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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Kevin Lye
Board: Downtown-Chinatown Neighborhood Board No. 13
Date: February 27, 2025
Subject: Meeting Notice by Electronic Mail (S APPEAL 23-06)

REQUEST FOR OPINION

Requester, a member of the Downtown-Chinatown Neighborhood Board No. 13 (NB 13), seeks a decision as to whether NB 13 violated the Sunshine Law, part I of chapter 92, HRS, by meeting remotely¹ on December 1, 2022 (December 1 Meeting), despite being informed that not all individuals on NB 13's list of persons who requested to receive meeting notices by electronic email (Email List) had been sent timely notice of the December 1 Meeting.

Unless otherwise indicated, this decision is based solely upon the facts presented in an email to OIP from Requester dated November 27, 2022; an email to OIP from Requester dated November 28, 2022, with attached email thread; an email to the Neighborhood Commission Office (NCO) from OIP dated November 29, 2022; an email to Requester from OIP dated November 30, 2022, with attached

¹ A remote meeting is one held by a board using interactive conference technology (ICT) in accordance with section 92-3.7, HRS. Section 92-3.7(a), HRS, requires that remote meetings held using ICT have "at least one meeting location that is open to the public and has an audiovisual connection[.]" and that the notice for an ICT meeting "[l]ist at least one meeting location that is open to the public that shall have an audiovisual connection[.]"

email thread; an email to NB 13 member Kevin McDonald (McDonald) from OIP dated November 30, 2022, with attached email thread; an email to NB 13 Chair Ernest Carvalho (Chair) from OIP dated November 30, 2022; an email to Requester from OIP dated November 30, 2022, with attachment; an email to OIP from the Chair dated November 30, 2022, with attached email thread; an email to OIP from Requester dated November 30, 2022, with attached email thread; an email to Requester from OIP dated December 1, 2022, with attached email thread; an email to OIP from the NCO dated December 1, 2022, with attached email thread; a telephone call on December 1, 2022, between OIP and the NCO; a telephone call on December 15, 2022, between OIP and the NCO; an email to OIP from Requester dated December 15, 2022, with attached email thread and attachment; an email to OIP from Requester dated December 16, 2022, with attached email thread and attachment; an email to OIP from Requester dated December 20, 2022, with attached email thread and attachment; an email to Requester from OIP dated December 20, 2022, with attached email thread; an email to NB 13 from OIP dated January 10, 2023, with attachments; an email to the NCO from OIP dated January 10, 2023, with attachments; an email to Requester from OIP dated January 10, 2023, with attachments; an email to OIP from Requester dated January 10, 2023, with attached email thread; an email to Requester from OIP dated January 11, 2023, with attachments and attached email thread; an email to OIP from Requester dated January 11, 2023, with attached email thread; an email to Requester from OIP dated March 8, 2023; an email to OIP from Requester dated March 8, 2023, with attached email thread; an email to NB 13 from OIP dated March 8, 2023, with attachment; an email to Requester from OIP dated March 8, 2023, with attachment; an email to OIP from NB 13 dated March 10, 2023, with attachment and attached email thread; an email to Requester from OIP dated March 13, 2023, with attachment; and an email to OIP from Requester dated March 13, 2023, with attached email thread.

QUESTION PRESENTED

Whether NB 13 gave proper notice of its December 1 Meeting under the Sunshine Law when it prepared and clicked send for what would have been a timely email to everyone on its Email List attaching a copy of the notice, but due to an error in its email system that NB 13 became aware of before the December 1 Meeting, the email was not sent and thus not everyone on its Email List received a copy of the notice by email.

BRIEF ANSWER

No. NB 13 did not give proper notice under the Sunshine Law because due to an error in its email system, it failed to provide timely notice of the December 1 Meeting to all individuals on its Email List, and NB 13 was aware that this error had occurred.

FACTS

Neighborhood boards are subject to the Sunshine Law. OIP Op. Ltr. No. 01-01 at 9-10. The Sunshine Law requires that boards provide advance notice of all meetings. HRS § 92-7 (Supp. 2024). Section 92-7(e), HRS, requires boards to maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings, and boards are required to mail or electronically mail a copy of the notice to these persons no later than the time the agenda is required to be electronically posted, i.e., six calendar days before the meeting as required by section 92-7(b), HRS.

Requester confirmed by email dated November 28, 2022, that he “previously signed up to receive electronic and snail mail versions of the agenda and draft meeting minutes for neighborhood board 13, typically distributed by webmaster@honolulu.gov and USPS, respectively.” Prior to submitting this appeal as discussed more fully below, Requester sent an email inquiry to OIP dated November 27, 2022, indicating that as of that date, “I have not received as per usual a timely email from webmaster@honolulu.gov disclosing a meeting time and agenda for the next convening of Neighborhood Board 13, ostensibly planned for the evening of 1 December 2022.” Requester’s November 27 email asked OIP, through its “attorney of the day” (AOD) service, to confirm on what date the NB 13 meeting notice for its December 1 meeting and the draft meeting minutes for its November 3, 2022, meeting were distributed to those on the email distribution list.² Requester also stated that he had “confirmed that as least one other resident” on NB 13’s Email List had not received the December 1 Meeting notice by email, “as well as physical mailboxes,” and asked, “[i]f distribution of this information is confirmed to have been incomplete, may the NB 13 meeting planned for 1 December 2022 proceed without violating HRS 92-7(e)?”

Requester indicated by email dated November 29, 2022, that he still had not received email notification of the December 1 Meeting as of that date, and that he understood that NB 13 members McDonald and Robert Armstrong also had not received notice by email. Accordingly, on the same date, OIP emailed the NCO³ to notify it about Requester’s inquiry and report that three NB 13 members did not

² Requester’s November 27 email also raised other issues, such as him not receiving a copy of the draft minutes for NB 13’s prior meeting on November 3, 2022, that are not at issue in this appeal.

³ The Neighborhood Commission, through the NCO, establishes policy and provides oversight and administrative support for the neighborhood board system, evaluates and amends the Neighborhood Plan, and reviews complaints initiated by the public and board members regarding alleged violations of the Neighborhood Plan. Neighborhood Commission Office, About Us, <https://www.8.honolulu.gov/nco/neighborhood-comission-office/> (last visited February 19, 2025).

receive the emailed agenda for the December 1 Meeting, that the three members claimed to be on NB 13's Email List, and that a resident similarly reported to one of the members that the email notice was not received.

OIP's November 29 email explained that boards subject to the Sunshine Law must provide timely notice of all regular meetings in accordance with section 92-7, HRS, which states that at least six calendar days before a county board meeting, notices must be electronically posted on the county calendar; filed with the county clerk's office for physical posting by those offices in a central location in a public building (e.g., county buildings), with proof of filing retained; physically posted at the board's office for public inspection; physically posted at the meeting site (when feasible); and provided to persons requesting notification by postal or electronic mail.

OIP also explained that section 92-7(e), HRS, requires boards to maintain a list of persons who wish to receive the notice by postal or electronic mail. The emails should be sent out and the meeting notices should be postmarked for delivery by regular U.S. Postal Service mail at least six calendar days before the meeting. If this does not occur, OIP routinely advises the board to cancel the meeting.

OIP stated that since four people reported that they were on the mailing list but were not notified, it appears that timely notice was not provided. Therefore, OIP asked the NCO to confirm whether the agenda for NB 13's December 1 Meeting was timely sent to those on the email and mailing lists. If they were not sent, OIP informed the NCO then NB 13 will have to cancel the meeting.⁴

OIP sent a separate email to the Chair, dated November 30, 2022,⁵ indicating in part that:

The Neighborhood Commission Office (NCO) sent a screen shot in png format showing that on November 25, 2022, the NCO sent an email with an attached agenda and minutes to those on its list for the December 1, 2022 meeting. Executive Secretary Lloyd Yonenaka confirmed that there are currently 600 people on the list to receive electronic notice of Neighborhood Board (NB) 13's agenda, and that the following board members are on its list:

⁴ OIP's November 29 email to the NCO also discussed an issue with untimely posting of minutes that is not at issue in this appeal.

⁵ The NCO was copied on OIP's November 30 email, which also noted a concern with an agenda item that is not at issue in this appeal. By email dated November 30, 2022, OIP also sent Requester a copy of its November 30 email to the Chair.

Robert Armstrong
Ernest Carvalho
Kevin Lye
Lori McCarney
Chu-Lan Shubert-Kwock
Laura Sturges

It was reported to OIP that three NB 13 board members and one member of the public did not receive the emailed agenda and minutes for the December 1, 2022 meeting, and therefore, NB 13 would like to cancel it.

NB 13 is free to cancel a meeting without the approval or consent of OIP or the NCO, and any time less than a quorum of members attends a scheduled meeting, the meeting is deemed automatically cancelled. Should NB 13 decide to cancel the December 1st meeting to avoid the possibility of a complaint being made about the lack of notice being received, the board is free to do so.

The Chair responded to OIP by email dated November 30, 2022, stating, “[w]e do not wish to cancel our Board meeting for tomorrow December 1, 2022. I am not sure where you got that from.” The Chair also asserted:

I do believe that a board member might have reached out to OIP to cancel this board meeting but there is no reason to cancel as we have major road closures coming up in January and our board is on recess in January. Also this agenda was sent up in time to follow Sunshine Rules.

In response, OIP sent the Chair another email also dated November 30, 2022, stating that there was a factual dispute over whether all of the persons on NB 13’s email list received the notice for the meeting, which could not be resolved by OIP’s AOD service. OIP advised the Chair that given these disputes, should the board decide to proceed with its December 1 Meeting, it was likely that a complaint would be filed and a Sunshine Law violation might be found.

On December 1, 2022, the NCO explained to OIP in a telephone call that it had learned that the entire City email system had “glitched” on the day the notices were emailed. The NCO’s email account showed the emails in the “sent” box, but the notices for four meetings scheduled for December 1, 2022, were subsequently found to still be in a queue waiting to be sent, and thus had not actually been sent

out.⁶ The NCO asked if it had to cancel the four meetings since the other methods of notice were completed. OIP advised that mailing and emailing notice carries the same weight as posting to the City calendar, and particularly given that the NCO now had actual knowledge that the emails had not actually been sent out, OIP advised cancelling the meetings to avoid a Sunshine Law violation.

Despite the NCO's actual knowledge that the email notice of the December 1 Meeting had not actually been sent out as intended, and OIP's recommendation to cancel the meeting, NB 13 met remotely on December 1, 2022. Requester thereafter appealed to OIP "the apparent failure of the City to duly and timely notify [NB13's Email List] of the proposed meeting agenda for the [December 1 Meeting.]" Requester stated that he received notification of the meeting agenda by email on November 29, 2022, and asserted that "at least two other distribution-list registrants have reported not having received such notifications at all, and concerns about this lack of notification were voiced at the start of the [December 1 Meeting.]"

The NCO confirmed to OIP by telephone on December 15, 2022, that NB 13 had held the December 1 Meeting, and again explained that the email system went down for the entire City so although the email to NB 13's Email List showed as "sent," it actually sat in the City's queue. The NCO also stated that it had recommended to the Chair to cancel the meeting, but that NB 13 decided to go ahead with the meeting to discuss road closures, which were important. NB 13 provided a written response as discussed more fully below.

DISCUSSION

The Sunshine Law's notice provisions require that a board give "written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance[.]" including the date, time, and place of the meeting, among other things. HRS § 92-7(a) (Supp. 2024). The notice provisions also require that "[n]o less than six calendar prior to the meeting," a board shall (1) "post the notice on an electronic calendar on a website maintained by the State or the appropriate county" and (2) "post a notice in the board's office for public inspection." The Sunshine Law also provides that "[t]he notice shall also be posted at the site of the meeting whenever feasible." HRS § 92-7(b) (Supp. 2024).

⁶ During the same call the NCO also asked to what extent a board must check to ensure a sent email was actually received. OIP advised that if an email shows in the email "sent" box and the board has no reason to believe there was a glitch or other technical issue, the board would not ordinarily have to take extra steps to confirm that the email was actually received. In a case such as this where multiple recipients claim not to have received the email, though, it is advisable to apply extra scrutiny (as the NCO did here) to be sure that there was not a problem with the email on the board's side.

Additionally, the Sunshine Law's notice provisions require a board to:

maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and **shall mail or electronically mail a copy of the notice** to the persons by the means chosen by the persons at their last recorded postal or electronic mail address **no later than the time the agenda is required to be electronically posted under subsection (b).**

HRS § 92-7(e) (Supp. 2024) (emphasis added).

In response to this appeal, NB 13 asserted that the NCO sends notices on behalf of NB 13 and had “notified NB 13 that all methods of distribution were completed, however, due to a technical issue with the email program, some individuals did not receive email notification.” NB 13 further admitted it had been “advised of the potential violation of Sunshine Law” but nonetheless “voted to continue the meeting because two out of the three distribution methods were met and the information to be distributed during the meeting was important for the general public[.]” NB 13 thus apparently assumed that because it had met other notice requirements of the Sunshine Law, it was not strictly required to also meet the requirement to provide timely notice of the December 1 Meeting to all individuals on its Email List, and since it had many issues to discuss it “felt the information on events and road closures could not wait another month until our next meeting, or even another week for a rescheduled meeting.”

OIP notes that the Requester who brought this appeal is a member of NB 13, and some of the other individuals specifically named as not having received email notice were also NB 13 members. The Sunshine Law's requirements are primarily intended to protect the general public's access to the formation and conduct of public policy, but its protections apply with equal force to the board members themselves. See HRS § 92-1 (2012) (setting out policy and intent of the Sunshine Law). A meeting notice serves not only to notify members of the public of the details of an upcoming meeting, but also serves to notify the members of a board of those same details. OIP Op. Ltr. No. F24-03 at 18.

Contrary to NB 13's apparent belief that its intention to disseminate information to residents and businesses owners somehow exempted it from having to comply with the Sunshine Law's notice requirements set forth in section 92-7(e), HRS, that provision is not conditional and does not exempt a board from meeting the notice requirements so long as it has met some of those requirements and considers it important to meet.

As noted above, the NCO informed OIP that as of November 2022, 600 people were on NB 13's Email List, and most of them were not actually sent a timely email notice of the meeting. OIP therefore finds that NB 13 did not email a copy of its December 1 Meeting Notice to its Email List by the deadline of November 25, 2022. OIP further finds that although NB 13 had intended to send, and initially believed it had sent, notice to its Email List on the deadline, by the time of the December 1 Meeting NB 13 had been informed by both OIP and the NCO that the required notice had not been sent. OIP therefore concludes that NB 13 knowingly violated the Sunshine Law's notice requirement as set forth in section 92-7(e), HRS, when it proceeded with its December 1 Meeting without having provided the required notice of that meeting.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). 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-43(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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APPROVED:



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