Office of the Ombudsman
State of Hawaii
Fiscal Year 2005-2006
Report Number 37

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.

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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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web site: **www.ombudsman.hawaii.gov**

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2005 - June 30, 2006
Report No. 37

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

December 2006

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2007:

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 2005-2006. This is the thirty-seventh annual report since the establishment of the office in 1969.

On behalf of all the members of the office, I would like to thank the State Legislature for its continued support of the office. I would also 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 to assure fair treatment for the people of Hawaii.

Those who sought assistance from our office would not have been as ably served in a timely, objective, efficient, and professional manner without the dedicated services of the staff members of the office. For their continued able and dedicated services, I convey my personal thanks.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2006

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Chapter I

THE YEAR IN BRIEF

The Office Workload

During fiscal year 2005-2006, the office received a total of 4,870 inquiries. Of these inquiries, 3,408, or 70 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 492 non-jurisdictional complaints and 970 requests for information.

The 4,870 inquiries received represent a 1 percent increase from the 4,824 inquiries received the previous fiscal year.

A comparison of inquiries received in fiscal year 2004-2005 and fiscal year 2005-2006 is presented in the following table.

TWO-YEAR CASELOAD COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2005-2006	4,870	970	492	3,408	1,845	1,563
2004-2005	4,824	1,012	414	3,398	1,760	1,638
Numerical Change	46	-42	78	10	85	-75
Percentage Change	1.0%	-4.2%	18.8%	0.3%	4.8%	-4.6%

Staff Notes

David Tomatani was officially appointed First Assistant for the office effective July 1, 2005. He was previously a Senior Analyst in the office and had been serving as Acting First Assistant since March 8, 2005.

Analyst James Tanabe left the office on July 13, 2005 to join the Department of Accounting and General Services, State Procurement Office, as a purchasing specialist.

Jon Ellis Pangilinan and Paul Kanoho joined our professional staff during the month of August 2005. Mr. Pangilinan began as an Associate Analyst on August 1 and Mr. Kanoho joined our staff as an Analyst on August 4. Mr. Pangilinan earned a BA in Economics from the University of Hawaii and recently worked as a Program Budget Analyst for the Ways and Means Committee, Hawaii State Senate. Mr. Kanoho earned his BA in Economics from Hillsdale College in Michigan, his Juris Doctor from Case Western Reserve University School of Law in Ohio, and was admitted to the Hawaii Bar in 2003. He had been a legal assistant for the Child Support Enforcement Agency on Maui prior to joining our office.

At the close of the fiscal year, the office consisted of Ombudsman Robin Matsunaga; First Assistant David Tomatani; analysts Herbert Almeida, Mark Au, Yvonne Faria, Alfred Itamura, Paul Kanoho, Gansin Li, Lynn Oshiro, and Jon Ellis Pangilinan ; and support staff Sheila Alderman, Edna de la Cruz, Debbie Goya, Sue Oshima, and Linda Teruya.

Outreach Efforts

On Saturday, August 27, 2005, Ombudsman Robin Matsunaga and staff members Edna de la Cruz, Paul Kanoho, and Jon Ellis Pangilinan manned a table at the Aiea-Pearl City Seniors Fair held at the Pearlridge Shopping Center. This event was sponsored by the State Senators and Representatives from the Aiea-Pearl City area and included participants from many community organizations and other businesses who provided information about services for the elderly and their families.

Ombudsman Matsunaga, First Assistant David Tomatani, and analysts Mark Au and Gansin Li represented Hawaii at the 26th Annual Conference of the United States Ombudsman Association held in Nashville, Tennessee on September 19-22, 2005. At this conference, Ombudsman Matsunaga, together with the Alaska Ombudsman and Arizona Ombudsman, presented a full-day training workshop for new ombudsmen.

Chapter II

RESPONSE TO LEGISLATIVE RECOMMENDATION

In our last annual report, as a result of the investigation of a complaint, we recommended that the State Legislature repeal Section 28-8(c), Hawaii Revised Statutes (HRS), which stated that "[t]he first deputy attorney general and all of the other deputies shall take the oath required of other public officers." We also recommended that the Legislature consider amending or repealing other sections of the HRS pertaining to oaths of office.

The basis for our recommendation was Article XVI, Section 4, of the Hawaii State Constitution, which was amended in 1992. The article states that only certain "eligible public officers" are required to take and subscribe to a Constitutional oath. "Eligible public officers" are defined as the governor, the lieutenant governor, the members of both houses of the legislature, the members of the board of education, the members of the National Guard, State or County employees who possess police powers, district court judges, and all those whose appointment requires the consent of the senate. Therefore, no oath was required of the First Deputy Attorney General.

Additionally, we learned that in 1993 the Legislature repealed Part II, Chapter 85, HRS, which had prescribed the statutory oath required of public officers. This legislative action in effect removed any oath that the First Deputy Attorney General and other deputies were required to take.

House Bill 3254 and Senate Bill 2537 were introduced during the 2006 Legislative Session pursuant to our recommendation. Both bills recommended the repeal or amendment of sections of the HRS that were similarly affected by Article XVI, Section 4, of the Hawaii State Constitution.

The Legislature passed House Bill 3254, which was enacted as Act 48 upon the Governor's signature on April 27, 2006. Besides Section 28-8(c), HRS, Act 48 repealed or amended the following HRS sections: 128-16; 128-21; 281-11(d); 382-4; 431:2-105(a); 485-3(a); and 502-2.

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 2005-2006

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	394	267	39	88
August	435	310	35	90
September	400	268	48	84
October	420	308	38	74
November	343	240	45	58
December	378	280	37	61
January	417	282	46	89
February	412	301	31	80
March	495	335	60	100
April	374	257	37	80
May	403	296	35	72
June	399	264	41	94
TOTAL	4,870	3,408	492	970
% of Total Inquiries	--	70.0%	10.1%	19.9%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2005-2006

Month	Telephone	Mail	E-mail	Fax	Visit	Other
July	355	15	10	3	10	1
August	394	23	10	1	7	0
September	379	15	4	0	2	0
October	379	21	9	3	8	0
November	315	18	6	1	3	0
December	345	14	11	3	5	0
January	367	26	15	1	7	1
February	358	35	11	4	4	0
March	454	30	8	1	2	0
April	335	23	13	1	1	1
May	363	21	12	0	5	2
June	363	18	11	2	5	0
TOTAL	4,407	259	120	20	59	5
% of Total Inquiries (4,870)	90.5%	5.3%	2.5%	0.4%	1.2%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2005-2006

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	905,266	71.0%	3,528	72.4%
County of Hawaii	167,293	13.1%	635	13.0%
County of Maui	139,995	11.0%	365	7.5%
County of Kauai	62,640	4.9%	110	2.3%
Out-of-State	--	--	232	4.8%
TOTAL	1,275,194	--	4,870	--

*Source: The State of Hawaii Data Book 2005, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by Counties: 1990 to 2005.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2005-2006

	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
Residence	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	2,526	74.1%	318	64.6%	684	70.5%
County of Hawaii	420	12.3%	74	15.0%	141	14.5%
County of Maui	258	7.6%	38	7.7%	69	7.1%
County of Kauai	69	2.0%	9	1.8%	32	3.3%
Out-of-State	135	4.0%	53	10.8%	44	4.5%
TOTAL	3,408	--	492	--	970	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2005-2006

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	E-mail	Fax	Visit	Other
C&C of Honolulu	3,528	3,267	106	78	13	59	5
% of C&C of Honolulu	--	92.6%	3.0%	2.2%	0.4%	1.7%	0.1%
County of Hawaii	635	596	22	15	2	0	0
% of County of Hawaii	--	93.9%	3.5%	2.4%	0.3%	0.0%	0.0%
County of Maui	365	331	24	7	3	0	0
% of County of Maui	--	90.7%	6.6%	1.9%	0.8%	0.0%	0.0%
County of Kauai	110	98	4	7	1	0	0
% of County of Kauai	--	89.1%	3.6%	6.4%	0.9%	0.0%	0.0%
Out-of-State	232	115	103	13	1	0	0
% of Out-of-State	--	49.6%	44.4%	5.6%	0.4%	0.0%	0.0%
TOTAL	4,870	4,407	259	120	20	59	5
% of TOTAL	--	90.5%	5.3%	2.5%	0.4%	1.2%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2005-2006

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	40	1.2%	4	18	5	9	1	3
Agriculture	5	0.1%	0	4	0	1	0	0
Attorney General	147	4.3%	11	28	11	10	84	3
Budget & Finance	106	3.1%	11	44	13	20	15	3
Business, Economic Devel. & Tourism	4	0.1%	0	1	1	1	0	1
Commerce & Consumer Affairs	47	1.4%	4	23	8	9	1	2
Defense	5	0.1%	1	1	1	1	0	1
Education	98	2.9%	13	34	8	33	5	5
Hawaiian Home Lands	14	0.4%	2	1	2	1	2	6
Health	147	4.3%	10	53	11	43	9	21
Human Resources Development	7	0.2%	1	3	3	0	0	0
Human Services	264	7.7%	26	126	37	45	17	13
Labor & Industrial Relations	75	2.2%	2	33	15	18	2	5
Land & Natural Resources	78	2.3%	13	27	8	14	6	10
Office of Hawaiian Affairs	0	0.0%	0	0	0	0	0	0
Public Safety	1,957	57.4%	190	732	107	780	84	64
Taxation	47	1.4%	9	17	6	4	11	0
Transportation	80	2.3%	11	34	5	17	7	6
University of Hawaii	43	1.3%	2	9	6	18	3	5
Other Executive Agencies	3	0.1%	0	0	1	2	0	0
Counties								
City & County of Honolulu	164	4.8%	12	66	13	54	4	15
County of Hawaii	32	0.9%	4	8	4	10	0	6
County of Maui	27	0.8%	4	10	5	6	0	2
County of Kauai	18	0.5%	3	6	2	3	0	4
TOTAL	3,408	--	333	1,278	272	1,099	251	175
% of Total Jurisdictional Complaints	--	--	9.8%	37.5%	8.0%	32.2%	7.4%	5.1%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2005-2006

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments			
Accounting & General Services	4	4	0
Agriculture	0	0	0
Attorney General	11	11	0
Budget & Finance	11	11	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	4	4	0
Defense	1	1	0
Education	13	13	0
Hawaiian Home Lands	2	2	0
Health	10	10	0
Human Resources Development	1	1	0
Human Services	26	24	2
Labor & Industrial Relations	2	2	0
Land & Natural Resources	13	12	1
Office of Hawaiian Affairs	0	0	0
Public Safety	190	180	10
Taxation	9	9	0
Transportation	11	11	0
University of Hawaii	2	2	0
Other Executive Agencies	0	0	0
Counties			
City & County of Honolulu	12	11	1
County of Hawaii	4	4	0
County of Maui	4	3	1
County of Kauai	3	3	0
TOTAL	333	318	15
% of Total Substantiated Jurisdictional Complaints	--	95.5%	4.5%
% of Total Completed Investigations (1,611)	20.7%	19.7%	0.9%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2005-2006

Agency	Information Requests	Percent of Total
State Departments		
Accounting & General Services	33	3.4%
Agriculture	4	0.4%
Attorney General	39	4.0%
Budget & Finance	36	3.7%
Business, Economic Devel. & Tourism	7	0.7%
Commerce & Consumer Affairs	125	12.9%
Defense	1	0.1%
Education	18	1.9%
Hawaiian Home Lands	1	0.1%
Health	94	9.7%
Human Resources Development	2	0.2%
Human Services	30	3.1%
Labor & Industrial Relations	28	2.9%
Land & Natural Resources	41	4.2%
Office of Hawaiian Affairs	1	0.1%
Public Safety	46	4.7%
Taxation	6	0.6%
Transportation	16	1.6%
University of Hawaii	5	0.5%
Other Executive Agencies	18	1.9%
Counties		
City & County of Honolulu	101	10.4%
County of Hawaii	21	2.2%
County of Maui	5	0.5%
County of Kauai	3	0.3%
Miscellaneous	289	29.8%
TOTAL	970	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2005-2006

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	41	8.3%
County Councils	4	0.8%
Federal Government	44	8.9%
Governor	9	1.8%
Judiciary	98	19.9%
Legislature	12	2.4%
Lieutenant Governor	0	0.0%
Mayors	1	0.2%
Multi-State Governmental Entity	0	0.0%
Private Transactions	278	56.5%
Miscellaneous	5	1.0%
TOTAL	492	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2005-2006 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2006-2007

Types of Inquiries	Inquiries Carried Over to FY 05-06	Inquiries Carried Over to FY 05-06 and Closed During FY 05-06	Balance of Inquiries Carried Over to FY 05-06	Inquiries Received in FY 05-06 and Pending	Total Inquiries Carried Over to FY 06-07
Non-Jurisdictional Complaints	1	1	0	8	8
Information Requests	4	4	0	1	1
Jurisdictional Complaints	147	142	5	175	180
		Disposition of Closed Complaints: Substantiated 39 Not Substan. 82 Discontinued 21 142			
TOTAL	152	147	5	184	189

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.

LIST OF SUMMARIES

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(06-0829) Denial of tort claim for destroyed property. A parolee was returned from Ohio to Hawaii and placed in a correctional facility because he violated conditions of his parole. He brought with him personal property that included a wallet which contained a social security card, a driver's license, a veteran's identification card, bank cards, and family photos, as well as clothing and other miscellaneous items.

According to Department of Public Safety (PSD) policy, property that an inmate was not allowed to retain while in custody was considered excess property. The policy required inmates to mail their excess property to someone on the outside, or to have someone pick up the property at the facility. If the inmate failed to dispose of the excess property within 30 days, the property would be considered abandoned and would be disposed of.

The complainant initially requested that an acquaintance pick up his property at the facility, but then changed his mind and notified the facility that he would like the property to be mailed instead. This occurred within the 30-day deadline. The complainant believed he had sufficient funds to mail the property because he received $150 from his family. Unbeknownst to the complainant, however, the facility's business office applied the $150 to a debt that he incurred during his previous incarceration. Thus, the complainant's property was not mailed and he later learned that after the 30-day deadline his property was considered abandoned and was disposed of.

The complainant maintained that PSD policy required the facility to pay the cost of mailing an indigent inmate's property. In our investigation, we confirmed this policy requirement. The facility staff was subsequently made aware of the requirement, as well.

We advised the complainant that he could seek compensation for the disposal of his personal property by filing a tort claim under the State Tort Liability Act, Chapter 662, Hawaii Revised Statues. The complainant then filed a claim.

Subsequently, the complainant contacted us about the denial of his tort claim by the Risk Management Office (RMO), Department of Accounting and General Services. In its denial letter, the RMO noted that the complainant initially requested that his property be picked up but then requested it be mailed, that he knew there was a deadline for mailing but failed to obtain sufficient funds to meet the deadline, and that his property was destroyed due to his own failure to take action.

We reviewed the RMO's file on the complainant's claim and found that the RMO was unaware that the complainant did make a timely request to have his property mailed and that the correctional facility did not comply with the PSD policy requirement to pay the mailing costs for an indigent inmate. Therefore, we asked the RMO to reconsider its decision.

Upon reconsideration, the RMO made what we considered to be a reasonable monetary offer to the complainant to settle the claim. The complainant agreed to the offer and received payment.

DEPARTMENT OF THE ATTORNEY GENERAL

(06-3473) Credit for direct child support payment. A man complained that he was sent a notice in March 2006 that his State income tax refund would be intercepted by the Child Support Enforcement Agency (CSEA) because he owed over $17,000 in back child support. He maintained that CSEA should not have sent the notice because he did not owe any child support.

The complainant explained that an order was issued for him to pay child support. While he paid child support, he and the children's mother reconciled and eventually married. The children for whom he was ordered to pay child support lived with them. The man's wife notified CSEA about this arrangement and CSEA issued to his employer a "Notice to Terminate Income Withholding" effective March 24, 2003. Thereafter, child support was no longer deducted from his pay. However, he and his wife subsequently divorced in January 2006.

We contacted CSEA and learned that the complainant was still required to pay monthly child support from April 2003 to the present because his wife only requested termination of CSEA services, such as the collection of support payments. She did not request termination of the child support order, so the order remained in effect. When the couple divorced in January 2006, the woman reapplied for services from CSEA, which triggered the issuance of the tax intercept notice to the complainant.

We informed the complainant of the reason for the tax intercept. We also informed him that if his ex-wife submitted an affidavit that she received direct child support payments from him for the time in question, CSEA would credit his account accordingly. Thereafter, his ex-wife submitted the affidavit and, on that basis, CSEA credited his account. Thus, his tax refund was not intercepted.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

(06-3142) Alleged violation of Hawaii Administrative Procedure Act. An attorney complained that the Department of Commerce and Consumer Affairs violated Chapter 91, Hawaii Revised Statutes (HRS), titled "Administrative Procedure," when the director issued three decisions and orders pertaining to cable television franchise fees. The complainant alleged that in Decision and Order (DO) No. 323, the director stated that the department must comply with Chapter 91 but failed to conduct a contested case hearing or comply with Chapter 91 in any other way. The complainant also alleged that in issuing DO Nos. 324 and 325, the director failed to comply with Chapter 91, HRS, and did not conduct a contested case hearing.

In our investigation, we reviewed Chapter 91, HRS, which provided for a hearing in a contested case proceeding to determine legal rights, duties, or privileges of specific parties. We also reviewed Chapter 440G, HRS, titled "Cable Television Systems"; Title 16, Chapter 132, Hawaii Administrative Rules (HAR), titled "Fees to be Paid by Cable Operators"; Title 16, Chapter 133, HAR, titled "Review of Applications by the Cable Television Division"; and DO Nos. 323, 324, and 325.

We found that Section 440G-11, HRS, required the director to regulate cable operator rates and that Section 440G-12, HRS, authorized the director to adopt rules, pursuant to Chapter 91, HRS, to implement Chapter 440G, HRS. Additionally, we found that the director adopted Title 16, Chapters 132 and 133, HAR, pursuant to Chapter 91, HRS.

In our review of DO No. 323, we found that the director did not state that the department must comply with Chapter 91. Instead, the director stated that under Section 440G-15(b), HRS, the director has the authority to adjust the annual fee pursuant to rules adopted in accordance with Chapter 91, HRS. We verified that the director's representation of Section 440G-15(b) was accurate. We also found that the director issued DO No. 323 pursuant to Title 16, Chapter 132, HAR, which authorized the director to adjust the annual fee by decision and order without holding a contested case hearing.

Similarly, we found that the director issued DO Nos. 324 and 325 pursuant to Title 16, Chapters 132 and 133, HAR. The rules provided that upon receipt of an initial rate schedule or proposed rate increase from a cable operator, the director shall notify the public and afford interested persons an opportunity to submit comment. The rules also provided that the director <u>may</u> hold a public hearing, but did not require the director to conduct a contested case hearing.

We concluded that the director was not required to conduct a contested case hearing in conjunction with the issuance of DO Nos. 323, 324, and 325. Instead the director properly issued DO Nos. 323, 324, and 325 pursuant to statutes and administrative rules that did not require contested case hearings.

We reported our findings to the complainant.

DEPARTMENT OF EDUCATION

(06-0809) Nonpayment for catering services. A vendor complained that she did not receive payment for catering services after she billed a school three-and-a-half months earlier. The complainant inquired whether she was also entitled to receive interest due to the school's late payment.

We contacted the school regarding the status of the payment. The school confirmed that the complainant submitted all the necessary paperwork but there were delays by the school in its processing. We monitored the processing of the payment and the school eventually forwarded the paperwork to the Administrative Services Branch, Office of Business Services, Department of Education. The branch conducted an audit and then issued the check to the complainant, but the payment did not include interest.

We reviewed Chapter 103, Hawaii Revised Statues (HRS), titled "Expenditure of Public Money and Public Contracts." Section 103-10, HRS, stated:

> **Payment for goods and services.** (a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent, commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the check. . . . .

We learned that according to branch policy, the charge for interest was required to be invoiced separately from the charge for goods and services. The vendors were notified to submit a separate bill for the interest charge.

We inquired with the school about the interest payment to the complainant. The school reported that the complainant was informed that she could submit a bill for interest payment, but the school did not receive a bill.

We contacted the complainant, who verified that the school informed her that she could submit a bill for the interest payment. However, she

declined to pursue the interest payment and was satisfied to know that in the future, she had the option of submitting a bill for interest if a payment was late.

(06-1723) Delay in payment for professional services. In November 2005, a psychologist in Virginia complained that she was not paid for eight and one-half hours of consulting services she provided to staff at a public school from December 2003 to February 2004.

We inquired with the school about the delay in payment. The school acknowledged there was a delay in processing the necessary paperwork. Additionally, the school noted that the complainant provided the consulting services in a previous fiscal year, and therefore it was uncertain whether it could pay her with funds from the current fiscal year. Also, the complainant did not have a current contract with the school to which such services could be charged.

We conferred with the Administrative Services Branch, Office of Business Services, Department of Education. The branch informed us that paying a vendor with current fiscal year funds for services rendered in a previous fiscal year was not prohibited. The branch thereafter contacted the school, which mailed the complainant a new contract. The complainant subsequently informed us that federal regulations prohibited her from signing the contract because she was already employed by the federal government during August 2005 to June 2006, the time period covered by the contract.

We contacted the branch, which then contacted the school. Thereafter, the complainant was sent another contract which covered the specific time period during which she actually provided the services. The complainant signed the contract and a check was finally issued to her.

(06-1890) Parking for school bus that transported disabled students. A bus driver who transported disabled students to public schools contacted our office for assistance because she was having difficulty dropping off and picking up the students at a public middle school.

While unloading her student passengers at the school, the bus driver parked in a space reserved for disabled persons. This location was determined by the school to be the safest place for the students to disembark and board the bus. Additionally, if the bus driver were to unload her passengers elsewhere in the parking lot, it would create a traffic backup. However, the bus driver did not have a disabled person's parking placard, which would have allowed her to use the parking stall reserved for disabled persons. Consequently, a parking control officer threatened to issue a citation if she continued to park in the stall without a placard. However, the

bus driver was unable to obtain a placard because according to law, only a disabled person may obtain a placard and she was not disabled.

We contacted the principal of the school to seek a resolution of the problem. The principal sought and subsequently obtained approval from the Department of Education to redesignate the parking stall in question as a bus drop-off zone. The redesignation was feasible because even with the loss of a parking stall reserved for disabled persons, the parking lot still had a sufficient number of such stalls.

The disabled parking markings were removed from the parking stall and a new sign was erected identifying the stall as being for use by the school bus. Thereafter, the bus driver was able to use the stall to drop off and pick up her student passengers.

The bus driver was very appreciative of the corrective action taken.

(06-1906) Bus transportation for students living near a school. A parent was concerned that students of a nearby elementary school encountered dangerous situations, such as illegal drug activity, when they walked to school. She wanted school bus transportation to be available for the students.

We reviewed Title 8, Chapter 27, Hawaii Administrative Rules (HAR), titled "Transportation of Students." Section 8-27-5, HAR, stated:

> Eligibility. (a) Fare free riders shall include:
>
> . . . .
>
> (2) Students who reside a mile or more from school, ride the bus every day, attend the school in their public school attendance area, . . .
>
> . . . .
>
> (b) Fare riders shall include:
>
> . . . .
>
> (2) Students not eligible for transportation because they reside less than a mile from school, do not ride the bus

> every school day, or are on district exception; provided there are unused seats on the bus and accommodation will not result in additional cost to the State . . . .

We contacted the Department of Education and were informed that the students in question lived less than a mile from the school, and therefore were ineligible for free school bus service. However, if there were unused seats on the bus, the students might be accommodated. We acknowledged that this was consistent with the administrative rules.

The department informed us that parents of the students who lived less than a mile from the school could apply for school bus transportation by completing the "Application for Student to Ride School Bus" and the "Request for Student to Ride School Bus on a Space Available Basis" that were available at the school. Bus service could be approved if there was room on the bus and there was no additional cost to the State. If bus service were approved for the students, they would be picked up and dropped off at a designated bus stop.

We informed the complainant of our findings.

DEPARTMENT OF HAWAIIAN HOME LANDS

(06-4404) Park permit rescinded. A woman complained that the Department of Hawaiian Home Lands rescinded a permit that she was granted for the use of a State park.

The complainant telephoned a department office in 2005 to obtain a permit for the use of the park during the Memorial Day weekend of May 25 to 28, 2007. The office staff told her that it was too early to obtain a permit and she was advised to call back in 2006. In April 2006, she telephoned the office and was told to call back the following month. On May 2, 2006, the complainant telephoned the office again and was told that she would be given a permit to use the park from May 25 to 28, 2007. However, on May 25, 2006, the office staff informed the complainant that the permit had to be given to another party.

We contacted the department office that issued the permit and were informed that the issuance of the permit to the complainant would have violated department rules. We reviewed Title 10, Chapter 4, Hawaii Administrative Rules (HAR), titled "Management of Hawaiian Home Lands." Section 10-4-38, HAR, stated in part:

> **Permit application.** An application for a park use permit may be obtained at the appropriate district office, subject to the following minimum guidelines and any other additional provisions that the department may deem necessary:
>
> . . . .
>
> (3) Permit applications must be in writing on a form provided by the department and contain all information required; and
>
> (4) Permit applications for events or exclusive use of facilities must be received at least fourteen calendar days before the event and no earlier than one calendar year in advance; . . . (Emphasis added.)

According to the rules, the complainant was not allowed to apply for the permit by telephone and her application could be made no earlier than May 25, 2006. However, our investigation revealed that the office staff did not inform the complainant of the rules when she called to apply for the permit. The staff member who spoke with the complainant was not aware of the requirements of the rules and erred in informing the complainant that she would receive the permit. Unfortunately, another party submitted a written

permit application on May 25, 2006 to use the park from May 25 to 28, 2007. This applicant met the application requirements and was granted the permit.

We inquired with the office supervisor about the possibility of a remedy for the complainant. The supervisor felt that the permit that was issued to the other applicant should not be rescinded, as that applicant applied for and was granted the permit in accordance with the rules. Although the employee who erroneously informed the complainant that she would receive the permit was advised of the proper procedure, a viable remedy for the complainant was not available.

We felt that the supervisor's position was reasonable and so informed the complainant, who graciously accepted the supervisor's decision.

DEPARTMENT OF HEALTH

(06-0690) Denial of a building permit application. A woman complained that the Wastewater Branch, Department of Health, disapproved plans she submitted in conjunction with her application for a building permit for a new garage.

In rural areas not serviced by a public sewage system, individual wastewater systems such as cesspools may be used to dispose of wastewater. As part of the building permit process, the permit application is routed to the department for review and approval of the building plans with regard to the individual wastewater system.

Due to the development of the land surrounding her house on the Big Island, the complainant was no longer able to access her garage from a street. Thus, she planned to build a new garage to which she would have access from another street on the opposite side of her house. The new garage was to be a separate structure and would be unattached to her house.

We contacted the Wastewater Branch and were informed that the complainant's application was denied because a cesspool was located under her house, which had been built in 1938.

We reviewed Title 11, Chapter 62, Hawaii Administrative Rules (HAR), titled "Wastewater Systems." Section 11-62-32, HAR, which took effect in 1988, prohibited the location of a cesspool less than five feet from the wall of any structure or building, unless approved by the department director or his authorized agent.

In the complainant's case, the proposed garage was a separate structure from the house and would be situated more than five feet away from the cesspool. A Wastewater Branch engineer acknowledged that the proposed garage would not be a hazard to the cesspool. He was concerned, however, that if he approved the permit for the garage and a health problem subsequently occurred, he could be held personally responsible.

Since the complainant's proposed garage would not result in a violation of the rules, we contacted the Wastewater Branch chief. After he reviewed the complainant's permit application, the branch chief informed us that the department would approve the application.

We thereafter confirmed with the complainant that her application was approved.

(06-2733) Nonreceipt of mail. A patient at Hawaii State Hospital complained that the hospital was improperly withholding several incoming letters from her attorney. The complainant's attorney later informed us that he was concerned that his correspondence was not reaching her.

We contacted the hospital staff and were informed that based on their examination of the envelopes, they suspected that the envelopes might contain contraband items. The staff did not open any of the envelopes in question, but asked the complainant to allow them to observe her open the envelopes. The complainant refused to consent to such observation. Thus, the staff withheld the envelopes from the complainant.

We reviewed Title 11, Chapter 175, Hawaii Administrative Rules (HAR), titled "Mental Health and Substance Abuse System." According to Section 11-175-56, HAR, a patient "may be required to open incoming mail in the presence of a staff member if contraband is reasonably suspected and the reasonable suspicion is documented in the clinical record."

As the hospital's basis for withholding the envelopes from the complainant was consistent with the HAR, and as the complainant refused to allow hospital staff to observe her while she opened the envelopes, we informed the complainant that we found the staff's action to be reasonable and that we would not recommend that the hospital give her the envelopes. We also informed the complainant's attorney of our findings.

As the HAR also required the hospital to document its suspicions regarding incoming mail it withholds from a patient, we asked the hospital staff if such documentation was completed in the complainant's case. The staff informed us that their suspicions regarding at least some of the withheld envelopes were not documented.

We informed the hospital staff that we found the withholding of the envelopes from the complainant to be reasonable. However, we recommended that staff's suspicions regarding such envelopes be documented in the clinical record in order to comply with the HAR.

The hospital administrator subsequently assured us that steps would be taken to remind staff of the requirement to document its suspicions in the clinical record when incoming mail is withheld from any patient due to suspected contraband.

(06-4036 and 06-4109) Delay in refund of overpayment. A mother and daughter who were patients at a State hospital complained of a delay in a refund to which they were entitled.

The complainants were sent notices of their overdue hospital bills. The hospital did not receive payment from them, so it sent the bills to the Department of the Attorney General (AG) for collection. The mother and daughter subsequently paid their bills. However, the AG then intercepted both of their income tax refunds to be applied toward the previously unpaid bills. The hospital informed the complainants that it would issue a refund check, but not until after the hospital received the intercepted tax refunds from the AG. The hospital estimated that it would take approximately three months before it could issue the refund checks.

We contacted the hospital, which acknowledged that the complainants' tax returns should not have been intercepted, since the bills were already paid. As the complainants were entitled to a refund, we asked the hospital if it would refund the complainants before it received the funds from the AG. The hospital informed us that it was willing to refund the payments to the mother and daughter, upon confirmation by the AG of the amount of money it intercepted. The hospital thereafter sought such confirmation from the AG.

We monitored the hospital's actions and within three weeks, the hospital informed us that it received confirmation from the AG and issued the refund checks to the complainants. We confirmed with the complainants that they received their refunds.

DEPARTMENT OF HUMAN SERVICES

(06-1277) Denial of general assistance benefits. A woman complained that the Department of Human Services denied her application for general assistance. The complainant was uncertain as to the reason for the denial.

In accordance with Section 346-71, Hawaii Revised Statutes, the department administered a general assistance program that provided financial assistance to eligible persons who are disabled, 55 years of age or older, or have dependent children in the home who do not receive other public assistance through the department, and who are unable to support themselves or their dependents. In this case, the complainant was under the age of 55 years, had no children in her household, and claimed no physical impairment. She did, however, claim a mental impairment.

Section 17-659-2, Hawaii Administrative Rules (HAR), defined a disabled individual to be:

> [U]nable to engage in any substantial gainful employment, at least thirty hours of work per week, for a period of more than sixty days from the onset of the disability, because of a physical or mental impairment.

During our investigation, we learned that an examining psychiatrist's evaluation found the complainant to be able-bodied. Based on this evaluation, the department determined that she did not qualify for general assistance. The department provided us with a copy of the written notice that was sent to the complainant which explained the reason for the denial of her application.

The notice cited Section 17-659-11, HAR, as the authority for the denial of the complainant's application. We reviewed Section 17-659-11(d), HAR, which stated in part:

> (d) A medical determination of physical or mental impairment shall be required at the time of application . . . .
>
> . . . .
>
> (2) A determination and certification of mental impairment shall only be made by a board of licensed psychologists or licensed physicians whose specialty is in psychiatry.
>
> . . . .

(5) A minimum of three members of each board must participate in the review of a disability.

We contacted the department and learned that a board of licensed psychologists or psychiatrists did not review the complainant's application. According to the above-cited rule, the evaluation by the examining psychiatrist alone was not sufficient for a determination of mental impairment. As a result of our inquiry, the complainant's case was submitted to a board for a determination on her claim of mental impairment.

The department subsequently informed us that the board determined that the complainant did not have a mental impairment. Thus, the complainant was deemed to be able-bodied and ineligible for general assistance.

We informed the complainant of the outcome of our investigation.

(06-1477) Referral to nonprofit agency for assistance with electricity bill. A woman on welfare assistance informed us that the electric company shut off the electricity to her home because she did not pay her bills. She knew of a private nonprofit agency that assisted people on welfare with their electricity bills, but the nonprofit agency required a referral and verification from another agency, such as the welfare office, that the person needed such assistance.

The woman complained that the welfare office would not refer her case to the nonprofit agency. She contacted a supervisor and learned that the welfare office no longer made referrals to the nonprofit agency because the agency assessed the Department of Human Services a fee for each referral. However, the complainant reported that she was informed by the nonprofit agency that it did not assess a fee.

We contacted the welfare office supervisor who confirmed that the office no longer made referrals to the nonprofit agency because of the assessment of a fee for each referral. We asked the supervisor to verify whether the nonprofit agency did assess a fee, since the complainant reported that the agency said it made no such assessment. Subsequently, the supervisor informed us that there was a misunderstanding and the nonprofit agency did not charge the department a fee for a referral. In the complainant's case, however, a referral to the nonprofit agency by the welfare office was not necessary because a referral was already made by another agency.

We thereafter contacted a department administrator to ensure that all welfare offices were aware that referrals of needy welfare recipients to the nonprofit agency should be resumed. Subsequently, the administrator

learned that contrary to what the supervisor reported, the nonprofit agency was indeed assessing a fee for a referral. However, the administrator determined that if the recipients were willing to pay the fee, which was a nominal amount, the welfare offices should still make the referral. At our suggestion, the administrator issued written instructions to all welfare offices to proceed accordingly.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

(06-0784) Computation of unemployment benefits. A substitute teacher complained that the Unemployment Insurance Division, Department of Labor and Industrial Relations, was not paying him the amount of weekly unemployment benefits to which he was entitled. He was receiving $256 a week in unemployment benefits.

Chapter 383, Hawaii Revised Statutes, titled "Hawaii Employment Security Law," is the Hawaii unemployment insurance law. According to the law, the complainant's weekly benefit was one twenty-first of his total wages for insured work paid during the calendar quarter of his base period in which such total wages were highest. The law defined the "base period" as "the first four of the last five completed calendar quarters preceding the first day of an individual's benefit year." An individual's benefit year was "the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits."

In our investigation, we learned that the complainant's benefit year began on June 5, 2005 and ended on June 4, 2006, so his base period was from January 1, 2004 to December 31, 2005. During his base period, his highest quarterly earning was $5,361.05 during the quarter from January through March 2004.

According to law, the complainant's weekly benefit amount would be calculated as follows: 1/21 of $5,361.05, or $255.28. The law provided that a weekly benefit amount, if not a multiple of $1, shall be computed at the next higher multiple of $1. Thus, $255.28 would be rounded upward to $256, the amount that the complainant received each week.

We informed the complainant that he was receiving the correct amount in benefits as prescribed by law.

DEPARTMENT OF LAND AND NATURAL RESOURCES

(06-0691) State park closed to the public. A woman complained that the gates at a State park were sometimes closed during regular park hours, making the park inaccessible to members of the public.

In our investigation, we spoke with park officials at the Department of Land and Natural Resources. We were informed that the department received reports of criminal activity in the park and the gates were installed to control such activity. We also learned that the responsibility for closing the park gates was assigned to the director of a nonprofit organization that leased some of the buildings within the park. Occasionally there were times when the park was closed when it should have been open because the nonprofit agency director had to leave the park before the park's official closing time. Thus, she closed the gates when she left the park.

The department also informed us that the park's regular visiting hours were from 7 a.m. to 8 p.m. during the summer, and from 7 a.m. to 7 p.m. during the winter. However, we learned that there were no signs posted to inform the public of the park's visiting hours.

We reviewed Title 13, Chapter 146, Hawaii Administrative Rules (HAR), titled "Hawaii State Park System." Section 13-146-4, HAR, stated in pertinent part:

> Closing of areas. (a) The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the protection of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the extent and scope of closure. All persons shall observe and abide by the officially posted signs designating closed areas and visiting hours.

The rule did not prohibit the department from installing gates for security purposes, but it appeared that the gates should be kept open during the park's visiting hours. Furthermore, the department was required to post signs regarding the park's visiting hours.

We notified the department of our concerns. In response, the department instructed the nonprofit agency director not to close the park gates during visiting hours. In the event the director needed to leave the park before the official closing time, park employees would be responsible for closing the gates. The department also placed a sign with the park visiting hours at the park entrance.

(05-2330) Nonreceipt of photographs. The mother of an inmate at a correctional facility sent her son 21 photographs through the mail. The inmate complained that he never received the photographs, which were disposed of by the facility mailroom staff.

A facility rule limited an inmate to the possession of 12 photographs. Therefore, the 21 photographs sent to the complainant exceeded the authorized limit.

According to established procedure, when an unauthorized item was sent to an inmate through the mail, the mailroom staff would send the inmate a Notice of Unauthorized Items Received By Mail (Notice). The Notice informed the inmate that he should arrange to send the unauthorized item out of the facility within 30 days of the date of the Notice. After 30 days, any item not sent out was considered abandoned property and was disposed of according to the facility's abandoned property procedure. The complainant maintained, however, that he did not receive the Notice and thus did not have an opportunity to send the photographs back to his mother.

In our investigation, we learned that the Notice consisted of three copies. One copy was kept in the mailroom, a second copy was sent to the property office, and the third copy was sent to the inmate. There were spaces on the Notice for the mailroom and property office staff to affix their signatures and the date they received the Notice. However, the inmate was not required to sign and date the Notice, so there was no proof of whether an inmate received the Notice.

We brought this to the attention of the facility administration. After due consideration, the administration decided that an inmate would no longer be responsible for sending the unauthorized item out of the facility. Instead, when an unauthorized item was received by the facility, the mailroom staff would return the item to the sender, with an explanation of the reason for the return of the item. Thereafter, the inmate would receive a copy of this explanation.

We advised the complainant of the results of our investigation. Although we were unable to assist him in his complaint, we hoped the new procedures would prevent a reoccurrence of the problem he encountered.

(06-0057 and 06-0998) Improper use of prosthesis purchase agreement. An inmate who was approved for elective hormone treatment

complained that he was denied the elective medication due to lack of sufficient funds in his inmate account. He claimed that he had enough money to pay for the medication.

We found that the complainant was mistaken and actually did not have sufficient funds to pay for the medication because the dosage he required was a little more expensive than he thought.

In our investigation, we noticed that the facility medical unit had the complainant sign a prosthesis purchase agreement by which he agreed to pay for the medication according to a payment plan. However, the purpose of the agreement was to allow indigent inmates to obtain medically indicated durable prosthetic items, such as crutches and eyeglasses, that they otherwise could not afford. If an inmate agreed to a payment plan, the medical unit would purchase the prosthetic item, and the inmate's account would be debited upon availability of sufficient funds. The agreement was not meant to be used to purchase elective medication.

We contacted the facility medical unit and were informed that it used the prosthesis purchase agreement because it was the only form available to determine if an inmate had sufficient funds. As it was not an appropriate use of the prosthesis purchase agreement form, we discussed the matter with the department's health care administration. The health care administrator agreed that it was an improper use of the form. Therefore, the medical unit developed a self-pay prescription request form for use by an inmate to purchase elective medication if he had sufficient funds in his account.

(06-0111) Finding of guilt by an adjustment committee. An inmate complained that he should not have been found guilty of promoting gang activities, which was a violation of greatest severity.

In our investigation, we reviewed the staff reports that indicated the complainant passed a piece of paper depicting a gang logo to his visitor. He was charged with violating the following sections of Department of Public Safety (PSD) Policy COR.13.03, "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

> .2 Greatest Misconduct Violations (6).
>
> a. . . .
>
> (18) Any lesser and reasonably included offense of the acts in paragraph (1) to (17).

.3 High Misconduct Violations (7).

. . . .

(16) Any lesser and reasonably included offense of paragraphs (1) to (15).

The Adjustment Committee (Committee) found the complainant not guilty of violating Section 7 (16), but guilty of violating Section 6 (18). In order to find the complainant guilty of violating Section 6 (18), the Committee must find that he committed a "lesser included offense" of one of the prohibited acts listed in paragraphs 6 (1) through 6 (17).

A "lesser included offense" was defined in *Black's Law Dictionary, Seventh Edition, 1999,* as, "A crime that is composed of some, but not all, of the elements of a more serious crime and that is necessarily committed in carrying out the greater crime." *Black's* noted, for example, that "battery is a lesser included offense of murder."

We reviewed the specific prohibited acts listed as "greatest misconduct violations" in paragraphs 6 (1) through 6 (17). None of the prohibited acts pertained to gang-related activity or passing an item to a visitor. We were unable to identify any prohibited act in paragraphs 6 (1) through 6 (17) for which the complainant's conduct could be deemed a "lesser and reasonably included offense."

We inquired with the Committee chair and the deputy warden about the basis for the charge of committing a "lesser and reasonably included offense." The Committee chair and deputy warden were unable to identify a paragraph from 6 (1) through 6 (17) on which the charge was based. Both officials informed us that the complainant was charged with a "lesser and reasonably included offense" only because he could not be charged with the commission of any of the greatest misconduct violations listed in paragraphs 6 (1) through 6 (17).

We did not believe that it was proper to use the charge of "lesser and reasonably included offense" simply because no other specific charge could be brought. If an inmate's conduct was unrelated to any of the specific and more serious charges, it was not possible to deem the inmate's conduct a "lesser and reasonably included" part of a specific and more serious charge. As such, there did not appear to be a reasonable basis for the Committee's finding.

In our research, we noted that Section 710-1023 of the Hawaii Penal Code (HPC) provided that a person committed the offense of promoting prison contraband in the second degree if the person was confined in a correctional facility and intentionally made, obtained, or possessed known contraband. Contraband was defined as any article or thing that a person

confined in a correctional facility was prohibited from obtaining or possessing by statute, rule, regulation, or order. We noted that a facility rule prohibited the possession of gang-related property. Thus, the possession of a gang logo could have been considered a violation of Section 710-1023, HPC, which was a Class C felony. Under PSD Policy COR.13.03, any criminal act that the HPC classified as a Class C felony was a moderate misconduct violation.

We wrote to the warden of the facility and requested his review of the guilty finding rendered by the Committee. We assured the warden that we understood the facility's concern with the threat that gang-related activities posed to the good government and security of the facility and the need to control such activities. However, based on our research, we recommended the reversal of the finding that the complainant was guilty of violating paragraph 6 (18).

The warden agreed with our analysis of the case. He informed us that the guilty finding for a greatest misconduct violation rendered by the Committee was set aside. Instead, the complainant was found guilty of refusing to obey an order of any staff member, possession of contraband, and improper conduct with a visitor. The modified violations were of moderate and low moderate severity, and an adjustment to the complainant's institutional file was made to reflect the changes.

We thereafter informed the complainant of the results of our investigation. He expressed great satisfaction with the outcome of his case.

(06-0539) Notice of insufficient funds based on erroneous assumption. An inmate at a correctional facility complained that he did not receive his store order because the business office "froze" the funds in his account to pay for a confirmatory drug test. The complainant informed us, however, that although he tested positive for illegal drugs, he did not ask for the confirmatory test.

We knew that according to the drug detection policy, an inmate whose urine sample was tested by facility staff and found to be positive could ask that a confirmatory test be performed by a certified laboratory. If the confirmatory test result was positive, the payment for the test would be deducted from the inmate's account. Therefore, the funds to pay for the confirmatory test would be "frozen" in the inmate's account pending the outcome of the confirmatory test. Based on our knowledge of the policy, we asked the business office to verify the complainant's claim that he did not ask for a confirmatory test.

The business office reported that an account clerk erroneously assumed that the complainant requested a confirmatory test because most of the inmates who were tested at the same time as the complainant and who received positive results did request confirmatory tests. However, the complainant did not ask for a confirmatory test, so the cost of the test was restored to his spendable account, and he received his store order.

(06-1130) Unauthorized use of restricted funds. According to Department of Public Safety (PSD) policy, an inmate's funds are held in two separate accounts. One of the accounts is a spendable account, from which an inmate may make purchases, including purchases from the inmate store. The other account is a restricted account, from which only limited expenditures may be made, in order that the inmate will have funds in this account upon release.

An inmate complained that a correctional facility's business office deducted funds from his restricted account without his consent to pay the balance of a store order that he made, and he was told that he might be criminally charged with theft because he placed the order knowing that he lacked sufficient funds in his spendable account. The complainant explained that he knew he did not have sufficient funds in his spendable account to pay for the entire order at the time he placed it, but he expected to receive a deposit in time to cover the entire order. However, the anticipated deposit to his spendable account was late and thus he lacked sufficient funds to pay for the entire order.

We contacted the facility's business office and confirmed that funds were withdrawn from the complainant's restricted account to pay for the balance owed on his store order. We also confirmed that he was threatened with a criminal theft charge. We questioned the authority of the business office to debit the complainant's restricted account. We were told that the store order vendor should not have processed the order because the complainant had insufficient funds, but due to a computer error the vendor processed and delivered the order. Since the complainant's spendable funds covered only part of the order, the business office debited his restricted account to cover the balance.

We reviewed PSD Policy No. 2.02.12, titled "Inmate Trust Accounts." The policy provided that store orders are charged to an inmate's spendable account. Furthermore, deductions from an inmate's restricted account required the approval of the warden or his designee.

We brought this matter to the attention of the warden. He confirmed that he did not authorize the business office to deduct funds from the complainant's restricted account. He informed us that it was not the facility's practice to use funds in an inmate's restricted account to pay a store order

debt. The warden instructed the business office to credit the complainant's restricted account with the amount previously withdrawn, and the amount that the inmate owed for the store order would subsequently be recouped from his spendable account until the debt was repaid.

The warden issued a letter of apology to the complainant for the mishandling of his restricted account and for being mistakenly informed that he may be charged with theft.

(06-2184) Nonreceipt of reading glasses. An inmate at a correctional facility contacted our office for assistance in obtaining reading glasses. The complainant informed us that there was no one outside the facility, such as relatives or friends, who would be able to provide him with the glasses or the money to purchase them. The facility's medical unit informed the complainant that it was unable to provide him with glasses because he did not have any money in his prison account.

We reviewed the Department of Public Safety's policies and procedures (P&P). According to the P&P, inmates who did not have a sufficient amount of money in their accounts would be allowed to obtain prosthetic items, such as glasses, through a prosthetic purchase agreement. The purpose of the policy was to allow indigent inmates to obtain necessary prosthetics that they otherwise could not afford. If an inmate agreed to the payment plan, the medical unit would purchase the prosthetic item and the inmate's account would be debited upon availability of sufficient funds.

We brought the P&P to the attention of the medical unit. The staff expressed concern because many of the inmates were at the facility for a short duration and some of the inmates would not be able to totally repay the State for the prosthetic item prior to their release from custody. However, we noted that the prosthetic purchase agreement the inmate signed provided that if the inmate was released from prison before he finished paying for the prosthesis, any funds remaining in his account would be applied to his debt. If the inmate returned to prison he would be obligated to pay any outstanding balance owed. Moreover, the P&P did not provide for the exclusion of short-term inmates from the prosthetic purchase agreement plan.

The medical unit agreed to follow the P&P. The complainant agreed to sign the purchase agreement and he subsequently received his glasses.

(06-2497) Presentence credits amended to reflect actual date of arrest. According to State law, a person convicted of a crime shall be credited for any time spent in custody from the date of arrest to the date of sentencing. The correctional facility where the inmate is admitted into custody calculates the number of presentence days that the inmate was in

custody. The Hawaii Paroling Authority is provided this information and then applies the presentence credits to determine the expiration dates of the inmate's minimum and maximum sentences.

An inmate complained that he was not credited with all the time he spent in custody prior to his sentencing. The complainant was on parole when he was arrested on new charges and taken into custody on a parole violation. The Department of Public Safety's recorded date of arrest on the new charges was three months after the date the complainant claimed he was arrested. We asked the facility to explain how it determined the date of arrest on the new charges, but it was unable to do so.

Thus, we contacted the department's Offender Management Program Office (OMPO) to determine the correct date of the complainant's arrest and whether he was in custody from the arrest date until the date of sentencing. The OMPO accessed the Criminal Justice Information System and was able to determine that the correct date of arrest was the date stated by the complainant.

The complainant's record of presentence credits was amended, he received an additional 91 days of credit, and the expiration dates of his minimum and maximum sentences were adjusted accordingly.

We informed the complainant, who was appreciative of the corrective action taken.

(06-2748) Unable to receive credit for nonreceipt of a store order. An inmate complained that his account was not credited for a store order that he did not receive.

The complainant placed the order while he was confined in disciplinary segregation. The order was primarily for items that he was not allowed to purchase while in segregation. In spite of this fact, however, the order was processed and funds were withdrawn from his account to pay for the order. When the order arrived, the facility staff informed him that he could only have the postage stamps from the order. The rest of the order was to be held until such time that he was released from segregation. Alternatively, the facility staff gave him the option of returning the entire order for credit and he chose this option. After more than a month passed without a credit being issued, the complainant called our office.

We contacted the facility's business office and were told that the complainant's order was sent to storage with the rest of his personal property. When we inquired why the order was not returned to the store for credit as he elected, the business office replied that it was too late to return the order (mostly snacks) to the vendor for credit. We questioned why the

complainant was allowed to place an order for items that he was not allowed to receive. We were directed to speak with security staff.

We inquired with a security commander who agreed that the facility erred in allowing the complainant to place an order from disciplinary segregation for items that he was not allowed to receive. The commander investigated the matter further and confirmed that staff did give the complainant the option of returning the entire order for credit, and that the complainant chose that option. The commander located the complainant's store order and found that it was still intact. The store order form was also reviewed and it was noted that the complainant did not sign the form, which indicated that he never received the items.

The commander instructed the business office to process a credit to the complainant's spendable account for the entire cost of the store order. We monitored the situation with the business office until the complainant's account was credited. We confirmed with the complainant that he received the credit.

DEPARTMENT OF TRANSPORTATION

(04-3755) Smoking in an airport. A group of people complained that a State airport allowed smoking in the concourse area leading to the terminal gates in violation of the law that prohibited smoking in certain public places. The concourse area was approximately 1,600 feet long with walls at each end. A roof covered the entire concourse and a floor-to-ceiling wall spanned one side of the concourse. Along the other side of the concourse, in certain areas, a half wall separated the concourse from an open air rock garden.

We spoke with the airport manager, reviewed airport floor plans, and conducted a site inspection of the airport. We found that smoking was allowed in designated areas along the concourse that were open on one side to the open air rock garden. Ashtrays were mounted on pillars adjacent to the rock garden area. While a smoker could blow smoke over a wall in the direction of the rock garden, the smoker remained in the concourse area.

We reviewed Chapter 328K, Hawaii Revised Statutes (HRS), titled "Smoking," and in particular Part I, titled "Smoking in Public Places." Section 328K-2, HRS, which prohibited smoking in certain places open to the public, stated in pertinent part:

> **Prohibition in certain places open to the public.** Except as otherwise provided in this part, smoking shall be prohibited in the following places within the State:
>
> . . . .
>
> (6) The following facilities or areas in state or county owned or controlled buildings:
>
> . . . .
>
> (D) Waiting areas, baggage claim areas, and check-in counters within buildings in all state airports; and
>
> (E) All areas open to the public, including service counters and reception or waiting areas; . . .

Section 328K-1, HRS, defined a "building" to mean "any area enclosed by a roof and at least three walls."

As the concourse was entirely covered by a roof and had walls at each end and along the entire length of one of its sides, it was our opinion that the concourse fit the definition of a "building" in Section 328K-1, HRS. Additionally, the concourse was also an area "open to the public."

Based on our findings, we recommended to the airport manager that smoking be prohibited in the concourse area. The manager consulted legal counsel, who concurred with our interpretation of the law. The manager indicated that the area would be redesignated in order to comply with the no-smoking law.

After a significant passage of time, however, we found that little corrective action had been taken. Thus, we wrote to the Airports Division deputy director to request his assistance in bringing the airport into compliance with the no-smoking law. A short time later, the Governor announced that the Airports Division would no longer allow smoking in the main central airport lobby and concourses of the airport. In the deputy director's response to our office, he informed us that no-smoking signs were installed and the ashtrays were removed.

One of the complainants contacted us to report the change and to express the group's appreciation of our assistance.

(05-3751) Failure to properly modify airport parking contract. A man complained that he was unfairly charged for exceeding a 30-minute free parking period at a State airport. He explained that in the past, the first 30 minutes of parking at the airport was free and he would be charged only for the time that he parked in excess of 30 minutes.

In our investigation, we learned that the Department of Transportation and the private company that was contracted to operate and manage the airport parking facilities had modified the terms of the contract. Under the modification, the 30-minute free parking period was changed to a 30-minute "grace period" in which the parking would be free only if it was for a period less than 30 minutes. If a vehicle was parked longer than 30 minutes, the first 30 minutes would no longer be free and the motorist would be charged $1 for that period, in addition to the charge for any period in excess of 30 minutes.

We reviewed Chapter 261, Hawaii Revised Statutes, titled "Aeronautics," and Title 19, Chapter 15.1, Hawaii Administrative Rules, titled "Operation of Motor Vehicles at Public Airports." We determined that under the law, the director of transportation had the authority to prescribe the parking fees and charges at any State airport.

We reviewed the contract between the department and the private contractor. The contract stated that "[t]his Contract shall not be varied in its terms, covenants or conditions by any oral agreement or representation, or otherwise than by an instrument in writing of subsequent date hereto executed by both parties by their respective officers or other duly authorized person." We found that the contract's parking fees and charges were modified by a letter from the department to the contractor. Although the letter was signed by a department representative, it was not signed by any representative of the private contractor. Thus, the modification of the parking fees and charges was not properly implemented.

We brought the omission to the attention of the department's legal counsel, who spoke with an airport official. Thereafter, the department sent the private contractor a revised letter, which included a signature line by which the contractor would acknowledge and agree to the change. The contractor subsequently reviewed and signed the letter, completing the proper modification of the original contract.

CITY AND COUNTY OF HONOLULU

(05-0528) Issuance of a permit for a biosolids recycling facility. A woman complained that the Department of Planning and Permitting (DPP), City and County of Honolulu (C&C), improperly issued a Special Management Area Use Permit to a private company for the construction and operation of a biosolids recycling facility.

According to C&C ordinance, the Honolulu City Council (Council) had the authority to grant, grant with conditions, or deny the permit application. By the adoption of a resolution, the Council granted the permit, subject to certain terms and conditions stated in the resolution.

One of the permit conditions was that no building permit for the construction of the recycling facility would be issued until the C&C Department of Environmental Services (DES) received a written statement from a professor at the University of Hawaii (UH) that he successfully performed a United States Environmental Protection Agency (EPA) test. The successful performance of the test required a determination by the UH Water Resources Research Center that public health would not be substantially adversely affected by the application to the land of certain biosolid pellets.

In his report, the professor did not issue the statement required by the permit condition. Nevertheless, the DES notified the DPP that the condition was met and that the building permit for the recycling facility may be issued.

The Council legal staff reviewed the matter and concluded that the UH professor's report did not satisfy the condition required by the Council resolution. In light of this legal opinion, the councilman who authored the resolution wrote to both DPP and DES and requested that no building permit be issued.

Based on our own review of the matter, we independently concluded that the permit condition was not satisfied. We asked the DES to reconsider its position. However, the DES declined to change its decision and stated that the test confirmed years of evaluation and testing by the EPA and the State Department of Health.

Since the permit was granted by the Council, which also passed the resolution that included the terms and conditions, we wrote to the Council Chair to bring this matter to his attention for any action that he believed to be necessary.

We informed the complainant of our disposition of her complaint, noting that we could not be of further assistance to her as our office did not have jurisdiction to investigate the granting of the conditional permit by the Council, as well as any further actions that the Council might take.

(06-0233) Revocation of use of garden plot. The Department of Parks and Recreation, City and County of Honolulu (C&C), made garden plots available for public use through its community gardening program. Every person who was assigned a garden plot was required to abide by the community gardens rules. A gardener who violated the rules was subject to the loss of use of the garden plot.

A man complained that his assignment of a garden plot was revoked. He received notice that he was camping and cooking on his garden plot, activities which were prohibited by the rules. However, he denied engaging in such activities.

In our investigation, we reviewed the pertinent ordinances and department rules. We also spoke with department staff. The staff indicated that participants of the program were subject to all applicable C&C rules. The staff explained that it was unlawful to build or use a fire within a public park other than in a cooking grill and that a permit was required for camping.

Although there appeared to be evidence that the complainant violated the rules, we pointed out to the department that the rules also stated:

> Individual gardeners who knowingly and continuously break the preceding rules shall, after two warnings, have their plot assignments revoked and be prohibited from re-applying for a period of up to one year. (Emphasis added.)

The complainant informed us that he was never given any warning before his plot assignment was revoked. Department staff acknowledged that not a single warning was given to the complainant. Therefore, after consulting its legal counsel, the department reinstated the complainant to the program and he was assigned another garden plot.

(06-0555) Removal of a crosswalk. A woman complained that when a street was repaved, a previously marked mid-block pedestrian crosswalk was not repainted. She stated that the public was not notified of the removal of the crosswalk.

We found that the repaving was done by the Department of Transportation Services, City and County of Honolulu (C&C), which decided not to repaint the crosswalk. The department determined that the crosswalk

was not necessary because there were crosswalks located at either end of the block. It was a short distance between these crosswalks, so we found the department's decision to be reasonable. However, based on our research of the applicable law, we questioned whether the department followed the proper procedure when it removed the crosswalk.

Section 15-17.1 of the Revised Ordinances of Honolulu (ROH) included a schedule which established crosswalks on streets owned by the C&C. The crosswalk in question was included in this schedule. Section 15-3.1(c), ROH, required the department director to amend existing schedules by deleting or adding traffic control devices such as crosswalks, and to file the amended schedule and three copies with the C&C clerk so that they may be examined by the public. Section 15-3.1(c), ROH, and Section 1-28.5(a)(2) of the Hawaii Revised Statutes, collectively required a notice of the amended schedule to be published in a daily or weekly countywide publication.

The department acknowledged that it did not remove the crosswalk in question from the established schedule in accordance with the procedure required by law. The department thereafter amended the schedule and published this information in a daily newspaper of countywide circulation. The department also filed the amended schedule and three copies with the C&C clerk.

We informed the complainant of the outcome of our investigation.

(06-1681) Dangerous road berms. A woman complained that asphalt berms along a one-way street near the exit gate of Iolani Palace posed a safety hazard. The complainant reported that she tripped over the berms while crossing the street at night because the berms were not visible.

We conducted an onsite visit and found that there were white lines painted diagonally next to the berms, but the berms themselves were not painted. The asphalt berms blended in with the street surface and were difficult to see at night, especially since there were no streetlights along the side of the street where the berms were located.

In our research, we discovered that responsibility for the street varied, depending on the section of the street in question. We asked the Department of Design and Construction (DDC), City and County of Honolulu (C&C), whether the C&C was responsible for the berms. After researching the question, the DDC informed us that the berms were installed by the C&C in 1995 to prevent drivers on the one-way street from entering Iolani Palace grounds through the exit and to prevent drivers exiting the grounds from

making a right turn against the traffic flow. The DDC referred us to the C&C Department of Facility Maintenance (DFM) to have the berms painted so that they would be more easily seen.

When we contacted the DFM, however, we were told that the section of the street in question was under State jurisdiction and therefore the State would have to paint the berms. We advised the DFM of the information we received from the DDC and asked that the DFM consult the DDC. Subsequently, the DFM acknowledged that the C&C was responsible for the berms. The very next day, the DFM completed the painting of the berms.

We made another onsite visit and confirmed that the berms were painted. We informed the complainant, who was appreciative of the action taken.

(06-1891) Bus pass expiration date. A senior citizen purchased an annual bus pass on October 17, 2005 and expected the pass to be valid until the end of November 2006. However, the bus company informed her that her pass was good for one year and would expire at the end of October 2006, not November 2006.

The Department of Transportation Services, City and County of Honolulu, contracted the company that provided bus services for Oahu. According to the Revised Ordinances of Honolulu, a bus pass was valid from the date of issuance and expired one year later at the end of the month in which the bus pass was issued. Thus, since the complainant's bus pass was issued on October 17, 2005, it would expire on October 31, 2006.

When we reported our findings to the complainant, she told us that the department informed her that had she bought her bus pass after October 20, 2005, the pass would have expired at the end of November 2006.

We contacted the department and were informed that if someone purchased a pass after the 20th of a month, the pass would be valid until the end of the following month one year later. Thus, if the complainant had purchased her pass after October 20, 2005, the pass would have been valid until November 30, 2006.

We informed the department about the ordinance that governed the beginning and expiration dates of annual bus passes. The department thereafter discontinued its practice. The department director issued a memorandum to the bus company and satellite city halls, where bus passes could be purchased, to ensure compliance with the ordinance.

We informed the complainant of the action taken.

COUNTY OF HAWAII

(06-0203) Unable to renew driver's license due to mistaken identity. Driver licensing offices across the nation share information with other jurisdictions to keep track of drivers. If one jurisdiction places a hold on a driver's license due to matters such as unresolved traffic citations or unpaid fines, another jurisdiction will not renew the license until the hold is removed.

A man on the Big Island complained that he was unable to renew his driver's license because a driver licensing agency in New Jersey placed a hold on his license. The New Jersey licensee had the same first and last names as the complainant. The complainant informed us, however, that he was never in New Jersey and was not licensed there.

The County of Hawaii driver licensing office explained to the complainant that New Jersey would have to remove the hold on his license before Hawaii would renew his license. He contacted New Jersey but received no answer after three weeks. He complained to our office because his driver's license was to expire soon.

We contacted a supervisor at the County driver licensing office. In checking further, she learned that New Jersey did not have the middle name or social security number of the man who had the New Jersey license. The supervisor further learned that the complainant did not match the physical description of the New Jersey man, who was 6'1", whereas the complainant was 5'6". The supervisor determined that the complainant was apparently not the same person whose driver's license was placed on hold in New Jersey, and he was allowed to renew his license before it expired. He was appreciative of our follow up.

COUNTY OF MAUI

(06-0105) Special license plates. A man who lived in the City and County of Honolulu (C&C) complained that he was unable to obtain the special license plates that he desired. These plates were already issued to a vehicle registered in the County of Maui and such plates could be issued to only one vehicle statewide, but the complainant learned that the registration of the Maui vehicle expired in 2001. The C&C informed him that the plates should be available three years after the registration expired. Although more than three years had passed since the registration expired, the County of Maui told the complainant in 2005 that it would not release the plates. Therefore, the C&C could not issue the plates to him.

In our investigation, we reviewed Section 249-9.1, Hawaii Revised Statutes, which pertained to special license plates and stated:

> **Special number plates.** In addition to the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance may provide, upon request, special number plates. The special number plates shall conform to the requirements provided for the uniform number plates except that the owner may request the choice and arrangement of letters and numbers. . . . The fee for special number plates shall be $25 upon initial application and $25 upon each annual renewal of the vehicle registration. . . . <u>The director of finance may discard and allow for new applications of inactive special number plates that have not been assigned or registered during the preceding three years. The director of finance shall adopt rules pursuant to chapter 91 to carry out this section</u>. (Emphasis added.)

We contacted the Maui Department of Finance. We verified that the owner of the vehicle to whom the special license plates in question were issued did not renew the vehicle's registration after 2001 and did not pay the $25 annual renewal fee for the plates. However, the department staff believed that it had the discretion to refuse to release the plates for reissuance because of a possibility that the Maui vehicle owner might later wish to renew the registration and pay the delinquent fees.

We advised department staff that it did not appear the legislature intended to allow anyone to retain a special license plate indefinitely, since the above-cited statute provided for the allowance of new applications for inactive plates after three years.

The staff decided to notify the Maui vehicle owner that she had to renew her registration and pay the delinquent fees by a certain date or new applications for the special license plates would be allowed.

When it received no response from the Maui vehicle owner, the department released the special license plates to allow for new applications. We informed the complainant, who submitted an application for the plates to the C&C.

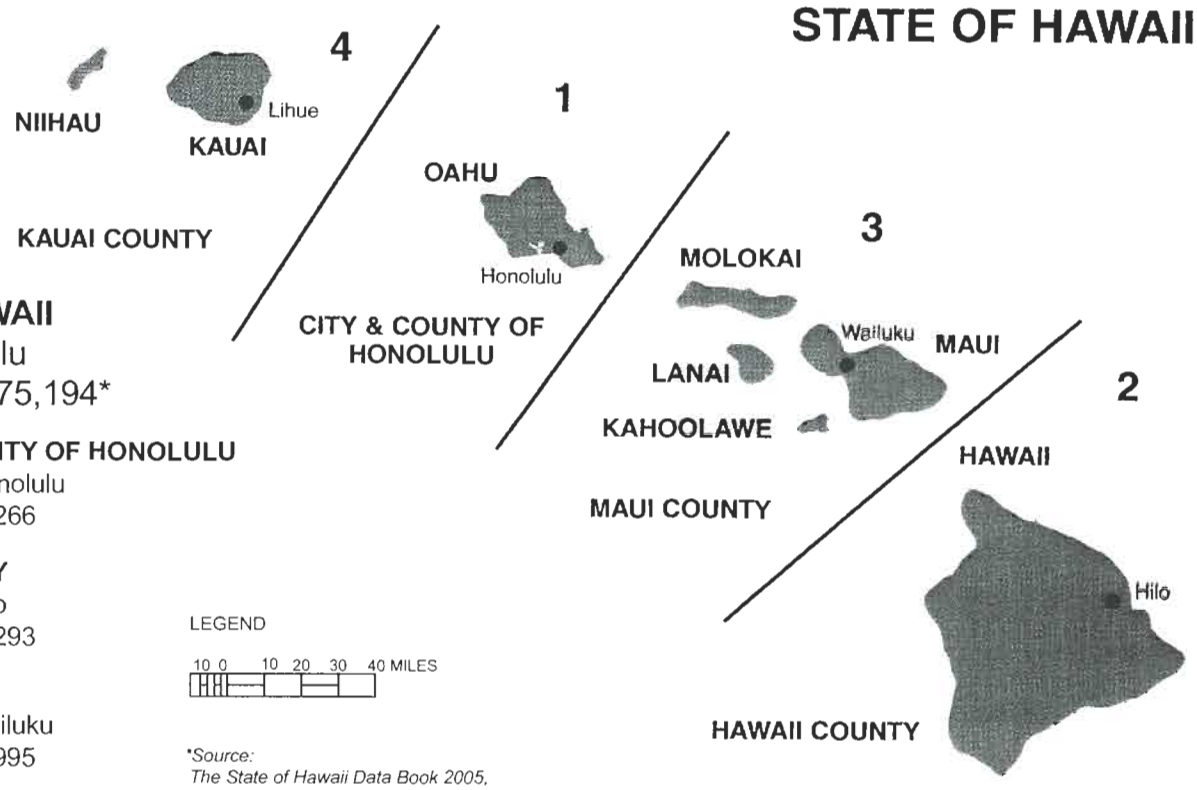
The department informed us that it would henceforth release special license plates for reissuance if the plates were inactive for three years.

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 37, please visit our Web site 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.



STATE OF HAWAII

Capital: Honolulu
Population: 1,275,194*

1. **CITY AND COUNTY OF HONOLULU**
   County Seat: Honolulu
   Population: 905,266

2. **HAWAII COUNTY**
   County Seat: Hilo
   Population: 167,293

3. **MAUI COUNTY**
   County Seat: Wailuku
   Population: 139,995

4. **KAUAI COUNTY**
   County Seat: Lihue
   Population: 62,640

*Source:
The State of Hawaii Data Book 2005, A Statistical Abstract, Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "Resident Population, by Counties: 1990 to 2005."