91-10 relate to “monthly rents paid by all airport permittees and lessees [and] are based upon the fair market rental value of the leased or permitted space, as expressed by a dollar per square foot value set forth in a DOT policy entitled ‘Schedule of Rates and Charges.’” OIP Op. Ltr. No. 91-10 at 3. The appraisals were statewide appraisals of all the airports and not specific to any particular parcel or space unlike the appraisal done for Halas’ easement.

In other words, clearly, by way of statutory enactment, the State has chosen to disclose its appraisal reports where it sets the minimum prices that prospective buyers will pay. Conversely, the City has not elected to disclose its negotiation tool in which it uses to sell its property at whatever price is negotiated between the parties. The City does not enjoy any mandatory

minimum price to which it can obtain. Therefore, applying HRS § 171-17 and OIP Op. Ltr. No. 91-10 and determining that the City is similarly situated to the State is palpably erroneous.

C. OIP DECISION VIOLATES HOME RULE PRINCIPLE.

The OIP Decision determined that City appraisals are to be treated similarly to appraisals done by the State, and based on HRS § 171-17 and OIP Op. Ltr. No. 91-10, disclosure could not be denied under the frustration exemption. The OIP Decision is palpably erroneous as it violates the Home Rule principle which permits the City discretion, subject to the general laws of State, to manage its own affairs. *See* Hawaii Const. art. VIII. HRS § 46-1.5(16) grants the City the power to own real property interests and dispose of those interests. HRS § 46-66 governs how the City may dispose of real property interests.¹ Neither commands the City to disclose real property appraisals to further negotiations with buyers. OIP briefly commented that, “Chapter 37 is silent on the question of disclosure of appraisal reports; it does not require either disclosure or nondisclosure of an appraisal report prepared under section 37-1.9, ROH.”² *See* ROA at 39. Furthermore, under HRS § 92F-12, the UIPA does require the disclosure of many types of documents, but did not specifically require that counties disclose its appraisals that it uses for negotiation purposes despite knowledge of the conflict between State laws and the City’s treatment of its appraisals. The absence of such legislative requirement means that the City is entitled to make its own determination in this matter.

Although the UIPA is a general law of the State, HRS Chapter 171 is not, and the OIP Decision effectively eliminates the City’s authority to determine whether it would voluntarily disclose information that would frustrate its ability to negotiate the sale of its property. As

¹ ROH Chapter 37 also mandates the disposition of real property by the City. Chapter 37 does not relate to the Halas easement.

² ROH Chapter 37 does not relate to easements with the exception of easements for access to the ocean. ROH § 37-1.1.

discussed above, OIP already recognizes that the disclosure of the City's appraisal would undermine its ability to negotiate. OIP further recognized that while HRS Chapter 171 did not apply to the City, the City is bound to the State's policy decision to mandate disclosure of its appraisals. However, without a general law to the contrary, the City should be able to determine whether or not to disclose a document that does frustrate a legitimate government purpose and to determine otherwise is palpably erroneous.

V. CONCLUSION

Based on the foregoing reasons, the OIP Decision is palpably erroneous as to the contradictory factual findings, application of the incorrect standards, and violation of the home rule principle, and as such, OIP Op. Ltr. No. F19-04 should be reversed, the City should not be required to disclose the appraisal, and this Honorable Court should award any other remedies it deems just and reasonable.

DATED: Honolulu, Hawaii, August 14, 2019.

Respectfully submitted,

PAUL S. AOKI
Acting Corporation Counsel

By



RYAN H. OTA
Deputy Corporation Counsel
Attorneys for Complainant
Department of Budget and Fiscal Services,
City and County of Honolulu

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In re

OFFICE OF INFORMATION PRACTICES
OPINION LETTER NO. F19-04

S.P. NO. 19-1-0157 (JPC)
(Agency Appeal)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies hereof were served upon the following by hand
delivery on August 14, 2019:

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