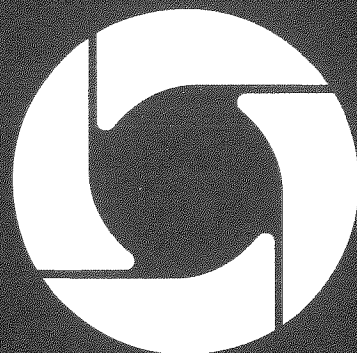


Office of the Ombudsman
State of Hawaii
Fiscal Year 2015-2016
Report Number 47





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

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

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

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

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

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

**Neighbor island residents may
call our toll-free numbers.**

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

**Telephone extension is 7-0770
Fax extension is 7-0773
TTY extension is 7-0774**

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



State of Hawaii

Report of the Ombudsman

For the Period July 1, 2015 - June 30, 2016
Report No. 47

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

March 2017

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2017:

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 2015-2016. This is the forty-seventh annual report since the establishment of the office in 1969.

My staff and I appreciate the unique role we serve in connecting the people and their government. We take with great seriousness our responsibility to independently and impartially investigate citizen complaints against government and to improve the level of public administration in Hawaii. We hope that our efforts help to strengthen the public's trust and confidence in government.

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

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

Respectfully submitted,

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

ROBIN K. MATSUNAGA
Ombudsman

March 2017

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Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2015-2016, the office received a total of 3,700 inquiries. Of these inquiries, 2,706, or 73.1 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 393 non-jurisdictional complaints and 601 requests for information.

There was a decrease in the number of jurisdictional complaints. However, there was a slight increase in non-jurisdictional complaints and information requests.

A comparison of inquiries received in fiscal year 2014-2015 and fiscal year 2015-2016 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
2015-2016	3,700	601	393	2,706	1,606	1,100
2014-2015	4,083	587	390	3,106	1,848	1,258
Numerical Change	-383	14	3	-400	-242	-158
Percentage Change	-9.4%	2.4%	0.8%	-12.9%	-13.1%	-12.6%

Staff Notes

The 36th Annual Conference of the United States Ombudsman Association (USOA), titled “Ombudsmen: Confronting the Prickly Issues,” was held on October 14-16, 2015, in Scottsdale, Arizona. Attendees from our office were Ombudsman Robin Matsunaga, Analysts Melissa Chee, Alfred Itamura, and Yvonne Jinbo. The conference featured sessions on handling conflict situations, serving citizens with mental health illnesses, making ethical decisions, working with one’s oversight authority, writing skills and investigative report writing, leveraging social and traditional media to benefit investigations, and using apology effectively.

Ombudsman Matsunaga, President of the USOA, served as an instructor for the New Ombudsman Training pre-conference workshop held on October 12 and 13, 2015. Basic techniques for intaking complaints, interviewing, investigating, and writing reports were some of the topics covered during the two-day workshop.

Analyst Vanda Lam left our office in February 2016. During her employment with us, she gained knowledge of the functions of State and county agencies and experience in investigating and resolving complaints. We wish Ms. Lam the best in her future endeavors.

On April 22, 2016, a special joint session was called to order by the Legislature in the chambers of the House of Representatives for the purpose of appointing the State Auditor and Director of the Legislative Reference Bureau and reappointing Ombudsman Matsunaga to serve another term as the Hawaii State Ombudsman. Mr. Matsunaga has served as the Ombudsman since July 1, 1998, and with this reappointment began serving another six-year term, commencing on May 1, 2016.

In June 2016, Ombudsman Matsunaga celebrated 30 years of service with the State of Hawaii. Prior to his appointment as Ombudsman in 1998, he served in various State positions, including as the committee clerk of the Committee on Finance of the House of Representatives, as a supervising Program Evaluation Analyst with the Planning, Programming, and Budgeting Office of the Department of Transportation, and as the Chief of Staff for the Speaker of the House of Representatives.

The newest analyst to join our office is Clayton Nakamoto. Mr. Nakamoto previously worked as a research analyst for the Public Utilities Commission. He holds a Bachelor of Arts degree in Political Science from the University of Hawaii at Manoa and a Master of Public Administration degree from the University of Washington. Welcome aboard, Mr. Nakamoto.

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

Outreach Efforts

The Office of the Ombudsman participated in the 31st Annual Hawaii Seniors' Fair – The Good Life Expo from September 25-27, 2015, at the Neal Blaisdell Center. Various products, services, facilities, programs, and organizations were showcased to the 20,722 attendees. During the three-day event, our staff had an opportunity to interact with attendees and provide them information about the services our office provides.

Ekaterine Popkhadze, Parliamentary Secretary of the Public Defender (Ombudsman) of Georgia, visited our office on May 12, 2016. Ms. Popkhadze plays a direct role in the lawmaking process in Georgia, preparing legislative proposals and amendments in order to improve the rule of law and human rights, representing the Office of the Ombudsman during legislation discussions, and participating in Parliamentary working groups.

Chapter II

Inmate Grievance Process

Inmates in the custody of the Department of Public Safety (PSD) are permitted to file complaints against the prison or jail facilities they are housed in by utilizing a grievance process. The grievance process is also a mechanism through which the PSD can identify institutional problems, increase communication between inmates and staff, and reduce litigation.

The PSD grievance process consists of three steps. The first step is the initial complaint to the correctional facility. The second step is an appeal to the administration of the correctional facility. The third step is an appeal to the PSD Corrections Division administration.

In most cases, upon receiving a complaint from an inmate housed in a Hawaii correctional facility, our office will ask the inmate to complete at least one step of the grievance process before we investigate the substantive issue raised. This is to allow the PSD an opportunity to try to resolve the complaint with the inmate before our office investigates the matter.

On August 3, 2010, the PSD replaced its 24-page grievance policy, titled "Inmate Grievance and Appeals Process," that had been in place since 1992. The new policy, COR.12.03, titled "Inmate Grievance Program" (IGP), was six pages in length. The major changes included deleting provisions in the previous policy that set out specific procedures for implementing the grievance policy; increasing the number of working days for the PSD facility staff to respond to the first and second steps of a grievance from 15 working days to 20 working days; requiring, rather than recommending, that an inmate attempt to informally resolve an issue with facility staff prior to filing the initial grievance; and requiring all grievances and appeals to be penned by the grievant.

Shortly after the IGP went into effect, our office began to receive complaints from inmates about the new grievance procedures. The complaints primarily concerned problems with the implementation of the requirement for inmates to try to informally resolve their complaints prior to filing their initial grievance. As part of our investigation of these complaints, we reviewed the other changes to the grievance policy to determine the reasonableness of the changes. Among our concerns was the new requirement that all grievances and appeals be penned by the grievant, as we were aware of inmates who did not have the ability to write.

Before we were able to complete our review of the new policy and our investigations of these complaints, the PSD, on June 8, 2011, further amended the IGP to more narrowly define the types of issues an inmate was

permitted to grieve. We were concerned about the impact this amendment would have on an inmate's ability to resolve complaints administratively rather than through the courts.

Following our review of standards for inmate grievance processes, we wrote a letter to the PSD Director expressing our concerns about the IGP. The Director responded by requesting that the PSD staff involved with the processing of grievances be provided an opportunity to meet with us to discuss our concerns and to provide us with a better understanding of the IGP. Subsequently, the PSD officer in charge of processing grievances at all Hawaii prisons and two facility grievance officers visited our office to meet with the Ombudsman, the First Assistant, and two staff analysts. After the PSD staff provided insight into the grievance process and the impetus behind the amendments, we made several recommendations. At the conclusion of the meeting, the PSD staff agreed to discuss our concerns and recommendations with the PSD administration.

The following is a summary of the concerns we raised about the IGP and the responses we received from the PSD.

Informal Resolution Process

We received numerous complaints stemming from the IGP's informal resolution process that required an inmate to attempt to informally resolve his/her complaint before being allowed to file a grievance. Although we agreed that the inmate should try to informally resolve the complaint with the PSD staff whenever possible, we believed the requirement and the procedure to fulfill the requirement were unreasonably burdensome for both the inmates and PSD staff.

The IGP stated in part:

7.0 INFORMAL RESOLUTION

- .1 . . . an inmate shall first present an issue of concern informally to staff by obtaining, filing [sic] out and submitting an Informal Resolution, Form PSD 8216 . . . and staff shall attempt to informally resolve the issue before an inmate submits an Inmate Grievance.

The informal resolution form, PSD 8216, stated in part:

This informal resolution must be submitted promptly following the alleged incident. If unresolved you must still meet the deadline to file a formal complaint within fourteen (14)

calendar days from the date on which the basis of the complaint occurred. . . . **If unresolved this form must be attached to the formal Administrative Remedy Form (PSD 8215).**

The Administrative Remedy Form (grievance form) is a four-sheet carbonless document. The top sheet is white and as the original, serves as the PSD's file copy of the grievance. The second sheet is canary yellow in color and serves as the inmate's copy of the grievance response. The third sheet is pink in color and is the respondent's copy. The fourth sheet is gold in color and is returned to the inmate to serve as a receipt after the grievance form is processed by the grievance officer. The "Informal Resolution" form referenced in the policy was a standard paper form, not a carbonless form, and there was no copy for the inmate's records. Thus, the inmate was forced to rely on the facility staff to return the original back to him/her. Therefore, if PSD staff failed to respond to the informal resolution form, the inmate would not have a copy of his/her original submission and would be unable to submit a copy of the informal resolution form with his/her grievance. We received complaints from several inmates that their grievances had been rejected because they had been unable to attach the informal resolution form to their grievance form.

A second issue regarding the informal resolution process was the lack of a deadline for PSD staff to respond to an informal resolution form submitted by an inmate. The lack of a deadline was problematic because the grievance policy allowed an inmate only 14 calendar days from the date on which the basis of the complaint/grievance occurred to file a grievance. If a response to the informal resolution form was not promptly provided, we were concerned that the inmate might not have sufficient time to file a grievance within the 14 calendar days. In effect, an inmate could be prevented from filing a grievance, not because of his/her own failing, but because the facility staff failed to respond or delayed their response to the informal resolution form.

At the meeting between staff from the PSD and our office, the PSD staff told us that they did not always reject a grievance because it was not filed within the 14 calendar days. They informed us that there were some situations where the grievance was not filed timely but was still processed.

The PSD staff informed us that ideally, a case manager would see inmates every day, so that when an inmate turned in the informal resolution form, facility staff could try to resolve the problem without the inmate having to file a grievance. However, the PSD staff acknowledged that this did not always happen.

The PSD staff noted that an inmate should not place the informal resolution form in the case manager's box and should just give it to an adult

corrections officer (ACO). They believed the ACO should try to resolve the complaint or inform the inmate that the resolution sought was beyond the module staff's control, and the response to the informal resolution form would be faster.

The PSD staff further informed us that when an inmate did not receive a response to an informal resolution form, the inmate was to obtain the signature of a staff member within his/her housing unit on another informal resolution form, which would serve as verification that the inmate attempted to resolve the complaint through the informal resolution process.

We later learned, however, that the mandatory use of the informal resolution form caused a significant increase in the workload of the facility grievance officers, who were required to process an additional form and research whether the inmate had attempted to informally resolve the issue prior to submitting his/her grievance. We also learned that the PSD had not assigned/hired additional staff to assist with the processing of grievances.

We spoke with the PSD Institutions Division Administrator (IDA) about our findings and concerns regarding the mandatory informal resolution process. The IDA informed us that funding an extra grievance officer position to deal with the additional workload was not an option. Instead, the IDA said he would consider amending the IGP.

The IDA subsequently amended the IGP to state that an informal resolution attempt was encouraged and should be handled at the lowest operational level, but was not required before filing the formal grievance. The amended IGP noted that inmates should view the grievance process as a last resort after all other informal means for resolving issues have been exhausted. The amended IGP also clarified that the informal resolution process was available to inmates through in-person discussion/consultation, or via a written inmate request form with the appropriate facility staff member.

Inmates Required to Pen Their Own Grievances

The IGP stated in part:

6.0 ASSISTANCE

- .1 An inmate may obtain assistance from institution staff or another inmate with proper authorization by the Warden in preparing a grievance or an appeal. However, no person may submit a grievance or appeal on another inmate's behalf. *All*

grievances/appeals must be penned by the grievant.
(Emphasis italicized.)

Because the policy required a grievance to be penned only by the inmate, we believed it effectively precluded an inmate who was illiterate, or for some other reason was unable to write, from filing a grievance.

At the meeting between the PSD staff and our office, we noted the conflict in the language of the policy, as although it stated that an inmate may obtain assistance from staff or another inmate with proper authorization from the warden in preparing the grievance, it also stated that all grievances must be penned by the grievant. The PSD staff agreed that the language should be changed so there is no conflict. The PSD staff suggested adding the phrase “or authorized designee” so that Section 6.1 would read: “All grievances/appeals must be penned by the grievant or authorized designee.” We believed the suggested amendment was reasonable.

After the meeting, the PSD amended the policy above to state “All grievances/appeals must be penned by the grievant or authorized designee.”

Restriction on Grievable Issues

The initial IGP that was implemented on August 3, 2010, allowed inmates to file grievances concerning a broad range of issues pertaining to their confinement, with certain limitations. The relevant sections of the IGP stated:

1.0 PURPOSE

The purpose of the Inmate Grievance Program is to allow an inmate to seek formal review of *an issue relating to any aspect of his/her own confinement* through a credible, confidential and independent administrative remedy process. (Emphasis italicized.)

11.0 GRIEVABILITY

Inmates shall not be allowed to file grievances on State and Federal Court decisions; laws and regulations; Parole Board decisions, staff, and/or board members, decisions of the Institutions Divisions Administrator, Deputy Director, and/or the Director of PSD, and agencies outside the jurisdiction of the Hawaii PSD, Corrections Division.

TORT CLAIMS: If an inmate raises an issue in a grievance or appeal that involves negligence and cannot be resolved through the Administrative Remedy Program, the department will refer the inmate to the administrative tort claim procedure. Monetary compensation is not an option for resolution in the Administrative Remedy Program.

However, when the IGP was amended on June 8, 2011, Sections 1.0 and 11.0 were revised to read:

1.0 PURPOSE

The purpose of the Inmate Grievance Program is to allow an inmate to seek formal review of *an issue that implicates a right guaranteed by either State or Federal Constitution or Regulation as to his/her own confinement* through a credible, confidential and independent administrative remedy process. (Emphasis italicized.)

11.0 GRIEVABILITY

Inmates shall not be allowed to file grievances on State and Federal Court decisions; laws and regulations; Parole Board decisions, staff, and/or board members, decisions of the Institutions Division Administrator, Deputy Director, and/or the Director of PSD; *Department Policy and Procedures and those activities and services deemed a privilege*; and agencies outside the jurisdiction of the Hawaii PSD, Corrections Division. (Emphasis italicized.)

TORT CLAIMS: If an inmate raises an issue in a grievance or appeal that involves negligence and cannot be resolved through the Administrative Remedy Program, the department will refer the inmate to the administrative tort claim procedure. Monetary compensation is not an option for resolution in the Administrative Remedy Program.

We noted that the IGP did not provide details about which conditions of confinement “implicate[d] a right guaranteed by either State or Federal Constitution or Regulation,” nor did it specify which activities and services the PSD deemed to be a privilege. We found no other PSD policy that provided this information.

We believed the scope of the IGP, as amended, was unreasonably narrow. From our experience in investigating complaints from PSD inmates, we believed the new language would preclude the filing of complaints about numerous conditions of confinement in PSD facilities, including such privileges as visitation, store orders, and program activities. We believed this could lead to an increase in lawsuits against the department. We also questioned whether the PSD staff responsible for processing grievances could effectively identify which issues implicated a right.

During our meeting with the PSD staff, they informed us that grievances were not being rejected on the basis that the issue being grieved did not implicate a right guaranteed by either State or Federal Constitution or Regulation or was about a privilege. We found it commendable that the PSD staff were not rejecting grievances based on the restrictions in the IGP, but noted that this was a violation of the IGP. We thus recommended that the IGP be amended to remove the language that limited the types of issues that could be grieved. The PSD staff agreed to discuss our recommendations with the PSD Director.

The PSD subsequently amended the Purpose section of the June 8, 2011, version of the IGP by replacing the language that restricted the types of issues that could be grieved with language that was substantively similar to what was previously stated in the August 3, 2010, version of the IGP.

Chapter III

STATISTICAL TABLES

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

TABLE 1
NUMBERS AND TYPES OF INQUIRIES
Fiscal Year 2015-2016

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	366	265	41	60
August	333	245	40	48
September	342	245	40	57
October	336	249	39	48
November	287	206	34	47
December	267	206	19	42
January	252	159	42	51
February	311	243	22	46
March	288	217	32	39
April	295	219	26	50
May	282	197	27	58
June	341	255	31	55
TOTAL	3,700	2,706	393	601
% of Total Inquiries	--	73.1%	10.6%	16.2%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2015-2016

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	315	16	31	0	3	1
August	298	18	12	0	4	1
September	304	12	23	1	1	1
October	288	25	20	0	3	0
November	245	27	10	0	5	0
December	230	11	21	0	3	2
January	217	17	15	1	1	1
February	278	12	19	1	1	0
March	251	12	19	0	4	2
April	250	19	24	0	2	0
May	260	7	13	1	1	0
June	295	21	19	0	3	3
TOTAL	3,231	197	226	4	31	11
% of Total Inquiries (3,700)	87.3%	5.3%	6.1%	0.1%	0.8%	0.3%

TABLE 3
DISTRIBUTION OF POPULATION AND
INQUIRERS BY RESIDENCE
Fiscal Year 2015-2016

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	998,714	69.8%	2,512	67.9%
County of Hawaii	196,428	13.7%	467	12.6%
County of Maui	164,726	11.5%	408	11.0%
County of Kauai	71,735	5.0%	100	2.7%
Out-of-State	--	--	213	5.8%
TOTAL	1,431,603	--	3,700	--

*Source: The State of Hawaii Data Book 2015, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "Resident Population, by County: 2000 to 2015."

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2015-2016

Residence	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	1,824	67.4%	236	60.1%	452	75.2%
County of Hawaii	359	13.3%	52	13.2%	56	9.3%
County of Maui	329	12.2%	42	10.7%	37	6.2%
County of Kauai	77	2.8%	9	2.3%	14	2.3%
Out-of-State	117	4.3%	54	13.7%	42	7.0%
TOTAL	2,706	--	393	--	601	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2015-2016

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,512	2,265	56	145	4	31	11
% of C&C of Honolulu	--	90.2%	2.2%	5.8%	0.2%	1.2%	0.4%
County of Hawaii	467	421	10	36	0	0	0
% of County of Hawaii	--	90.1%	2.1%	7.7%	0.0%	0.0%	0.0%
County of Maui	408	375	14	19	0	0	0
% of County of Maui	--	91.9%	3.4%	4.7%	0.0%	0.0%	0.0%
County of Kauai	100	88	8	4	0	0	0
% of County of Kauai	--	88.0%	8.0%	4.0%	0.0%	0.0%	0.0%
Out-of- State	213	82	109	22	0	0	0
% of Out- of-State	--	38.5%	51.2%	10.3%	0.0%	0.0%	0.0%
TOTAL	3,700	3,231	197	226	4	31	11
% of Total	--	87.3%	5.3%	6.1%	0.1%	0.8%	0.3%

TABLE 6
DISTRIBUTION AND DISPOSITION OF
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2015-2016

Agency	Juris- dictional Complaints	Percent of Total	Completed Investigations		Discon- tinued	Declined	Assisted	Pending
			Substan- tiated	Not Substan- tiated				
<u>State Departments</u>								
Accounting & General Services	26	1.0%	0	8	0	10	5	3
Agriculture	14	0.5%	0	3	1	6	1	3
Attorney General	40	1.5%	2	4	9	12	13	0
Budget & Finance	52	1.9%	6	18	4	21	2	1
Business, Economic Devel. & Tourism	2	0.1%	0	0	0	2	0	0
Commerce & Consumer Affairs	36	1.3%	0	15	5	7	8	1
Defense	0	0.0%	0	0	0	0	0	0
Education	52	1.9%	5	7	14	20	2	4
Hawaiian Home Lands	2	0.1%	0	1	1	0	0	0
Health	80	3.0%	6	24	10	31	3	6
Human Resources Development	0	0.0%	0	0	0	0	0	0
Human Services	243	9.0%	12	57	35	74	54	11
Labor & Industrial Relations	83	3.1%	3	25	17	29	7	2
Land & Natural Resources	47	1.7%	0	8	12	20	3	4
Office of Hawaiian Affairs	0	0.0%	0	0	0	0	0	0
Public Safety	1,706	63.0%	73	457	96	933	69	78
Taxation	41	1.5%	1	6	3	19	11	1
Transportation	47	1.7%	4	9	17	3	4	10
University of Hawaii	24	0.9%	0	2	2	18	0	2
Other Executive Agencies	4	0.1%	0	0	1	2	1	0
<u>Counties</u>								
City & County of Honolulu	145	5.4%	2	33	20	66	10	14
County of Hawaii	39	1.4%	0	11	4	22	0	2
County of Maui	19	0.7%	0	6	0	8	1	4
County of Kauai	4	0.1%	0	2	0	2	0	0
TOTAL	2,706	--	114	696	251	1,305	194	146
% of Total Jurisdictional Complaints	--	--	4.2%	25.7%	9.3%	48.2%	7.2%	5.4%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2015-2016

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
<u>State Departments</u>			
Accounting & General Services	0	0	0
Agriculture	0	0	0
Attorney General	2	2	0
Budget & Finance	6	6	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	0	0	0
Defense	0	0	0
Education	5	5	0
Hawaiian Home Lands	0	0	0
Health	6	6	0
Human Resources Development	0	0	0
Human Services	12	11	1
Labor & Industrial Relations	3	3	0
Land & Natural Resources	0	0	0
Office of Hawaiian Affairs	0	0	0
Public Safety	73	65	8
Taxation	1	1	0
Transportation	4	4	0
University of Hawaii	0	0	0
Other Executive Agencies	0	0	0
<u>Counties</u>			
City & County of Honolulu	2	2	0
County of Hawaii	0	0	0
County of Maui	0	0	0
County of Kauai	0	0	0
TOTAL	114	105	9
% of Total Substantiated Jurisdictional Complaints	--	92.1%	7.9%
% of Total Completed Investigations (810)	14.1%	13.0%	1.1%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2015-2016

Agency	Information Requests	Percent of Total
<u>State Departments</u>		
Accounting & General Services	7	1.2%
Agriculture	2	0.3%
Attorney General	12	2.0%
Budget & Finance	13	2.2%
Business, Economic Devel. & Tourism	1	0.2%
Commerce & Consumer Affairs	52	8.7%
Defense	4	0.7%
Education	11	1.8%
Hawaiian Home Lands	0	0.0%
Health	53	8.8%
Human Resources Development	0	0.0%
Human Services	31	5.2%
Labor & Industrial Relations	18	3.0%
Land & Natural Resources	15	2.5%
Office of Hawaiian Affairs	1	0.2%
Public Safety	65	10.8%
Taxation	3	0.5%
Transportation	8	1.3%
University of Hawaii	2	0.3%
Other Executive Agencies	8	1.3%
<u>Counties</u>		
City & County of Honolulu	89	14.8%
County of Hawaii	2	0.3%
County of Maui	3	0.5%
County of Kauai	0	0.0%
Miscellaneous	201	33.4%
TOTAL	601	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2015-2016

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	18	4.6%
County Councils	1	0.3%
Federal Government	20	5.1%
Governor	6	1.5%
Judiciary	52	13.2%
Legislature	7	1.8%
Lieutenant Governor	0	0.0%
Mayors	3	0.8%
Multi-State Governmental Entity	0	0.0%
Private Transactions	283	72.0%
Miscellaneous	3	0.8%
TOTAL	393	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2015-2016 AND
THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER
TO FISCAL YEAR 2016-2017

Types of Inquiries	Inquiries Carried Over to FY 15-16	Inquiries Carried Over to FY 15-16 and Closed During FY 15-16	Balance of Inquiries Carried Over to FY 15-16	Inquiries Received in FY 15-16 and Pending	Total Inquiries Carried Over to FY 16-17
Non-Jurisdictional Complaints	4	4	0	2	2
Information Requests	0	0	0	1	1
Jurisdictional Complaints	113	101	12	146	158
		<u>Disposition of Closed Complaints:</u> Substantiated 16 Not Substan. 60 Discontinued 25 101			
TOTAL	117	105	12	149	161

Chapter IV

SELECTED CASE SUMMARIES

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

LIST OF SUMMARIES

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DEPARTMENT OF HUMAN SERVICES

(16-01621) Police officer allowed to continue residing in public housing beyond term of service contract. Public housing programs were established to provide rental housing for eligible low-income individuals and families, the elderly, and persons with disabilities. The United States Department of Housing and Urban Development (HUD) administers Federal aid to local public housing agencies (PHA), such as the Hawaii Public Housing Authority (HPHA), which are responsible for the management and operation of the local public housing program.

In the course of investigating a complaint against the HPHA, we learned that the HPHA had entered into a one-year agreement with a police officer to live in a unit at the housing complex rent-free, excluding utilities, in exchange for the officer's enforcement presence. The police officer was not subject to the HPHA tenant selection procedures and would not have otherwise qualified to live in the HPHA housing complex due to his income.

This arrangement between the HPHA and the police officer was authorized by HUD. Pursuant to Section 960.505, Code of Federal Regulations (CFR), titled "Occupancy by police officers to provide security for public housing residents," a police officer, who would not otherwise qualify to live in public housing could qualify to be a resident of public housing under certain conditions.

Section 960.505, CFR, stated in pertinent part:

(a) *Police officer.* For purpose of this subpart E, "police officer" means a person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

(b) *Occupancy in public housing.* For the purpose of increasing security for residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. The PHA must include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

According to the agreement between the officer and the HPHA, the officer was to assist management in implementing and coordinating programs and procedures to maintain a safe and secure community; walk the premises of the housing complex no less than once a day on a work day and no less than twice a day during off days; understand the Federal and State public housing rental agreement to be able to identify when individuals were not adhering to the terms of the rental agreement; and keep a report log of incidents of rental agreement violations and criminal activities on the premises that listed the incident date, time, names of persons involved, description of the incident, and whether active duty police officers were called, including the names of the responding officers. The agreement also stated that “[m]anagement has determined occupancy of a dwelling unit by a police officer is needed to increase security for public housing residents of the Project” and identified the unit occupied by the officer. We found that the agreement met the requirements of the CFR.

However, we also learned that the agreement authorizing the police officer to live in the HPHA housing complex had expired. We decided to follow up further regarding the HPHA allowing the officer to continue to live in the housing complex without a current agreement.

In our follow up, we learned that the HPHA had entered into similar agreements with police officers at other HPHA properties. We also learned that the agreement could be extended for another term at the sole discretion of the HPHA, that there was no automatic renewal or extension upon expiration of the agreement, and that the agreement could only be extended by the execution of a written Supplemental Police Officer Occupancy and Lease Agreement.

We inquired with the HPHA as to why this particular police officer was allowed to continue to live in the housing complex when the agreement had expired. We informed the HPHA of the potential risks of allowing the police officer to live on its property without an agreement. In particular, we noted that if the police officer should not be residing at the HPHA property, the unit he occupied should have been assigned to a family on the waiting list.

The property manager informed us that it was the HPHA’s intention to renew the agreement with the police officer, but it was overlooked. She informed us that she maintained a list of the agreements and their expiration dates, which were different for each HPHA housing complex. She also informed us that she checked the list when she had the time to do so. If she noticed that an officer’s agreement had expired, she would have the police officer sign a new agreement. The property manager did not have an automated system to remind her when a police officer’s rental agreement expired.

Because the system the property manager used to keep track of the status of agreements the HPHA had with police officers did not guarantee that the agreements would be renewed on time, we recommended to the HPHA housing supervisor that the HPHA implement an automated reminder system using her computer's software calendar system. By doing so, the system would send a reminder to the appropriate property manager 30 to 45 days before the expiration of an agreement to initiate efforts to renew the agreement. The HPHA agreed with our recommendation and instructed all of its property managers accordingly.

DEPARTMENT OF PUBLIC SAFETY

(14-02976) Correctional facility not complying with department policy on retention of urine samples. The Department of Public Safety (PSD) has found urinalysis to be an effective tool in its efforts to maintain a drug-free environment, control contraband, detect illicit use of drugs and alcohol, identify substance abusers, and hold inmates accountable for their actions. As a safeguard against false positive urinalysis results, an inmate who tests positive is permitted to request a confirmatory test by an outside private laboratory on the same urine specimen that was tested by PSD staff. If the confirmatory test is positive, the inmate is charged for the cost of the test. If the confirmatory test is negative, the PSD pays for the cost of the test.

An inmate's urine sample tested positive for amphetamines, so the facility found him guilty of violating a prison policy. The inmate later asked to have a confirmatory test performed on his urine sample by an independent laboratory, but was informed that the facility had already discarded his sample. As a result, the inmate complained that the facility failed to properly retain his sample for the confirmatory test.

According to PSD policy, an inmate is given the option to request the confirmatory test by an independent laboratory at the time the inmate is provided the written results of the inmate's urinalysis. In this case, when the complainant received his test results, he refused the confirmatory test. He also did not file a timely grievance. PSD Policy No. COR.08.10.6.3.d stated:

Urine samples with positive results shall be kept in a secured freezer for the duration of the grievance process. It may be kept longer if needed for court purposes. (Emphasis added.)

Based on the above, we did not find it unreasonable that the facility discarded the complainant's urine sample after he refused the confirmatory test and failed to file a grievance, and informed the inmate of our finding.

However, during our investigation of this complaint, we learned that the facility lacked the necessary refrigerated storage capacity to retain all of the urine samples that tested positive for the duration of the grievance process, which could take several months in each case. We also learned that there was no communication between the facility grievance staff and the urinalysis staff about retention of urine samples. Therefore, there was a possibility that a urine sample could be discarded even though there was an ongoing grievance about a positive test result.

We contacted the PSD Institutions Division Administrator (IDA) regarding this facility's lack of compliance with COR.08.10.6.3.d. The IDA was unaware of the problem. In reviewing this issue, the IDA questioned the need to retain positive urine samples for months. Since some controlled substances and/or its metabolites can degrade in urine within a matter of days (such as amphetamines), we agreed that the usefulness of a urine sample that was several months old was questionable.

After discussion with the PSD Director and the Department of the Attorney General, the IDA informed us that COR.08.10.6.3.d was amended to read:

Urine samples with positive results shall be kept in a secured freezer until the confirmation test results are received from the contracted, certified laboratory.

Based on our research of urinalysis and the PSD urinalysis confirmatory test process, we found the amended policy to be reasonable.

(14-04107) Handling of personal property belonging to work furlough inmates. The Department of Public Safety (PSD) allows inmates to maintain a certain amount of personal property within the confines of the facility in which they are incarcerated. However, because the presence of certain personal property can lead to various conflicts, the department places restrictions on certain items and money within the facility.

Since inmates participating in the PSD work furlough program are allowed to enter the community, the department may allow these inmates to acquire items that are normally prohibited within correctional facilities, such as work shoes and clothing, sunglasses, certain personal hygiene items, forms of identification, and cash. If the PSD suspects an inmate in the work furlough program has committed a rule or law violation, the inmate is removed from the furlough module and moved to a segregation unit until the department can investigate the suspected violation. While inmates in the segregation unit are allowed to retain some of their personal property, the storage of their other personal property is governed by the PSD policies. In addition, the PSD policy dictates what personal property inmates can take

with them if they are transferred to another facility, and what happens to any property that the inmates are not allowed to take (a.k.a. “excess property”).

We received a sudden increase in complaints about the mishandling of personal property of inmates who had been participating in a work furlough program at one particular correctional facility. Our investigations resulted in substantiated complaints regarding three basic issues. The first issue was that allowable property was not transported with the inmate to the segregation unit. Inmates were particularly concerned with the ability to retain their legal materials and paperwork. The second issue was that allowable property was not transported with inmates who were ultimately transferred to another facility. Of particular concern to the inmates were their forms of identification and legal materials. The third issue pertained to the disposition of excess property when an inmate was being transferred to another facility. Because of the number of complaints we substantiated, we initiated an investigation into the facility’s practices to determine if there was a systemic problem that was causing these complaints.

In our investigation, we reviewed the policy governing the handling of inmates’ personal property, PSD Policy No. COR.17.02, titled “Personal Property of Inmates.” With regard to the handling of property of inmates who were transferred to the segregation unit, we found that COR.17.02.4.7, titled “Transfers to Segregation,” stated in pertinent part:

a. Personal Property:

Offenders transferred to Segregation, shall have their personal property stored in a secure location. The offender’s residency officer shall contact the segregation unit to determine what personal articles the offender is allowed to retain while in segregation. All personal articles not allowed shall be inventoried and documented by the offender’s residency officer. The Inmate Property Receipt, form PSD 8212, shall be used for this purpose. The attending officer and offender shall sign and date the receipt and the offender given a copy.

Regarding the handling of personal property when the inmate was transferred to a different facility, we found that COR.17.02.4.4 stated in pertinent part:

Property allowance when transferring custodies between facilities and other jurisdictions:

- 1) The following is the maximum property allowed when transferring inmates between In State Correctional Facilities . . . :
 - a) Legal materials
 - b) Forms of identification
 - c) Holy book of professed faith, eg. Bible, Koran, etc[.]
 - d) Treatment/Education program material, i.e., Substance abuse treatment RDAP Journal/corresponding paper work, Sex offender treatment journal/corresponding paper work, education workbooks, diplomas etc.

On the issue of allowing inmates to mail excess property, we found that COR.17.02.4.4 further stated in pertinent part:

- 2) The following is maximum property allowed when transferring inmates to mainland facilities, other jurisdictions and the Federal Detention Center:
 - a) Legal materials

The sending facility shall inventory excess property on PSD 8212 Property Inventory form and require custody to sign PSD 8256 Notice of Excess Property . . . requiring offenders to arrange for property to be picked up or sent out within 30 days.

We believed that the handling of inmate personal property by the furlough module residency staff was not in compliance with the PSD policies. We contacted the security staff and unit residency staff at the furlough module to discuss their process for handling personal property. We found that security staff understood the policy requirements, but we met some resistance from a unit residency staffer who appeared to be either unaware of, or in disagreement with, the policy requirements.

Thus, we elevated our discussion to the residency supervisor, who agreed with our analysis of the policies and the residency staff's responsibilities. The residency supervisor assured us that direction would be given to the staffer regarding compliance with the policy.

We subsequently toured the facility's furlough module and its property storage area and met with security and residency staff. We found their process was now in compliance with the policy requirements.

Following our investigation, there was a significant decrease in complaints from former furlough inmates of this facility regarding the handling of their personal property.

(16-00198) Refusal to assist indigent inmate with request for free photocopying and postage. In order to ease overcrowding in Hawaii's correctional facilities, the Department of Public Safety (PSD) contracted the operator of a private correctional facility to house Hawaii inmates on the mainland. An inmate housed at this contracted facility informed us that he had filed a civil lawsuit but that the facility's law library was not providing him copies of legal documents he needed for the lawsuit. He also said the facility was not providing him postage he needed to correspond with the courts. He believed that since the PSD had designated him as an indigent inmate, all copying and postage costs associated with his litigation should be paid for by the State of Hawaii and/or the contracted facility. He complained that the Mainland Branch (MB), PSD, which monitors compliance with the contract by the operator of the private facility, had not responded to his requests for assistance. We agreed to investigate the MB's actions in responding to his request.

We reviewed the PSD policies regarding the copying and postage costs of legal materials. PSD Policy COR.12.02, titled "Inmate Legal Activities," stated in part:

4.0 Procedures

. . . .

.7 Legal materials shall be made available for inmate use.

. . . .

d. Inmates shall be required to pay for the costs of copying legal material. . . . If an inmate is indigent, their account shall be debited until some future time when they have adequate money in their account.

We also found that Policy COR.12.02 defines an inmate who had a balance of zero dollars in his or her trust account in the last 30 days to be an “indigent” inmate. In addition, PSD Policy COR.15.02, titled “Correspondence,” which applied to all inmates, not just indigent ones, also contained the following provisions:

4.0 Procedures

. . . .

.10 Correspondence to courts, attorneys, or other privileged sources shall be unlimited unless it becomes apparent that the correspondence is frivolous or criminal in nature; i.e., threatening, fraudulent, etc.

.11 Inmates who do not have an amount equal to the cost of a first class stamp in their spendable account shall be provided with postage.

. . . .

.14 Inmates shall be required to pay for postage for official correspondence to the courts. If an inmate does not have an amount equal to the cost of a first class stamp in his account, and if an attorney does not represent an inmate, the facility may provide the inmate with postage.

Based on our review of the PSD policies, we believed that the PSD provided indigent inmates with a mechanism through which they could obtain copies of legal materials and that the PSD could assist inmates with postage to correspond with the courts.

Since the PSD policies only applied to inmates in PSD facilities, we also reviewed the contract between the PSD and the contracted private mainland correctional facility and found the following provision:

Pursuant to Lewis v. Casey, constitutional access to the courts system extends only to assistance with the preparation of initial pleadings (e.g. Motions to Proceed, In Forma Pauperis, Motions for Appointment of Counsel, Petitions for Writs of Habeas Corpus, Petitions for Post-Conviction Relief, Civil Complaints for Section 1983 Claims in state and federal court). Constitutional access to courts provided by the STATE and PROVIDER does not extend to assistance with any legal proceedings beyond the initial pleading stage.

Access to the court does not extend to any other proceedings not related to the inmate's imprisonment to include bankruptcy, divorce, or child support.

Duplicate copies of pleadings, legal documents including postage for legal mail to be filed in court are the financial responsibility of the Inmate. The PROVIDER shall provide all indigent Inmates, upon request access to paper and other supplies and services to contact legal counsel or representatives, courts, and other persons concerning legal matters in accordance to [Provider's] Policy. Under this Agreement, an Inmate is considered to be indigent if there is \$3.00 or less in his trust account within a 30-day period.

We found no provision in the contract that required the contracted correctional facility to provide an indigent Hawaii inmate with unlimited free copies of legal materials or postage, but it also did not provide a mechanism through which the Hawaii inmate's account could be debited for these costs.

Although we found no basis for the MB to provide the complainant the free assistance he had requested, we were concerned about the disparity in the services available to indigent Hawaii inmates housed in the contracted mainland facility as compared to those housed in Hawaii facilities. We discussed our concerns with the MB and suggested that they consider asking the contracted facility to provide to the indigent Hawaii inmates at the contracted facility the same access to copying of legal materials and postage that was afforded to Hawaii inmates in the PSD facilities.

The MB subsequently informed us that the contracted facility warden agreed to provide the indigent Hawaii inmates housed at that facility with the same legal material photocopying services and postage that the PSD provides indigent inmates housed in Hawaii, provided the documents were sent to the courts.

While the complainant ultimately did not obtain everything he had requested, we believed the PSD had taken reasonable action to improve indigent inmate access to the courts.

(16-00419) State vehicle speeding on State highway. A man complained that the driver of a State vehicle sped by him on a State highway. According to the complainant, he entered the highway and had just merged into the right lane when the State vehicle passed him on his left. The complainant did not know exactly how fast the vehicle was traveling, but was certain it was in excess of the speed limit. The complainant provided a description of the vehicle and its license plate number, as well as a general description of the driver.

In our investigation, we learned that the driver of the State vehicle was a deputy sheriff assigned to the Executive Protection Unit of the Law Enforcement Division (LED), Department of Public Safety (PSD). The LED informed us that the deputy sheriff had filed a report documenting an incident that occurred in the same area of the highway around the same time as described in the complaint we received. According to the report, as the deputy sheriff approached the on-ramp to the State highway, a vehicle traveling at high speed recklessly passed the deputy sheriff and other vehicles on the on-ramp to the highway, forcing the other drivers ahead to rapidly move to the side to avoid a collision with the passing vehicle. The deputy sheriff stated that in an attempt to obtain the license plate number of the vehicle, he activated his vehicle's emergency lights and increased his speed to pursue the other vehicle. The deputy sheriff further reported that he reduced his vehicle's speed shortly thereafter because he lost sight of the other vehicle. The deputy sheriff stated that he later noticed that his vehicle's emergency lights may not have been operational during the pursuit because the lights were not properly connected to the power source in the State vehicle.

We spoke with the LED supervisor, who explained that a temporary emergency system was installed in the State vehicle, which the LED had borrowed from another State department. A small bullhorn, to be used as a siren, was attached to the front grill of the vehicle. Emergency lights, powered through a connector to the vehicle's cigarette lighter port, were placed on the outward facing side of the driver's visor. The bullhorn and lights were activated by two separate switches. The LED supervisor noted that the emergency lights were small, so while the driver of a vehicle being pursued would see them, the deputy sheriff would not have been able to see whether they were operational during the day.

We reviewed Chapter 291C, Part III, Hawaii Revised Statutes (HRS), titled "Obedience to and Effect of Traffic Laws." Section 291C-26, HRS, titled "Authorized emergency vehicles," stated in part:

The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm and vehicles used by police officers while in the performance of a police function, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

The law included drivers of PSD law enforcement vehicles and allowed them certain privileges such as exceeding the speed limit, if the driver did not endanger life or property and the driver activated the vehicle's

authorized audible and visual signals. We believed that under the circumstances, the deputy sheriff reasonably attempted to comply with Section 291C-26, HRS.

However, we were concerned that there appeared to be no procedure in place to ensure that deputy sheriffs check whether the emergency equipment was functional prior to the use of the vehicle. Based upon our inquiry, the LED supervisor issued a memorandum to all Executive Protection Unit personnel instructing them to check all their emergency equipment prior to the start of their shifts. We found this response by the LED to be reasonable.

(16-02380) Delay in being seen by correctional facility health professionals. In January 2016, several inmates complained about a Department of Public Safety (PSD) correctional facility's medical unit (MU). These inmates informed us that they had submitted non-emergency requests to be seen by a health professional for physical ailments. They had waited several weeks to be seen by a health professional before contacting our office for assistance.

PSD Policy No. COR.10.1E.07, titled "Non-Emergency Health Care Requests and Services," required medical requests to be triaged within 24 hours. If the medical request describes a clinical symptom, the policy also required that a health professional have face-to-face contact with the inmate within 72 hours. This PSD policy was based on recommendations of the National Commission on Correctional Health.

The MU staff informed us that they were behind in having health professionals meet face-to-face with inmates who reported that they were experiencing clinical symptoms, and acknowledged that they were not in compliance with COR.10.1E.07. The MU staff explained that there were two reasons for the delays. First, there were only a few examination rooms at the MU's current location, so only a few visits could be held at a time. Second, because of the MU's proximity to a housing unit for female inmates, the ability to transport male inmates to the MU for appointments was limited. The MU staff informed us that in order to resolve these issues, they had proposed that the facility administration renovate a trailer at the facility to provide a larger MU. The MU staff had also requested that the MU be moved to a larger area within the facility. The MU staff informed us that the facility administration had yet to approve of either proposal or come up with any other alternatives.

Although the MU staff provided a reasonable explanation for their inability to comply with the policy, we found the current situation to be unacceptable. We explained our findings to the facility warden and discussed some possible solutions to decrease the wait times for

face-to-face visits with health professionals. We recommended that the warden meet with the MU staff on this issue again and he agreed to do so.

We monitored the situation over the next few weeks and learned that as a short-term solution, the MU held additional weekend appointments to clear up the backlog of health professional visits. The warden subsequently informed us that for the long term, the facility had installed wireless computer equipment to provide the MU staff with access to medical records in the facility modules. This allowed health professionals to hold face-to-face visits with the inmates in the various housing modules instead of only at the MU. The MU staff confirmed that the ability to conduct health professional visits in the modules resulted in vastly decreased patient wait times. The MU staff also informed us that having additional staff present at the housing units helped ensure that the health professional visits were orderly and efficient.

HAWAII COUNTY

(15-03791) Employer did not return employee's premium overpayment that was refunded by the Employer-Union Health Benefits Trust Fund. The Hawaii Employer-Union Health Benefits Trust Fund, more commonly known as the EUTF, provides medical, chiropractic, prescription drug, dental, vision, and life insurance benefits to all eligible State of Hawaii, City and County of Honolulu, and Hawaii, Kauai, and Maui County employees and retirees. The EUTF is responsible for designing health benefit plans in accordance with Federal and State regulations, contracting with insurance carriers to provide the services, and negotiating premium rates. The EUTF offers employees self-coverage, as well as two-party and family coverage to employees with eligible dependents.

The employer and employee share in paying the premium cost of the health benefit plan chosen by the employee. Some employees have the option to pay their percentage of the premium payment through a Flexible Spending Plan (FSP), pursuant to Section 125 of the Internal Revenue Code of 1986, which allows the employees to use pre-tax dollars to pay for qualifying insurance premiums, medical expenses, and dependent care expenses that would otherwise be paid for using after-tax salary. Using pre-tax dollars through the FSP can result in lower taxes and increased take home pay for the employee.

An employee of a county agency selected family coverage to acquire medical insurance for herself, her spouse, and her daughter, and utilized the FSP to make her premium payments. When the employee's daughter turned 26 years of age, she no longer qualified as an eligible dependent for health plan benefits. The insurer automatically cancelled coverage for the employee's daughter, converted the employee's coverage from family

coverage to the lower cost two-party coverage, and returned the difference in the premium to the EUTF. In turn, the EUTF returned the refunded portion of the premium to the employer. The employer, however, did not return the refunded portion of the premium that was paid by the employee to the employee. When the employee learned of this, and her requests for the refund were denied, she complained to our office about the employer's decision.

We contacted the employer and were informed that because it did not receive timely notice from the employee about the change in status of her daughter's eligibility, the employer could not return the refunded portion of the employee's premium payment. We learned that, under Internal Revenue Service rules, once an employee chooses to participate in the FSP, his/her pre-tax election cannot be changed during the Plan Year unless there is a change in family status that is consistent with the pre-tax election change. A Change in Status Form must be filed with the county's Department of Human Resources within 60 days of the family status change event. A Change in Status Form received beyond 60 days of the family status change event will result in continuation of the employee's pre-tax election and forfeiture of all or part of the employee's insurance premiums.

Unfortunately, the employee did not provide the Change in Status Form to her employer within 60 days of her daughter's 26th birthday. Therefore, her pre-tax election continued and the difference in the premium amount was forfeited to the employer.

We found that the employer provided adequate notice of the FSP requirements to the plan participants via the annual FSP Summary Plan Descriptions and during pay days. Thus, we were unable to substantiate this complaint.

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 47, please visit our website at ombudsman.hawaii.gov and select the “Cumulative Index” 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.

