



NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

CHERYL KAKAZU PARK
DIRECTOR

April 9, 2013

VIA EMAIL:

Ms. Sharon Rondeau
The Post & E-Mail

The Honorable Loretta J. Fuddy
Director
Department of Health
State of Hawaii

Re: Appeal from Agency Denial of Access to General Records (APPEAL 12-6)

Dear Ms. Rondeau and Director Fuddy:

This letter is for your information only, and you need not respond. However, please do respond if you have new information relevant to this appeal, or if anything has changed. For Ms. Sharon Rondeau please inform the Office of Information Practices (OIP) if you no longer wish to pursue this appeal.

As you know, OIP opened the above-referenced file relating to Ms. Rondeau's request to appeal the Department of Health's (DOH) denial the work schedule of Loretta Fuddy, Director of the Department of Health under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA).

One or both of you received a letter from OIP at the time this appeal was opened, which noted that, because of a recent Hawaii Supreme Court case and staff constraints, OIP was issuing advisory opinions rather than determinations in response to UIPA appeals.

Since then, OIP's appeals rules, chapter 2-73, Hawaii Administrative Rules (HAR), entitled "Administrative Appeal Procedures," became effective on December 31, 2012. Under these rules, OIP may issue decisions in the form of published opinions, unpublished informal or memorandum opinions, or other written dispositions, as determined by OIP's director. See HAR § 2-73-17(d). Accordingly, this appeal will be resolved in the manner deemed most appropriate by OIP's director.

For DOH, in light of the fact that OIP may resolve this appeal by issuing a decision that may be more than an advisory opinion, please consider whether you wish to supplement your previous submission to OIP. OIP asks that any supplemental positions be submitted within thirty calendar days of your receipt of this letter. If you need more time than that please let OIP know.

Ms. Sharon Rondeau
Director Loretta J. Fuddy
April 9, 2013
Page 2

Please note that OIP's resolution of this appeal will constitute 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 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.

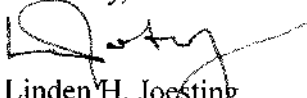
OIP is currently experiencing a backlog of cases, and is striving to complete work on the oldest appeals first. Promulgation of OIP's new appeals rules will not affect the priority given to this appeal based on the date it was opened.

For your information, record requesters are entitled to seek assistance from the courts when the requester has been improperly denied access to a government record, and need not wait for OIP's resolution of this appeal to do so. HRS § 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if the 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, the requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

Should you have any questions, please do not hesitate to contact me at 586-1400.

Sincerely,



Linden H. Joesting
Staff Attorney

LHJ:dms

cc: Ms. Jill Nagamine, Deputy Attorney General