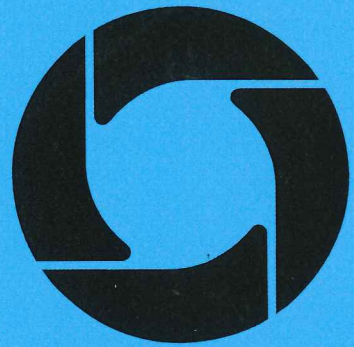


Office of the Ombudsman
State of Hawaii
Fiscal Year 2012-2013
Report Number 44





As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the legislature. The Ombudsman is empowered to obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations, or statutes.

By law, the Ombudsman cannot investigate actions of the governor, the lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

**Kekuanaoa Building, 4th Floor
465 South King Street
Honolulu, HI 96813**

**Phone: 808-587-0770
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**Neighbor island residents may
call our toll-free numbers.**

**Hawaii 974-4000
Maui 984-2400
Kauai 274-3141
Molokai, Lanai 1-800-468-4644**

**Telephone extension is 7-0770
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TTY extension is 7-0774**

**email: complaints@ombudsman.hawaii.gov
website: www.ombudsman.hawaii.gov**

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2012 - June 30, 2013
Report No. 44

Presented to the Legislature
pursuant to Section 96-16 of
the Hawaii Revised Statutes

December 2013

Madam President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2014:

In accordance with Section 96-16, Hawaii Revised Statutes, I am pleased to submit the report of the Office of the Ombudsman for fiscal year 2012-2013. This is the forty-fourth annual report since the establishment of the office in 1969.

I would like to thank the State Legislature for its support during this period of limited fiscal resources, allowing the Office of the Ombudsman to continue to connect citizens with their government. We remain committed in our efforts to ensure the fair and impartial delivery of government services.

The Office of the Ombudsman would not be able to resolve complaints or bring about administrative improvements without the full cooperation of the executive branches of the State and County governments. For their continued cooperation and assistance, I extend my sincere appreciation to the Governor, the Mayors of the various counties, and the State and County department heads and employees.

Finally, those who sought the services of our office would not have been as ably served in a timely, objective, efficient, and professional manner without the dedicated services of Mark G.S. Au, my First Assistant, and the professional and support staff members of the office. For their commitment and dedication to the mission and purpose of our office, I convey my personal thanks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robin K. Matsunaga', with a long, flowing horizontal line extending to the right.

ROBIN K. MATSUNAGA
Ombudsman

December 2013

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Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2012-2013, the office received a total of 4,317 inquiries. Of these inquiries, 3,128, or 72.5 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 513 non-jurisdictional complaints and 676 requests for information.

The 4,317 inquiries received represent less than a one percent decrease from the 4,335 inquiries received the previous fiscal year. There was a slight decrease in information requests, but a 4.1 percent increase in non-jurisdictional complaints.

A comparison of inquiries received in fiscal year 2011-2012 and fiscal year 2012-2013 is presented in the following table.

TWO-YEAR COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2012-2013	4,317	676	513	3,128	1,692	1,436
2011-2012	4,335	683	493	3,159	1,540	1,619
Numerical Change	-18	-7	20	-31	152	-183
Percentage Change	-0.4%	-1.0%	4.1%	-1.0%	9.9%	-11.3%

Staff Notes

Every State election year, the Office of the Ombudsman provides the Election Advisory Council with a representative who serves as an official observer. Support staff Sue Oshima represented our office during the primary election on August 11, 2012, and the general election on November 6, 2012. In preparation as an official observer, Ms. Oshima attended several training sessions after work. This experience gave her a greater knowledge of a key part of the electoral process.

In September 2012, our newest analyst, Cori Woo, visited the Oahu Community Correctional Center (OCCC) to familiarize herself with the facility, its operation, and condition. She was accompanied by veteran analyst Herbert Almeida. Following their visit, Ms. Woo and Mr. Almeida shared their observations of the OCCC with the rest of our analysts. This updated information will help our analysts better understand and deal with inmate complaints.

The 33rd Annual Conference of the United States Ombudsman Association (USOA) was held in Spokane, Washington, from October 8-12, 2012. Attendees from our office were Ombudsman Robin Matsunaga, First Assistant Mark Au, and analyst Cori Woo. This year's training conference included a full-day session that provided attendees specific strategies and skills to effectively and confidently deal with unreasonable complainant conduct. Mr. Matsunaga, who continues as President of the USOA, once again served as an instructor of the USOA's two-day New Ombudsman Training workshop.

On November 12-16, 2012, Ombudsman Robin Matsunaga attended the 10th World Conference of the International Ombudsman Institute (IOI) in Wellington, New Zealand. The event provided Ombudsmen from around the world the opportunity to meet, share, and discuss their experiences and expertise. Mr. Matsunaga, who completed his term as a director of the North American Region of the IOI at the conference, used the opportunity to establish new working relationships with members of the Pacific Ombudsman Alliance.

After 41 years of State service, Edna de la Cruz retired on December 31, 2012. Ms. de la Cruz was the longest-serving employee with the Office of the Ombudsman, which opened its doors to the public in 1969. She was one of four support staff greeting walk-in complainants and other visitors, answering the telephone, and providing clerical and administrative support to ensure our daily operations run smoothly. While we will miss her presence and wit, we wish her the best in her well-deserved retirement.

First Assistant Mark Au celebrated 20 years of service with the State and the City and County of Honolulu in April 2013. Besides his tenure with the Office of the Ombudsman, Mr. Au also worked at the Judiciary, the Department of the Corporation Counsel of the City and County of Honolulu, and the University of Hawaii. His knowledge, skills, and experience help our office deal with the various complaints that we receive. Congratulations, Mr. Au, and thank you for your contributions and commitment to our office!

At the end of the year, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant Mark Au; analysts Herbert Almeida, Melissa Chee, Rene Dela Cruz, Alfred Itamura, Yvonne Jinbo, Gansin Li, Marcie McWayne, and Cori Woo; and support staff Sheila Alderman, Debbie Goya, Carol Nitta, and Sue Oshima.

Outreach Efforts

The Good Life Expo Inc. invited our office to participate in the 28th Annual Hawaii Seniors' Fair held at the Neal Blaisdell Center from September 28-30, 2012. Hundreds of seniors and other attendees stopped by our exhibit booth to find out who we are, what our function is, and how we can help the public resolve their issues with various executive agencies of the State and County governments. Our staff enjoyed the opportunity to meet and speak with visitors who stopped by our booth and provided brochures with additional information about our office.

CHAPTER II

Delay in Recognizing Licensed Naturopathic Physicians

In March 2012, a parent complained that a Department of Education (DOE) elementary school refused to accept his children's certificates of physical examination, immunization, and tuberculosis (TB) testing because the provider who completed the certificates was a licensed naturopathic physician and not a licensed medical physician. The complainant argued that pursuant to Chapter 455, Hawaii Revised Statutes (HRS), titled "Naturopathic Medicine," the school should have accepted his physician's certificates because licensed naturopathic physicians were recognized as "equal" to other medical providers in the State with respect to certain practices.

We researched the current statutes regarding licensed naturopathic physicians. Section 455-1, HRS, defined "naturopathic physician" as a person who holds a current license to practice naturopathic medicine that was issued pursuant to Chapter 455, HRS, and defined "naturopathic medicine" as:

[T]he practice of the art and science of diagnosis, prevention, and treatment of disorders of the body by support, stimulation, or both, of the natural processes of the human body. The practice of naturopathic medicine includes the prescription, administration, dispensing, and use of nutrition and food science, physical modalities, manual manipulation, parenteral therapy, minor office procedures, naturopathic formulary, hygiene and immunization, contraceptive devices, common diagnostic procedures, and behavioral medicine of the type taught in education and training at naturopathic medical colleges; provided that the use of parenteral therapy and performance of minor office procedures shall not be allowed until the board adopts rules in accordance with chapter 91 pursuant to section 455-6.

Act 22, Special Session Laws of Hawaii 2009, amended Section 455-8, HRS, titled "License to practice; biennial registration," by adding the following underlined provision:

Licenses to practice naturopathic medicine shall be issued by the board to those who qualify according to this chapter. Naturopathic physicians licensed under this chapter shall observe and be subject to all state requirements relative to reporting births and all matters pertaining to the public health with equal rights and obligations as physicians, surgeons, and

practitioners of other schools of medicine. These equal rights shall apply to all matters of public health, including the performance of medical examinations and evaluations. Every licensee shall renew the licensee's license on or before December 31 of each odd-numbered year. Failure to renew the license on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license; provided that the license shall be restored upon written application therefor together with payment of the renewal fee, all delinquent fees, and a penalty fee.

We believe this amendment to Section 455-8, HRS, makes it clear that naturopathic physicians licensed under Chapter 455, HRS, have the same right to perform medical examinations and evaluations as physicians, surgeons, and practitioners of other schools of medicine.

We spoke with the principal of the elementary school that refused to accept the certificates of medical examination and immunization from the complainant's licensed naturopathic physician. The principal informed us that the school did not accept the certificates from a licensed naturopathic physician because the Department of Health (DOH) guidelines did not appear to allow it. The principal also admitted that she was unfamiliar with naturopathic physicians in general and informed us that she was not aware of any law, rule, or directive regarding naturopathic physicians.

We also polled staff at other DOE schools and found that they, too, did not know that the law required them to accept certificates from a licensed naturopathic physician. It appeared from the results of our poll that many DOE employees were not aware that licensed naturopathic physicians had the same rights and obligations as physicians, surgeons, and practitioners of other schools of medicine, and that these equal rights applied to all matters of public health, including the performance of medical examinations and evaluations.

We reviewed the DOE statutes and administrative rules. Under Chapter 302A, HRS, titled "Education," before a child can be initially admitted to the Hawaii public school system, his or her parents or guardians must provide a recent report of physical examination, immunization record, and TB testing.

Section 302A-1154, HRS, which requires students to have immunization and TB clearance, stated:

(a) No child shall attend any school in the State unless the child presents to the appropriate school official documentation satisfactory to the department of health that the child has

received immunizations against communicable diseases as required by the department of health.

(b) No child shall be admitted to attend any school for the first time in the State unless the child presents to the appropriate school official documentation satisfactory to the department of health that the child has been examined and tested according to the rules of the department, and is free from tuberculosis in a communicable form. (Emphases added.)

Likewise, Section 302A-1159, HRS, which requires students to have physical examinations, stated in part:

No child shall be admitted to any school for the first time in the State unless the child presents to the appropriate school official a report from a licensed physician or advanced practice registered nurse of the results of a physical examination performed within a year of the date of entry into school. (Emphasis added.)

In addition, Section 302A-1162(a), HRS, stated in part:

The department of health shall adopt rules under chapter 91 relating to immunization, physical examination, and tuberculin testing under section 302A-1154 to 302A-1163.

We spoke with DOH staff about the complaint and they agreed that licensed naturopathic physicians should be allowed to complete certificates for students entering school for the first time, immunize children, and administer TB tests, as required by Chapter 302A, HRS. The DOH also informed us that the Disease Outbreak Control Division of the DOH was still in the process of amending Chapter 11-157, Hawaii Administrative Rules (HAR), DOH, to comply with Section 455-8, HRS. The DOH was unable to provide us with a timeline for completing these amendments.

We reviewed Chapter 11-157, HAR, titled “Examination and Immunization.” Section 11-157-2, HAR, defined a “physician” to be a person “licensed to practice medicine or osteopathic medicine in any of the states or territories of the United States.” The rule noted that “[l]icensure or accreditation in chiropractic, homeopathy, acupuncture, or herbal healing do not qualify a person as a physician in this chapter.” In addition, a “practitioner” was defined as “a physician, advanced practice registered nurse, or physician assistant licensed to practice in any of the states or territories of the United States.”

Section 11-157-3, HAR, titled “Immunization,” stated in part:

Immunizations against certain specified diseases . . . are required as set forth in the following exhibits:

. . . .

Exhibit B, “Guide to Hawaii Immunization & Examination Requirements for Schools (July 1, 2002).”

Exhibit B stated in part:

1. Certificate of TB Examination

. . . .

- c. The certificate of TB examination may be issued by the Hawaii Department of Health or a U.S. licensed Medical Doctor (MD), Doctor of Osteopathy (DO), Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA). The certificate must include:

. . . .

- the signature or stamp of the MD, DO, APRN, PA, or clinic.

2. Physical Examination

. . . .

- b. The exam must be performed and signed by a U.S. licensed Medical Doctor (MD), Doctor of Osteopathy (DO), Advanced Practice Registered Nurse (APRN), or a Physician Assistant (PA).

It appeared that the absence of any reference to licensed naturopathic physicians in the DOH rules pertaining to examination and immunization was contributing to the lack of understanding by the DOE of the authority of licensed naturopathic physicians to perform physical examinations and administer immunizations and TB testing. Realizing that the administrative rulemaking process can be long and arduous, and considering the fact that there already was a statute that allowed licensed naturopathic physicians to perform the school examinations/testing for admissions, we contacted the DOE again.

We asked the DOE Office of the Superintendent how the department would comply with Section 455-8, HRS. The DOE complex area superintendent (CAS) for the school from which the complaint originated replied that the schools would ask the parents or guardians of an incoming student to provide proof that the naturopathic physician who completed the certificates was licensed by the State.

In response, we informed the CAS that unless the department required all licensed physicians and health practitioners to do the same, the proposed remedy was unfair because the law required licensed naturopathic physicians be treated equally to other medical doctors.

Thereafter, we contacted the DOE Deputy Superintendent and recommended that the administration notify all public schools Statewide that pursuant to Section 455-8, HRS, schools were required to accept physical examination/testing certificates from licensed naturopathic physicians. When the Deputy Superintendent informed us that the DOE preferred to wait for the DOH to complete its rule changes, we pointed out that this law had already been in effect for three years and did not require the DOH administrative rules to be amended in order to be implemented. The Deputy Superintendent agreed to reconsider the matter.

After consulting with the DOH, the Deputy Superintendent issued a memorandum to all CAS, district educational specialists, principals and vice principals, charter school administrative office executive directors, public charter school directors, school administrative services assistants, and school health aides that stated the following:

In accordance with HRS §455-8, the State of Hawaii has authorized licensed naturopathic physicians to provide school physical examinations, immunizations, and tuberculin (TB) skin tests in the same manner as physicians.

Effective immediately, schools are to accept physical examinations, immunizations, and TB skin tests performed by licensed naturopathic physicians as valid with regard to school entrance and admissions requirements.

We reported the findings of our investigation and the remedy to our complainant who was satisfied with the result.

Chapter III

STATISTICAL TABLES

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1
NUMBERS AND TYPES OF INQUIRIES
Fiscal Year 2012-2013

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	414	300	46	68
August	447	307	76	64
September	321	236	38	47
October	349	238	32	79
November	322	228	40	54
December	332	248	39	45
January	374	272	41	61
February	329	248	31	50
March	299	225	33	41
April	422	293	60	69
May	364	287	33	44
June	344	246	44	54
TOTAL	4,317	3,128	513	676
% of Total Inquiries	--	72.5%	11.9%	15.7%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2012-2013

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	355	32	19	1	7	0
August	394	32	12	1	8	0
September	281	25	10	1	4	0
October	313	20	8	0	7	1
November	286	17	10	5	4	0
December	282	24	19	1	6	0
January	325	25	17	0	7	0
February	291	14	19	0	5	0
March	263	21	10	1	2	2
April	367	33	18	1	3	0
May	314	27	17	0	5	1
June	282	39	19	0	4	0
TOTAL	3,753	309	178	11	62	4
% of Total Inquiries (4,317)	86.9%	7.2%	4.1%	0.3%	1.4%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND
INQUIRERS BY RESIDENCE
Fiscal Year 2012-2013

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	976,372	70.1%	3,164	73.3%
County of Hawaii	189,191	13.6%	451	10.4%
County of Maui	158,316	11.4%	388	9.0%
County of Kauai	68,434	4.9%	65	1.5%
Out-of-State	--	--	249	5.8%
TOTAL	1,392,313	--	4,317	--

*Source: The State of Hawaii Data Book 2012, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, *"Resident Population, by County: 2000 to 2012."*

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2012-2013

Residence	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	2,304	73.7%	332	64.7%	528	78.1%
County of Hawaii	321	10.3%	67	13.1%	63	9.3%
County of Maui	316	10.1%	32	6.2%	40	5.9%
County of Kauai	38	1.2%	13	2.5%	14	2.1%
Out-of-State	149	4.8%	69	13.5%	31	4.6%
TOTAL	3,128	--	513	--	676	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2012-2013

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	3,164	2,864	106	120	8	62	4
% of C&C of Honolulu	--	90.5%	3.4%	3.8%	0.3%	2.0%	0.1%
County of Hawaii	451	404	19	28	0	0	0
% of County of Hawaii	--	89.6%	4.2%	6.2%	0.0%	0.0%	0.0%
County of Maui	388	337	42	9	0	0	0
% of County of Maui	--	86.9%	10.8%	2.3%	0.0%	0.0%	0.0%
County of Kauai	65	54	2	9	0	0	0
% of County of Kauai	--	83.1%	3.1%	13.8%	0.0%	0.0%	0.0%
Out-of- State	249	94	140	12	3	0	0
% of Out- of-State	--	37.8%	56.2%	4.8%	1.2%	0.0%	0.0%
TOTAL	4,317	3,753	309	178	11	62	4
% of Total	--	86.9%	7.2%	4.1%	0.3%	1.4%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2012-2013

Agency	Juris- dictional Complaints	Percent of Total	Completed Investigations		Discon- tinued	Declined	Assisted	Pending
			Substan- tiated	Not Substan- tiated				
<u>State Departments</u>								
Accounting & General Services	33	1.1%	3	8	7	8	4	3
Agriculture	4	0.1%	0	1	0	1	1	1
Attorney General	91	2.9%	4	22	13	21	28	3
Budget & Finance	80	2.6%	5	35	9	21	7	3
Business, Economic Devel. & Tourism	10	0.3%	1	4	3	0	1	1
Commerce & Consumer Affairs	33	1.1%	1	13	6	6	1	6
Defense	0	0.0%	0	0	0	0	0	0
Education	70	2.2%	8	18	15	22	1	6
Hawaiian Home Lands	10	0.3%	0	4	2	4	0	0
Health	115	3.7%	3	41	11	45	10	5
Human Resources Development	3	0.1%	0	3	0	0	0	0
Human Services	343	11.0%	21	124	65	82	39	12
Labor & Industrial Relations	89	2.8%	3	42	14	20	10	0
Land & Natural Resources	47	1.5%	4	22	5	10	2	4
Office of Hawaiian Affairs	1	0.0%	0	0	1	0	0	0
Public Safety	1,859	59.4%	101	588	105	948	46	71
Taxation	31	1.0%	0	2	4	15	9	1
Transportation	37	1.2%	2	15	5	13	2	0
University of Hawaii	15	0.5%	3	3	7	2	0	0
Other Executive Agencies	5	0.2%	0	3	0	2	0	0
<u>Counties</u>								
City & County of Honolulu	184	5.9%	10	61	25	76	4	8
County of Hawaii	41	1.3%	1	8	5	24	1	2
County of Maui	22	0.7%	2	5	2	12	0	1
County of Kauai	5	0.2%	0	2	0	2	1	0
TOTAL	3,128	--	172	1,024	304	1,334	167	127
% of Total Jurisdictional Complaints	--	--	5.5%	32.7%	9.7%	42.6%	5.3%	4.1%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2012-2013

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
<u>State Departments</u>			
Accounting & General Services	3	3	0
Agriculture	0	0	0
Attorney General	4	4	0
Budget & Finance	5	5	0
Business, Economic Devel. & Tourism	1	1	0
Commerce & Consumer Affairs	1	1	0
Defense	0	0	0
Education	8	8	0
Hawaiian Home Lands	0	0	0
Health	3	3	0
Human Resources Development	0	0	0
Human Services	21	19	2
Labor & Industrial Relations	3	3	0
Land & Natural Resources	4	4	0
Office of Hawaiian Affairs	0	0	0
Public Safety	101	90	11
Taxation	0	0	0
Transportation	2	2	0
University of Hawaii	3	3	0
Other Executive Agencies	0	0	0
<u>Counties</u>			
City & County of Honolulu	10	10	0
County of Hawaii	1	1	0
County of Maui	2	2	0
County of Kauai	0	0	0
TOTAL	172	159	13
% of Total Substantiated Jurisdictional Complaints	--	92.4%	7.6%
% of Total Completed Investigations (1,196)	14.4%	13.3%	1.1%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2012-2013

Agency	Information Requests	Percent of Total
<u>State Departments</u>		
Accounting & General Services	24	3.6%
Agriculture	2	0.3%
Attorney General	16	2.4%
Budget & Finance	15	2.2%
Business, Economic Devel. & Tourism	3	0.4%
Commerce & Consumer Affairs	49	7.2%
Defense	4	0.6%
Education	7	1.0%
Hawaiian Home Lands	2	0.3%
Health	61	9.0%
Human Resources Development	0	0.0%
Human Services	19	2.8%
Labor & Industrial Relations	20	3.0%
Land & Natural Resources	13	1.9%
Office of Hawaiian Affairs	2	0.3%
Public Safety	44	6.5%
Taxation	4	0.6%
Transportation	12	1.8%
University of Hawaii	5	0.7%
Other Executive Agencies	17	2.5%
<u>Counties</u>		
City & County of Honolulu	97	14.3%
County of Hawaii	6	0.9%
County of Maui	9	1.3%
County of Kauai	1	0.1%
Miscellaneous	244	36.1%
TOTAL	676	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2012-2013

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	17	3.3%
County Councils	2	0.4%
Federal Government	34	6.6%
Governor	2	0.4%
Judiciary	70	13.6%
Legislature	7	1.4%
Lieutenant Governor	0	0.0%
Mayors	3	0.6%
Multi-State Governmental Entity	0	0.0%
Private Transactions	371	72.3%
Miscellaneous	7	1.4%
TOTAL	513	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2012-2013 AND
THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER
TO FISCAL YEAR 2013-2014

Types of Inquiries	Inquiries Carried Over to FY 12-13	Inquiries Carried Over to FY 12-13 and Closed During FY 12-13	Balance of Inquiries Carried Over to FY 12-13	Inquiries Received in FY 12-13 and Pending	Total Inquiries Carried Over to FY 13-14
Non-Jurisdictional Complaints	4	4	0	3	3
Information Requests	1	1	0	2	2
Jurisdictional Complaints	162	153	9	127	136
		<u>Disposition of Closed Complaints:</u> Substantiated 36 Not Substan. 102 Discontinued 15 <hr/> 153			
TOTAL	167	158	9	132	141

Chapter IV

SELECTED CASE SUMMARIES

The following are summaries of selected cases investigated by the office. Each case summary is listed under the State government department or the county government involved in the complaint or inquiry. Although some cases involved more than one department or involved both the State and the county, each summary is placed under what we believe to be the most appropriate agency.

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DEPARTMENT OF THE ATTORNEY GENERAL

(13-00975) Verification of income in determination of child support. The Office of Child Support Hearings (OCSH), a division of the Department of the Attorney General, conducts administrative hearings to establish, enforce, or modify child support orders, including medical support. The OCSH is an administrative forum that serves as an alternative to Family Court legal proceedings for child support matters only.

In the course of investigating a complaint about the modification of a child support order by the OCSH, we learned that the OCSH occasionally will modify a support order based on income figures that are stipulated to by the parties in the case. As the amount of child support is calculated based upon the incomes of the child's parents, we were concerned about the possibility that the stipulated income amounts may not accurately reflect the true incomes of the parties, resulting in the subject child receiving an incorrect amount of monthly support. We initiated an investigation to learn more about the process and to find out (1) whether the OCSH hearings officers had authority to accept and approve stipulated agreements concerning parents' incomes, and if so, (2) whether the OCSH had policies in place to corroborate the information that it received to help ensure proper calculation of child support.

In order to determine what the OCSH hearings officers were authorized to do, we reviewed Chapter 576E, Hawaii Revised Statutes (HRS), titled "Administrative Process for Child Support Enforcement." Section 576E-10(d), HRS, pertaining to hearings officers, stated in part:

Hearings officers shall have further authority to:

. . . .

- (2) Receive testimony and evidence from parties to the hearing and to establish a record;
- (3) Evaluate testimony and other evidence received at hearings and make specific findings of fact and conclusions of law after contested hearings and when otherwise required by law;

Based upon Section 576E-10(d), HRS, we believe that an OCSH hearings officer has the authority to receive the testimonies of both parties regarding income and to accept and use stipulated incomes to calculate child support amounts under the Hawaii Child Support Guidelines (Guidelines).

Having determined that the OCSH hearings officers were authorized to use stipulated income amounts to determine monthly child support amounts, we asked an OCSH supervisor whether the OCSH had a written policy for hearings officers to follow when accepting agreements by the parties regarding their incomes. The supervisor explained that although the OCSH did have written internal policies for hearings officers to follow, there was no specific policy regarding the acceptance and use of stipulated income amounts.

We also asked the supervisor if there were any procedural safeguards in place to ensure that hearings officers took steps to obtain information, such as documentation or testimony from the parties, to corroborate or support the stipulated income amounts. The supervisor explained that hearings officers typically rely upon documentation such as pay stubs and tax returns, and also the testimony of the parties, to verify stipulated incomes. However, the supervisor noted that this information was not always documented in the Administrative Findings and Order that is issued after every child support hearing.

Because we believed that the income used in calculating child support obligations should be as accurate as possible to ensure establishment of the proper amount of support under the Guidelines, we recommended, and the OCSH issued, a policy for hearings officers to follow when accepting the agreements of the parties on their respective incomes. The policy included provisions for consideration by the hearings officers of corroborating evidence of incomes, even if stipulated to by the parties, prior to their acceptance by the OCSH for establishment or modification of support.

We also recommended that the OCSH make it standard procedure for hearings officers to document the bases for the parties' incomes in the Administrative Findings and Order. The supervisor agreed to make this a mandatory feature of future Administrative Findings and Orders.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

(13-00298) Private event at public park. A man complained that the Hawaii Community Development Authority (HCDA) improperly closed the Kaka`ako Waterfront Park (KWP) for a private for-profit concert/festival event and that the HCDA failed to properly notify the public of the park closure for the event. He also complained that the HCDA failed to properly investigate his complaint that the event security staff had restricted his access to the ocean, park facilities, and restrooms during the event set-up and during the event itself.

We reviewed Hawaii Administrative Rules (HAR) Title 15, Department of Business, Economic Development and Tourism, Subtitle 4, Hawaii Community Development Authority, Chapter 210, titled “Rules, Regulations, Charges, and Fees for Public Parks.”

Section 15-210-46, HAR, stated in part:

Permits. (a) Required. Any person using the premises shall first obtain a permit from the authority for the following uses:

. . . .

(8) Commercial activities designed for profit, . . .

. . . .

(e) Special use permits.

(1) Special uses shall be permitted only with a special use permit issued by the authority or the authority’s authorized representative. Special uses are all types of uses other than temporary concession and group use and considered compatible with the functions and purposes of each individual area, facility, or unit of the premises;

. . . .

(3) Special uses include but are not limited to such activities as . . . concerts, . . . festivals, . . .

. . . .

(5) Requests for special use permits shall be submitted in writing and shall provide . . . the date, time, duration, nature, and place of the proposed event, . . . and a statement of equipment and facilities to be used in connection therewith.

The HCDA informed us that it had granted a special use permit to the event vendor (permittee) for an enclosed festival at the KWP. We reviewed this permit and found that the HCDA had issued the special use permit in accordance with Section 15-210-46(e), HAR. Thus, we did not substantiate the complaint regarding the HCDA allowing the private use of a park facility.

We also noted that the special use permit required the permittee to pay a permit application fee and provide a security deposit to the HCDA.

However, we also believed that for purposes of clarity, the HCDA permit should have specified the dates, times, and areas that any park facilities would be closed off to the general public. We recommended that the HCDA include that information in future permits and they agreed to do so.

In speaking with HCDA officials, we initially learned that the only notice it provided to the public of the events that it granted permits for was through its notices of monthly public meetings where permit applications were scheduled to be discussed. Because there was no other form of notice provided to the public, we further discussed the matter with the HCDA and recommended that it consider additional means to provide notice of park closures. The HCDA agreed and informed us that information about future events at the KWP would be posted on its website under the section titled "MEETING/EVENTS" and also placed on flyers posted at the KWP in advance of those events. We also recommended that the HCDA provide the public with a means to contact the agency should complaints arise during permitted events. The HCDA agreed to require future permittees to provide members of the public with a telephone number of an HCDA staff member who could be reached if a complaint or concern arose concerning a vendor's actions during non-business hours.

The HCDA also informed us that it had investigated the complainant's allegations about the restriction of his access to the ocean, park facilities, and restrooms during the permitted period. The HCDA stated that the permit did not allow the permittee to restrict access to the ocean, but did allow the permittee to limit public access to the park facilities and restrooms on the day of the event between the hours of 4:00 p.m. and 3:00 a.m. The HCDA reviewed incident logs from the event but could not substantiate the complainant's claims that he was denied access to the ocean or any area of the park prior to 4:00 p.m. on the day of the event. The HCDA also noted that the permittee had placed two portable restroom facilities outside the event boundaries for public park patrons to utilize after 4:00 p.m. Based on their investigation, the HCDA was unable to support any of the allegations regarding the access restrictions by the permittee. We found the HCDA's investigation of the complainant's allegations regarding access to be reasonable.

We notified the complainant of the above action taken by the HCDA.

DEPARTMENT OF EDUCATION

(13-01421) Principal allowed part-time temporary teacher to work more than maximum hours authorized. A woman complained that the Department of Education (DOE) did not pay her for the time she worked as a part-time temporary teacher at an elementary school on Maui. The complainant stated that by agreement, the principal allowed her to work beyond the maximum 17 hours per week that were authorized for the position, but that she had not received payment for the additional hours she had worked. While the complainant's issue was about being paid for the hours she worked, we questioned the authority of the principal to allow the teacher to work more than the maximum hours per week that were authorized for the position.

We contacted the DOE and were informed that a part-time temporary teacher was only authorized to work a maximum of 17 hours per week. The DOE also confirmed our belief that a principal did not have the authority to allow a part-time temporary teacher to work more than the maximum of 17 hours per week. We contacted the complex area superintendent (CAS) for the Maui school, who informed us that the issue was already being addressed with the school principal.

Although we were confident that the Maui principal would no longer make the same error, we believed it was possible that principals at other schools might also be erroneously authorizing their part-time temporary teachers to work more than the maximum of 17 hours per week. Therefore, we contacted the DOE Deputy Superintendent, explained the situation, and recommended that the DOE take steps to ensure that all principals were informed of the maximum hours a part-time temporary teacher was authorized to work.

The Deputy Superintendent agreed with our recommendation, noting that he also wanted to avoid future problems similar to the situation that occurred at the Maui school. The Deputy Superintendent assigned an assistant superintendent to issue a memorandum regarding casual employment to remind everyone that a part-time temporary teacher was authorized to work a maximum of 17 hours per week. Shortly thereafter, a memorandum conveying this information was sent to all principals, program administrators, school administrative services assistants, and secretaries. Copies of the memorandum were also sent to all CAS, assistant superintendents, and the personnel regional officers and personnel specialists.

DEPARTMENT OF HUMAN SERVICES

(12-04292) Personal use of a State vehicle. A State employee, who wished to remain anonymous, reported seeing a vehicle with State license plates and the State seal on its door in a parking stall at her apartment complex on a Sunday. The complainant did not believe it was appropriate for a State employee to take home a State vehicle.

In our investigation, we learned from the Department of Accounting and General Services (DAGS), the agency that maintains State vehicles, that the vehicle being complained about was assigned to the Child Welfare Services Division (CWS), Department of Human Services. We contacted a CWS administrator to inquire about the use of the vehicle. The administrator informed us that one of the CWS employees had been put on 24-hour standby duty for child abuse and neglect cases for a two-week period; and since the employee may have had to do a home visit, the employee was allowed to take the vehicle home.

Through our investigation of a previous complaint (see our Fiscal Year 2008-2009 Report Number 40, Case No. 07-03728), we were aware that State employees were required to obtain permits from DAGS for the personal use of government vehicles. Section 105-1, Hawaii Revised Statutes (HRS), stated:

Government motor vehicles; certain uses prohibited.

Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) including, without limitation to the generality of the foregoing, travel by or conveyance of any officer or employee of the State, or of any county thereof, directly or indirectly, from his place of service or from his work to or near his place of abode, or, directly or indirectly, from such place of abode to his place of service or to his work. (Emphasis added.)

The exceptions to the restriction on personal use of a State vehicle were listed in Section 105-2, HRS, which stated in part:

Exceptions. Section 105-1 shall not apply to:

. . . .

- (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given

written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State; . . . (Emphasis added.)

As a result of that investigation, the Governor issued Administrative Directive No. 08-02, dated October 30, 2008, which delegated the authority to approve an employee's personal use of a State vehicle to the DAGS Comptroller. According to the directive, an employee must apply for a permit authorizing the personal use of a State vehicle by filling out a form titled "Application for Personal Use of State-Owned Vehicle," in accordance with Section 105-2(4), HRS. The Comptroller must approve the application and issue a permit before an employee is allowed to drive a State vehicle for personal use, such as driving to and from the workplace.

Based on the above, we asked the CWS administrator to provide our office with a copy of the employee's permit for personal use of a State vehicle issued by the Comptroller. However, the administrator was only able to provide us with a copy of the employee's incomplete application for the permit from 2010, and a "certificate" the CWS had provided the employee authorizing her to take the vehicle home for the dates in question.

We informed the CWS administrator of the legal requirements that must be met in order to allow the employee personal use of the State vehicle. The administrator informed us that she would immediately process the employee's application for the permit for personal use of a State vehicle. We asked the administrator to review the agency's files to determine whether its other employees possessed the proper permits authorizing personal use of State vehicles. The administrator subsequently informed us that in response to our recommendation, 46 CWS employees statewide submitted applications for permits for personal use of State vehicles. The administrator also informed us that the CWS had initiated procedures to remind employees to renew their permits prior to their expiration.

In order to ensure that all State agencies were aware of the permit requirements for employees who use State vehicles for personal use, we recommended to DAGS that it send a written reminder to all State agencies. The Comptroller concurred and issued a memorandum to all agencies.

(13-00221) Nonpayment of bills. In January 2009, a woman on Kauai complained that the Med-QUEST Division (Med-QUEST), Department of Human Services (DHS), did not pay two bills she received from a hospital in Guam. One bill was for approximately \$2,450 for services rendered on April 22, 2008 and the other bill was for approximately \$4,260 for services rendered from April 22 to April 25, 2008. The complainant was returning to

Hawaii from the Philippines when she suffered a heart attack, causing the pilot to make an emergency stopover in Guam in order for her to receive medical treatment.

In our investigation, we learned that the hospital sent the complainant the bills, who in turn submitted them to a supervisor at the Benefit, Employment and Support Services Division, DHS, the agency that had determined the complainant's eligibility for Medicaid assistance. The DHS supervisor forwarded the bills to an Oahu Med-QUEST office in July and October 2008, and asked if Med-QUEST would pay the bills or if the complainant would be responsible for payment. The supervisor did not receive a response.

Thereafter, we inquired with a Med-QUEST branch chief as to the payment of the bills. After checking into the matter, the branch chief explained that the hospital did not bill Medicaid but billed the complainant instead. Therefore, Med-QUEST reprocessed the bills and entered the Guam hospital into its computer system as a provider so that the complainant's bills would be paid. In January 2009, the branch chief informed us that the bills were paid.

However, in April 2009, the complainant informed us that the Guam hospital sent her a notice in March 2009 requesting payment for the same bills. The Med-QUEST branch chief checked further and found that the hospital had billed Med-QUEST incorrectly on the claim form. The branch chief informed us that the hospital was going to resubmit the bills and that the complainant did not have to worry about the payment.

Over three years later, in July 2012, the complainant contacted us and complained that she had again received the same bills from the hospital in Guam. Contrary to what we had been told by the DHS, the bills had not been paid.

Upon following up with Med-QUEST, we learned that the branch chief who informed us in 2009 that the bills were paid was no longer with the agency. We spoke with a secretary of the current branch chief and explained the situation.

Subsequently, a branch employee informed us that the two bills in question had been denied by Med-QUEST. Although Med-QUEST had made the hospital a provider, the Med-QUEST medical consultant denied payment of the bills because Guam was considered "out of the country" and services furnished by a provider "out of the country" were not deemed payable by Medicaid. The staff informed us that the previous branch chief was unaware of this at the time of our initial inquiry into this matter as she was new to the job in 2009.

As part of our investigation, we reviewed the Code of Federal Regulations (CFR), the laws that govern Medicaid. We found that for Medicaid purposes, "State" was defined as "the several States [in the United States], the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands." We learned that the CFR required a State to provide Medicaid to eligible residents of the State, including residents who were absent from the State. In addition, the law required a State to pay for services furnished in another State to the same extent that it would pay for services furnished within its boundaries if the services were furnished to a beneficiary who was a resident of the State and the medical services were needed because of a medical emergency. Thus, it appeared that the payment of the bill had been incorrectly denied.

In following up on our legal research, we also contacted and confirmed this information with the Federal Centers for Medicare & Medicaid Services area representative for Hawaii. As such, Med-QUEST was required to pay the bills in the complainant's case. We brought this to the attention of the Med-QUEST branch office, which, after checking further, informed us that Med-QUEST would be paying \$4,169 of the \$4,260 bill for the hospital stay because that was the limit of what Medicaid could cover. We were informed that the second bill for \$2,450 pertained to an emergency room visit that was already included in the \$4,260 bill, so Med-QUEST denied the hospital's claim for payment for this bill. Med-QUEST later informed us that the bill was paid and provided us with confirmation of the satisfaction of the bill.

We thereafter informed the complainant that the complaint had been resolved as the medical bills had finally been paid.

DEPARTMENT OF LAND AND NATURAL RESOURCES

(13-02500) Enforcement of rules pertaining to live-aboards at Keehi harbor. A vessel owner who holds a valid regular mooring permit issued by the Department of Land and Natural Resources (DLNR) to moor the vessel in Keehi harbor may not use that vessel as a place of principal habitation, unless the owner secures a principal habitation permit and a harbor resident permit, subject to the owner and the vessel meeting the requirements set forth in the DLNR rules.

Staying aboard a vessel moored at Keehi harbor is generally prohibited, except that owners holding a valid regular permit, the spouse or personal partner of each, their legal dependents, and their nonpaying guests, when in the company of the owner, are allowed to stay aboard the vessel

without a use permit upon written notification to the DLNR on or before the date of stay; provided that the period does not exceed any three nights in a week or a total of 120 nights in a calendar year. Staying aboard a vessel in excess of any three nights in a week is only permitted in limited situations when done in accordance with the rules.

A permitted Keehi harbor resident complained that the Division of Boating and Ocean Recreation (DOBOR), DLNR, was not enforcing the rules as there were unauthorized guests staying aboard some of the other vessels. The complainant alleged that the individuals staying aboard were also engaged in other illegal and unsafe activities at the harbor during the evening hours when DOBOR staff members were not present.

Subsequent to the initiation of our investigation, the complainant informed us that he had voluntarily removed his vessel from Keehi harbor and withdrew his complaint. However, we determined that the issue of the complaint affected other users of the harbor and initiated our own investigation.

We contacted DOBOR staff at Keehi harbor regarding the alleged violations. The staff informed us that they had received similar complaints from other users of the harbor. They further informed us that many of the violations occurred after 4:30 p.m. when the staff finished work for the day. They believed that the best way to catch violators in the act was to conduct an unannounced walk-through of the harbor during evening hours. The harbor staff reported that they had discontinued the unannounced walk-throughs because: (1) they no longer had a sufficient number of staff to do the job; (2) the nature of this type of enforcement action was best suited for trained enforcement officers of the Division of Conservation and Resources Enforcement (DOCARE), DLNR; and (3) DOCARE was already unable to respond to all of the DOBOR requests for other enforcement actions at its harbors. Harbor staff also informed us that a portion of the DOBOR boating special funds were annually transferred into the DOCARE budget to cover the cost of enforcement assistance by DOCARE for DOBOR.

We agreed that it would be beneficial for DOBOR staff to be accompanied by DOCARE officers during the evening walk-throughs and decided to look into whether DOCARE was providing an appropriate level of support to DOBOR. Thus, we contacted a DOCARE administrator to evaluate DOCARE's response to DOBOR's requests for enforcement assistance. After reviewing the DOCARE records of its officers' activities over a span of several recent months, we determined that DOCARE was allocating an amount of staff resources to DOBOR's requests for assistance that closely matched the percentage of DOBOR's contribution to the DOCARE budget. We thus reported these findings to DOBOR and recommended that DOBOR resume efforts to schedule evening walk-throughs of Keehi harbor with the assistance of DOCARE officers.

We monitored the situation until DOBOR and DOCARE resumed joint evening walk-throughs of Keehi harbor. During these walk-throughs, DOBOR and DOCARE staff found numerous individuals aboard vessels whose owners did not possess a principal habitation permit and harbor resident permit, or a stay-aboard permit. Individuals who were not authorized to stay aboard vessels were asked to leave the harbor. Vessel owners in violation were issued citations and faced being fined or having their permit revoked by the Board of Land and Natural Resources, DLNR. DOBOR and DOCARE staff informed us that they plan to continue conducting periodic unannounced walk-throughs of the harbor in the future to help ensure compliance.

DEPARTMENT OF PUBLIC SAFETY

(12-03309) Tobacco use/possession guilty finding based on possession of a matchbook. An inmate complained that she was erroneously found guilty of a misconduct violation at a correctional facility.

The complainant was transferred to a segregation cell while the facility investigated a physical altercation between the complainant and several of her fellow inmates. During a routine inventory of the complainant’s personal property, an adult corrections officer (ACO) found a book of matches in her belongings. The facility subsequently charged the complainant with the following misconduct violations: (1) encouraging others to riot; and (2) possession, introduction, or use of any tobacco or tobacco product. After holding a hearing on the charges, the facility’s adjustment committee (committee) found the complainant not guilty of the first charge but found her guilty of the use or possession of tobacco.

We reviewed Department of Public Safety (PSD) Policy No. COR.13.03, titled “Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations.” The complainant was found guilty of violating the following section of the policy:

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

. . . .

.3 High Misconduct Violations (7).

a. . . .

. . . .

7 (15) Possession, introduction or use of any tobacco or tobacco product.

We interviewed the ACO who found the matchbook in the complainant's property. The ACO confirmed that she did not find any cigarette or other tobacco product in the complainant's property.

We also interviewed the staff member who was in charge of committee hearings for this particular facility. The staff member informed us that she believed an inmate could be found guilty of a violation of Section 7 (15) whenever matches or lighters are found in the inmate's possession. We informed her that we did not believe a matchbook is considered to be "tobacco" or a "tobacco product." We also informed her that we believed the following section of PSD Policy No. COR.13.03 appeared to be the more appropriate charge for this incident:

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

. . . .

.4 Moderate Misconduct Violations (8).

a. . . .

. . . .

- 8 (10) Possession of anything not authorized for retention or receipt by the inmate/detainee and not issued to the inmate/detainee through regular institutional channels.

Because the complainant did not have any authorization to possess a matchbook, we asked the staff member to consider amending the committee's guilty findings to the less severe Section 8 (10) violation. However, she declined to do so.

We therefore asked the Institutions Division Administrator (IDA), PSD, to consider amending the committee's findings. The IDA concurred with our assessment of the matter. He stated that he would dismiss the complainant's guilty finding for the Section 7 (15) violation and that records of the charge would be expunged from the complainant's institutional file. The IDA also informed us that because the committee had not considered the violation of Section 8 (10) during the hearing, he did not find the need to charge the complainant with that misconduct.

We notified the complainant of the results of our investigation and she was pleased with the results.

CITY AND COUNTY OF HONOLULU

(13-00054) Dangerous door in municipal parking garage. A woman complained about a dangerous restroom door in a municipal parking garage in the Chinatown District of Honolulu. She explained that about three weeks prior to calling us, she had driven her mother to Chinatown and parked in the municipal parking garage. In one corner of the parking garage was a corridor that connected the municipal parking garage to an open-air mall. The complainant stated that while walking through the corridor, her mother was badly injured when an individual exiting the restroom suddenly opened the door, striking her mother. She complained that the restroom door should not open outward into the path of pedestrians using the corridor, but instead should open inward to prevent these types of accidents from occurring. The complainant also noted that the door was not easily visible to pedestrians as there was no signage and the door was the same color as the wall.

We visited the municipal parking garage and located the restroom door in question. We confirmed the lack of any signage alerting pedestrians of the door. However, contrary to what the complainant reported, we found the door to be reasonably visible. The door was painted light yellow and the wall surrounding it was white, and there was a light fixture to the left of the door illuminating the area. We noted that there were gray-colored hinges on the right side of the door and a hydraulic closing mechanism on top of the door, as well as a gray-colored door handle and deadbolt lock. However, although we believed the door was reasonably visible, we agreed that the door opening outward did pose a threat to persons outside the restroom.

In our investigation, we learned that the area in question was under the jurisdiction of the Parking and Property Management (PPM) office of the Department of Facility Maintenance, City and County of Honolulu (C&C). We spoke with the PPM branch chief. He was not aware of what happened to the complainant's mother. We inquired whether it was possible to have the restroom door open toward the inside, rather than toward the outside, of the restroom.

The branch chief was not sure if the C&C Building Code permitted doors to open inward from enclosed spaces. He recalled that the C&C Fire Code required such doors to open outward. He also did not know if the

configuration of the interior of the restroom would accommodate an inward-swinging door. He offered to conduct an inspection within the week.

The branch chief subsequently informed us that he had inspected the restroom at the parking garage and determined that there was more than adequate room inside the restroom to permit the door to open inward rather than outward. He noted that before he authorized changing the swing of the door, he needed to check the Fire Code to determine if there was a requirement to retain the outward swing of the door. He believed that in some jurisdictions, enclosed spaces were required to have outward opening doors for fire exit purposes. If there was no objection by the Honolulu Fire Department (HFD), the branch chief planned to authorize an expenditure of funds for the modification. If he was unable to make this change, he planned to paint the sweep of the door on the floor in bright yellow. He also planned to replace an existing handwritten sign with a more visible sign on the inside of the door warning people opening the door to be cautious and to open the door slowly.

The branch chief, thereafter, met with the HFD fire inspectors and received their approval to change the swing of the door to open inward instead of outward. After obtaining an estimate to do the work, he immediately authorized the work to be done. Shortly thereafter, the branch chief was pleased to report to us that the work to reverse the swing of the restroom door was completed.

We reported this to the complainant.

(12-03197) Lack of pedestrian safety measures on Kalakaua Avenue. In March 2012, a woman complained that the City and County of Honolulu (C&C) was not taking the necessary safety measures to protect pedestrians after a road had been resurfaced about six months earlier near the Honolulu Zoo in Waikiki. The complainant was concerned because there was a lot of pedestrian traffic in this area.

The C&C had painted a crosswalk on Kalakaua Avenue where there was a sharp turn in the road, just before the point where Kalakaua Avenue merged with Monsarrat Avenue. Despite the limited line of sight between drivers and pedestrians in this crosswalk, there was only one pedestrian crossing sign along Kalakaua Avenue to warn drivers of the approaching crosswalk.

The complainant had suggested that the C&C implement various measures to alert motorists of the crosswalk, or of pedestrians who were in or approaching the crosswalk, including improved signs and the removal of one or more of the angled curbside parking stalls along Kalakaua Avenue closest to the curve of the road. The complainant had spoken with several

C&C agencies over the course of several months, but none of the agencies were willing to accept responsibility for the area in question.

After visiting the area in question, we agreed that the complainant's suggestions deserved consideration by the C&C.

We contacted the Department of Transportation Services (DTS), which investigates traffic safety complaints for the C&C. The DTS informed us that it forwarded the few complaints it received about this particular crosswalk area to the Department of Facility Maintenance (DFM) in October 2011 and also to the Department of Parks and Recreation (DPR) in January 2012.

We thereafter contacted the DFM and DPR regarding the DTS referrals. The DFM informed us that the crosswalk area was under the jurisdiction of the DPR. In our contact with the DPR, staff confirmed its receipt of the complaint but admitted no action had been taken in several months.

The DPR informed us that the DTS would need to install any necessary signs on the Kalakaua Avenue median because, although the area was adjacent to Kapiolani Park, the DPR only had jurisdiction up to the borders of the park. The DPR further informed us that the parking stalls nearest to the crosswalk were assigned to the lifeguards of the C&C Emergency Services Department (ESD). Therefore, reconfiguring the parking stalls would require input from the ESD. Furthermore, the DPR said it would require labor and materials from the DFM to reconfigure any parking stalls. After several weeks of dialogue with the other C&C agencies, the DPR administration agreed to request an assessment of the area by a DTS traffic engineer.

When the assessment was completed several weeks later, we learned that the DTS engineer had recommended the installation of several new high-visibility fluorescent pedestrian warning signs and the removal of the last parking stall along Kalakaua Avenue. We monitored the progress of the project by the DPR, DTS, and DFM for several months until the new pedestrian crossing signs had been installed and a parking stall was eliminated.

We thereafter reported the C&C's actions to the complainant, who acknowledged that some improvements had been made, but was still not completely satisfied. We informed her that we believed that the actions by the C&C agencies were sufficient to address the safety of pedestrians, and asked that she allow the agency some time to evaluate the effectiveness of the changes that had been made.



Kalakaua Avenue crosswalk (March 2012)



New high-visibility pedestrian crossing sign approaching crosswalk (August 2012)



Pedestrian view from crosswalk (March 2012)



Pedestrian view from crosswalk with removed parking stall (October 2012)

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

To view a cumulative index of all selected case summaries that appeared in our Annual Report Nos. 1 through 42, please visit our website at www.ombudsman.hawaii.gov and select the “Annual Reports” link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.

