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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: Jason Braswell
Agency: Department of Taxation
Date: August 26, 2020
Subject: Closing Agreements (U APPEAL 17-44)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Department of Taxation (TAX) properly denied his request for copies of two closing agreements under the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's appeal with exhibits dated February 24, 2017; OIP's letters to TAX dated April 28 (with enclosure) and July 6, 2017; TAX's letter to OIP dated March 8, 2017 (received on May 1, 2017); a letter from TAX to OIP with enclosure dated October 17, 2017; a letter from OIP to TAX and Requester dated May 22, 2020; and a letter to OIP from TAX dated July 22, 2020.

QUESTION PRESENTED

Whether TAX closing agreements are public under the UIPA.

BRIEF ANSWER

No. Closing agreements are protected from disclosure by several confidentiality statutes in Title 14, HRS, titled "Taxation" (Title 14), namely, sections 237-34(b), 235-116, 237D-13, and 238-13, HRS. In accordance with section 92F-13(4),

HRS, which allows an agency to withhold records protected by a confidentiality statute, TAX may withhold the closing agreements.

FACTS

On January 23, 2017, Requester made a request for the settlement agreements¹ between TAX and the taxpayers in two litigations: (1) Safeway Inc. v. State of Hawai'i Department of Taxation, No. 1TX071000042; and (2) Costco Wholesale Corporation v. State of Hawai'i Department of Taxation, No. 1TX061000001. Both cases were filed in the Hawaii Tax Appeal Court.

Requester received from TAX a Notice to Requester (NTR) dated February 22, 2017, which denied the request in its entirety. The NTR explained:

In your request, you have requested a copy of the “settlement agreement(s)” related to two separate cases. . . . The Department of Taxation enters into a “closing agreement” rather than a “settlement agreement[”] in settlement of tax appeals cases. In all closing agreements, however, there is a confidentiality provision which binds both the taxpayer and the Department from disclosing information related to the settlement of the case. For this reason, your request for copies of the two agreements is denied.

After TAX denied access, Requester filed this appeal. In response to the appeal, TAX explained that a closing agreement between it and the taxpayer “concerns the taxpayer’s tax liability for a specific tax period.” TAX asserted again that it and the taxpayers involved with the requested closing agreements are bound by a confidentiality statute, and Requester is neither the taxpayer, nor has he provided proof of a waiver of confidentiality from either taxpayer.

¹ For this appeal, Requester’s request for “settlement agreements” is treated as a request for closing agreements. TAX referred to section 231-3(13), HRS, for the definition of “closing agreement.” This section is not a definition section. Instead, it sets forth TAX’s duties and powers. Regarding closing agreements, it states, in relevant part:

Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of the taxpayer or other person, under any law the administration of which is within the scope of the department’s duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive.

Cases filed with the Tax Appeals Court are a matter of public record, but TAX asserted that closing agreements are not. TAX explained that closing agreements reflect an agreement between TAX and the taxpayer in settlement of disputed tax issues and contain confidential tax information. TAX routinely includes a confidentiality provision in all closing agreements that bind TAX and the taxpayer. TAX further asserted that confidentiality of taxpayer information in all settlements is necessary and consistent with the confidentiality provisions in Title 14, and is consistent with the underlying premise of maintaining the confidentiality of tax information necessary to maintain a voluntary-based tax compliance system. Therefore, TAX stated that its confidentiality provisions in all closing agreements are necessary.²

For this appeal, OIP asked TAX twice, in letters dated February 27 and July 6, 2017, for copies of the closing agreements for OIP's *in camera* review.³ TAX's letter to OIP dated October 17, 2017, declined to provide the requested closing agreements for *in camera* review because TAX is "uncomfortable releasing copies of these documents

² OIP has found that agencies may not validly enter into a confidentiality agreement that would circumvent the disclosure requirements of the UIPA, and OIP cautions agencies not to rely on them as controlling in all circumstances. OIP Op. Ltr. No. 90-39 at 10, citing OIP Op. Ltrs. No. 89-10 and 90-2.

³ OIP's requests were based on OIP's statutory authority to review confidential records *in camera*. The UIPA vests in OIP these duties and powers:

- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraphs (4) and (18) and seek to enforce that power in the courts of this State;
- ...
- (9) Shall review the official acts, records, policies, and procedures of each agency[.]

HRS § 92F-42(4), (5), and (9) (2012 & Supp. 2019). In addition, OIP's appeal rules state:

OIP may require any party to submit to OIP the original or a copy of one or more documents necessary for its ruling, including government records or minutes at issue in an appeal. OIP may examine the documents *in camera* as necessary to preserve any claimed exception, exemption, or privilege against disclosure. OIP shall take measures necessary to protect any records submitted for *in camera* review from unauthorized disclosure.

HAR § 2-73-15(c).

to [OIP] without a court order. Also, section 92F-42(5), HRS provides no immunity from criminal prosecution for the disclosure.”⁴

TAX did provide a “sample draft of a typical closing agreement for [OIP’s] review and understanding.” The sample closing agreement contains mostly boilerplate-type provisions such as statements that the closing agreement is made between the parties, *i.e.*, TAX and the taxpayer; and that the parties wish to resolve claims for particular tax years and to avoid further litigation. The sample closing agreement also contains a confidentiality provision stating that, except as required by law or pursuant to a subpoena or written consent of the parties, the parties will not make public announcements regarding the closing agreement’s terms; will not disclose any terms of the agreement; and will not make available or distribute the agreement, or any portion. Further, either party without the consent of the other may disclose the existence of the agreement.

The sample closing agreement also calls for insertion of information that would be made public in a court action by a taxpayer, including the taxpayer’s Tax Identification Number and address, and the party names. The records filed in a tax appeal to the court are public unless the court has sealed them, but the parties would not necessarily file a closing agreement and do not appear to have done so here based on OIP’s review of available court documents.

⁴ In support of its refusal to provide records for OIP’s *in camera* review, TAX invoked section 237-34(b), HRS (see full citation at pages 6-7, *infra*), which governs filing and nondisclosure of general excise tax returns, as a statute requiring confidentiality of settlement agreements. OIP previously noted in a non-precedential opinion that, arguably, section 237-34(b), HRS, may bar disclosure even to another State agency such as OIP in the course of its official duties unless the disclosure is for tax purposes. U MEMO 18-17. Agencies nonetheless have the burden of proof in UIPA appeals, and must provide relevant records for *in camera* review, when so requested, to demonstrate that a claimed exception applies. HAR §§ 2-73-14(4) and -15(c); HRS § 92F-15(c) (2012). OIP recognizes there may be a conflict of laws between section 237-34, HRS, and section 92F-42, HRS, that potentially puts TAX in an untenable position: if it fails to provide records for *in camera* review in an OIP appeal based on a confidentiality statute that arguably applies, it may fail to meet its burden to establish that the claimed exception applies and lose the appeal for that reason; yet if the confidentiality statute applies, the power to authorize TAX to provide records to OIP rests with the taxpayers, who are not involved in the appeal. For this appeal, the sample closing agreement was sufficient, as discussed below, for OIP to determine whether closing agreements must be disclosed as a rule, and thus to meet TAX’s burden under the UIPA. Nevertheless, in a future case OIP may find that an agency refusing to provide *in camera* records has failed to meet its burden to demonstrate the applicability of a claimed exception, or may go to court to enforce its right to examine the records at issue.

DISCUSSION

I. Closing Agreements Are Tax Return Information

TAX asserted, and OIP agrees, that the description of closing agreements in section 231-3(13), HRS, (see note 1, supra), is encompassed within the federal definition of tax return information in 26 U.S. Internal Revenue Code section 6103(b)(2), which reads in relevant part:

26 U.S. Code § 6103. Confidentiality and disclosure of returns and return information

...

(b) Definitions For purposes of this section—

...

- (2) Return information** The term “return information” means—
- (A)** a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
 - (B)** any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110.

26 U.S. Code § 6103(b)(2).

Section 231-3(13), HRS, states that a closing agreement is an agreement in writing between TAX and a taxpayer relating to the taxpayer’s liability under any law within the scope of TAX’s duties, during a taxable period, or in respect of one or more separate items affecting liability for a taxable period, that once signed is final and conclusive. Based on this statutory description, OIP finds that closing agreements do fall within the federal definition of tax “return information” in 26 U.S. Code § 6103(b)(2), which includes a taxpayer’s identity; the nature, source, or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth; tax liability; tax withheld; deficiencies, overassessments, or tax payments; whether the taxpayer’s return was, is being, or will be examined or subject to other

investigation or processing; or any other data received by, recorded by, prepared by, furnished to, or collected by TAX or the federal Internal Revenue Service (IRS) with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

II. Closing Agreements Are Protected by Several Confidentiality Statutes

Section 92F-13(4), HRS, allows an agency to withhold “[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure.” Tax return information is protected from disclosure by several confidentiality statutes in Title 14 except for very limited situations where it is made public by statute, or a waiver is obtained from the taxpayer.

OIP asked TAX which specific provisions of Title 14 allow it to withhold the closing agreements. TAX invoked several sections, including section 237-34, HRS, which governs filing and nondisclosure of general excise tax (GET)⁵ returns, as a statute requiring confidentiality of closing agreements. The applicable language states:

(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor’s agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only, the taxpayer, the taxpayer’s authorized agent, or persons with a material interest in the return, return information, or report may examine them.

...

⁵ General excise taxes are “privilege taxes” levied annually against persons “on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified,” including manufacturers, sellers of tangible personal property, contractors, theaters, amusements, radio broadcasting stations, sales representatives, service businesses, insurance producers, and other businesses. HRS § 237-13 (2017 and Supp. 2019).

Any violation of this subsection shall be a class C felony.

HRS § 237-34(b) (2017).⁶

TAX invoked section 235-116, HRS, which governs income tax, as a statute requiring confidentiality of closing agreements:

§235-116 Disclosure of returns unlawful; penalty. All tax returns and return information required to be filed under this chapter shall be confidential, including any copy of any portion of a federal return that may be attached to a state tax return, or any information reflected in the copy of the federal return. It shall be unlawful for any person, or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to make known intentionally information imparted by any income tax return or estimate made under sections 235-92, 235-94, 235-95, and 235-97 or wilfully to permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized agent, persons duly authorized by the State in connection with their official duties, the Multistate Tax Commission or the authorized representative thereof, except as otherwise provided by law. Any offense against the foregoing provisions shall be punishable as a class C felony.

HRS § 235-116 (2017).

TAX invoked section 237D-13, HRS, which governs the transient accommodation tax, as a statute requiring confidentiality of closing agreements. The applicable language states:

§237D-13 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the

⁶ Section 23-5(a), HRS, is cited in sections 237-34(b), 235-116, and 237D-13(a), HRS, all of which are quoted herein. Section 23-5(a), HRS, states that the legislative auditor may examine and inspect all records of every department, office, agency, and political subdivision; with two provisos. First, upon written request by the auditor, TAX shall provide access to tax returns to the extent necessary and relevant to the scope of the State comprehensive annual financial report audit. HRS § 23-5(a)(1) (Supp. 2019). Second, tax return information provided to the auditor by TAX is considered working papers of the auditor pursuant to section 23-9.5, HRS, which makes the auditor's papers confidential. HRS § 23-5(a)(2).

return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) through (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States, or of any state or territory, or of any county of this State;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a class C felony.

HRS § 237D-13(a) (2017).

TAX invoked section 238-13, HRS, which governs the use tax, as a statute requiring confidentiality of closing agreements:

§238-13 Other provisions of general excise tax law applicable. In respect of:

- (1) The examination of books and records and of taxpayers and other persons;
 - (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or a proper return; and
 - (3) The general administration of this chapter,
- the director of taxation shall have all the rights and powers conferred upon the director by the general excise tax law with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8, 237-30, 237-34, and 237-36 to 237-41 are hereby made applicable to and with respect to the taxes and the taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by the general excise tax law.

HRS § 238-13 (2017).⁷

As OIP found in section I, supra, based on section 231-3(13), HRS, and 26 U.S. Code § 6103(b)(2), the closing agreements qualify as “tax return information” under the federal definition. Therefore, as “tax return information,” closing agreements falling under any of the Title 14 statutes cited by TAX, supra (sections 237-34(b), 235-116, 237D-13, and 238-13, HRS), may be withheld under section 92F-13(4), HRS, because Title 14’s confidentiality statutes make it unlawful to disclose tax return information for the various types of taxes covered by those sections. As the tax return information at issue here falls within at least one of those statutes, presumably the GET, OIP finds that section 92F-13(4), HRS, allows TAX to withhold them in this instance.

⁷ TAX also cited to OIP opinions that found “tax returns” and “tax return information” are protected from disclosure. OIP Opinion Letter Number 89-3 found that offers by State taxpayers to compromise tax liabilities that are accepted by TAX and statements required to be filed with TAX are protected from disclosure under the Internal Revenue Code’s definition of “return information.” OIP Opinion Letter Number 90-38 found that tax return information contained in escheated warrant reports was protected from disclosure by law. OIP Opinion Letter Number 92-22 found that for blind individuals who, under section 235-1, HRS, claim a personal tax exemption and file with TAX a report from an ophthalmologist, the information contained in those reports received by TAX certifying the visual impairment constitutes “return information required to be filed under” chapter 235, HRS, and TAX is prohibited from disclosing the report under section 235-116, HRS.

III. Section 231-19.5, HRS, Shows Legislative Intent that Tax Returns and Tax Return Information Generally Are Confidential

Although it is not germane to the request here for closing agreements, OIP notes that chapter 231, HRS, titled “Administration of Taxes[,]” includes section 231-19.5, HRS, on public inspection of TAX written opinions.⁸ A written opinion is a “written statement issued by [TAX] to a taxpayer . . . that interprets and applies any provision in title 14 administered by [TAX] to a specific set of facts.” HRS § 231-19.5(b) (2017). Section 231-19.5(f), HRS, allows a taxpayer or interested person to file an appeal with OIP when TAX designates all or a portion of a written opinion as confidential. Written opinions are not at issue here, but OIP notes the existence of the confidentiality provision in section 231-19.5(a), HRS, which states, in relevant part, “[e]xcept as provided in subsection (f), regarding the disclosure of the text of written opinions, chapter 92F shall not apply to tax returns and tax return information.”

OIP notes the existence of section 231-19.5, HRS, because it also makes clear that tax returns and tax return information remain confidential, subject to the limited exemption described therein allowing public inspection of TAX’s written opinions. As discussed in section II, supra, tax return information is clearly subject to several other confidentiality statutes and is not required to be disclosed under the UIPA, a conclusion that is reinforced by the legislative history and policy of section 231-19.5, HRS, and OIP Op. Ltr. No. 92-10 (Opinion 92-10).

The preamble of House Bill (H.B.) 3190 House Draft (H.D.) 1 Senate Draft (S.D.) 1, which ultimately became section 231-19.5, HRS, stated:

SECTION 1. The purpose of this Act is to open to public inspection written opinions of the department of taxation that interpret the tax laws, while at the same time maintaining the confidentiality of tax return information.

The viability of Hawaii’s tax system depends upon the voluntary disclosure of information to the taxing authorities. The legislature finds that it is necessary to keep information disclosed by taxpayers confidential in order to maintain voluntary compliance with the tax laws. At the same time, the legislature finds that correct reporting can

⁸ Although it was not raised by either party this appeal, OIP provided both TAX and Requester the opportunity to comment on section 231-19.5, HRS, and referred them to OIP’s website where the legislative history of this section has been posted. Requester did not respond. TAX responded that the settlement agreements at issue were not written opinions containing interpretations of Hawaii tax laws or analysis applying tax laws to the specific facts, and thus were not subject to the public inspection requirements of section 231-19.5, HRS.

be enhanced by issuing guidance to taxpayers in areas where the interpretation of the tax laws is unclear. Accordingly, this Act makes available to the public written opinions of the department in areas where the law is unclear.

This Act does not open to public inspection the voluminous routine correspondence with taxpayers concerning established principles of law. **This Act is an exception to the well-established principle of confidentiality of tax information and thus, it is narrowly tailored to achieve its purpose to provide guidance on the interpretation of tax laws in order to enhance correct reporting, while maintaining the confidentiality of tax return information in order to maintain voluntary compliance with the tax laws.** To protect the integrity of the voluntary disclosure system, doubts about whether information should be publicly disclosed shall be resolved in favor of nondisclosure.

H.B. 3190 H.D. 1 S.D. 1, 17th Leg., Reg. Sess. (1994) (emphasis added).

Section 231-19.5, HRS, became law partly in response to OIP Opinion Letter Number 92-10 (Opinion 92-10), which found that TAX was not required under the UIPA to disclose certain “private letter rulings or other written determinations” issued by TAX to taxpayers concerning the applicability of the franchise tax. Using the federal definition of the term “return information” for guidance (see section I, supra, for that federal definition), Opinion 92-10 found that TAX opinion letters constituted return information, the disclosure of which is a criminal offense under State law. OIP Op. Ltr. No. 92-10 at 12-14. OIP noted that Congress, unlike the State Legislature, adopted specific provisions allowing disclosure of written determinations by the IRS. Id. at 3. Because of the significant public interest in the disclosure of TAX opinions, OIP recommended in Opinion 92-10 that TAX and the State Legislature adopt provisions similar to those permitting the IRS to issue written opinions providing guidance to the public on its interpretation and administration of tax laws. Id.

When H.B. 3190 was being considered by the Legislature in 1994, OIP testified in support of H.D. 1, describing H.D. 1’s purpose as “to amend the State’s taxation laws to permit the public inspection and copying of written opinions issued by the Department of Taxation[,]” and OIP described the bill as “a definite improvement over the existing law[,]” which had prevented any TAX opinion letters from being disclosed to the public. Nothing in H.B. 3190’s legislative history shows an intent to exempt records consisting of tax returns and tax return information wholesale from the UIPA, as that would have meant that TAX would not have to respond at all to record requests or respond to OIP when a requester challenged a TAX denial on the basis that requested records did indeed consist of or contain tax returns or tax return information. Instead, it is clear from the preamble and

legislative history of H.B. 3190 H.D. 1 S.D. 1 that its purpose was not to remove TAX records from the category of “government records” subject to the UIPA, but rather to open TAX opinions to public disclosure under limited conditions, while maintaining confidentiality of tax return information in order to keep the tax system viable through voluntary compliance with the tax laws.

The important point to take away from this discussion is that, since the adoption of the UIPA and to this day, tax returns and tax return information are clearly confidential under Hawaii tax laws. While making TAX’s written opinions public, section 231-19.5, HRS, also contains a confidentiality provision for tax return information contained in such opinions. Thus, OIP believes the Legislature has repeatedly set forth its intent that tax returns and tax return information remain confidential with very limited exceptions not raised here.

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.

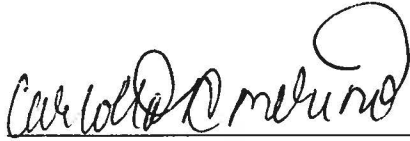
SPECIAL NOTICE: During the COVID-19 pandemic, Hawaii's Governor issued his Supplementary Proclamation on March 16, 2020, which suspended the UIPA in its entirety. The suspension was continued until May 31, 2020, by the Governor's Sixth Supplementary Proclamation dated April 25, 2020. On May 5, 2020, the Governor's Seventh Supplementary Proclamation (SP7) modified the prior suspension of the UIPA in its entirety and provided that the UIPA and chapters 71 and 72, Title 2, HAR, "are suspended to the extent they contain any deadlines for agencies, including deadlines for OIP, relating to requests for government records and/or complaints to OIP." SP7, Exhibit H. On May 18, 2020, the Governor's Eighth Supplementary Proclamation (SP8) at Exhibit H, continued the modified suspension of the UIPA provided in SP7. On June 10, 2020, the Governor's Ninth Supplementary Proclamation (SP9) at Exhibit H, continued the modified suspension of SP8, Exhibit H. On July 17, 2020, the Governor's Tenth Supplementary Proclamation (SP10) at Exhibit G, continued the modified suspension in SP9, Exhibit H, through August 31, 2020. On August 20, 2020, the Governor's Twelfth Supplementary Proclamation (SP12)⁹ at Exhibit G, continued the modified suspension in SP10, Exhibit G, through September 30, 2020.

The UIPA's Part IV sets forth OIP's powers and duties in section 92F-42, HRS, which give OIP authority to resolve this appeal and have been restored by SP7 through SP12, except for the deadline restriction. Thus, for OIP's opinions issued while SP12 is still in force, agencies will have a reasonable time to request reconsideration of an opinion to OIP, but a request for reconsideration shall be made by an agency no later than ten business days after suspension of the UIPA's deadlines are lifted upon expiration of SP12 after September 30, 2020, unless SP12 is terminated or extended by a separate proclamation of the Governor. Agencies wishing to appeal an OIP opinion to the court under section 92F-43, HRS, have a reasonable time to do so, subject to any orders issued by the courts during the pandemic, and no later than thirty days after suspension of the UIPA's deadlines is

⁹ On August 6, 2020, the Governor's Eleventh Supplementary Proclamation pertaining only to the interisland travel quarantine was issued.

lifted upon expiration of SP12 after September 30, 2020, unless terminated or extended by a separate proclamation of the Governor.

OFFICE OF INFORMATION PRACTICES

A handwritten signature in black ink, appearing to read "Carlotta Amerino", written over a horizontal line.

Carlotta Amerino
Staff Attorney

APPROVED:

A handwritten signature in blue ink, appearing to read "Cheryl Kakazu Park", written over a horizontal line.

Cheryl Kakazu Park
Director