Office of the Ombudsman
State of Hawaii
Fiscal Year 2006-2007
Report Number 38

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**
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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
Fax extension is 7-0773
TTY extension is 7-0774

email: **complaints@ombudsman.hawaii.gov**
web site: **www.ombudsman.hawaii.gov**

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2006 - June 30, 2007
Report No. 38

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

December 2007

Mme. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2008:

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 2006-2007. This is the thirty-eighth 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. 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 First Assistant David Tomatani and the other staff members of the office. For their continued commitment and hard work, I convey my personal thanks.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2007

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Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2006-2007, the office received a total of 4,501 inquiries. Of these inquiries, 2,973, or 66 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 431 non-jurisdictional complaints and 1,097 requests for information.

The 4,501 inquiries received represent a 7.6 percent decrease from the 4,870 inquiries received the previous fiscal year. There was also a decrease in non-jurisdictional complaints. However, there was a 13.1 percent increase in information requests.

A comparison of inquiries received in fiscal year 2005-2006 and fiscal year 2006-2007 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
2006-2007	4,501	1,097	431	2,973	1,589	1,384
2005-2006	4,870	970	492	3,408	1,845	1,563
Numerical Change	-369	127	-61	-435	-256	-179
Percentage Change	-7.6%	13.1%	-12.4%	-12.8%	-13.9%	-11.5%

Staff Notes

The Office of the Ombudsman provides a representative to the Election Advisory Council (EAC) who serves as an observer during each State election. The EAC serves as an advisory group to the Chief Election Officer and also serves as the "eyes and ears" for the general public to ensure that our elections are conducted honestly and efficiently. This year's representative for the 2006 Primary and General elections was support staff member Edna de la Cruz. She attended several meetings and ballot test sessions on her own time in order to prepare for this important responsibility.

Ombudsman Robin Matsunaga and analysts Herbert Almeida, Paul Kanoho, and Jon Ellis Pangilinan traveled to Des Moines, Iowa, the week of September 10, 2006 to represent Hawaii at the 27th Annual Conference of the United States Ombudsman Association.

After serving two years as an ex-officio member, Ombudsman Matsunaga was elected in May 2007 to a fourth two-year term as Director on the USOA Board. Ombudsman Matsunaga was subsequently elected by the Board at its first regular meeting to serve as its Vice President.

Several members of our staff attended presentations by the Office of Information Practices (OIP) in October 2006 to members of State boards, their staff, and agency personnel. Mr. Leslie Kondo, Director of the OIP, conducted Sunshine Law training and two sessions on the Uniform Information Practices Act (UIPA). All presentations provided valuable information which gave staff good insight and a better understanding of our responsibility to protect the public's right to open and accessible government.

During the month of June, the Ombudsman and three analysts visited the State correctional facilities on Maui and Kauai, and the First Assistant and three analysts visited the correctional facilities on Hawaii. The site visits provided a firsthand view of conditions in the correctional facilities and a better understanding of the physical layout of each facility, as well as the opportunity to meet and discuss issues with facility staff members. The information gained from these visits will contribute to the office's ability to understand and investigate complaints filed by inmates at these facilities.

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

Analyst Herbert Almeida addressed a group of tenants and youth as a guest speaker at the Mayor Wright Housing on July 28, 2006. Mr. Almeida was one of a series of speakers invited by the Mayor Wright Housing Youth Group to encourage young people in that public housing community to participate and contribute to the betterment of their community. The group was very receptive to Mr. Almeida's presentation on how to work with government agencies.

Several staff members manned our exhibit booth at the Good Life Expo Seniors' Fair held at the Neal Blaisdell Center from September 22 to 24, 2006. This was the third year that the office has participated at the Fair, which provides the opportunity to meet and speak with many members of the community and to inform them of the services that the office provides.

State Representatives and Senators from the Pearl City and Aiea districts sponsored a separate Senior Fair at the Pearlridge Shopping Center Uptown on Saturday, October 21, 2006. Ombudsman Robin Matsunaga and analysts Paul Kanoho and Jon Ellis Pangilinan joined other state, county, and private agencies in presenting important and useful information about various services for the elderly and their families that are available to the public.

Ombudsman Matsunaga spoke and answered questions on the topic of conflict management at the 13th annual symposium of the Hawaii Athletic Trainer's Association, held at the University of Hawaii – Manoa Campus on May 31, 2007. Athletic trainers are health care professionals working with athletes and coaches in the management, treatment, and rehabilitation of athletic injuries. Organizers of the symposium believed that the Ombudsman's knowledge of conflict resolution and management could be helpful to athletic trainers in dealing with contentious issues that arise in the course of performing their work in the public or private sector. The symposium was well attended by athletic trainers from across the State.

Japanese Delegation Visits Ombudsman

In February 2007, a delegation from Tokyo, Japan, visited our office to meet with Ombudsman Robin Matsunaga and First Assistant David Tomatani. The delegation included Mr. Jun Ochiai and Ms. Yoko Togawa of the Ministry of Internal Affairs and Communications, Administrative Evaluation Bureau, Administrative Counseling Division, and Mr. Yasuhiro Sakon of Mitsubishi UFJ Research and Consulting.

The meeting was arranged by the delegation to learn about local and state government ombudsman programs in the United States. The delegation also met with the ombudsmen in King County, Washington and Portland, Oregon.

The Ministry of Internal Affairs and Communications has the overall responsibility for the administrative functions that affect broad aspects of the lives of Japanese citizens. The Ministry's Administrative Evaluation Bureau is responsible for ensuring that the ministries and government agencies in Japan operate effectively and efficiently.

Ombudsman Matsunaga and First Assistant Tomatani provided the delegation information on the history of the Hawaii ombudsman office and the operating practices of the office, including examples of the methods used to manage and investigate complaints. The delegation was also provided suggestions on how to promote the ombudsman concept, build trust among users of the Ombudsman's services, and ensure the Ombudsman's recommendations are implemented.

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 2006-2007

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	387	263	33	91
August	431	278	52	101
September	374	228	36	110
October	406	272	46	88
November	345	224	28	93
December	346	237	27	82
January	382	236	40	106
February	349	242	20	87
March	371	239	35	97
April	350	243	28	79
May	388	255	43	90
June	372	256	43	73
TOTAL	4,501	2,973	431	1,097
% of Total Inquiries	--	66.1%	9.6%	24.4%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2006-2007

Month	Telephone	Mail	E-mail	Fax	Visit	Other
July	349	21	7	1	9	0
August	386	19	9	1	16	0
September	342	16	8	1	6	1
October	388	9	7	0	2	0
November	326	8	7	4	0	0
December	322	16	7	0	0	1
January	356	13	11	0	2	0
February	320	16	9	0	4	0
March	344	9	15	2	0	1
April	313	16	16	1	4	0
May	368	10	6	0	3	1
June	341	16	12	2	1	0
TOTAL	4,155	169	114	12	47	4
% of Total Inquiries (4,501)	92.3%	3.8%	2.5%	0.3%	1.0%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2006-2007

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	909,863	70.8%	3,097	68.8%
County of Hawaii	171,191	13.3%	622	13.8%
County of Maui	141,440	11.0%	435	9.7%
County of Kauai	63,004	4.9%	154	3.4%
Out-of-State	--	--	193	4.3%
TOTAL	1,285,498	--	4,501	--

*Source: The State of Hawaii Data Book 2006, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by Counties: 1990 to 2006.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2006-2007

	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	2,039	68.6%	270	62.6%	788	71.8%
County of Hawaii	403	13.6%	72	16.7%	147	13.4%
County of Maui	325	10.9%	31	7.2%	79	7.2%
County of Kauai	97	3.3%	16	3.7%	41	3.7%
Out-of-State	109	3.7%	42	9.7%	42	3.8%
TOTAL	2,973	--	431	--	1,097	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2006-2007

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	E-mail	Fax	Visit	Other
C&C of Honolulu	3,097	2,899	74	71	9	41	3
% of C&C of Honolulu	--	93.6%	2.4%	2.3%	0.3%	1.3%	0.1%
County of Hawaii	622	595	13	13	1	0	0
% of County of Hawaii	--	95.7%	2.1%	2.1%	0.2%	0.0%	0.0%
County of Maui	435	412	16	7	0	0	0
% of County of Maui	--	94.7%	3.7%	1.6%	0.0%	0.0%	0.0%
County of Kauai	154	135	14	5	0	0	0
% of County of Kauai	--	87.7%	9.1%	3.2%	0.0%	0.0%	0.0%
Out-of-State	193	114	52	18	2	6	1
% of Out-of-State	--	59.1%	26.9%	9.3%	1.0%	3.1%	0.5%
TOTAL	4,501	4,155	169	114	12	47	4
% of TOTAL	--	92.3%	3.8%	2.5%	0.3%	1.0%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2006-2007

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	38	1.3%	3	19	2	7	3	4
Agriculture	8	0.3%	1	4	0	2	0	1
Attorney General	124	4.2%	5	16	18	16	59	10
Budget & Finance	94	3.2%	10	43	8	10	18	5
Business, Economic Devel. & Tourism	10	0.3%	1	5	2	0	1	1
Commerce & Consumer Affairs	35	1.2%	0	20	5	7	2	1
Defense	2	0.1%	1	0	1	0	0	0
Education	105	3.5%	12	46	13	24	3	7
Hawaiian Home Lands	8	0.3%	0	5	1	1	1	0
Health	112	3.8%	6	58	8	25	6	9
Human Resources Development	5	0.2%	1	1	1	2	0	0
Human Services	272	9.1%	35	133	28	45	14	17
Labor & Industrial Relations	64	2.2%	3	35	6	14	1	5
Land & Natural Resources	88	3.0%	16	28	11	11	7	15
Office of Hawaiian Affairs	3	0.1%	0	0	2	1	0	0
Public Safety	1,647	55.4%	153	703	101	601	41	48
Taxation	31	1.0%	3	7	3	6	12	0
Transportation	71	2.4%	6	29	5	17	7	7
University of Hawaii	30	1.0%	6	6	6	5	1	6
Other Executive Agencies	2	0.1%	0	1	1	0	0	0
Counties								
City & County of Honolulu	149	5.0%	10	61	12	41	11	14
County of Hawaii	41	1.4%	0	16	5	18	0	2
County of Maui	23	0.8%	1	8	3	7	0	4
County of Kauai	11	0.4%	2	7	1	1	0	0
TOTAL	2,973	--	275	1,251	243	861	187	156
% of Total Jurisdictional Complaints	--	--	9.2%	42.1%	8.2%	29.0%	6.3%	5.2%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2006-2007

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments Accounting & General Services	3	3	0
Agriculture	1	1	0
Attorney General	5	5	0
Budget & Finance	10	10	0
Business, Economic Devel. & Tourism	1	1	0
Commerce & Consumer Affairs	0	0	0
Defense	1	1	0
Education	12	12	0
Hawaiian Home Lands	0	0	0
Health	6	6	0
Human Resources Development	1	1	0
Human Services	35	35	0
Labor & Industrial Relations	3	3	0
Land & Natural Resources	16	16	0
Office of Hawaiian Affairs	0	0	0
Public Safety	153	146	7
Taxation	3	3	0
Transportation	6	6	0
University of Hawaii	6	6	0
Other Executive Agencies	0	0	0
Counties City & County of Honolulu	10	10	0
County of Hawaii	0	0	0
County of Maui	1	1	0
County of Kauai	2	2	0
TOTAL	275	268	7
% of Total Substantiated Jurisdictional Complaints	--	97.5%	2.5%
% of Total Completed Investigations (1,526)	18.0%	17.6%	0.5%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2006-2007

Agency	Information Requests	Percent of Total
State Departments		
Accounting & General Services	41	3.7%
Agriculture	7	0.6%
Attorney General	37	3.4%
Budget & Finance	36	3.3%
Business, Economic Devel. & Tourism	10	0.9%
Commerce & Consumer Affairs	133	12.1%
Defense	1	0.1%
Education	14	1.3%
Hawaiian Home Lands	2	0.2%
Health	96	8.8%
Human Resources Development	3	0.3%
Human Services	43	3.9%
Labor & Industrial Relations	36	3.3%
Land & Natural Resources	29	2.6%
Office of Hawaiian Affairs	2	0.2%
Public Safety	51	4.6%
Taxation	12	1.1%
Transportation	24	2.2%
University of Hawaii	5	0.5%
Other Executive Agencies	32	2.9%
Counties		
City & County of Honolulu	108	9.8%
County of Hawaii	12	1.1%
County of Maui	7	0.6%
County of Kauai	1	0.1%
Miscellaneous	355	32.4%
TOTAL	1,097	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2006-2007

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	36	8.4%
County Councils	1	0.2%
Federal Government	31	7.2%
Governor	6	1.4%
Judiciary	73	16.9%
Legislature	12	2.8%
Lieutenant Governor	1	0.2%
Mayors	1	0.2%
Multi-State Governmental Entity	0	0.0%
Private Transactions	266	61.7%
Miscellaneous	4	0.9%
TOTAL	431	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2006-2007 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2007-2008

Types of Inquiries	Inquiries Carried Over to FY 06-07	Inquiries Carried Over to FY 06-07 and Closed During 06-07	Balance of Inquiries Carried Over to FY 06-07	Inquiries Received in FY 06-07 and Pending	Total Inquiries Carried Over to FY 07-08
Non-Jurisdictional Complaints	8	8	0	0	0
Information Requests	1	1	0	2	2
Jurisdictional Complaints	180	169	11	156	167
		Disposition of Closed Complaints: Substantiated 41 Not Substan. 111 Discontinued 17 169			
TOTAL	189	178	11	158	169

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.

LIST OF SUMMARIES

Page

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(07-00616) Free parking for electric vehicles in metered stalls. After reporting our findings to the owner of an electric vehicle who complained that she was charged a fee for parking her vehicle at a municipal lot in downtown Honolulu (see case summary 06-04052 on page 62 of this report), she then complained that she was cited for having an expired parking meter on Iolani Palace grounds. She informed us that she did not feed the parking meter because electric vehicles were exempt from parking meter fees.

The complainant informed us that she was cited several times previously for having an expired meter at Iolani Palace. In each instance, she contested the citation by mailing her ticket to the court with a copy of Act 290, Session Laws of Hawaii 1997 (SLH 1997), and an explanation that she should not have been cited because of the parking fee exemption for electric vehicles under the Act. She informed us that the court dismissed the citation in each instance.

We advised the complainant that she should contest the current citation in court, but that we would contact the Parking Control Branch, Department of Accounting and General Services, which had jurisdiction over the metered stalls at Iolani Palace.

We reviewed Act 290, SLH 1997, which took effect on July 1, 1997. The Act stated in part:

> SECTION 4. An electric vehicle on which a license plate described in section 3 is affixed shall be exempt from:
>
> (1) The payment of parking fees, <u>including those collected through parking meters</u>, charged by any governmental authority, other than a branch of the federal government, when being operated in this State . . . . (Emphasis added.)
>
> . . . .
>
> SECTION 5. For a period of five years from the effective date of this Act, the motor vehicle registration fee and other fees, if any, assessed upon or associated with the registration of an electric vehicle in this State, including any fees associated with the issuance of a license plate described in Section 3, shall be waived; provided that the department of transportation shall review the incentive program every two years to determine the proper level of incentives for continuation of the program.

We contacted the Parking Control Branch, which was aware of Act 290, SLH 1997. However, it was the Branch's understanding that the Act had already expired. We informed the Branch that Section 5 of the Act, which provided for the waiver of the motor vehicle registration fee and other fees, had expired. However, Section 4 of the Act, which provided for the exemption of parking fees, including those collected through parking meters, remained in effect.

Upon further review, the Parking Control Branch agreed with our position and issued an instruction to all of its parking and security officers to not cite electric vehicles in metered stalls in State parking lots for expired meters.

We informed the complainant of the results of our investigation.

(07-03221) Erroneous rate of pay. A temporary employee of the Department of Accounting and General Services who was paid on an hourly basis complained that she was paid $300 a month less than what she had been told she would be paid. The complainant stated that before she began employment, she received a letter from the department informing her that she would be paid $2100 a month. She accepted the job but learned that she would be paid on an hourly basis amounting to approximately $1800 a month, depending on the number of hours she worked.

We spoke with the division administrator who informed us that the division sent letters of job offer and compensation only to prospective permanent employees, not prospective temporary hires such as the complainant. He also informed us that on the complainant's first day of work, she was sent to the Personnel Office to fill out necessary forms, at which time she learned that her pay was not what she thought it would be. The Personnel Office asked if she was still interested in the job, and she accepted the position. When she returned from the Personnel Office, she told the administrator about the discrepancy in pay. The administrator learned that during the complainant's job interview, a secretary who was new to her job had erroneously quoted the complainant the higher monthly pay. The administrator asked the complainant if she still wanted the job, and she affirmed.

As the complainant learned of her lower hourly pay before starting work, we were unable to recommend any adjustment in her pay. However, we suggested to the administrator that when hiring an individual in a position for which the individual will be paid on an hourly basis rather than by monthly salary, the division inform the individual of the specific hourly rate of pay rather than an approximation of monthly pay. We believed this practice would prevent future misunderstandings of the type that occurred with the

complainant. The administrator agreed with our suggestion and stated that hourly pay rates would be provided prospective temporary employees in the future.

DEPARTMENT OF THE ATTORNEY GENERAL

(07-03540) Erroneous notice for sex offender registration. A convicted sex offender who was about to move to California complained that the "Notification of Covered Offender Registration" (Notification) from the Hawaii Criminal Justice Data Center (HCJDC), Department of the Attorney General (AG), forced him to meet requirements that were excessive and not specified in the law.

In the course of investigating his complaint, we learned that upon release from prison, sex offenders receive the Notification, which required sex offenders to meet certain requirements. One of the requirements pertained to sex offenders who moved to another state:

> As a convicted covered offender (a sex offender or an offender against minors), I have been informed and understand that I am required to comply with the following requirements and <u>that failure to comply with any of the requirements can result in criminal penalties:</u>
>
> . . . .
>
> 6) If I move to a new state, I must register my new address with the attorney general within three (3) working days and I must register my new address with the designated law enforcement agency in the new state <u>within ten (10) days of establishing residence</u>. (Emphasis added.)

We reviewed Chapter 846E, Hawaii Revised Statutes (HRS), titled "Registration of Sex Offenders and Other Covered Offenders and Public Access to Registration Information," which required convicted sex offenders to register with the AG. We found that a discrepancy existed between the Notification and the requirements of the law. The law did not require sex offenders who moved to a new state to register their address with the designated law enforcement agency in the new state within 10 days of establishing residence, as stated in the Notification. Instead, Section 846E-6, HRS, stated in part:

> **Requirement to register a change of registration information; verification by the attorney general**. (a) A covered offender required to register under this chapter, who changes any of the covered offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. . . . If the new residence is in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state's sex offender registration laws. (Emphasis added.)

We brought this discrepancy to the attention of the HCJDC. After consulting its legal counsel, the HCJDC acknowledged that the Notification was erroneous and modified the Notification to comply with the law. Item 6 of the Notification was modified to state:

> 6. If I move to a new state, I must register my new address with the attorney general within three (3) working days and I must register my new address with the designated law enforcement agency in the new state within the period of time mandated by the new state's sex offender registration laws. (Emphasis added.)

Contrary to the complainant's allegation, we found no other requirements imposed by the Notification that were inconsistent with Hawaii's sex offender registration law.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

(07-02578) Inadequate parking lot signage. A woman complained that she was not provided adequate warning that she could not park her car in the parking lot for the Kakaako Waterfront Park (KWP) while she attended an alumni function at the adjacent University of Hawaii medical school. After the function was over, she was unable to find her car, assumed that it was stolen, and called the police. She then learned that her car was not stolen but had been removed by a tow company that was contracted by the State to remove illegally parked cars.

In our investigation, we learned that the KWP parking lot was under the jurisdiction of the Hawaii Community Development Authority (HCDA). Parking in the lot was restricted to users of the KWP. Parking for visitors of the medical school was available in another parking lot on the other side of the school, away from the KWP.

According to HCDA, a staff member called the tow company after she saw the complainant walk to the medical school after parking her car in the KWP lot. The HCDA informed us that many motorists who were not park users were parking their cars in the KWP lot, so enforcement action became necessary. The HCDA staff believed there was a sufficient number of signs in and around the parking lot to inform drivers of the applicable parking restrictions.

We made a site visit to the KWP and found that the parking lot is located approximately 175 yards inside the main park entrance on Ilalo Street. We followed the route driven by the complainant into the KWP parking lot, but did not notice any signs that restricted parking. However, when inspecting the area on foot, we noticed a rather small sign that was located at the beginning of the road that led to the KWP parking lot entrance.

TOW AWAY ZONE
PARKING FOR
PATRONS OF
KAKAAKO
WATERFRONT PARK
WHILE VISITING PARK

UNAUTHORIZED VEHICLES
WILL BE TOWED AT
OWNER'S EXPENSE
IN ACCORDANCE WITH SEC. 290-11
HAWAII REVISED STATUTES
HONOLULU TOWING
933 OWEN ST. HONOLULU HI
PH: 839-9494

Because a driver entering the road that leads to the KWP lot would need to be attentive to traffic on the cross street at the park's main entrance, we believed that the sign could be easily missed. The HCDA informed us, however, that there were five signs throughout the KWP parking lot similar to the one at the park entrance, and a second sign on the road leading from the park's entrance to the parking lot. The HCDA sent us a map that denoted the location of the seven signs.

We made a second site visit and located the seven signs. We felt that the placement of the two signs along the road leading to the KWP parking lot entrance was not helpful, since the signs were small and difficult to read. A motorist could not be expected to read the signs while approaching and driving through the KWP to the parking lot entrance. We were also of the opinion that because the other signs were spread out within the KWP parking lot and the lot was large, a driver might miss seeing any of the signs, depending on where he or she parked. When we parked where the complainant had parked and followed her route toward the medical school, we found it conceivable that she would not have seen any of the parking restriction signs.

We reviewed Section 290-11, Hawaii Revised Statutes, which governed the towing of cars from public and private property, and which stated in part:

> **Vehicles left unattended on private and public property; . . .** any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. . . . The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice. (Emphasis added.)

Based on our observations during our visits to the park, we recommended that the HCDA place a larger sign with large lettering on an existing pole that was well within the park, a considerable distance past the park entrance but near the entrance to the parking lot. We believed that at this location the sign would be hard to miss and drivers would have the opportunity to slow or stop their cars to read the sign without creating a traffic hazard.

The HCDA agreed with our recommendation, ordered a new sign, and notified us when it was installed.

We subsequently notified the complainant of the action taken.

SMALL SIGN LOCATED AT ENTRANCE TO PARK

NEW SIGN POSTED IN BETTER LOCATION

DEPARTMENT OF EDUCATION

(07-00313) Library fine. A public library patron complained that he was assessed a $4 fine for not returning a compact disc (CD) case and its back insert. He stated that he returned the CD in the same case the CD was in when he borrowed it. He noted the case was not the standard library CD case and that the back insert identified as missing was not inside the case when he borrowed the CD. However, the library stated that its staff is well trained and they properly check library materials when they are returned.

In our investigation, we reviewed Section 8-200.1-11, Hawaii Administrative Rules, which stated in part:

> (b) A library customer shall be charged $2 for each library material returned partially damaged. This may include, but is not limited to, library material requiring replacement of plastic jackets and replacement of audiovisual cases.
>
> . . . .
>
> (e) The branch library manager shall determine the charges and bill the library customer for the damaged library material.

We contacted the library and were informed that based on its records, the complainant returned the CD in a case other than the standard library case and without the back insert. The patron was charged $2 for the missing library case and $2 for the missing insert. We requested that the library staff review the matter further.

The library staff subsequently informed us that the complainant's fine would be reduced to $2 because according to the State Librarian's office, library patrons should be assessed a $2 fine for each damaged library material and not a $2 fine for each damaged part of a library material. However, shortly thereafter, the library staff informed us that it reexamined the CD. When the head of the audiovisual unit examined the CD case, she concluded that due to the unusual design of the CD's printed insert, the staff member who processed the CD apparently decided to leave the CD in its original case instead of placing it in the standard library case and did not add the library's standard back insert. As such, the library dropped the remaining $2 charge from the complainant's account and added a note to this particular CD so that staff would not make the same mistake with patrons who borrowed the CD in the future.

At our request, the library sent the complainant a letter explaining its corrective action. The librarian also apologized to the complainant for the error.

(07-01746) Denied refund of payment for school yearbook. A student at a public high school paid for her school yearbook when she registered for her senior year. During the Fall semester, the student was not available during the days she was to be photographed for the yearbook. Because her photograph would not appear in the yearbook, the student wished to rescind her purchase.

The parent of the student complained to our office on November 14, 2006 that the school refused to issue a refund. The school informed the parent that money collected for the yearbook was already spent. However, the parent informed us that according to the school newsletter, the school was still taking orders for the yearbook until December 1, so she questioned the finality of her daughter's purchase.

We reviewed the Department of Education rules and learned that there was no rule that addressed the issue of refunds for yearbook purchases. We contacted the principal of the high school and were informed that the school did not have a policy about such refunds. After checking with the yearbook coordinator, the principal informed us that since the students were not informed that refunds would not be available after a specified date, and in the interest of fairness, the school would issue a refund to the student. The principal also informed us that the school would develop a refund policy for the next school year.

We subsequently confirmed with the complainant that the school informed her that she would receive a refund.

(07-02738) Incorrect social security number on Form W-2. A woman began employment at a public school in August 2006. When it was time to file her 2006 income tax return, she received her Form W-2 (Form) from the Department of Education (DOE). However, the social security number on her Form was incorrect, as the fifth digit was a "4" when it should have been a "9".

The employee learned that her social security number in the DOE payroll record was erroneous from the beginning of her employment. As a safeguard against identity theft, the Department of Accounting and General Services (DAGS), which issued employee payroll checks, installed a security feature in which the first five digits of an employee's social security number

were represented by an “X”. Thus, an employee would not be made aware by his or her payroll statements if any of the first five digits of the social security number were erroneous.

The employee filed a complaint with our office because the DOE refused to issue an amended Form with her correct social security number. She informed us that her tax preparer would not process her income tax return unless she obtained an amended Form from her employer that contained her correct social security number.

The complainant was told by her school personnel office to handwrite the correction on her Form, as the State did not issue a corrected Form. Her tax preparer, however, refused to accept a handwritten correction to the Form.

We contacted the school personnel office and were referred to the DOE payroll office. The payroll office explained that errors on the Form sometimes occurred and that the DOE was instructed by DAGS to have employees make their own handwritten corrections. The payroll office also informed us that DAGS provided the Social Security Administration with corrections to employees’ social security tax payment history.

We contacted DAGS, which explained that the Internal Revenue Service allowed an employee to make corrections on the Form to an employee’s name, social security number, or address. We were referred to the reverse side of the Form, which contained instructions to the employee on making corrections. The instructions read, in part:

> If your name, SSN, or address is incorrect, correct Copies B, C, and 2 and ask your employer to correct your employment record. Be sure to ask the employer to file Form W-2c, Corrected Wage and Tax Statement, with the Social Security Administration (SSA) to correct any name, SSN, or money amount error reported to the SSA on Form W-2.

DAGS explained further that upon notification of the errors from a department payroll office, DAGS processes Form W-2c and sends a copy to the employee for recordkeeping purposes. The employee could also send Form W-2c with his or her income tax return, if it had not yet been filed.

We reported our findings to the complainant and directed her to the instructions on the reverse side of her Form. We also referred her to her school’s personnel office to confirm that she would receive a copy of Form W-2c and verification that her employment record was corrected.

DEPARTMENT OF HAWAIIAN HOME LANDS

(06-04675) Failure to update mailing address. On June 16, 2006, an applicant for a homestead lease complained to our office that the Department of Hawaiian Home Lands failed to send her information on a timely basis about a lottery for homestead leases that was to be conducted on July 8, 2006. Applications for the lottery were due on March 31, 2006, and the complainant missed the deadline.

The complainant informed us that she terminated her postal box service on February 28, 2006. The complainant reported her new mailing address to the department on March 1, 2006. The department staff instructed her to submit written notice of her change of address and informed her that an informational packet for the lottery was sent to her on February 8, 2006. The department told the complainant that if the packet were to be returned to the department, it would be mailed to her new address.

The department received the written notification of the complainant's change of address on March 14, 2006. Thereafter, the March 31, 2006 deadline passed before the complainant realized that she did not receive the informational packet from the department. Because she was unable to apply in time, she was not eligible for the lottery.

In our inquiry with the department, we learned that the department hired a private contractor to mail the lottery informational packets to homestead lease applicants at addresses that the department provided the contractor. The contractor mailed the packet to the complainant's postal box address. The packet was returned to the contractor on March 6, 2006 with no forwarding address. Although the packet was returned well before the lottery application deadline of March 31, 2006, it was not re-mailed to the complainant.

According to the department, its practice was not to inform the contractor of an applicant's change of address after the informational packet was mailed. We contacted the contractor and were informed that it would have re-mailed the packet to the complainant, had it been informed by the department of the complainant's new mailing address.

Thus, we asked the department to reconsider its practice of not informing a contractor of an applicant's change of address. The matter was still under review at the time of the July 8, 2006 lottery, so a resolution for the complainant was not possible. However, as it turned out, there was another lottery in December 2006 and the complainant was awarded a lease.

Subsequently, the department established a new procedure so that whenever there was an offering of homestead leases, an applicant whose

address was current in the department's system and who requested a change of address in writing prior to the deadline for applications would have his or her address updated in the system. The recipient of the change of address request, whether the department or its contractor, would notify the other party of the change of address within one day of its receipt. Any materials would then be mailed to the applicant at the new address.

DEPARTMENT OF HEALTH

(07-02251) Telephone survey. A woman complained that a representative of the Department of Health (DOH) who was conducting a telephone survey about tobacco use contacted her approximately six times within a two-week period even after she refused to participate in the survey.

In our investigation, we learned that the DOH Health Promotion and Education Branch contracted a private company to conduct a random telephone survey of households regarding tobacco use. The DOH collaborated with the Federal Centers for Disease Control and Prevention (CDC), which initiated the Behavioral Risk Factor Surveillance System (BRFSS) to collect data on risk behaviors and preventive health practices that affect people's health. The BRFSS was a cross-sectional telephone survey conducted by state health departments with technical and methodological assistance from the CDC. A standardized questionnaire was used to determine the distribution of risk behaviors and health practices among randomly selected adults. The results of the survey were used by the states to help formulate public health policies, prevention, and health promotion programs.

The BRFSS developed the "Operational and User's Guide" (Guide), a manual covering all aspects of survey operations. According to the Guide's calling schedule, if there was no answer at a randomly selected telephone number, the interviewer was to redial the number until the party was reached or until 15 attempts were made.

According to the survey protocol in the Guide, with the exception of verbally abusive respondents, eligible persons who initially refused to be interviewed would be contacted at least one additional time and given the opportunity to be interviewed.

According to the DOH, the private contractor attempted to call the complainant's household 14 times. The interviewer was unable to speak to anyone because the line was busy, no one answered the telephone, or calls were received by an answering machine. The contractor reached the complainant on its 15th attempt, and the complainant refused to participate in

the survey. The company then made another attempt, and the complainant again refused to participate in the survey. The DOH confirmed that the complainant would not be contacted again.

At our request, the DOH provided the contractor's call history, which contained specific information on each call that the contractor made to the complainant's telephone number. The call history confirmed the information that the DOH had provided.

We explained the survey guidelines to the complainant. She was pleased to learn that she would not receive any more calls about the survey.

DEPARTMENT OF HUMAN SERVICES

(07-02649) Required physical examination by a State physician. A woman who was diagnosed with Stage III cervical cancer applied for general assistance benefits with the Department of Human Services (DHS). She complained to our office on January 30, 2007 that her DHS caseworker informed her that she was required to have a physical examination completed by a State physician. The examination by the State physician was scheduled for February 1, 2007, and was part of the application process to determine whether the complainant was disabled and eligible for benefits.

The complainant informed us that she completed radiation treatment on January 26, 2007, and was physically unable to attend the examination with the State physician. She had already provided her DHS caseworker with documentation from her private physician of her medical condition and the need for continued care, so she questioned why she would need to be examined by the State physician.

We contacted the complainant's DHS caseworker, who sympathized with the complainant. He informed us that DHS accepted the examination report from the complainant's physician in lieu of sending the complainant to the State physician. However, the report was reviewed by the DHS Medical Review Board (Board) whose consultants determined that the complainant needed to be examined by the State physician.

We thereafter inquired with the DHS administration as to whether there was any available option in lieu of the examination by the State physician. A general assistance program specialist informed us that the report from the complainant's physician did not state that the complainant had Stage III cervical cancer, which would have qualified the complainant to be deemed disabled and eligible for assistance without being examined by the State physician. We inquired whether DHS would accept an updated

report from the complainant's physician that would clearly state the complainant's present medical condition. The program specialist informed us that she would accept the updated report and send it to the Board for review.

We informed the complainant, who had a friend obtain the updated report from her physician as well as the physician's initial examination report. We forwarded both reports to the specialist. Because time was of the essence, we also contacted the Medical Standards Branch administrator, who then requested that the Board expedite the review of the reports from the complainant's physician. The administrator requested that the Board waive the examination by the State physician, if warranted.

On January 31, 2007, the Board determined that the complainant was disabled and waived the physical examination by the State physician. The complainant's application for assistance was subsequently approved.

We informed the grateful complainant of the action taken by the agency.

DEPARTMENT OF LAND AND NATURAL RESOURCES

(07-00086) Use of public land without proper approval. A man complained that the Department of Enterprise Services (DES), City and County of Honolulu (C&C), allowed a "beachboy" concession to operate on State land without proper approval. The land was set aside to the C&C by an Executive Order signed by the Governor in 1963.

The complainant contended that the use of the land by the concessionaire was subject to approval of the Board of Land and Natural Resources (Board), Department of Land and Natural Resources (DLNR). However, the Board never gave its approval. The complainant cited Section 171-11, Hawaii Revised Statutes (HRS), which stated in part:

> **Public purposes, lands set aside by the governor; management.** The governor may, with the prior approval of the board of land and natural resources, set aside public lands to any department or agency of the State, the city and county, county, or other political subdivisions of the State for public use or purpose. All withdrawals of the lands or portions thereof so set aside shall be made by the governor.

> Any public lands set aside by the governor prior to the enactment of this chapter, or any public lands set aside by the governor of the Territory of Hawaii, shall be subject to the provisions of this section.
>
> Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, city and county, county, or other political subdivisions of the State having jurisdiction thereof, unless otherwise provided by law. Such department, agency of the State, the city and county, county, or other political subdivisions of the State in managing such lands shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter <u>all such dispositions being subject to the prior approval of the board</u>; . . . (Emphasis added.)

In our investigation, we inquired with the DLNR whether the requirements of Section 171-11, HRS, apply to all lands set aside by executive orders of the Governor. The DLNR informed us that the statute would apply to such lands, and the DLNR wrote to the DES to request its assistance in obtaining Board approval for the "beachboy" concession. However, the DES responded that its legal counsel determined that another Executive Order signed by the Governor in 1999 provided the DES with control and management rights to the land in question. The DES contended that it was therefore not required to obtain Board approval prior to awarding the concession contract.

We disagreed that the 1999 Executive Order exempted the C&C from the statutory requirement and therefore wrote to the Chair of the Board (Chair) and requested that the Board review its responsibilities under Section 171-11, HRS. We were informed that a DLNR administrator was assigned to respond to our inquiry. Subsequently, the administrator informed us that although he believed the law required the DES to obtain Board approval for use of the land, he planned to take no further action as he deemed the matter to be a disagreement between the DLNR and the C&C over the legal interpretation of the statute.

We did not believe the administrator's response settled the matter and we questioned whether the concession contract was valid, since the DES had not obtained Board approval of the concession. The DLNR administrator responded that we did not present any substantial evidence

to prove the contract to be invalid. He suggested that we contact the Department of the Attorney General (AG) to respond to our questions.

We again wrote to the Chair and noted that under Chapter 171, HRS, titled “Management and Disposition of Public Lands,” it was the responsibility of the DLNR, not the Ombudsman, to manage, administer, and exercise control over public lands. Accordingly, we believed it was the responsibility of the Board to review and resolve any questions regarding the legal interpretation of the law.

The Chair then sought the advice and counsel of the AG regarding the interpretation of the law. In the meantime, the DLNR continued to seek from the DES a request for Board approval of the concession.

Subsequently, the DLNR informed us that the DES submitted a request for Board approval to allow the beach concession and the Board granted its approval. We believed that by this action, the awarding of the “beachboy” concession contract was brought into compliance with Section 171-11, HRS. We informed the complainant of the corrective action.

(07-02543) Erroneous sign. A man complained that motor vehicles were being allowed on a narrow paved trail at the Ka Iwi Scenic Shoreline Park. The complainant and his family hiked the trail to an area from where they could watch whales frolicking in the ocean. Later, as they descended the trail, they encountered three motorcyclists headed in the opposite direction on the trail. The complainant called the police and was met by an officer at the beginning of the trail. The officer informed him that it was permissible for motorcyclists to use the trail because a posted sign stated, "No vehicles (except on paved roads)." The complainant subsequently called the Department of Land and Natural Resources hotline and received a similar response.

The complainant felt that allowing motor vehicles on the trail posed a danger to the numerous pedestrians who used the trail, some of whom were children, including babies in strollers. The complainant reported that while improvements to the trail were being made, a large gate prevented vehicles from entering the trail, and he did not recall discussion in any public meeting or reference in any environmental report that allowed vehicles on the trail.

We contacted a State Parks administrator, who informed us that motor vehicles were not allowed on the trail and that the sign was in error. The public was required to park their vehicles in a nearby parking lot and hike the trail. The administrator agreed that the wording of the sign was erroneous.

We then contacted the State Parks branch that was responsible for making signs for the State parks system. After the branch chief visited the site, the sign was modified to simply state, "No vehicles." An additional sign was posted, stating "No unauthorized vehicles beyond this point."

We informed the complainant of the corrective action taken by State Parks. Thereafter, he reported that he visited the site, confirmed the new signs, and felt that the trail was much safer with the change. He thanked us for what he considered a quick response to his complaint.

(07-02894) Improper use of a State vehicle and work time. A man complained that a State employee used a State vehicle to travel to the private residence of a Department of Land and Natural Resources (DLNR) administrator to repair a fence during State work hours. He considered it a misuse of taxpayer dollars.

In our investigation, we reviewed Section 105-1, Hawaii Revised Statutes (HRS), which stated in part:

> **Government motor vehicles; certain uses prohibited.** Except as provided in section 105-2, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use) . . . .
>
> Section 105-2, HRS, provided:
>
> **Exceptions**. Section 105-1 shall not apply to:
>
> . . . .
>
> (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State; . . .

We brought the complaint to the attention of the DLNR administration.

After investigating the allegation, the DLNR reported that the administrator enlisted the services of a friend to work on his fence. The administrator's subordinate used the State vehicle to travel to the administrator's residence to help the friend work on the fence. The subordinate was not authorized to use the vehicle for this purpose.

The DLNR counseled the administrator and his subordinate about the inappropriate use of a State vehicle, and both were required to attend an ethics training class. Furthermore, the subordinate was required to deduct from his accumulated vacation leave the amount of time he worked on the fence and to reimburse the State for the cost of gasoline he used to travel to the administrator's residence in the State vehicle.

As the complainant had chosen to remain anonymous, we were unable to report the outcome to him.

DEPARTMENT OF PUBLIC SAFETY

(06-03508) Found guilty of fighting even though inmate acted in self-defense. An inmate complained that an Adjustment Committee (Committee) found him guilty of fighting with another inmate despite his having acted in self-defense.

In our investigation, we reviewed staff reports on the incident and spoke with facility staff. According to one report, an adult corrections officer (ACO) observed the other inmate take off his shirt, kick off his slippers, and charge the complainant with his hands up and fists clenched. The ACO also observed the complainant raise his hands with clenched fists, kick off his slippers, and step back as though he was preparing to defend himself. The ACO immediately called for backup and noted that other inmates were positioned between the two inmates, trying to keep them apart.

Additionally, a sergeant who conducted an investigation of the incident reported that two inmate witnesses stated they observed the other inmate hit the complainant but did not witness the complainant retaliate in any way. The sergeant recommended that the charges against the complainant be dismissed.

Based on the staff reports, we believed that the complainant's assertion that he acted in self-defense was credible. We questioned the Committee Chairperson as to the appropriateness of finding the complainant guilty of fighting, as the incident and investigation reports supported the complainant's claim that he acted in self-defense. The Chairperson, however, did not agree and was not willing to reconsider the finding.

We then wrote to the facility warden, explained our position, and asked him to review the matter. The warden thereafter reviewed the staff reports and the decision of the Committee. He noted that the sergeant's investigation report was not considered by the Committee because the report had not been completed by the time of the hearing.

As such, the warden overturned the guilty finding by the Committee, and all records of the proceedings were expunged from the complainant's file. The warden also ordered that the complainant's classification be reviewed to ensure that there were no adverse effects due to the Committee's vacated decision.

We reported the warden's decision to the complainant.

(06-04137) Found guilty of the wrong charge. In a routine search of a cell, adult corrections officers discovered a makeshift needle, a motor for a tattoo machine, stencil-like drawings used for tattooing, and drill bits. The two inmates who occupied the cell were charged with violating rules that prohibited the "possession, introduction or manufacture of any firearm, weapon, sharpened instrument, knife or other dangerous instrument," and the "possession of an unauthorized tool."

One of the inmates pled not guilty to both charges at his Adjustment Committee (Committee) hearing. The charge of possessing an unauthorized tool was dismissed, but he was found guilty of the rule prohibiting the possession of any firearm, weapon, sharpened instrument, knife or other dangerous instrument. The charge for which he was found guilty was classified as a violation of "greatest severity," which subjected him to the harshest disciplinary action and program ramifications.

The other inmate pled guilty to the charge of possessing any firearm, weapon, sharpened instrument, knife or other dangerous instrument. He was found guilty of this charge, and the charge of possessing an unauthorized tool was dismissed.

The inmate who pled not guilty to both charges complained to our office that he should not have been found guilty of the charge, since his cellmate had by his guilty plea admitted that the prohibited items belonged to him.

In our investigation, we reviewed the staff reports and discussed the case with the Committee Chairperson. Based on our review of the reports, we concluded that there was a reasonable basis for the Committee to find that the prohibited items were used for tattooing and that both inmates were responsible for possessing the items. However, as there was a rule that specifically prohibited tattooing or possession of tattooing tools and implements, we believed that the inmates should have been found guilty of violating this rule rather than the rule prohibiting the possession of firearm, weapon, sharpened instrument, knife or other dangerous instrument. Tattooing or possession of tattooing tools and implements was classified as a "moderate severity" violation.

As we were unable to resolve the matter with the Chairperson, we wrote to the warden. We asked the warden to review the guilty findings against both inmates.

The warden subsequently agreed with our determination and issued his decision rescinding the finding of guilt for the violation of greatest severity and instead finding the complainant guilty of the lesser violation of tattooing or possession of tattooing tools and implements. The warden also ordered the expungement of the greatest severity guilty finding from the complainant's records. Finally, in the interest of equal treatment, the warden applied the same corrective actions in the case of the complainant's cellmate.

The warden issued to his staff a thorough explanation of the reasons for his decision. We commended the warden for his open-mindedness and sense of fairness for his actions in this case (as well as in case 06-03508, summarized on page 48 of this report) and noted that his explanation to his staff would serve as a learning tool to assist them in carrying out their responsibilities in the future.

We notified the complainant, who was appreciative of the warden's corrective actions. We also notified the complainant's cellmate of the action taken, although he had not filed a complaint with our office.

(07-00119) Inmate who lit a cigarette found guilty of setting a fire. An inmate complained that he was improperly found guilty of smoking where prohibited, possessing an item not authorized for retention or receipt by an inmate, and setting a fire. The charges were brought against the complainant when an adult corrections officer (ACO) caught him smoking in a restroom. The complainant stated that he was not smoking and instead possessed a twisted piece of tissue paper he used to clean his ears.

In our investigation, we reviewed staff reports and the Department of Public Safety Policy No. COR.13.03, "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations." We also spoke with correctional staff.

The ACO reported that upon entering the restroom on a routine check, the complainant turned around to face him. The complainant had a lit object in his mouth. He then quickly threw the object into the toilet and flushed it before the ACO could retrieve it.

Although we found it reasonable that the Adjustment Committee (Committee) found the complainant guilty of smoking and possessing an unauthorized item, we felt that finding the complainant guilty of setting a fire was unreasonable.

Under the Policy, "setting a fire" was classified as a violation of greatest severity and was comparable to offenses such as killing, sexual assault, assaulting another person, use of force, and rioting. It appeared unreasonable to equate the lighting of a cigarette with such violations of greatest severity.

We questioned the Committee Chairperson as to the appropriateness of this charge. We expressed our belief that the purpose of this charge was to penalize inmates who set fires that were intended to cause damage or injury to life or property. The Chairperson, however, was not willing to reconsider the finding.

We wrote to the facility warden, explained our position, and asked him to review the matter. Thereafter, the warden informed us that he agreed with our opinion. Therefore, the warden had the guilty finding for setting a fire expunged from the complainant's file. We advised the complainant of the corrective action taken.

(07-00269) Erroneous presentence credit. According to State law, a person convicted of a crime shall receive presentence credit for time spent in custody from the date of arrest to the date of sentencing. The correctional facility where the inmate is detained calculates the presentence credit that the inmate is to receive. The presentence credit is reported to the Hawaii Paroling Authority (HPA), which uses the information to determine the expiration dates of the inmate's minimum and maximum sentences.

An inmate at a mainland correctional facility contracted by the Department of Public Safety complained that his maximum sentence expiration date was incorrect. The HPA informed him that his maximum sentence would expire on October 31, 2006. However, according to the complainant's calculation of his presentence credit, his sentence should expire on October 11, 2006.

We contacted the HPA and reviewed the documents used to determine the complainant's maximum sentence expiration date. We verified the complainant's claim that his presentence credit was calculated incorrectly. For the period from his arrest on October 11, 2001 to his sentencing on November 4, 2002, he received only 368 days presentence credit.

We informed the correctional facility that calculated the complainant's presentence credit about the error. The facility verified the error and determined that the complainant should have received 389 days presentence credit. The facility reported the corrected presentence credit to the HPA,

which adjusted the complainant's maximum sentence expiration date. Rather than being released on October 31, 2006, the complainant would be released on October 10, 2006.

We informed the department staff that arranged inmates' return from mainland facilities to Hawaii of the complainant's new release date. Thereafter, we confirmed that the complainant was returned to Hawaii in time to be released on October 10, 2006.

(07-00409) Erroneous release date. On August 2, 2006, an inmate complained that he was still in jail when he should have been released. He said that on August 1, a judge sentenced him to 5 days in jail for three convictions, but gave him credit for the 5 days that he had already been incarcerated. Thus, he claimed that he should have been released on August 1, the day he was sentenced.

In our investigation, we contacted the correctional facility records office. The records staff informed us that the complainant was arrested on July 24, 2006, and was subsequently convicted of three charges of driving without a license. The judge sentenced him to 5 days in jail for each conviction, with credit for time already served and with the sentences to run consecutively, for a total of 15 days. In each sentence, the judge credited the complainant with time spent in custody prior to the date of sentencing, from July 24 to July 31, which amounted to 8 days.

We found that the records staff applied the 8 days credit only to the first 5-day sentence, in effect reducing the credit to 5 days. Since no credit was applied toward the second and third 5-day sentences, the staff determined that the complainant needed to serve 10 days from the date of sentencing, so he would not be released until August 10.

The calculation of the complainant's release date appeared questionable because he would be in jail for 18 days, from July 24 to August 10, even though his sentences totaled 15 days. With 8 days credit towards a cumulative 15-day jail term, we believed that the complainant should remain in jail for an additional 7 days from the date of his sentencing on August 1, and be released on August 7.

We asked the Offender Management Program Office (OMPO) to review the calculation of the complainant's release date. Upon review, the OMPO determined that the complainant's correct release date was August 7. Therefore, the complainant was subsequently released on August 7.

(07-00438) Denial of calcium supplement. A private physician examined a female inmate's leg injury and recommended that the inmate receive a calcium supplement to hasten the healing of the bone. The inmate complained that she was not being given the calcium supplement because, according to the correctional facility medical unit staff, the facility physician did not agree with the private physician's recommendation.

In our investigation, we reviewed Department of Public Safety (PSD) Policy No. COR.10D.17.3.1, titled "Modified Diets," which stated in part:

> In compliance with the Administrative Rules of the Department, all inmates shall be provided with a wholesome, nutritionally adequate diet. Inmates shall be provided with a modified diet upon prescription by the facility physician or nurse practitioner.

The Policy defined a "Modified or Therapeutic Diet" as:

> A form of treatment of a disease or a disorder by providing changes in either the consistency; method of cookery; preparation; elimination; reduction or adding of specific food items or nutrients in an attempt to provide optimum health.

We contacted the medical unit supervisor and learned that the private physician recommended that the complainant be provided with milk as a calcium supplement. The food services staff informed the supervisor that the complainant was provided a carton of milk with breakfast every morning. We noted, however, that all inmates were provided a carton of milk with breakfast. The supervisor did not find any documentation in the complainant's medical chart that the facility physician disagreed with the private physician's recommendation or that he issued a modified diet order for the complainant to receive extra milk.

We asked the supervisor to check if a modified diet was prescribed by the facility physician and, if so, to clarify the quantity of milk the complainant was to receive.

Thereafter, the supervisor informed us that after reviewing the complainant's medical records, the facility physician issued a special diet order. The order provided that the complainant was to receive a carton of milk three times a day for three months.

We confirmed with the grateful complainant that she was receiving a carton of milk three times a day.

(07-00637) No presentence credit. An inmate complained that he was not credited for nine months he spent in prison for sexual assault before he was sentenced. He contended that the recorded expiration of his term of imprisonment was therefore erroneous.

In our investigation, we reviewed the complainant's sentencing documents, record of presentence credit, and Hawaii Paroling Authority records. We also reviewed Section 706-671, Hawaii Revised Statutes, which stated in part:

> **Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.** (1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence. (Emphasis added.)

The law allowed a person convicted of a crime to be credited for time spent in custody from the date of arrest to the date of sentencing only for the crime for which the person was detained.

We found that the complainant served the nine months in prison while awaiting sentencing on assault and drug promotion charges, not on the charge of sexual assault. Thus, the presentence credit could only be applied to his sentence for assault and drug promotion and his sentence for the sexual assault conviction would not be reduced by nine months.

We explained the application of the law to the complainant and informed him that the expiration of his sentence for sexual assault was correct.

(07-01363) Delay in processing workline pay raise. According to Department of Public Safety Policy No. COR.14.02, "Inmate Work Program/Compensation," a goal of the department is "to provide inmates with reasonable opportunities for useful and productive employment and to enable them to acquire experiences which may be valuable to them in securing and maintaining regular employment in the community when they are released." Sentenced inmates who contribute to the operation and maintenance of the facility receive compensation for their work. Inmates are paid according to a pay scale consisting of four grade levels, based on the skill required for the work and their work performance.

An inmate who worked on a correctional facility workline for one year complained that he did not receive a pay increase to which he was entitled. He was paid at the Grade IV level, earning 25 cents an hour, but contended that he should have received a pay raise after his ninth month on the job. He alleged that his supervisor processed the required documents for his raise, but he had not received the raise.

In our investigation, we reviewed the correctional facility policy. According to the policy, all workline pay grade placements must be submitted to the warden for review and approval. A precondition for consideration of pay grade advancement was that an inmate complete nine months on the workline with at least average evaluations.

We spoke with the complainant's supervisor, who confirmed that the complainant had worked for a year and was eligible for a pay raise. However, the facility operations supervisor disputed the length of time that the complainant had worked and informed us that the complainant would not be eligible for a pay raise for two more months. When we questioned the date on which the complainant began his work, we were referred to the warden.

We brought the matter to the attention of the warden. After reviewing the facility's records, the warden informed us that the complainant was hired without proper documentation. Subsequently, because of a reduction in the work force and a job reassignment, the complainant's start date was mistakenly changed. The warden determined that the complainant had completed a year of work with a satisfactory evaluation and was thus eligible for a pay raise. The complainant's pay was increased from 25 cents to 38 cents an hour.

We contacted the complainant, who happily confirmed that the staff had informed him of his raise.

(07-02388) Nonreceipt of inmate wages. In January 2007, an inmate complained that he had not been paid for work he performed while on a Correctional Industries (CI) special project workline during the month of September 2006. He claimed that his net pay should have been $95.40. According to the complainant, CI sent his September pay to the correctional facility but the facility's business office did not credit his account with the payment. The business office informed the complainant that no payment was received from CI. The complainant noted that other inmates on this workline were also not paid for the same month.

In our investigation, we contacted the correctional facility's business office. According to its records, the business office did not receive any

payment for the CI workline. We subsequently contacted CI, which informed us that it sent the necessary paperwork to the business office for the complainant to be paid net wages of $95.40.

We contacted the business office again. After checking further, the business office noted that it did not receive the worksheets from CI, which was the reason the complainant and the other inmates on the same workline were not paid for September.

We informed CI of the missing worksheets and CI subsequently sent the worksheets to the business office. Later, the business office confirmed that it received the worksheets and had begun processing payment not only for the complainant, but also for the other inmates who were not paid for September. The inmates' accounts were soon credited with their earnings.

We informed the grateful complainant of the results of our investigation.

(07-02728) Found guilty of physical interference. An inmate complained that she was found guilty of misconduct for "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."

In our investigation, we reviewed staff reports and Department of Public Safety Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations." We also discussed the matter with facility staff.

The complainant had been charged with assault and fighting, as well as physical interference. The charges stemmed from an incident in which another inmate punched the complainant in the mouth, dislodging a tooth. The complainant required medical attention and had to be escorted to the health care unit by an adult corrections officer (ACO). Based on staff reports and the admission of the inmate who punched the complainant, the Adjustment Committee (Committee) found the complainant not guilty of assault and fighting. However, the complainant was found guilty of physical interference.

We questioned the Committee Chairperson as to the appropriateness of finding the complainant guilty of physically interfering with an ACO. The Chairperson believed that the finding was proper because the ACO had to be removed from her assigned post to respond to the incident and to escort the complainant to the health care unit.

We informed the Chairperson that we believed the rule was intended to prohibit an inmate from physically interfering with or using an obstacle to

interfere with a staff member's performance of his or her duties. For example, an inmate who physically blocked an ACO's path or closed a door to prevent an ACO from entering a cell would be guilty of violating the rule. In this instance, however, no such physical interference was committed by the complainant and even though the ACO had to be removed from her post, responding to the incident and escorting the complainant to the health care unit were part of the ACO's regular duties.

As the Chairperson remained firm in his position that finding the complainant guilty of physical interference was proper, we contacted the facility chief of security and explained our position. Thereafter, the chief of security informed us that he agreed with our position. By written memorandum, he informed the complainant that the finding of guilt for the charge of physical interference would be expunged from her file.

(07-02849) Noncompliance with urinalysis procedure. The Department of Public Safety (PSD) has a zero-tolerance policy for substance abuse. The department found the use of urinalysis to be an effective means of maintaining a drug-free environment, controlling contraband, detecting illicit use of drugs and alcohol, identifying substance abusers, determining treatment needs, and holding inmates accountable for their actions. Urinalysis can be utilized randomly, for cause, in connection with substance abuse treatment and community-based correctional programs, when court-ordered for supervised release, or during the transfer of inmates. As a safeguard against false positive urinalysis results, an inmate who tests positive is permitted to request that a confirmatory test be conducted by an outside private laboratory on the same urine specimen that was tested by PSD staff.

An inmate complained that an Adjustment Committee (Committee) found him guilty of the use of an unauthorized substance when his urinalysis was positive for amphetamines. The complainant argued that the correctional facility should not have found him guilty because his urine specimen leaked during its transport to the mainland for a confirmatory test and he believed that this affected the outcome of the test. He also believed that there was not enough of his urine specimen left for another confirmatory test to be conducted.

In our investigation, we reviewed the staff reports and spoke with the urinalysis officer of the correctional facility. We learned that the urinalysis officer obtained a urine sample from the complainant and tested the sample on the same day. The test was positive for amphetamines. Also on the same day, the complainant acknowledged receipt of the test result and requested a confirmatory test. According to an entry by the urinalysis officer

on the urinalysis test record/chain of custody form (Form), the container with the complainant's specimen leaked during transit and the sample was rejected by the private laboratory.

The urinalysis officer informed us that because of the rejection, he sent a second sample of the same specimen to the private laboratory, as there was enough of the specimen to be sent. The result of the confirmatory test was positive for amphetamines, confirming the result that the urinalysis officer had obtained.

We also reviewed the department policy and procedure on urinalyses. We found that the policy and procedure required an entry in the chain of custody section of the Form every time a staff member handled the urine specimen. The policy and procedure required staff documentation on the Form from initial collection through final disposition each time the specimen was handled. Any person handling the specimen was required to note his or her name and the date on the Form.

In the complainant's case, the Form's chain of custody section had only two entries. The first entry indicated that the urinalysis officer handled the urine specimen for testing. The second entry indicated that five minutes later, the urinalysis officer placed the urine specimen in the refrigerator. There was no record thereafter of the officer's handling of the specimen on the two occasions that he sent portions of the specimen to the private laboratory for confirmatory testing.

According to the policy and procedure, when procedural requirements are not met, a positive test result shall not be reported or recorded. The policy and procedure stated that it was the responsibility of the warden to ensure compliance with the requirements.

Since the procedural requirement was unmet by the failure to document the handling of the complainant's urine specimen for the confirmatory tests, we wrote to the warden and requested his review. We asked the warden whether the positive urinalysis results should have been reported or recorded for consideration by the Committee and if not, whether the Committee's finding and disposition should be expunged from the complainant's file.

The warden subsequently agreed that the chain of custody requirements were not met. Thus, he overturned and expunged the Committee's finding and disposition.

We informed the complainant of the result of our investigation and we commended the warden for the fairness of his action.

(07-02912) Incorrect release date. According to State law, anyone sentenced to imprisonment for a crime shall be credited for time spent in custody from the date of arrest to the date of sentencing for that crime. Based on official records, the staff at the correctional facility where an inmate is imprisoned calculates the number of days that the inmate was in custody prior to being sentenced. The calculations may be complicated if an inmate is serving more than a single sentence and if the inmate was arrested and held in custody in different counties.

An inmate at a correctional facility on Maui complained that he was not credited with all the time he spent in custody prior to being sentenced and his release date was therefore incorrect. The complainant said that he was arrested on the island of Hawaii in August 2006 on an arrest warrant issued by a Maui court for assault in the second degree. He was convicted in February 2007 and sentenced to one year in jail by the Maui court. The complainant claimed that with credit for time served, he would complete his one-year sentence and should be released in August 2007. However, he said that the Maui facility informed him that he would not be released until November 2007.

In our investigation, the records staff at a facility on the island of Hawaii informed us that the complainant served a 40-day jail sentence there, imposed by a court on Hawaii, for contempt of court and theft in the fourth degree. He began service of the 40-day sentence in August 2006 and completed that sentence in September 2006.

The records staff at the Maui facility informed us that the complainant was in custody from August to September 2006 for contempt of court and theft, and was not in custody for the assault until September 2006. He was then sentenced in February 2007 to one year in jail for the assault. Thus, he would receive presentence credit for the time he spent in custody from his arrest in September 2006 until his sentencing in February 2007. The Maui staff determined that his release date would be in September 2007, not in November 2007 as he was previously told.

When we informed the complainant what the Maui records staff told us, he insisted that he was arrested on the island of Hawaii in August 2006 on all charges, including the assault charge. He contended that after his arrest in August 2006, he was held at the Hawaii facility until his transfer to the Maui facility in September 2006. Thus, he maintained he should be released in August 2007. We informed the complainant that we would investigate further.

We informed the Maui facility's records staff of the complainant's contention that he was held for a month after being arrested for assault, from August to September 2006, at a facility on the island of Hawaii. We requested that a further review of his records be conducted. The records

staff acknowledged that it may not have reviewed all of the records. Upon further review, the records staff discovered that the complainant was, in fact, arrested and held in custody at the Hawaii facility for the assault charge from August to September 2006. The records staff informed us that it would make the necessary correction to the complainant's release date and he would be released in August 2007.

We informed the complainant that his release date was recalculated to August 2007 and he was satisfied with the outcome.

(07-04052) Hawaii grievance forms unavailable at mainland correctional facility. In order to ease overcrowding in Hawaii's correctional facilities, the Department of Public Safety (PSD) has contracted with operators of private correctional facilities on the mainland to house inmates.

Before she was transferred to a mainland correctional facility, an inmate initiated a grievance at a Hawaii correctional facility. Inmates in Hawaii who have a complaint about prison conditions are allowed to file a grievance at three successively higher administrative levels within the department. The grievance system provides a mechanism to identify institutional problems, increase communication, and reduce litigation.

After her transfer to the mainland, the inmate complained that staff at the mainland correctional facility refused to provide her with a Hawaii grievance form. Thus, she was unable to continue the grievance process at the next administrative level. According to the complainant, the mainland facility staff informed her that the PSD advised the mainland facility that Hawaii grievances were void after inmates transferred to the mainland.

It was our understanding that an inmate who initiated a grievance at a Hawaii correctional facility was allowed to complete the grievance procedure at all three administrative levels, even if the inmate transferred to a mainland correctional facility. We contacted the PSD's Mainland Branch, whose staff monitored compliance with the contract by the mainland correctional facility. The branch staff confirmed our understanding.

In response to the complaint, the PSD Mainland Branch advised the mainland facility to provide Hawaii grievance forms to the complainant. The branch also sent a reminder to all of the contracted facilities on the mainland informing them that Hawaii inmates may utilize the Hawaii grievance forms if they have a complaint about their placement at the mainland facility, if they are continuing a grievance they initiated in Hawaii prior to transferring to the mainland, or if they have a complaint against a Hawaii correctional facility but were transferred to the mainland before they were able to file a grievance.

UNIVERSITY OF HAWAII

(07-00891) Denial of request for college transcript because of alleged debt. A woman complained that a community college in the University of Hawaii system denied her request for a transcript of classes in which she had been enrolled. The request was denied because the complainant reportedly had an outstanding debt with the school since 1998. The complainant maintained that she did not owe any money to the college and pointed out that she requested and received her transcript twice previously, in 1999 and 2001, from the college. Her inability to obtain the transcript was hindering her enrollment in a university on the mainland.

In our investigation, we learned that the complainant attended the college for one semester. She registered for classes and paid for a second semester, but withdrew before classes started and moved to another state. The complainant was entitled to a refund of $500. However, the college erroneously mailed the complainant a refund check for $2800. Unbeknownst to the complainant at the time, the college sent the check to the complainant's former Hawaii address and her father forged her signature and cashed the check. This created a debt of $2300 that the college said the complainant owed.

We also learned that when the complainant made her request for her transcript in 2001, the college raised the issue of the outstanding debt with her. The complainant argued that she did not owe any money to the college because she had never received the $2800 refund check. She also informed the college that she had never received any prior notice about the debt.

According to its records, the college received a telephone call from the complainant's father in April 2001 in which he inquired about the amount of the debt and acknowledged that the debt was his. The records also revealed that the college provided the complainant her transcript at the end of April 2001. It appeared that the college expected the complainant's father to pay the debt, so it provided the complainant with her transcript. The debt, however, was never paid.

Since then, there had been no attempt to collect the outstanding debt by the college nor any notice provided to the complainant about the debt.

We reviewed Title 20, Chapter 10, Hawaii Administrative Rules (HAR), titled "Delinquent Financial Obligations." Section 20-10-2, HAR, stated:

General statement of policy. (a) If a person has assumed a financial obligation to the University of Hawaii and payment is overdue, the University shall have the right to impose sanctions under this chapter as it may deem appropriate.

Section 20-10-6, HAR, stated:

Application of sanctions.

. . . .

(d) Denial of transcripts, diplomas, and other entitlements may be imposed as a sanction in all cases of delinquent financial obligations. These sanctions shall remain in force during the appeals and contested case processes.

Although the college had the authority to sanction the complainant for the outstanding debt by denying the complainant's request for her transcript, we questioned whether adequate notice had been provided to the complainant about the debt and whether the college had made reasonable efforts to collect the debt. The college sought the assistance of its legal counsel.

Subsequently, the college provided the transcript to the complainant while it considered whether to forgive the debt. We advised the complainant to follow up directly with the college regarding the disposition of the debt and invited her to contact us again if she was later dissatisfied with the outcome.

CITY AND COUNTY OF HONOLULU

(06-04052) Free parking for electric vehicles at municipal lots. A woman who drove an electric vehicle complained that she was charged a fee for parking at a municipal lot in downtown Honolulu. When she questioned the parking attendant about being charged the fee, she was told that electric vehicles were allowed free parking only in metered parking stalls on public streets. However, she believed there was a law that waived parking fees for electric vehicles in municipal lots as well.

In our investigation, we researched State law and learned that the Legislature passed a law exempting electric vehicles from parking fees in order to encourage the use of such vehicles. The Legislature recognized the need for Hawaii to rely less on fossil fuels and to promote newer technologies in everyday life. It was the policy of the State to support the

development and consumer acceptance of electric vehicles in order to reduce air pollution, improve energy efficiency in transportation, and reduce the State's dependence on petroleum.

We found that Act 290, Session Laws of Hawaii 1997, relating to electric vehicles, took effect on July 1, 1997, and stated in part:

> SECTION 4. An electric vehicle on which a license plate described in section 3 is affixed shall be exempt from:
>
> (1) The payment of parking fees, including those collected through parking meters, charged by any governmental authority, other than a branch of the federal government, when being operated in this State; . . .

According to the law, the electric vehicle exemption from the payment of parking fees applied not only to fees collected through parking meters, but also to parking fees charged by any State or County authority. Thus, the attendant at the municipal parking lot should not have charged the complainant a parking fee.

We contacted the Department of Facility Maintenance (DFM), City and County of Honolulu, which contracted private companies to operate municipal parking lots and collect parking fees. We learned that the DFM was unaware of Act 290.

After reviewing Act 290, the DFM agreed with our position and informed all of the contractors at its municipal parking lots that it should no longer charge fees for electric vehicles parked in those lots.

We informed the complainant and she was appreciative of the corrective action taken by the DFM. However, she then complained that she was cited for not feeding the parking meter when she parked her electric vehicle in a State lot. (See case summary 07-00616 on page 31 of this report.)

(07-00144) Delay in obtaining release of personal property held by the police. In September 2004, an inmate complained that the Honolulu Police Department (HPD) had not returned personal property that it had confiscated. We learned that the inmate's personal property had been confiscated at the time of his arrest in 2001 and was being held as evidence by the HPD. The criminal case for which the property had been retained as evidence had been adjudicated, appealed, and dismissed in 2004. However, the HPD would not release the property to the inmate without authorization from the Department of the Prosecuting Attorney (PA).

According to the PA, there was a dispute about the ownership of the property, and the court had to determine who was entitled to the property. The PA had to locate the victims of the crime who might have an interest in the items that were confiscated. Once these individuals were located, the PA had to file a motion with the court for a hearing and notify the inmate after a hearing was scheduled. In June 2005, we advised the inmate of this process and closed the case.

In July 2006, the inmate contacted our office to complain that the PA had not yet taken action necessary for the property to be released to him. The inmate informed us that despite writing to the PA in 2005 and 2006, the PA had not notified him of any hearing. We contacted the deputy prosecuting attorney (DPA) who was assigned to the case. We learned that although staff was instructed to prepare a motion for hearing on the disposition of the property, the department had not yet begun the process of locating the individuals who might have an interest in the property.

There was little progress reported by the DPA in subsequent months and in October 2006, the DPA informed us that no further action would be taken. The DPA reasoned that because the property in question was not entered as evidence at trial, the department was not responsible for determining the further disposition of the property. The DPA believed the responsibility to dispose of the property rested with the Department of the Corporation Counsel (DCC).

We informed the DPA that according to the complainant, he initially filed a claim for the property with the DCC in 2004. The DCC denied the claim and instructed the complainant to provide HPD with a copy of the final adjudication from the court so that his property could be released. Although the complainant followed these instructions, the HPD would not release the property without authorization from the PA. The DPA was unaware of the denial of the complainant's claim by the DCC and agreed to review the matter again.

Upon further consideration, the DPA advised the HPD that the property items were no longer required for prosecution but that items in evidence may be robbery proceeds to which the victims may have a claim. The DPA stated that the HPD and the DCC were the appropriate entities to determine the ultimate disposition of the property being held.

In our contacts with the HPD and the DCC, we learned that two victims claimed ownership to money and jewelry that were among the held property. For HPD to process his claim, the complainant had to agree with the items being returned to the persons claiming ownership. If he agreed that the money and jewelry should be returned to the claimants, the remaining items could be returned to him. Otherwise, ownership of the various items would be determined through a court process. The

complainant agreed to the return of the claimed items to the victims. The HPD subsequently informed us that the complainant was allowed to retrieve his property.

We informed the grateful complainant, who authorized a family member to pick up his property from the HPD.

(07-01058) Dismissal of Real Property Assessment Appeal. In recent years, the price of real estate in Hawaii has risen dramatically, leading to a corresponding increase in real property valuations by the City and County of Honolulu (C&C). Since real property tax assessments are based on property valuations, property owners have been faced with steep increases in their property tax obligations.

A husband and wife saw the C&C Real Property Assessment Division's valuation of their home in Honolulu more than double, from $271,000 in 2005 to $640,000 in 2006. As a result, their real property tax obligation rose from $1,016 in 2005 to $2,298 in 2006. As they believed there was an error in their property valuation, the couple filed an appeal with the C&C Board of Review (Board). Their appeal, however, was dismissed by the Board.

The couple complained that the Board dismissed their appeal because they did not provide an opinion of the dollar value of their property on their appeal form. The complainants explained that they did not state a dollar value of their property because they planned to submit the results of an appraisal conducted by a licensed professional at a later date. The complainants noted that the appeal form did not state that a failure to provide a dollar value for their property would result in the dismissal of their appeal.

In our investigation, we reviewed the copy of the Notice of Real Property Assessment Appeal that the complainants filed and Chapter 8, Revised Ordinances of Honolulu (ROH), titled "Real Property Tax." Section 8-12.9, ROH, stated in part:

> **Appeal to board of review.**
>
> (a) A notice of appeal to the board of review must be lodged with the director on or before the date fixed by law for the taking of the appeal. . . .
>
> (b) The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal, stating the valuation claimed by the taxpayer and the grounds of objection to the assessment shall be sufficient. Upon

> the necessary information being furnished by the taxpayer to the director, the director shall prepare the notice of appeal upon request of the taxpayer or county and any notice so prepared by the director shall be deemed sufficient as to its form. (Emphasis added.)

As the law required the taxpayer to state in the appeal the value of the property claimed by the taxpayer, and as the complainants failed to do so, we found the dismissal of their appeal by the Board to be in compliance with the law.

We spoke with the Real Property Assessment Division, however, about clarifying the appeal form so that taxpayers would be better informed that the claimed value of the property was required and that an appeal would be dismissed if the claimed property value was omitted. The division informed us that it was already in the process of revising the appeal form for other reasons and agreed to accommodate our suggestion in the revised form.

Subsequently, the appeal form was revised to state in bold letters, with regard to the assessed value of the property claimed by the taxpayer, "**specific amount must be filled in**." The form also stated that unless one or more of the grounds for objection was indicated, including an objection that the C&C's assessment exceeded the market value of the property by more than 10 percent, the appeal was subject to dismissal. The instructions for completing the appeal form were also amended to include the following statement:

> *** Required – an incomplete appeal is grounds for dismissal**
>
> . . . .
>
> 3. * Enter the owner's or taxpayer's opinion of the fee simple value of the property, before deductions for any exemptions. A specific opinion of the fee simple value must be stated on this form, otherwise the appeal is subject to dismissal. . . .

Although we were unable to assist the complainants regarding the dismissal of their appeal, we informed them that their complaint to our office contributed to improving the appeal form and clarifying its instructions, which would benefit property owners who filed appeals in the future.

(07-03142) Responsibility for trimming tree branches. A man complained that the branches of a tree located at a busy intersection near downtown Honolulu blocked drivers' views of a traffic signal light. The complainant, who was an employee of the City and County of Honolulu (C&C), stated that he brought his concern to the Complaint Section of the Department of Customer Services, C&C. He was informed that the State was responsible for the tree. Thus, he contacted our office.

We conducted an onsite inspection of the intersection in question. We confirmed that the branches did obstruct drivers' views of the traffic signal light.

We inquired with the Division of Road Maintenance (RMD), Department of Facility Maintenance, C&C, and the State Department of Transportation. Each agency informed us that it was not responsible for maintaining the tree in question. The RMD suggested that we inquire with the Division of Urban Forestry (UFD), Department of Parks and Recreation, C&C.

We found that the tree was planted on the sidewalk of a street that was under C&C jurisdiction. We inquired with the UFD, which was responsible for maintaining trees planted on City sidewalks. After reviewing the complaint, the UFD acknowledged responsibility and trimmed the tree branches.

We reported to the complainant that the branches no longer interfered with drivers' views of the traffic signal.

NO JURISDICTION

(07-03542) Good Friday is not a holiday for everyone. Although the Ombudsman does not have authority to investigate a complaint against a private organization, we are sometimes able to assist in resolving a complaint against a private organization that is contracted by the State to perform a service. The following is an example of such a case.

The administrative rules of the Department of Human Services (DHS) required certain food stamp recipients to participate in an employment and training program. We learned that DHS contracted with a private nonprofit organization to operate the program. The program participants were required to file with the program, at designated times throughout the year, verification reports of the hours they spent working, seeking employment,

volunteering, or attending school. For some of the program participants, monthly verification reports were due within five working days following the end of the month.

A program participant whose monthly verification reports were due by the fifth workday of the following month complained that he was told by the private organization that his verification report for March 2007 was due on Good Friday, April 6, 2007. He disagreed with the due date because Good Friday was a State holiday and he contended that Monday, April 9, 2007, should be considered the fifth workday of the month. He had submitted his verification report on April 9, 2007, but was able to show good cause for filing after April 6, 2007, so he was not penalized. He was concerned, however, about future deadlines that may fall on a State holiday.

In our investigation, we found that Section 8-1, Hawaii Revised Statutes, established Good Friday as a State holiday. We contacted staff at the private organization and were told that despite the State holiday, April 6, 2007 was a workday for its employees. Therefore, the private organization considered April 6, 2007 to be a workday and the due date for the complainant's report, even though it was a State holiday.

We questioned the private organization's determination and brought it to the attention of the DHS program specialist who monitored the DHS contract with the private organization. He agreed that the private organization should not consider a State holiday as a workday when determining the report filing deadline, even if employees of the private organization worked on the holiday. The specialist instructed the private organization accordingly.

We advised the complainant of the corrective action taken.

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 38, 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.

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