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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Daniel Granillo
Agency: Department of Public Safety
Date: June 28, 2018
Subject: Corrections Corporation of America's Policies
(U APPEAL 15-6¹ and U APPEAL 15-7)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Department of Public Safety (PSD) properly denied, under Part II of the UIPA, an inmate's request for a copy of all or portions of three policies created by the Corrections Corporation of America (CCA).

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's letter of August 17, 2013 to PSD; Requester's letter of July 18, 2014 to OIP; PSD's letter of March 19, 2014 to Requester; email correspondence from PSD to OIP on December 20, 2016; the Department of the Attorney General's (AG) letter on behalf of PSD to OIP dated April 18, 2018, with enclosures including CCA's policies for OIP's *in camera* review; and the following documents from U APPEAL 15-6 (U MEMO 18-9): the AG's letters to OIP dated October 9, 2017 and March 19, 2018; and the AG's email to OIP of April 3, 2018 with an attachment containing a copy of the documents on the Log of Redactions/Withheld Documents

¹ Except for the issue of whether CCA policies must be disclosed to Requester, which is discussed herein, all other issues in U APPEAL 15-6 were resolved in OIP's memorandum decision U MEMO 18-9.

(Log) provided for OIP's *in camera* review. In addition, OIP reviewed PSD's website, which included the PSD Corrections Division's Policies and Procedures.²

QUESTIONS PRESENTED

1. Whether PSD has administrative control over CCA's policies and thus "maintains" the requested records.
2. Whether the requested policies may be withheld to avoid the frustration of a legitimate government function under section 92F-13(3), HRS.

BRIEF ANSWERS

1. Yes. PSD has administrative control because PSD has the contractual right to inspect and audit all records, which have not been shown to be proprietary corporate information and have actually been provided, in part, by CCA to PSD. Thus, PSD "maintains" the requested records, whether or not they are in its physical possession.
2. No. PSD must disclose the requested policies as disclosure would not frustrate a legitimate government function by jeopardizing the safety of the Requester, inmates, or CCA staff.

FACTS

Saguaro Correctional Center (Saguaro) is a private prison owned by CCA, which has contracted with PSD to provide correctional facilities and services to inmates in PSD's custody transferred from Hawaii. Requester is an inmate at Saguaro who made record requests to PSD for all or portions of three CCA policies, which were denied. Because the requests were made at different times, OIP opened two appeal files, which are now being partially consolidated for resolution in this opinion.

I. Record Request in U APPEAL 15-7

On August 17, 2013, Requester wrote a letter to PSD requesting a copy of CCA Policy 10-100, Special Inmate Management (SIM Policy), and Policy 10-101, Special Housing Incentive Program (SHIP Policy). The Policies essentially concern the voluntary or involuntary segregation of inmates from the general prison population. By letter dated March 19, 2014, PSD denied Requester's request.

² The PSD website can be found at <http://dps.hawaii.gov/policies-and-procedures/pp-cor/>.

The SIM Policy allows the segregation of inmates/residents from the general population if they have threatened the physical safety of other inmates/residents, staff, or the orderly operation of the facility; pose the risk of escape; or have requested protective custody. It sets forth the procedures for the following topics:

- A. Segregation Housing Unit Placement
- B. Review of Placements
- C. Release from Segregation Status
- D. Segregation Confinement Record
- E. Segregation Activity Record
- F. Procedures for Segregation Daily/Routine Activities
- G. Short Term Removal
- H. Pre-Hearing Detention
- I. Disciplinary Detention
- J. Administrative Segregation
- K. Special Security Detention
- L. Protective Custody
- M. Legal Materials, Legal Calls, Reading Materials, Personal Property and Mail
- N. Commissary
- O. Supervision
- P. Searches of Segregated Areas

The SIM Policy applies to “All Staff and Hawaiian Inmates.”

The SHIP Policy allows the separation of inmates from the general population solely for the purpose of managing inmate behavior and ensuring the safety, security, and order of the facility. The SHIP Policy provides procedures for placement in SHIP, as well as operating procedures covering the following topics:

- A. Maintaining a Segregation Activity Record
- B. Housing Assignments
- C. Review and Orientation by Unit Manager
- D. Meals
- E. Monitoring of Inmate Activities
- F. Personal Hygiene
- G. Telephone Usage
- H. Commissary Items
- I. Recreation
- J. Inmate Property
- K. Visitation
- L. Medical Treatment
- M. Correspondence
- N. Library Privileges

- O. Education
- P. Religious Services
- Q. Legal Access

Additionally, the SHIP Policy sets forth procedures for monitoring and evaluating inmate progress through various steps, as well as review/release procedures. The SHIP Policy applies to “All Staff and Inmates.”

II. Record Requests in U APPEAL 15-6

The record requests in U APPEAL 15-6 were resolved by U Memo 18-9, with the exception of the portion requesting three Policies created by CCA relating to:

1. Disposition, storage, laundering, and acquisition of inmates’ property, including medical, legal, and religious materials (CCA Policy No. 14-6)
2. Recipe for alternative meal and diet loaf (SIM Recipe Policy 10-100K)
3. Pages 7 and 8 of SIM Policy No. 10-100, relating to short term removal, segregation activity record, and procedures for segregation daily/routine activities (SIM Partial Policy 10-100).

From PSD’s Log reviewed by OIP in U APPEAL 15-6, it appears that these three Policies were in the physical possession of PSD. SIM Recipe Policy 10-100K and SIM Partial Policy 10-100 were portions of SIM Policy No. 10-100, which had been requested in U APPEAL 15-7.

All Policies requested in U APPEAL 15-6 and 15-7 are collectively referred to as “CCA Policies.”

III. PSD’s Responses to the APPEALS

In U APPEAL 15-7, PSD stated that it did not maintain the requested records because PSD’s Mainland Branch Unit staff, who physically work at CCA in Arizona, are not in possession of the SIM and SHIP Policies. PSD argued that the SIM and SHIP Policies “were written and promulgated by CCA for its facilities and not for the State of Hawai’i or its contract with the State of Hawai’i. The State of Hawai’i and PSD had nothing to do with the development of CCA Policies 10-100 and 10-101 and do not possess them.” PSD cited State of Hawaii Organization of Police Officers v. Society of Professional Journalist-University of Hawaii Chapter, 83 Haw. 378, 397, 927 P.2d 386, 401 (Haw. 1996) (SHOPO) and Nuuanu Valley Association v. City and County of Honolulu, 119 Haw. 90, 97, 194 P.3d 531, 538 (Haw. 2008) (NVA), in support of its claim that the Hawaii Supreme Court has ruled that the UIPA does not impose an “affirmative obligation” upon an agency to

“maintain” records. Since PSD did not have the CCA Policies in its possession, PSD argued it did “not have an affirmative duty to gather them and provide them to the public (or Granillo) upon request.” PSD further asserted that the CCA Policies were deemed by CCA to be its confidential and proprietary materials.

Alternatively, PSD contends that it may withhold the SIM and SHIP Policies to avoid the frustration of a legitimate government function under section 92F-13(3), HRS. Citing OIP Opinion Letter Number 90-34, which looked to the federal Freedom of Information Act, 5 U.S.C. 552 (FOIA), for guidance, PSD argued that CCA Policies

concern inmates who have threatened the safety and orderly operation of the correctional facility so much they must be separated from other inmates in the general population and kept segregated until they demonstrate that they can comply with prison regulations and policies. If [Requester], who is currently in SHIP because of his threatening behavior, is able to obtain these policies he would be able to manipulate the procedures to frustrate or obstruct the program’s objectives. CCA would not be able to prevent [Requester] from threatening the safety of others and the operation of the facility because it could not discipline him for his behavior. PSD was therefore authorized to withhold these CCA policies from [Requester] to prevent endangering the life or physical safety of any individual in CCA facilities under Exemption 7(f) of FOIA.

PSD further argued that the Policies fell within a correctional agency’s “unique security and operational confidentiality requirements to ensure the safety of the facility operations, staff, inmates and the public.”

In U APPEAL 15-6, PSD’s arguments were addressed generally by OIP in U Memo 18-9. PSD made no specific arguments regarding the withholding of CCA Policy No. 14-6, SIM Recipe Policy No. 10-100K, or SIM Policy No. 10-100 pages 7 and 8. OIP notes, however, that these Policies had been described in PSD’s Log of redactions as having been withheld from Requester because they were “internal” Policies that either must be obtained from CCA or were proprietary to CCA.

DISCUSSION

I. PSD has Administrative Control Over CCA’s Policies and Thus “Maintains” the Policies

PSD does not dispute that it is in possession of the CCA Policies sought in U APPEAL 15-6, including portions of the SIM Policy No. 10-100 requested in U APPEAL 15-7. But PSD denied the request for the SIM and SHIP Policies sought

in U APPEAL 15-7 on the basis that they belong to CCA and are not in PSD's possession or "maintained" by PSD. PSD argued that it is not required to produce records that it does not maintain and that it has no duty to maintain, pursuant to the SHOPO and NVA cases.

The UIPA states that "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a) (2012). "Government record" is statutorily defined as any information that is "maintained" by an agency. HRS § 92F-3 (2012). In NVA, the Court defined "maintain" to mean to "hold, possess, preserve, retain, store, or administratively control," which is the same definition followed by OIP. NVA, 119 Haw. at 97, 194 P.3d at 538 (emphasis added); OIP Op. Ltr. No. 95-8 at 8-9. OIP has further noted that "control" may have different meanings depending on the context in which it is used, but usually means "the power or authority to manage, direct, or oversee,' or to [sic] 'to exercise restraining or directing influence over,' and also relates to 'authority over what is not in one's physical possession.'" OIP Op. Ltr. No. 92-25 at 4-5.

The SHOPO case is inapposite because it dealt with record retention requirements, as there was no dispute that the requested records had actually been in the possession of and maintained by the Honolulu Police Department at one time. C.f. Molfino v. Yuen, 134 Haw. 181, 339 P.3d 679 (2014) (recognizing that there is no express record-keeping requirement in the UIPA, but concluding in dicta that the UIPA had been violated when the county planning department did not provide access to letters that it should have maintained but were temporarily missing from the department's file). NVA, while relevant to this case, is distinguishable because under the facts of that case, the City did not retain possession or control of draft engineering reports until it formally "accepted" them and thus did not "maintain" those records.

OIP has previously opined that an agency "maintained" requested records, not in its possession but in the physical possession of its contractor, when the agency had administrative control over records due to its contractual right to obtain them. OIP Op. Ltr. No. 95-8. Similarly, the PSD/CCA contract in this case provides,

[t]he STATE shall have the right to inspect, at all reasonable times, all records of, or associated with, Inmates or any charges, billing, demands, and payments under this Contract, including, but not limited to any institutional, medical, dental, psychiatric, financial, educational, recreational, or transportation expense, timekeeping, or other operational records. All records shall be retained and made accessible for a minimum of three years after the expiration date of this Contract, or any subsequent amendment, continuation or follow-up contract whichever is later. The Provider shall not dispose of any

records without the approval of the STATE. The STATE reserves the right to require appropriate audits to be conducted by an accounting firm or person chosen by the STATE, the cost to be paid by the STATE.

(Emphases added.) Thus, the PSD/CCA contract expressly gives PSD the right to inspect “all records,” including “other operational records,” associated with inmates or any charges, billing, demands, and payments. The contract also requires PSD’s access to continue for a period of time after the contract terminates so that the records may be audited by PSD. In order to determine whether CCA is properly providing and charging for its services, PSD would necessarily need access to CCA’s Policies, which would be part of “all records” that PSD has the right to inspect.³

Although another provision in the PSD/CCA contract denies PSD access to CCA’s proprietary corporate information, there is no evidence that the requested Policies are proprietary corporate information, as they appear to be neither “proprietary” to CCA nor to concern CCA’s corporate organization or finances. See OIP Op. Ltr. No. 90-2 at 8-9 (defining proprietary information). Instead, the SIM and SHIP Policies contain operational procedures and specifically state that they are applicable to all staff and inmates. As these operational Policies would have had to be distributed to all CCA employees to carry out their work duties and to segregated inmates for due process considerations, it is apparent that no efforts were made to maintain their secrecy. OIP therefore concludes that the Policies cannot be considered proprietary corporate information to which PSD would not have access under the PSD/CCA contract.

Consistent with its contractual obligations to provide access to records, CCA had previously provided PSD with portions of the SIM Policy, which were requested in U APPEAL 15-6. In response to an August 22, 2012 request by the PSD Administrator for the PSD’s Mainland Branch Unit, the Warden at Saguario emailed a copy of SIM Recipe Policy 10-100K. Additionally, PSD was in possession

³ In addition to access and inspection rights, the PSD/CCA Contract provides that

[t]he STATE shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the [CCA] pursuant to this contract...The STATE, in its sole discretion shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the [CCA] pursuant to this Contract.

By claiming that it had nothing to do with the development of the CCA Policies, PSD is apparently not asserting ownership of them. Whether or not PSD owns the CCA Policies is irrelevant to this case, however, since, as discussed above, they are “government records” because PSD has the right to access them and has administrative control over them.

of at least two other pages of the SIM Policy as well as CCA Policy No. 14-6, as PSD's Log records show that PSD withheld them from Requester.

Pursuant to the parties' practices and the terms of the PSD/CCA Contract, therefore, OIP concludes that PSD has the contractual right to obtain from CCA copies of the entire SIM and SHIP CCA Policies, and PSD thus retains administrative control over them and "maintains" them for purposes of the UIPA. See OIP Op. Ltr. No. 95-8. Consequently, the entire SIM and SHIP Policies requested in U APPEAL 15-7, along with CCA Policy No. 14-6 and portions of the SIM Policy that were in PSD's possession and withheld from Requester as evidenced by PSD's Log in U APPEAL 15-6, are "maintained" by PSD and are "government records" that must be provided to Requester unless access is restricted or closed by law. HRS § 92F-11(a).

II. All Requested Policies are Required to be Disclosed Under the UIPA

PSD has the burden to justify its nondisclosure of records. In OIP Opinion Letter Number F15-01, OIP stated

The UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012). Consequently, [the agency] has the burden to establish that an exception in section 92F-13, HRS, allows it to withhold the . . . reports, and "broad, general assertions are generally insufficient to meet this burden" of proof.

OIP Op. Ltr. No. F15-01 at 4 (citation omitted).

The UIPA requires the disclosure of "[r]ules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency," without application of the UIPA's exceptions to disclosure. HRS § 92F-12(a)(1) (2012). However, it is not clear that the Policies requested in this case fall into this category as they have clearly not been adopted as rules under chapter 91, HRS, and arguably do not constitute "interpretations of general applicability adopted by [PSD]" that "explain[], clarif[y], or implement[] agency statutes or regulations." OIP Op. Ltr. No. 90-34 at 6.

In OIP Opinion Letter Number 90-34, OIP concluded that most of the Policies contained in PSD's "Department of Corrections Policies and Procedures Manual" (Manual) were neither rules nor agency statements interpreting the rules. As the mandatory disclosure requirement of section 92F-12(a)(1), HRS, was not applicable, OIP then examined whether the frustration exception of section 92F-13(3), HRS, would allow PSD to withhold the policies from disclosure. While recognizing that federal law is not controlling, OIP looked to federal case law regarding FOIA

exemptions for guidance in determining whether any of PSD's policies and procedures would result in the frustration of a legitimate government function under the UIPA. OIP Op. Ltr. No. 90-34 at 8. To determine if they were "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function" under section 92F-13(3), HRS, OIP adopted the two-part test fashioned in Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051 (D.C. Cir. 1981) (Crooker), which looked to whether such policies are "(1) predominantly internal, and (2) the disclosure of which would significantly risk the circumvention of agency regulations concerning the security of the prisons or the control of inmates." Crooker at 10. The two-part test for policies that are not subject to the mandatory disclosure requirements of section 92F-12(a)(1), HRS, has also been applied in several other OIP opinions. E.g., OIP Op. Ltr. Nos. 90-6 (holding that the Department of Personnel Services must disclose supervisory management training material); 92-1 (holding that PSD's standards of conduct must be disclosed); 94-19 (concluding that PSD could withhold policies concerning inmates' court appearances and transportation, but must disclose its policy on "Protective Custody Management"); 94-25 (holding that PSD must disclose policies on searches of inmates); and 95-13 (deciding that portions of a county's police policies relating to motor vehicle pursuit tactics and use of a chemical spray, along with a policy on transportation of prisoners, can be withheld, but that other policies must be disclosed).

As PSD noted, the Crooker interpretation of FOIA's Exemption 2 was subsequently rejected by the U.S. Supreme Court in Milner v. Dept. of the Navy, 562 U.S. 562, 131 S.Ct. 1259, 179 L.Ed.2d 268 (2011) (Milner). In Milner, the Court limited the application of Exemption 2 to only "personnel" matters and held that this FOIA exemption did not protect from disclosure data and maps calculating and visually portraying the magnitude of hypothetical detonations. The Court recognized that other FOIA exemptions may shield national security information and other sensitive materials, such as Exemption 1 (preventing access to classified documents), Exemption 3 (applying to records that any other statute exempts from disclosure), and Exemption 7 (protecting information compiled for law enforcement purposes). Cf. OIP Op. Ltr. No. 95-13 (using both Exemption 2 and Exemption 7 rationales while applying Crooker two-part analysis).

Although the Crooker interpretation of FOIA Exemption 2 was expressly rejected by the Court and limited in application solely to personnel matters, OIP still considers valid the two-part analysis followed in OIP Opinion Letter Number 90-34 to determine whether the UIPA exempts from disclosure "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function" under section 92F-13(3), HRS. OIP Opinion Letter Number 90-34 was not interpreting FOIA or its exemptions, but instead looked to federal law and cases simply for guidance in interpreting Hawaii's own similar law and its unique exceptions. Consequently,

OIP does not believe it necessary to overrule OIP Opinion Letter Number 90-34 or other cases using the Crooker analysis, and will continue to use its two-part test in this case.

Here, there is no question that the CCA Policies were predominantly internal, as they set forth the procedures for segregation of inmates. As to the second part of the test, PSD contends that the requested CCA or PSD Policies must be confidential to avoid the frustration of a legitimate government function under section 92F-13(3), HRS. PSD argued that the CCA Policies concern inmates who have threatened the safety and orderly operation of a correctional facility, thus requiring that they be segregated from the general prison population until they demonstrate they comply with the prison's regulations and policies. Furthermore, PSD claims that providing Requester access to the Policies would frustrate the program's objectives because CCA would not be able to discipline him or prevent him from threatening the safety of others and the operation of the facility.

Despite PSD's conclusory arguments, after reviewing the requested Policies, OIP fails to see how their disclosure would significantly risk the circumvention of agency regulations concerning the security of the prisons or the control of inmates. The SIM and SHIP Policies contain no sensitive information that would jeopardize the lives or safety of any inmates or staff or the security of the prison, and they merely set forth the procedures to be followed when inmates are placed into segregation, including inmates' due process rights. Although PSD also appears to generally claim that these Policies are law enforcement records that are kept confidential under Exemption 7 of FOIA, it has not provided any specific citations to that effect or any argument as to how that exemption would relate to disclosure under the UIPA, nor do the Policies disclose any law enforcement techniques or procedures that could be circumvented by disclosure. See OIP Op. Ltr. No. 95-13 (concluding that police policies regarding firearms and prisoner transport aboard aircraft, post-shooting incident procedures, arrest, and use of force were not records compiled for law enforcement purposes that must remain confidential); see also OIP Op. Ltr. No. F15-01 at 4 (concluding that agency did not meet its burden of proof under the UIPA).

We have previously examined similar PSD policies in OIP Opinion Letter Number 94-19, which

set forth guidelines to be followed by PSD personnel in placing an inmate in protective custody, or for separating an inmate from the general population when the inmate requests or requires protection from other inmates, including: (1) criteria for determining whether an inmate should be placed in protective custody; (2) procedures for documenting the placement of an inmate in protective custody; (3) standards for the placement of sentenced felons in protective housing;

(4) due process rights of inmates involuntarily transferred to protective custody; (5) inmate rights and privileges while confined in protective custody; (6) procedures and standards to be followed in reviewing the need for the inmate to continue in protective custody; (7) procedures applicable to the release of inmates from protective custody; and (8) the inspection of protective custody operations on a periodic basis.

OIP Op. Ltr. No. 94-19 at 7. OIP concluded in that case that PSD's Policy No. COR.11.03, entitled "Protective Custody Management," would not result in the frustration of a legitimate government function by significantly risking the circumvention of prison security measures.

Our review of PSD's website showed that a similar policy setting forth PSD's procedures for "Administrative Segregation and Disciplinary Segregation" is now readily available and marked as "Not-Confidential." PSD has also recognized in its Policy No. COR.05.03 that "[p]olicies create standards or regulation designed to govern inmate behavior or protect their rights. Since inmates are to be held accountable for their behavior, they must be made aware of these policies." Both PSD's and CCA's segregation Policies fall within this description of standards designed to govern inmate behavior or protect their rights, which should be provided to inmates to hold them accountable for their behavior.

Consequently, consistent with our prior decision in OIP Opinion Letter No. 94-19 and PSD's own Policies, OIP concludes that PSD has failed to meet its burden of proof. The disclosure of the SIM and SHIP Policies, including the portions that were withheld in U APPEAL 15-6,⁴ would not significantly risk the circumvention of agency regulations concerning the security of the prisons or the control of inmates, and must be disclosed to Requester.

Likewise, CCA Policy No. 14-6 in U APPEAL 15-6 does not significantly risk circumvention of regulations concerning the security of prisons or control of inmates. Instead, this policy governs inmates' behavior and provides for inmate rights with respect to the disposition, storage, laundering, and acquisition of inmates' property, including medical, legal, and religious materials.

⁴ Although PSD's Log claimed that the SIM Recipe Policy No. 10-100 for the alternative meal and diet bread was withheld from disclosure under section 92F-13(3), HRS, because it is CCA's proprietary information, PSD provided no further evidence that it was proprietary information. PSD failed to meet its burden of proof to justify this denial of access. HRS § 92F-15(c); OIP Op. Ltr. No. F15-01 at 4.

In conclusion, OIP finds that all CCA Policies requested in both appeals may not be withheld from disclosure under section 92F-13(3), HRS, or any other exception to the UIPA, and must therefore be disclosed.⁵

CONCLUSION

Based on the parties' language in the contract and CCA's practice of providing access to records upon PSD's request, PSD has the right to inspect and audit them. Even if some of the records were not in its physical possession, PSD has administrative control over all CCA Policies requested in this case and is thus deemed to "maintain" them.

Even if the mandatory disclosure requirement of section 92F-12(a)(1), HRS, for "[r]ules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency" do not apply to PSD's internal Policies described in this case, they nevertheless fail to qualify for any exception to disclosure. Using the two-part test from Crooker as the basis for our analysis that section 92F-13(3), HRS, which allows agencies to withhold government records which, if disclosed, would frustrate legitimate government functions applies, OIP concludes that disclosure of the requested CCA Policies would not significantly risk the circumvention of agency regulations concerning the security of the prisons or the control of inmates.

Consequently, OIP holds that all of the CCA Policies requested in U APPEALS 15-6 and 15-7 must be disclosed to Requester.

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).

⁵ The attachments to SIM Policy and Appendices to the SHIP Policy were not provided to OIP, and no argument was made by PSD to withhold them, so once again, PSD has not met its burden of proof. HRS § 92F-15(c); OIP Op. Ltr. No. F15-01 at 4. Consequently, the attachments are subject to the same disclosure requirements as the Policies themselves.

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

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