

Office of the Ombudsman  
State of Hawaii  
Fiscal Year 2013-2014  
Report Number 45





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**

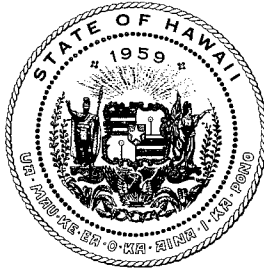
**Phone: 808-587-0770  
Fax: 808-587-0773  
TTY: 808-587-0774**

**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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website: [www.ombudsman.hawaii.gov](http://www.ombudsman.hawaii.gov)**



State of Hawaii

# Report of the Ombudsman

For the Period July 1, 2013 - June 30, 2014  
Report No. 45

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

December 2014



Mme. President, Mr. Speaker, and Members of the  
Hawaii State Legislature of 2015:

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 2013-2014. This is the forty-fifth annual report since the establishment of the office in 1969.

I would like to thank the State Legislature for its continued support of our office. We remain steadfast in our efforts to independently and impartially investigate citizen complaints against government and to improve the level of public administration in Hawaii, and hope that these efforts help to enhance the public's trust and confidence in government.

On behalf of the members of the office, I would like to thank the Governor, the Mayors of the various counties, and the State and County department heads and employees for their ongoing cooperation and assistance in our efforts to resolve citizen complaints and their shared desire to ensure the fair and impartial delivery of government services.

I would also like to personally thank First Assistant Mark Au and the professional and support staff of the Office of the Ombudsman for their continued commitment and dedication to the mission and purpose of our office.

Respectfully submitted,

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

ROBIN K. MATSUNAGA  
Ombudsman

December 2014



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## Chapter I

### THE YEAR IN BRIEF

#### Total Inquiries Received

During fiscal year 2013-2014, the office received a total of 4,114 inquiries. Of these inquiries, 3,071, or 74.6 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 469 non-jurisdictional complaints and 574 requests for information.

There was an across-the-board decrease in the number of jurisdictional complaints, information requests, and non-jurisdictional complaints.

A comparison of inquiries received in fiscal year 2012-2013 and fiscal year 2013-2014 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
2013-2014	4,114	574	469	3,071	1,676	1,395
2012-2013	4,317	676	513	3,128	1,692	1,436
Numerical Change	-203	-102	-44	-57	-16	-41
Percentage Change	-4.7%	-15.1%	-8.6%	-1.8%	-0.9%	-2.9%

## Staff Notes

In September 2013, analyst Cori Woo transferred to the Department of Human Services. In December 2013, Haans Endecott joined our office as an analyst. Mr. Endecott holds a Bachelor of Arts degree from California State University - Channel Islands and in May 2014 earned a Master's degree in Public Administration from the University of Hawaii at Manoa. Mr. Endecott left the office in May 2014 to pursue a career in California. We wish Ms. Woo and Mr. Endecott the best in their future endeavors.

In October 2013, analyst Gansin Li celebrated 20 years of service with the State of Hawaii. Mr. Li has been with the Office of the Ombudsman since January 2005. Prior to joining our office, he worked at the Office of the State Auditor. We extend our congratulations to Mr. Li and thank him for his contribution and dedicated service.

First Assistant Mark Au and analysts Rene Dela Cruz and Gansin Li attended the 34<sup>th</sup> Annual Conference of the United States Ombudsman Association (USOA) in Indianapolis, Indiana, from October 30 to November 1, 2013. Conference workshop topics included development of investigation plans, use of social media tools, and management of complainants with mental health issues. Messrs. Au, Dela Cruz, and Li also attended a pre-conference workshop on October 28 and 29, 2013, titled "The Reid Technique of Investigative Interviewing." This training focused on how to efficiently and effectively conduct a non-accusatory investigative interview and how to assess the credibility of the information developed during the interview.

At the annual meeting held during the USOA Annual Conference, Ombudsman Robin Matsunaga was elected to serve another two-year term as the USOA President. This is his seventh two-year term as an elected Director of the USOA Board. Mr. Matsunaga has been a member of the USOA Board of Directors since 1999, serving as chair of the Outreach and Membership Committees (1999-2001), President (2001-2003, 2003-2005), Past-President (ex-officio, 2005-2007), Vice President (2007-2009), Conferences & Training Committee Chair (2009-2011), and President (2011-2013). The USOA is the oldest and largest professional organization in the United States of ombudsmen working in government to address citizen complaints.

In June 2014, we welcomed Vanda Lam as our newest analyst. Ms. Lam earned a Bachelor of Science degree and a Master's degree in Public Administration from the University of Hawaii at Manoa. She previously worked at the Judicial Services Branch of the District Court of the First Circuit.

At the end of the fiscal 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, Vanda Lam, Gansin Li, and Marcie McWayne; and support staff Sheila Alderman, Debbie Goya, Carol Nitta, and Sue Oshima.

## **Outreach Efforts**

On July 29, 2013, Assistant Ombudsman Rachel Barnett from the Joint Office of Citizen Complaints in Dayton, Ohio, visited our office while on a trip to Hawaii. The Dayton office, created in 1971, is one of the oldest municipal ombudsman offices in the United States.

As in prior years, the Office of the Ombudsman participated in the Annual Hawaii Seniors' Fair – The Good Life Expo, which was held from September 27 to 29, 2013, at the Neal Blaisdell Center. The three-day event attracted over 21,000 attendees and more than 200 vendors who exhibited their products and services. Seniors and other attendees stopped by our exhibit booth to find out who we are and how we can help them resolve their issues with various executive agencies of the State and county governments. Our staff enjoyed meeting and speaking with these attendees and provided brochures with additional information about our office.

Analysts Herbert Almeida and Marcie McWayne participated in the Hawaii Small Business Fair held on October 12, 2013, at the Henry Hall Courtyard of Chaminade University. This year's theme was titled "Launch Your Dreams Into Reality." Approximately 30 vendors were on hand to answer questions and distribute information about their companies to interested attendees. Mr. Almeida and Ms. McWayne provided small business owners and other attendees information about the services of our office that can be beneficial to small businesses.

Two international government leaders from Malaysia visited our office on December 5, 2013. Farah Intan Binti Burhanudin and King Wei Wong were on tour of the United States to meet with counterparts to discuss transparency and ethics within government. Ms. Burhanudin is an analyst for the government accountability section of the Malaysian government, Pemandu. Mr. Wong is a leader within Malaysia's opposition coalition. He is the youngest state legislator in the East Malaysian State of Sarawak.

On January 9, 2014, Ombudsman Robin Matsunaga addressed students in a doctoral seminar at Khon Kaen University in Thailand via Skype. This seminar was organized by Professor Richard Pratt of the University of Hawaii's Public Administration Program. Mr. Matsunaga provided an overview of the ombudsman profession, explained the work

of the Hawaii Ombudsman's Office, and responded to questions regarding creating and sustaining an effective ombudsman office in local government.

On June 27, 2014, Mr. Matsunaga met with volunteers of the State's Health Insurance Assistance Program (formerly Sage PLUS) at the Community Church of Honolulu. He provided the volunteers with information about the function of our office and the services we provide.

## Chapter II

### 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 2013-2014**

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	395	295	55	45
August	342	257	50	35
September	376	286	39	51
October	332	241	41	50
November	322	246	28	48
December	283	206	38	39
January	365	268	38	59
February	371	283	41	47
March	302	218	31	53
April	361	272	38	51
May	327	248	29	50
June	338	251	41	46
TOTAL	4,114	3,071	469	574
% of Total Inquiries	--	74.6%	11.4%	14.0%



**TABLE 2**  
**MEANS BY WHICH INQUIRIES ARE RECEIVED**  
**Fiscal Year 2013-2014**

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	345	22	19	0	8	1
August	276	47	15	0	4	0
September	322	33	11	2	7	1
October	287	20	23	0	2	0
November	265	39	11	0	7	0
December	234	31	9	0	8	1
January	319	29	14	0	2	1
February	320	34	13	0	3	1
March	242	38	18	0	2	2
April	308	35	18	0	0	0
May	290	17	18	1	0	1
June	277	41	15	0	4	1
TOTAL	3,485	386	184	3	47	9
% of Total Inquiries (4,114)	84.7%	9.4%	4.5%	0.1%	1.1%	0.2%





**TABLE 3  
DISTRIBUTION OF POPULATION AND  
INQUIRERS BY RESIDENCE  
Fiscal Year 2013-2014**

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	983,429	70.0%	2,973	72.3%
County of Hawaii	190,821	13.6%	405	9.8%
County of Maui	160,292	11.4%	377	9.2%
County of Kauai	69,512	5.0%	64	1.6%
Out-of-State	--	--	295	7.2%
<b>TOTAL</b>	<b>1,404,054</b>	<b>--</b>	<b>4,114</b>	<b>--</b>

\*Source: The State of Hawaii Data Book 2013, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "Resident Population, by County: 2000 to 2013."



**TABLE 4**  
**DISTRIBUTION OF TYPES OF INQUIRIES**  
**BY RESIDENCE OF INQUIRERS**  
**Fiscal Year 2013-2014**

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	2,266	73.8%	273	58.2%	434	75.6%
County of Hawaii	288	9.4%	54	11.5%	63	11.0%
County of Maui	303	9.9%	40	8.5%	34	5.9%
County of Kauai	47	1.5%	7	1.5%	10	1.7%
Out-of-State	167	5.4%	95	20.3%	33	5.7%
TOTAL	3,071	--	469	--	574	--



**TABLE 5  
MEANS OF RECEIPT OF INQUIRIES  
BY RESIDENCE  
Fiscal Year 2013-2014**

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,973	2,618	177	120	3	47	8
% of C&C of Honolulu	--	88.1%	6.0%	4.0%	0.1%	1.6%	0.3%
County of Hawaii	405	364	17	23	0	0	1
% of County of Hawaii	--	89.9%	4.2%	5.7%	0.0%	0.0%	0.2%
County of Maui	377	352	16	9	0	0	0
% of County of Maui	--	93.4%	4.2%	2.4%	0.0%	0.0%	0.0%
County of Kauai	64	54	6	4	0	0	0
% of County of Kauai	--	84.4%	9.4%	6.3%	0.0%	0.0%	0.0%
Out-of- State	295	97	170	28	0	0	0
% of Out- of-State	--	32.9%	57.6%	9.5%	0.0%	0.0%	0.0%
TOTAL	4,114	3,485	386	184	3	47	9
% of Total	--	84.7%	9.4%	4.5%	0.1%	1.1%	0.2%



**TABLE 6**  
**DISTRIBUTION AND DISPOSITION OF**  
**JURISDICTIONAL COMPLAINTS BY AGENCY**  
**Fiscal Year 2013-2014**

Agency	Jurisdictional Complaints	Percent of Total	Completed Investigations		Discontinued	Declined	Assisted	Pending
			Substantiated	Not Substantiated				
<u>State Departments</u>								
Accounting & General Services	15	0.5%	2	4	3	4	0	2
Agriculture	3	0.1%	1	1	0	0	1	0
Attorney General	48	1.6%	1	7	5	15	18	2
Budget & Finance	71	2.3%	1	20	12	22	15	1
Business, Economic Devel. & Tourism	11	0.4%	0	2	1	4	1	3
Commerce & Consumer Affairs	39	1.3%	2	17	7	6	2	5
Defense	6	0.2%	1	3	2	0	0	0
Education	96	3.1%	9	22	9	43	4	9
Hawaiian Home Lands	12	0.4%	1	3	4	4	0	0
Health	95	3.1%	1	32	11	37	8	6
Human Resources Development	8	0.3%	1	2	1	3	0	1
Human Services	289	9.4%	17	99	38	83	41	11
Labor & Industrial Relations	85	2.8%	7	34	10	24	3	7
Land & Natural Resources	55	1.8%	0	20	6	20	3	6
Office of Hawaiian Affairs	3	0.1%	0	0	0	3	0	0
Public Safety	1,866	60.8%	90	560	110	947	82	77
Taxation	32	1.0%	0	2	5	15	10	0
Transportation	48	1.6%	2	13	8	15	5	5
University of Hawaii	26	0.8%	4	1	5	14	1	1
Other Executive Agencies	9	0.3%	0	7	1	1	0	0
<u>Counties</u>								
City & County of Honolulu	186	6.1%	8	49	31	75	13	10
County of Hawaii	30	1.0%	1	6	2	18	0	3
County of Maui	27	0.9%	0	11	3	10	0	3
County of Kauai	11	0.4%	1	3	3	3	0	1
<b>TOTAL</b>	<b>3,071</b>	<b>--</b>	<b>150</b>	<b>918</b>	<b>277</b>	<b>1,366</b>	<b>207</b>	<b>153</b>
% of Total Jurisdictional Complaints	--	--	4.9%	29.9%	9.0%	44.5%	6.7%	5.0%





**TABLE 7  
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED  
JURISDICTIONAL COMPLAINTS BY AGENCY  
Fiscal Year 2013-2014**

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
<u>State Departments</u>			
Accounting & General Services	2	2	0
Agriculture	1	1	0
Attorney General	1	1	0
Budget & Finance	1	1	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	2	2	0
Defense	1	1	0
Education	9	6	3
Hawaiian Home Lands	1	0	1
Health	1	1	0
Human Resources Development	1	1	0
Human Services	17	17	0
Labor & Industrial Relations	7	7	0
Land & Natural Resources	0	0	0
Office of Hawaiian Affairs	0	0	0
Public Safety	90	84	6
Taxation	0	0	0
Transportation	2	2	0
University of Hawaii	4	4	0
Other Executive Agencies	0	0	0
<u>Counties</u>			
City & County of Honolulu	8	7	1
County of Hawaii	1	1	0
County of Maui	0	0	0
County of Kauai	1	1	0
<b>TOTAL</b>	<b>150</b>	<b>139</b>	<b>11</b>
% of Total Substantiated Jurisdictional Complaints	--	92.7%	7.3%
% of Total Completed Investigations (1,068)	14.0%	13.0%	1.0%



**TABLE 8**  
**DISTRIBUTION OF INFORMATION REQUESTS**  
**Fiscal Year 2013-2014**

Agency	Information Requests	Percent of Total
<u>State Departments</u>		
Accounting & General Services	11	1.9%
Agriculture	3	0.5%
Attorney General	10	1.7%
Budget & Finance	16	2.8%
Business, Economic Devel. & Tourism	0	0.0%
Commerce & Consumer Affairs	40	7.0%
Defense	1	0.2%
Education	9	1.6%
Hawaiian Home Lands	1	0.2%
Health	46	8.0%
Human Resources Development	3	0.5%
Human Services	18	3.1%
Labor & Industrial Relations	20	3.5%
Land & Natural Resources	14	2.4%
Office of Hawaiian Affairs	0	0.0%
Public Safety	40	7.0%
Taxation	8	1.4%
Transportation	10	1.7%
University of Hawaii	4	0.7%
Other Executive Agencies	3	0.5%
<u>Counties</u>		
City & County of Honolulu	72	12.5%
County of Hawaii	5	0.9%
County of Maui	3	0.5%
County of Kauai	0	0.0%
Miscellaneous	237	41.3%
<b>TOTAL</b>	<b>574</b>	<b>--</b>



**TABLE 9**  
**DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS**  
**Fiscal Year 2013-2014**

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	19	4.1%
County Councils	0	0.0%
Federal Government	24	5.1%
Governor	2	0.4%
Judiciary	53	11.3%
Legislature	10	2.1%
Lieutenant Governor	1	0.2%
Mayors	3	0.6%
Multi-State Governmental Entity	0	0.0%
Private Transactions	356	75.9%
Miscellaneous	1	0.2%
TOTAL	469	--



**TABLE 10  
INQUIRIES CARRIED OVER TO FISCAL YEAR 2013-2014 AND  
THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER  
TO FISCAL YEAR 2014-2015**

Types of Inquiries	Inquiries Carried Over to FY 13-14	Inquiries Carried Over to FY 13-14 and Closed During FY 13-14	Balance of Inquiries Carried Over to FY 13-14	Inquiries Received in FY 13-14 and Pending	Total Inquiries Carried Over to FY 14-15
Non-Jurisdictional Complaints	3	3	0	3	3
Information Requests	2	2	0	0	0
Jurisdictional Complaints	136	124	12	153	165
		<u>Disposition of Closed Complaints:</u>  Substantiated           26 Not Substan.           90 Discontinued            8 <hr style="width: 50px; margin-left: auto; margin-right: 0;"/> 124			
TOTAL	141	129	12	156	168





## **Chapter III**

### **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 HUMAN SERVICES

**(14-02496) Miscalculation of deadline to request an expedited grievance hearing.** A person who lived in housing provided by the Hawaii Public Housing Authority (HPHA), Department of Human Services (DHS), complained that he was denied a hearing to contest his eviction. The complainant informed us that on December 1, 2013, he opened an envelope addressed to him from the HPHA. Inside the envelope, which was postmarked November 27, 2013, was an eviction notice dated November 25, 2013. The notice stated that he had the right to contest the eviction by filing a written request for an expedited grievance hearing within five business days from the date of the notice.

The complainant informed us that he hand-delivered his written request for an expedited grievance hearing to the HPHA on December 4, 2013, but that the HPHA denied it. The complainant said that the HPHA staff determined his request was not timely because the due date was December 2, 2013, or the fifth business day starting from November 25, 2013, the date of the notice. The complainant pointed out that although the notice was dated November 25, 2013, the envelope that it came in was postmarked November 27, 2013. The complainant contended that he was being penalized for the delayed mailing of the notice and that the actual deadline for his written request for an expedited grievance hearing should be December 4, 2013.

During our investigation of the denial of the complainant's request for an expedited hearing, the HPHA agreed that the notice was not mailed in a timely manner. Thus, the HPHA recalculated the due date based on the postmark date instead of the date of the notice, approved the complainant's request for an expedited grievance hearing, and processed it accordingly. The complainant was satisfied with the resolution of his complaint.

As a result of this case, the HPHA provided instructions to the property managers about the methods of dating and delivering the notices. Staff were instructed that when notices are delivered by mail, the notices must be postdated, at a minimum of one day before they go out to ensure the recipients have the five business days to request expedited grievance hearings. They were also told that when notices are delivered by hand, postdating of the notices is not necessary if they are hand-delivered before 9:00 a.m. that day and the recipients are available to receive the notices.

Although the complainant obtained the resolution he was seeking and the HPHA took steps to address the dating and delivery of the notices, we disagreed with the HPHA's method of calculating the deadline for filing a request for an expedited grievance hearing. By treating the date of the notice as day one for the due date calculation, we believed the recipient of an

eviction notice lost one day to submit the recipient's request for an expedited grievance hearing. Therefore, we initiated an investigation of the HPHA's methodology for calculating the due date for written requests for expedited grievance hearings.

In our investigation, we reviewed Hawaii Administrative Rules (HAR) Title 17, DHS, Subtitle 5, HPHA, Chapter 2021, titled "Grievance Procedure." Section 17-2021-31, HAR, titled "Request for hearing - expedited grievance," stated in part:

The complainant shall submit a written request for grievance hearing to the project office within five business days from the date of the written notice of violation from management. . . .

Under the HAR, when a complainant disagrees with the notice of violation from the HPHA, the complainant has the right to file for an expedited grievance hearing within five business days from the date of the notice. As such, we believed a complainant should be given five full business days to assert this right. In our particular complainant's case, we believed the deadline to file the request for an expedited grievance hearing should have been December 5, 2013, the fifth business day following the postmark date.

We shared our concerns regarding the calculations with the HPHA. The HPHA agreed with our position that day one should be the first business day following the date of the notice. As a result, the HPHA provided instructions to the scheduling staff about the proper counting of days when processing requests for expedited grievance hearings.

We believed that the HPHA had taken appropriate corrective action in this situation.

## **DEPARTMENT OF PUBLIC SAFETY**

**(12-03167) Duplicate misconduct charges.** An inmate complained that a correctional facility's adjustment committee (committee) improperly found him guilty of charges related to a fire that was started by inmates at that facility. The complainant was found guilty of the following violations of Department of Public Safety (PSD) Policy No. COR 13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

### **4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS**

.....

.2 Greatest Misconduct Violations (6).

a. . . .

. . . .

6 (7) Destroying, altering or damaging government property or the property of another person resulting in damage of \$1,000.00 or more, including irreplaceable documents.

. . . .

6 (13) The use of force or violence resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant.

The complainant was charged with but found not guilty of the following violations:

6 (3) Assaulting any person, with or without a dangerous instrument, causing bodily injury.

6 (6) Setting a fire.

In our investigation, we asked the committee chairperson to explain the basis for the two guilty findings. The chairperson informed us that the guilty finding for the 6 (7) violation was based on the fact that the fire destroyed documents such as memoranda, reports, and other information related to inmates that appeared to be irreplaceable; caused environmental damage due to smoldering; caused personal injuries to staff; and required maintenance staff to come in during non-work hours to clean up, resulting in overtime costs. We informed the chairperson that we believed the 6 (7) violation applied only to tangible, government property and not injury to persons or overtime costs. We also noted that the investigation report identified the damaged items as a trash can, library books, and papers, and did not place a monetary value on the damaged property.

With regard to the guilty finding for the 6 (13) violation, the chairperson explained that their decision was based on the fact that the fire prevented the correctional staff from performing their duties of providing a safe and secure facility. We informed the chairperson that we believed the 6 (13) violation required evidence of the physical use of force or violence.

We also noted that the investigation report stated that the complainant moved a trash can into the common area and then back to the cubicle, allegedly to aid other inmates in setting the fire.

We contacted the facility warden and expressed our concerns with the committee findings. We recommended that the guilty findings for 6 (7) and 6 (13) be expunged from the complainant's record. However, we believed the act of moving the trash can back and forth between the common area and the cubicle indicated the complainant's intent to aid and assist the other inmates in setting the fire. We noted that COR 13.03.4.7 stated: "[a]ttempting to commit . . . aiding another person to commit . . . and conspiring to commit any of the above acts shall be considered the same as a commission of the act itself." We thus recommended that the warden also reverse the committee's not guilty finding for the 6 (6) violation.

The warden reviewed our recommendations and subsequently informed us that he had reversed and rescinded the committee's guilty findings for the 6 (7) and 6 (13) violations. The warden also informed us that he replaced those findings with guilty findings for the following three violations:

.3 High Misconduct Violations (7).

a. . . .

. . . .

7 (12) The use of physical interference or obstacle resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant.

. . . .

.4 Moderate Misconduct Violations (8).

a. . . .

. . . .

8 (5) Destroying, altering or damaging government property or the property of another person resulting in damages between \$50-\$499.99.

. . . .



8 (15) Participating in an unauthorized meeting or gathering.

With regard to the 7 (12) violation, the warden indicated that the complainant moved the trash can and placed it in an area not normally expected. The warden noted that when walking in the dark, the staff could have easily tripped over the trash can. With regard to the 8 (5) violation, the warden reported that the floor, ceiling, alarm system, and water sprinklers had to be repaired, repainted, and inspected by professionals. In addition, a work crew of four inmates overseen by three facility staff was required to clean, repair, and repaint the floor and ceiling. Moreover, the mattresses and bedding needed to be repaired. With regard to the 8 (15) violation, the warden stated that there was a clear division of labor to cause a fire that resulted in damages of several hundreds of dollars and the fire would not have happened without an unauthorized meeting. The warden did not address the 6 (6) violation so we understood it to mean that the warden declined to find the complainant guilty of that charge.

We had concerns with the warden's decision so we contacted the Institutions Division Administrator (IDA). With regard to the 7 (12) violation, we did not believe that the complainant moved the trash can with the intent to create an obstacle, but that he moved it to assist in the setting of the fire. As soon as the fire was set inside the trash can, the complainant moved the trash can from the cubicle to the common area. The complainant's act of moving the trash can showed his assistance and involvement in the setting of the fire which, pursuant to COR 13.03.4.7, was the same as setting the fire itself. Thus, we believed that the 6 (6) violation was the more appropriate charge.

With regard to the 8 (15) violation, we agreed that it was reasonable to find that the setting of the fire could not have been completed without the inmates meeting to discuss their plan. However, the meeting amongst the inmates to discuss their plan was part of the overall process in carrying out the act of setting the fire. The inmates' actions in planning the fire showed their assistance and involvement in the setting of the fire. As noted above, the inmates' actions in this case should, therefore, be considered the same as a commission of the act itself. As such, we again believed the 6 (6) violation was the more appropriate charge.

We explained our concerns and reasoning to the IDA and recommended that the warden's guilty findings for the 7 (12) and 8 (15) violations and the committee's not guilty finding for the 6 (6) violation be reversed. The IDA agreed with our reasoning, vacated the guilty findings for the 7 (12) and 8 (15) violations, and replaced them with a guilty finding for the 6 (6) violation.

With regard to the 8 (5) violation, we believed that the warden's guilty finding was appropriate, but did not believe that the process he used in finding the complainant guilty was correct. Although the committee documents did not include information on the value of the government property destroyed in the fire, the warden informed us that there were ruined mattresses and bedding that needed repairs totaling \$100. Since the value of the government property destroyed in the fire was between \$50 and \$499, we believed the guilty finding of the 8 (5) violation was reasonable. We also noted that, pursuant to COR 13.03.5.9b, "[t]he Warden . . . may also initiate review of any adjustment committee decision and it shall be within the Warden's discretion to modify any committee findings or decisions. . . ." Although the warden had the discretion to reverse the committee's guilty finding for the 6 (7) violation, it appeared that the warden's decision to find the complainant guilty of the 8 (5) violation was based on new information that was not available at the time of the hearing. Thus, we questioned whether the complainant should not be afforded another committee hearing specifically for the 8 (5) violation, based on the new information, to allow the complainant the opportunity to defend himself against this charge. The IDA noted that based on 13.03.5.9b, the warden has the authority to modify the violation without requiring any further hearings on the matter. After considering the evidence supporting the guilty finding and the length of time that had passed since the committee hearing, we determined that the IDA's decision to not order a new hearing for the 8 (5) charge was reasonable in this case.

We subsequently notified the complainant of the outcome of our investigation and he expressed his appreciation for the action taken by the IDA.

**(14-01215) Food not served at correct temperature.** An inmate complained that a correctional facility was not serving food at proper temperatures. The module where the complainant was housed had its own food service area so the inmates did not go to a separate dining hall for their meals. Instead, the food was delivered by cart from the facility kitchen to the housing module no earlier than 15 minutes prior to the scheduled meal time.

The facility's policy required hot food to be maintained at a temperature of 140 degrees or above from the time of completion of preparing the food to the serving of the food. The policy also required cold food to be maintained at a temperature of 45 degrees or less from the time the food is taken out of the refrigeration unit to the serving of the food.

The policy further stated that the unit managers are to ensure that staff at the modules take thermometer readings so that the food was served

at the proper temperatures. The policy also required the temperature readings to be recorded in a log book/sheet provided by the kitchen on a daily meal-by-meal basis.

In our investigation, we spoke with the supervisor of the facility kitchen. He informed us that the hot food is placed in thermal plates that were stacked one on top of the other to help maintain the proper serving temperature. He also informed us that the hot food was served at a minimum temperature of 140 degrees and the cold food was served at a maximum temperature of 45 degrees.

The kitchen supervisor further informed us that the housing module staff recorded the temperature reading of the food before it was served to the inmates. However, when we reviewed a copy of the report of the daily temperature readings, we noted that the kitchen staff was recording the temperatures when the food left the kitchen but the module staff was not recording the temperature of the food before it was served. We thus inquired with the kitchen supervisor as to why the temperatures were not being recorded at the module. He admitted that the module staff there did not consistently record the temperatures.

We recommended that the kitchen supervisor require the module staff to obtain and record food temperature readings. The kitchen supervisor informed us that he did not oversee the module staff, but agreed to raise this issue at an upcoming facility meeting. Subsequently, the kitchen supervisor reported that at the meeting, concerns were raised about bringing pointed objects, such as the thermometers, into the modules. As a result, the supervisor informed us that to avoid having to bring thermometers into the modules, in addition to taking the temperature readings of the food when it left the kitchen, the kitchen staff would also take and record the food temperatures when they delivered the food to the modules.

We informed the complainant of the corrective action taken.

**(14-01258) Erroneous reclassification of inmate.** Shortly after a sentenced inmate begins serving time in prison, the Department of Public Safety (PSD) utilizes a classification instrument that identifies various risk factors associated with the inmate and objectively computes the inmate's custody level. The degree of physical control and staff supervision that the inmate requires, as well as the types of programs the inmate has access to, are determined by an inmate's custody level. A reassessment of the inmate's custody level is conducted every six months thereafter using a reclassification instrument.

The classification and reclassification instruments compute custody levels, which in order of lowest to highest security level are community,

minimum, medium, close, and maximum. However, correctional facility staff may recommend that the PSD Classification Office (CO) override an inmate's computed custody level to a higher or lower custody level through a procedure called the exception case process. An inmate who has previously committed a behavioral misconduct in the high or greatest category of violations and whose institutional behavior demonstrates that he or she is unable to function appropriately in the general inmate population, may be classified by exception case to maximum custody.

An inmate complained that staff erroneously reclassified her from medium custody to maximum custody. We reviewed several documents to determine whether the complainant had been properly reclassified to maximum custody. We found that staff used the exception case process and recommended to the CO that the complainant's custody level be raised to maximum custody because she was under investigation for a behavioral misconduct of the greatest category. The CO approved the facility's recommendation and the complainant was thereafter reclassified to the maximum custody level.

We noted that even though the alleged misconduct had occurred nine months earlier, the facility had not yet conducted an adjustment committee (committee) hearing to determine whether the complainant had in fact violated any facility rules. As such, the facility staff had not determined that the complainant had committed a misconduct violation in the high or greatest category. We did not believe that an investigation of the misconduct alone was a sufficient basis to recommend the reclassification of the complainant to maximum custody.

We informed the supervisor at the CO that we believed the exception case recommendation should not have been approved because it assumed the complainant had committed a behavioral misconduct of the greatest category without providing the inmate an opportunity to defend herself. The supervisor agreed with our position. He was unable to explain why the previous supervisor, who had retired, had approved of the facility's recommendation for maximum custody. The current supervisor informed us that this error appeared to be an isolated incident. Nevertheless, he reviewed the requirements of the exception case process with the facility staff who submitted the recommendation in this case.

The complainant eventually appeared before the facility's committee and was found guilty of the alleged misconduct. Based on that finding, the complainant was subsequently reclassified to maximum custody via the exception case process.

While we were unable to do anything about the time that the complainant spent prematurely in maximum custody, the complainant appreciated that the facility staff had been re-educated about the exception case process.

**(14-01343) Correctional facility not providing inmates with sufficient clothing.** An inmate complained that he had not been given any underwear or T-shirts after his arrival at a correctional facility.

We reviewed the pertinent Department of Public Safety (PSD) policy and learned that all inmates were to be issued, at a minimum, three pairs of pants; three shirts; three T-shirts; and three pairs of underwear. The correctional facility staff informed us that the complainant had received all of the required items from a supply of recycled clothing that they had set aside for inmates, such as the complainant, who the facility had determined to be indigent. The staff also informed us that inmates who were not determined to be indigent were given shirts and pants, but were required to purchase their own T-shirts and underwear or have their family drop off the items at the facility.

We contacted the complainant to report what we had learned. The complainant then admitted to us that he received the items, but he actually wanted the items to be replaced since they were worn out. We informed the complainant that he needed to follow the facility procedure to obtain replacement items.

Although the complainant's issue was closed, we had concerns about why the facility was not providing non-indigent inmates T-shirts and underwear pursuant to policy. Thus, we decided to investigate further. The staff of the correctional facility informed us that the facility had no money for these clothing items. The staff also stated that they had cut back on the distribution of T-shirts and underwear because many of the inmates who were housed at that facility were there only for a short time and were either released or transferred to another facility soon after admission.

We discussed this matter with the PSD Institutions Division Administrator (IDA) and recommended either budgetary assistance for the facility or a revision of the clothing policy for correctional facilities that had a large transient inmate population. The IDA believed the facility needed to budget for the clothing items and contacted the facility warden. The facility was subsequently able to budget for the purchase of T-shirts and underwear for all inmates.

We then asked the correctional facility staff how they planned to distribute the clothing items. The staff informed us that they were providing the currently housed inmates with the items when it did not appear the

inmates had such items. The staff were aware of what clothing items the newly admitted inmates brought with them but still required these inmates to request any clothing items they lacked. We noted that there would be inmates who would not know they could make requests for clothing items and we believed the policy did not require inmates to ask for the minimum number of clothing items. We believed that the inmates should be issued the clothing items at the time of their admission to the facility. We recommended to the facility administration that a directive be sent to its staff instructing them to issue to all newly admitted inmates the minimum number of clothing items. The facility administration agreed with our recommendation and issued the directive.

## **UNIVERSITY OF HAWAII**

**(14-00675) State vehicle sitting idle at a university campus.** A man who frequently visited the University of Hawaii at Hilo (UHH) campus complained that a truck parked in the campus parking lot was not being utilized properly. Based on the location and angle that the truck was parked, the complainant believed the truck had not been used in several months. He also noticed that the vehicle safety inspection decal on the truck had expired months earlier. The complainant stated that he had contacted the UHH administration about the truck and that the administration could not determine who owned the truck or account for its presence on the campus.

In our investigation, we first contacted the Automotive Management Division (AMD), Department of Accounting and General Services, which maintains records of the vehicles in the State motor pool, to ascertain the ownership of the truck. The AMD informed us that the truck was assigned to the UHH and that the UHH had reported that the 11-year-old vehicle was going to be disposed of.

We then contacted the UHH motor pool for more information regarding the truck and were informed that the truck was assigned to the UHH Division of Natural Sciences. A professor at the UHH Division of Natural Sciences explained that the truck actually belonged to the University of Hawaii at Manoa (UHM) Biology Department. The truck was brought over to the UHH from Oahu for a UHM forestry project. The project was completed but the truck remained at the UHH for use by the UHH Biology Department for field work. However, the truck, which only had 40,000 miles on it, was later discovered to have electrical problems so it could not be used and could not pass the vehicle safety inspection. The UHH Division of Natural Sciences professor informed us that he had been asked to figure out

what to do with the truck. He had obtained a repair estimate for the truck but no other action had been taken. He also informed us that the UHH Geology Department was interested in assuming ownership of the truck.

We therefore contacted the UHH Geology Department and were informed by a professor there that he had made an offer to assume ownership of the truck and accept responsibility for its repair. However, he noted that the UHM had not responded to his offer. Thus, we contacted the UHM Biology Department, which informed us that there was a delay in deciding what to do with the truck due to a shortage of staff. A professor in the UHM Biology Department said they were initially considering bringing the truck back to the UHM, but after further consideration, they decided a truck that had been driven up and down the mountains on the island of Hawaii was not worth bringing back. He said they were happy to give the truck to another department in the University of Hawaii system that could make use of it.

Later, the professor at the UHM Biology Department informed us that the UHH Geology Department agreed to accept the truck. Arrangements were made to transfer ownership of the vehicle to that department.

We continued to monitor the actions of the UHM Biology Department and UHH Geology Department and were subsequently informed that the ownership of the truck had been transferred and that the UHH Geology Department had scheduled the truck for repair and safety inspection. The UHH Geology Department noted that the truck was a welcome addition since many projects were dependent on the use of a vehicle.

What initially appeared to be a simple investigation turned out to involve a significant amount of coordination with the offices involved in order to address this complaint. The complainant was grateful for our effort to resolve the complaint.

## **CITY AND COUNTY OF HONOLULU**

**(14-03058) Issuance of State identification card without sufficient verification of the applicant's identity.** In response to the September 11, 2001 terrorist attack on the United States (U.S.), Congress passed the REAL ID Act of 2005. The REAL ID Act establishes minimum standards for the production and issuance of State-issued driver's licenses and identification (ID) cards. It also prohibits Federal agencies from accepting for official uses driver's licenses and ID cards from States unless the U.S. Department of Homeland Security determines that the State meets the standards. Official

uses are defined as accessing Federal facilities, entering nuclear power plants, and boarding Federally-regulated commercial aircraft.

According to the REAL ID Act, States shall require, at a minimum, the presentation and verification of the following information before issuing a driver's license or ID card to a person: (1) a photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth; (2) documentation showing the person's date of birth; (3) proof of the person's social security account number or verification that the person is not eligible for a social security account number; and (4) documentation showing the person's name and address of principal residence.

To comply with the REAL ID Act, the Hawaii State Legislature enacted Act 310 during the 2012 Regular Session. The Legislature found that Hawaii is unique in that the counties, under the general supervision of the State Director of Transportation, have been delegated the function of implementing the State driver's license program since 1937. Prior to Act 310, the State Department of the Attorney General issued the State civil ID (State ID) cards. The Legislature found that it was imperative that the two functions be combined in order to efficiently comply with the REAL ID Act. As such, Act 310 also consolidated the State driver's license and State ID programs under the State Director of Transportation and authorized the county examiner of drivers to issue State ID cards.

A woman complained that a driver licensing office denied her application to renew her State ID card because she had not submitted sufficient evidence of her legal name and/or birthdate. Based on the information the complainant provided, our investigation of similar complaints previously received by our office, and our review of the REAL ID Act, we suspected the denial had been proper. Nevertheless, we asked a driver licensing administrator to explain the reason for the denial. The administrator offered to review the matter and subsequently informed us that he decided to issue the complainant her State ID card.

We were surprised by the administrator's decision to issue the State ID card to the complainant, given our understanding of the complaint, and thus we decided to investigate the issue further. We noted that the documents the complainant submitted as evidence of her legal name and date of birth contained an obvious inconsistency: her surname as it appeared on her birth certificate did not match her maiden name listed on her marriage certificate. The driver licensing office had initially questioned whether the two documents belonged to the same person. The complainant had explained that her mother and father were not married when she was born, and she was a child with her mother's surname when her mother passed away. She had thereafter assumed her father's surname without legally changing her name. When she applied for her marriage license, she



used her father's surname as her maiden name. The driver licensing office had told the complainant that the law requires a connection between the name on the birth certificate and the name on the marriage certificate. Because she was unable to provide a connection, her application for the State ID card was denied. Based on our research of the applicable laws, we believed the denial was reasonable.

Thus, we requested the State Department of Transportation (DOT) to review the action by the driver licensing office. The DOT subsequently agreed that the driver licensing office did not properly verify the complainant's identity and therefore should not have issued her the State ID card. The DOT thereafter informed the driver licensing office of its error. The driver licensing office notified the complainant that she had 30 days to surrender the State ID card and that failure to submit additional documentation of her legal name would result in the cancellation of the ID card. We determined that the driver licensing office's corrective actions were reasonable.

We informed the complainant of the results of our investigation. We also informed her that we believed to prove her legal identity she had to amend either her birth certificate or her marriage certificate so that her surname on her birth certificate and her marriage certificate was the same. We referred her to the State Department of Health for questions about the process for amending those documents. The complainant was understanding of the situation and informed us that she would seek the necessary amendment.



## *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 45, please visit our website at [www.ombudsman.hawaii.gov](http://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.



