

PROPOSAL TO SUPPORT ADDITIONAL FUNDING AND POSITIONS FOR OIP

As part of the recommendations to the Legislature, OIP respectfully requests that the SCR 192 Working Group support the establishment in FY 2024 of two permanent full-time positions and additional funding in the amount of \$185,000 per year on an ongoing basis for OIP.

OIP is the single agency that uniformly administers Hawaii's UIPA and the Sunshine Law, which apply to all State, county and independent agencies and to most government (not federal) boards—from OHA and the State Land Use Commission to the neighborhood boards in the City and County of Honolulu and certain task forces. These laws ensure government transparency and accountability by protecting the public's rights to access government records and to attend public meetings.

For too long, OIP has had the smallest budget and personnel resources of all State good government groups, despite the extensive reach of the open records and open meetings laws that it administers. While many State agencies' jurisdictions cover only other State agencies, OIP's jurisdiction extends to the counties and their Councils; independent agencies such as OHA and the University of Hawaii; the administrative functions of the Judiciary; the Legislature; all State Executive branch departments; and the Governor and Lt. Governor's offices.

OIP's duties have expanded over the decades to include administration of the Sunshine Law as well as open data responsibilities, and it now impacts approximately 300 state and county agencies compared to 125 when it was established in 1988, along with an undetermined number of Sunshine Law boards. Yet, OIP's total allocations (excluding budget restrictions and lapsed funds) have declined to \$752,721 and 8.5 FTE positions in FY 22 compared to an inflation-adjusted amount of \$1,591,384 and 15 FTE positions in FY 94 when it administered only the UIPA.

During 2022 session, the Legislature had appropriated \$185,000 and 2.00 full-time equivalent (FTE) permanent positions for OIP for FY 22-23 in SB 3252, SD 2, HD 2, CD 1, which was unfortunately vetoed by Governor Ige for other reasons. Whether or not a version of SB 3252 is passed again during the 2023 session, OIP needs the additional positions and funding because its work level has only been going up.

Not only has OIP been trying to catch up with the backlog that grew after the uncharacteristic loss of nearly half its experienced staff during the Covid emergency period, OIP also experienced an 86% increase in formal and informal requests for its assistance in FY 22 as the UIPA and Sunshine Law are no longer suspended by the Governor's emergency orders, government offices have reopened, the public's pent-up demand for government services has exploded, and substantial revisions have been made to the Sunshine Law, including new remote meeting provisions. Due to delays in receiving hiring approval during the Covid emergency, OIP was not able to fill the last of its four vacant positions until March 2022 and has been training new employees. Additionally, OIP has been deeply engaged in interim work for the Legislature on SCR 192. As a result of these challenges, OIP's formal case backlog (consisting mostly of appeals) increased 12% from a low of 67 on June 30, 2020 to 111 pending cases as of September 30, 2022, and it continues

to trend upward because OIP's attorneys do not have the time to write time-consuming opinions or resolve complicated appeals while fulfilling their many other duties and increasing workload.

OIP is anticipating an increase in its workload to assist the newly established Chief Data Officer and Data Task Force to develop policies and procedures to implement the State's open data policy, including standards to determine the data sets that are appropriate for online disclosure and the data set format standards to be used by all agencies in making their data sets available to the public. Act 157, SLH 2022; HRS § 27-44.3. OIP has already delayed working on revisions to its administrative rules and UIPA Record Request Log because of its interim work to support the SCR 192 Working Group, and OIP expects its workload to further increase next year as legislative proposals to amend the UIPA are considered by the Legislature and may be ultimately enacted.

Consequently, OIP is seeking two new permanent positions for a 1.0 FTE Staff Attorney and 1.0 FTE legal assistant. The legal assistant would have different skills and could more efficiently relieve some of the current and new workload of the attorneys and administrative staff. The additional staff attorney would help OIP to address its growing backlog of appeals and the informal Attorney of the Day inquiries that increased to more than double in FY 2022, so as to allow more experienced attorneys to complete more difficult tasks, including resolution of questions regarding statutory changes and revising OIP's administrative rules.

In conclusion, OIP respectfully requests that the SCR 192 Working Group include in its recommendations to the Legislature that OIP be authorized in fiscal biennium 2023-2025 to establish and fill 2.00 FTE permanent positions and be annually appropriated additional general funds of \$185,000. Mahalo.