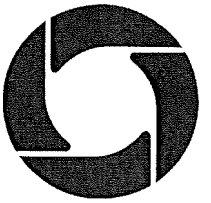
Office of the Ombudsman
State of Hawaii
Fiscal Year 2016-2017
Report Number 48



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.

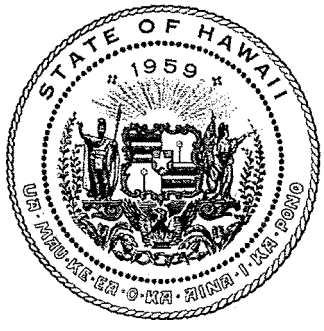
Kekuanaoa Building, 4th Floor
465 South King Street
Honolulu, HI 96813
Phone: 808-587-0770
Fax: 808-587-0773
TTY: 808-587-0774

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, 2016 - June 30, 2017
Report No. 48

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

December 2017

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2018:

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 2016-2017. This is the forty-eighth annual report since the establishment of the office in 1969.

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 continuing cooperation and assistance in our efforts to address citizen complaints and ensure the fair and impartial delivery of government services.

I would also like to personally thank 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. Their unwavering efforts to independently and impartially investigate citizen complaints against government and to improve the level of public administration in Hawaii help to strengthen the public's trust and confidence in government.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2017

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Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2016-2017, the office received a total of 3,300 inquiries. Of these inquiries, 2,357, or 71.4 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 389 non-jurisdictional complaints and 554 requests for information.

There was a decrease in all categories of inquiries.

A comparison of inquiries received in fiscal year 2015-2016 and fiscal year 2016-2017 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
2016-2017	3,300	554	389	2,357	1,295	1,062
2015-2016	3,700	601	393	2,706	1,606	1,100
Numerical Change	-400	-47	-4	-349	-311	-38
Percentage Change	-10.8%	-7.8%	-1.0%	-12.9%	-19.4%	-3.5%

Staff Notes

During a State election year, the Office of the Ombudsman provides a representative to the Election Advisory Council (EAC) to serve as an Official Observer. Analyst Rene Dela Cruz represented our office and attended several training sessions to prepare for the Primary Election on August 13, 2016, and General Election on November 8, 2016. Mr. Dela Cruz's duties consisted of testing the vote counting system to confirm that the ballots are being tabulated accurately and logically, ensuring that the Counting Center Teams are following standard operating procedures, and observing the transport and transfer of ballots and other election materials. Being an Official Observer plays an important role in ensuring the security and integrity of the vote counting system.

On October 17-21, 2016, the United States Ombudsman Association (USOA) held its 37th Annual Conference in Arlington, Virginia. The USOA's annual conferences have provided sessions to enhance the skills needed by government ombudsmen to effectively carry out their duties. The conferences also provide attendees opportunities to network with peers who have similar jurisdiction for technical assistance, moral support, and lasting friendship. Attendees from our office were Ombudsman Robin Matsunaga, and Analysts Herbert Almeida, Rene Dela Cruz, and Clayton Nakamoto.

Two pre-conference workshops were provided at the 2016 Annual Conference. The first, titled "New Ombudsman Training," was a two-day workshop tailored for individuals who are relatively new to the role of government ombudsman. Instructors, including Ombudsman Matsunaga, provided attendees with basic intake, interviewing, and investigation techniques. The second workshop, titled "Dealing with Unreasonable Complainant Conduct," provided new skills for staff who come into contact with, or respond to, complainants or customers who display unreasonable conduct, as well as supervisors and senior management responsible for establishing complaint handling policy.

Analyst Herbert Almeida celebrated 30 years of State service in October 2016. Mr. Almeida has served all of those years with the Ombudsman's Office. He earned a Bachelor of Arts degree in Political Science from the University of Hawaii at Hilo and a Master's degree in Public Administration from the University of Hawaii at Manoa. Mr. Almeida's witty spirit eases the daily stress of handling complaints and his years of experience helps our complainants understand the process and mission of our office. Congratulations and thank you, Mr. Almeida, for your contributions and commitment to serving the public to ensure fairness in government.

First Assistant Mark Au resigned from our office in February 2017 to become the Director of the Equal Employment Opportunity and Affirmative

Action Office of the University of Hawaii at Manoa. Mr. Au served five years as First Assistant and was responsible for supervising the analyst staff, as well as serving as second in command to the Ombudsman. He also previously served as an Analyst from December 2000 to May 2010. Congratulations and best wishes, Mr. Au, as you embark on your new career at the University of Hawaii.

In June 2017, Ombudsman Robin Matsunaga was re-elected to the USOA Board of Directors for the 2017-2019 term. This will be Ombudsman Matsunaga's ninth term as a Director of the USOA.

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

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 2016-2017

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	289	204	30	55
August	333	233	39	61
September	289	215	26	48
October	303	229	29	45
November	262	197	22	43
December	242	178	27	37
January	287	217	37	33
February	253	181	33	39
March	276	186	46	44
April	236	161	28	47
May	268	179	45	44
June	262	177	27	58
TOTAL	3,300	2,357	389	554
% of Total Inquiries	--	71.4%	11.8%	16.8%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2016-2017

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	261	10	14	0	3	1
August	277	25	24	0	7	0
September	252	16	17	0	4	0
October	252	6	44	1	0	0
November	223	13	20	0	6	0
December	212	7	23	0	0	0
January	229	26	26	1	3	2
February	211	21	19	0	2	0
March	236	17	21	0	1	1
April	212	7	14	0	3	0
May	235	14	16	0	3	0
June	224	10	23	1	4	0
TOTAL	2,824	172	261	3	36	4
% of Total Inquiries (3,300)	85.6%	5.2%	7.9%	0.1%	1.1%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2016-2017

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	992,605	69.5%	2,129	64.5%
County of Hawaii	198,449	13.9%	465	14.1%
County of Maui	165,474	11.6%	371	11.2%
County of Kauai	72,029	5.0%	78	2.4%
Out-of-State	--	--	257	7.8%
TOTAL	1,428,557	--	3,300	--

*Source: The State of Hawaii Data Book 2016, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by County: 2000 to 2016.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2016-2017

	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	1,522	64.6%	201	51.7%	406	73.3%
County of Hawaii	355	15.1%	59	15.2%	51	9.2%
County of Maui	287	12.2%	40	10.3%	44	7.9%
County of Kauai	61	2.6%	8	2.1%	9	1.6%
Out-of-State	132	5.6%	81	20.8%	44	7.9%
TOTAL	2,357	--	389	--	554	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2016-2017

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,129	1,884	56	151	3	31	4
% of C&C of Honolulu	--	88.5%	2.6%	7.1%	0.1%	1.5%	0.2%
County of Hawaii	465	399	12	51	0	3	0
% of County of Hawaii	--	85.8%	2.6%	11.0%	0.0%	0.6%	0.0%
County of Maui	371	352	4	15	0	0	0
% of County of Maui	--	94.9%	1.1%	4.0%	0.0%	0.0%	0.0%
County of Kauai	78	73	0	5	0	0	0
% of County of Kauai	--	93.6%	0.0%	6.4%	0.0%	0.0%	0.0%
Out-of-State	257	116	100	39	0	2	0
% of Out-of-State	--	45.1%	38.9%	15.2%	0.0%	0.8%	0.0%
TOTAL	3,300	2,824	172	261	3	36	4
% of Total	--	85.6%	5.2%	7.9%	0.1%	1.1%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2016-2017

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	23	1.0%	2	8	6	6	1	0
Agriculture	3	0.1%	0	0	1	2	0	0
Attorney General	32	1.4%	0	4	4	19	5	0
Budget & Finance	42	1.8%	2	7	7	19	7	0
Business, Economic Devel. & Tourism	3	0.1%	0	1	0	1	1	0
Commerce & Consumer Affairs	71	3.0%	8	18	13	20	6	6
Defense	0	0.0%	0	0	0	0	0	0
Education	50	2.1%	3	6	17	19	3	2
Hawaiian Home Lands	10	0.4%	1	1	3	4	0	1
Health	69	2.9%	1	19	14	22	10	3
Human Resources Development	6	0.3%	0	0	4	1	1	0
Human Services	226	9.6%	13	38	41	85	39	10
Labor & Industrial Relations	79	3.4%	4	20	13	35	5	2
Land & Natural Resources	30	1.3%	2	5	7	9	3	4
Office of Hawaiian Affairs	2	0.1%	0	1	0	1	0	0
Public Safety	1,312	55.7%	51	336	85	703	71	66
Taxation	95	4.0%	2	2	13	37	41	0
Transportation	50	2.1%	2	8	2	19	16	3
University of Hawaii	28	1.2%	0	9	1	15	1	2
Other Executive Agencies	0	0.0%	0	0	0	0	0	0
Counties								
City & County of Honolulu	154	6.5%	3	35	27	66	16	7
County of Hawaii	42	1.8%	1	6	3	28	2	2
County of Maui	20	0.8%	1	3	2	13	0	1
County of Kauai	10	0.4%	0	1	2	7	0	0
TOTAL	2,357	--	96	528	265	1,131	228	109
% of Total Jurisdictional Complaints	--	--	4.1%	22.4%	11.2%	48.0%	9.7%	4.6%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2016-2017

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments			
Accounting & General Services	2	2	0
Agriculture	0	0	0
Attorney General	0	0	0
Budget & Finance	2	2	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	8	8	0
Defense	0	0	0
Education	3	3	0
Hawaiian Home Lands	1	1	0
Health	1	1	0
Human Resources Development	0	0	0
Human Services	13	13	0
Labor & Industrial Relations	4	4	0
Land & Natural Resources	2	2	0
Office of Hawaiian Affairs	0	0	0
Public Safety	51	47	4
Taxation	2	2	0
Transportation	2	2	0
University of Hawaii	0	0	0
Other Executive Agencies	0	0	0
Counties			
City & County of Honolulu	3	3	0
County of Hawaii	1	1	0
County of Maui	1	1	0
County of Kauai	0	0	0
TOTAL	96	92	4
% of Total Substantiated Jurisdictional Complaints	--	95.8%	4.2%
% of Total Completed Investigations (623)	15.4%	14.8%	0.6%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2016-2017

Agency	Information Requests	Percent of Total
State Departments Accounting & General Services	14	2.5%
Agriculture	1	0.2%
Attorney General	9	1.6%
Budget & Finance	11	2.0%
Business, Economic Devel. & Tourism	1	0.2%
Commerce & Consumer Affairs	47	8.5%
Defense	2	0.4%
Education	6	1.1%
Hawaiian Home Lands	1	0.2%
Health	37	6.7%
Human Resources Development	1	0.2%
Human Services	24	4.3%
Labor & Industrial Relations	15	2.7%
Land & Natural Resources	17	3.1%
Office of Hawaiian Affairs	2	0.4%
Public Safety	54	9.7%
Taxation	6	1.1%
Transportation	10	1.8%
University of Hawaii	2	0.4%
Other Executive Agencies	9	1.6%
Counties City & County of Honolulu	91	16.4%
County of Hawaii	4	0.7%
County of Maui	6	1.1%
County of Kauai	0	0.0%
Miscellaneous	184	33.2%
TOTAL	554	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2016-2017

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	22	5.7%
County Councils	2	0.5%
Federal Government	23	5.9%
Governor	3	0.8%
Judiciary	48	12.3%
Legislature	10	2.6%
Lieutenant Governor	0	0.0%
Mayors	3	0.8%
Multi-State Governmental Entity	0	0.0%
Private Transactions	274	70.4%
Miscellaneous	4	1.0%
TOTAL	389	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2016-2017 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2017-2018

Types of Inquiries	Inquiries Carried Over to FY 16-17	Inquiries Carried Over to FY 16-17 and Closed During FY 16-17	Balance of Inquiries Carried Over to FY 16-17	Inquiries Received in FY 16-17 and Pending	Total Inquiries Carried Over to FY 17-18
Non-Jurisdictional Complaints	2	2	0	1	1
Information Requests	1	1	0	0	0
Jurisdictional Complaints	158	146	12	109	121
		Disposition of Closed Complaints: Substantiated 34 Not Substan. 82 Discontinued 30 146			
TOTAL	161	149	12	110	122

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

DEPARTMENT OF EDUCATION

(15-03184) Insufficient School Community Council Bylaws pertaining to elections. As reported in our summary of Case No. 14-01468 in Annual Report Number 46, our office received a complaint about the election procedures used by a School Community Council (SCC) of a Department of Education (DOE) elementary school. In 2004, the Hawaii State Legislature passed Senate Bill No. 3238, which was enacted as Act 51, Session Laws of Hawaii 2004 (Act 51). Act 51 contained a coordinated package of initiatives to implement comprehensive education reform in Hawaii's public schools. One of these initiatives was the establishment of an SCC for each public school to strengthen the involvement of parents, the community, and other key stakeholders in the affairs of their local schools. In our investigation of the complaint, we found that the law required each SCC to establish policies to govern elections of its members, but this particular school's SCC had failed to do so. We worked with the SCC to resolve this issue.

Following our investigation of that complaint, we initiated an investigation to determine if the error was limited to only that particular school's SCC, or if it was a system-wide problem. We surveyed a random sampling of DOE schools statewide regarding their SCC election processes. All of the schools that responded to our survey informed us that their SCC Bylaws included provisions similar to those in "Article III: Membership and Election" of the sample SCC Bylaws in the DOE "School Community Council Handbook II" (Handbook). However, we believed that the provisions in the sample SCC Bylaws regarding elections did not provide meaningful procedural guidance to the schools.

Therefore, we wrote to the DOE Superintendent of Education (Superintendent) to inform her of our findings. We noted that the Handbook included a section titled "SCC Elections" that provided detailed recommendations for conducting elections, including the processes for nominations, voting, and the announcement of election results. We further noted that the SCC in our prior investigation had revised its Bylaws to add provisions that were based on this section of the Handbook and which described in detail the specific procedures the school's SCC would use in its elections. We believed that as a result, that school's SCC Bylaws now provided a transparent and consistent process for its annual elections and that their Bylaws could be used as a model by the SCCs of other schools.

Consequently, we recommended to the Superintendent that all DOE school SCCs include similar provisions in their respective Bylaws to guide their annual elections. The Superintendent responded and informed us that the DOE would review and edit, as appropriate, the SCC annual election provision as referenced in our Annual Report Number 46 case summary and

update the SCC Bylaws sample in the Handbook. Further, prior to the beginning of the school year, the DOE would issue a memorandum providing guidance to each school SCC and recommend that modifications be made, as necessary, to each SCC Bylaws as they pertained to the election process.

The DOE subsequently revised the Handbook to include the changes we recommended. We also received a copy of a letter the Superintendent sent to the DOE Complex Area Superintendents, all school principals, and all SCC chairpersons, informing them to review and update their SCC Bylaws accordingly. Attached was our Annual Report Number 46 case summary, including an example of Bylaws that incorporated election procedures and the public announcement of election results.

DEPARTMENT OF HEALTH

(16-03364) Agency lacked internal controls for use of State vehicles. While investigating a complaint regarding a driver of a State vehicle speeding on a public highway, our office learned that the Department of Accounting and General Services (DAGS) had leased this particular vehicle to a community mental health clinic of the Department of Health (DOH). The DOH informed us that their clinic staff used the vehicle to provide services to its clients, such as taking them to doctor appointments. However, the DOH informed us that they were unable to identify the driver because their records did not show the particular vehicle as being in use at the time of the incident. After conducting an internal investigation, the DOH informed us that the particular vehicle had indeed been in use during the reported incident but that the staff member who was driving had failed to complete the office's vehicle use log. We initiated an investigation of the DOH's internal practices regarding the assignment and use of State vehicles.

We asked the DOH to explain their policies and procedures regarding vehicle use. The DOH informed us that employees were required to record the following information on an office log whenever a State vehicle was used: staff name, the time and mileage when they check the vehicle out, and the time and mileage when they check the vehicle in. They also informed us that this particular vehicle was being used under a long-term lease with DAGS and that the DOH complied with DAGS' policies and procedures for vehicle use.

In order to learn more about these DAGS policies, we contacted the DAGS Motor Pool Branch (MP), which operates a financially self-supporting motor pool program by assessing fees for the acquisition, operations, maintenance, repairs, and disposal of State vehicles rented by various agencies. We learned that MP vehicles can be rented on a daily or monthly

basis. According to the MP, although the MP controls and manages the daily rentals of vehicles, for vehicles rented on a monthly basis, it is up to the renting agency to establish its own internal controls to ensure that the MP vehicles are only being used by authorized personnel for official business. The MP informed us that each agency that rents a vehicle from the MP on a monthly basis is required to submit logs of the vehicle use showing the miles traveled so that the MP can perform periodic maintenance, such as oil changes, tire rotations, and similar services, on the vehicle.

We informed the DOH that the DAGS policies and procedures pertaining to monthly rentals of MP vehicles were mainly for the purpose of maintaining the vehicles and not to regulate their use. We informed the DOH that we believed it is responsible for regulating the use of MP vehicles that it rented on a monthly basis. We believed that if the use of the vehicle caused property damage or was involved in some accident and the driver was not known, then the State may be found liable. Due to the significant risks involved, we reviewed the vehicle use logs of all the community mental health clinics in the State. We found that for the most part, the majority of the clinics followed DAGS' policy and recorded the mileage usage of its vehicles on a monthly basis. The logs also included the names of the drivers using the vehicle. However, there was one clinic that did not maintain a log.

Because the DAGS logs were mainly used for vehicle maintenance purposes and because internal controls regarding use of State vehicles at the DOH were not consistent among the clinics, we recommended to the DOH that it develop policies and procedures to improve its management of State vehicles under its control. In particular, we recommended that the DOH designate persons to be responsible for controlling vehicle keys, signing vehicles out and in, and conducting periodic audits of the logs. The DOH agreed and developed policies and procedures based on our recommendations.

DEPARTMENT OF PUBLIC SAFETY

(16-02129) Noncompliance with exception case reclassification process. Shortly after a sentenced inmate begins serving time in prison, the Department of Public Safety (PSD) utilizes a classification instrument that identifies various risk factors associated with the inmate and objectively computes the inmate's custody level. The degree of physical control and staff supervision that the inmate requires, as well as the type of programs that the inmate has access to, are determined by the inmate's custody level. A reassessment of the inmate's custody level is conducted every six months thereafter using a reclassification instrument.

The classification and reclassification instruments compute custody levels, which in order of lowest to highest security level are community, minimum, medium, close, and maximum. However, correctional facility staff may recommend that the PSD Inmate Classification Officer (ICO) override an inmate's computed custody level to set a higher or lower custody level through a procedure called the exception case process.

An inmate complained about being assigned to a facility that housed medium custody level inmates. He stated that the reclassification instrument scored him as a minimum custody level inmate, and that he should therefore be housed in a minimum custody level facility.

We contacted the ICO and were informed that the statewide corrections management system database (Offendertrak) indicated that the complainant was currently classified at the medium custody level. However, there was a notation in the digital record that an exception case form for the increase to medium custody was still in a "draft" version. The ICO informed us that she had not yet received any exception case form requesting that the complainant's custody level be increased to medium custody.

In our investigation, we reviewed PSD Policy No. COR.18.07, titled "Exception Case" (PSD Policy), which stated in relevant part:

> **3.0 POLICY**
>
> It is the policy of the PSD to classify inmates according to individual needs and security risks presented. The classification instruments used to recommend security and custody needs are management tools that assist staff in determining appropriate placement. However, staff must always be aware that other factors may override the recommendations made by these classification instruments.
>
> . . . .
>
> .2 Processing of Exception Case
>
> a. . . . The Classification Committee or Unit Team Manager/designee shall complete the Exception Case Form, PSD 8202 . . . .
>
> b. The Warden/designee shall review and forward to the department classification officer for approval the findings of the Classification Committee or Unit Team Manager/designee.

c. Upon review by the Warden/designee, the following material shall be transmitted to the Classification Officer.

    1) Current classification instrument(s).

    2) Exception Case Form

    3) Initial Programming Plan

    4) Current Programming Plan Update

d. The Classification Officer shall review the material and submit a decision on the memorandum within 5 working days of receipt.

e. If Exception Case is disapproved by the Classification Officer, all materials shall be forwarded to the Deputy Director for Corrections for final resolution.

We thereafter contacted staff at the complainant's correctional facility and were informed that several months earlier, his reclassification instrument scored him at the minimum custody level. However, staff believed the complainant's custody level should be increased to medium custody due to recent acts he had committed while in their custody. The staff admitted that they had not yet submitted the exception case form to the ICO, but in the meantime they were able to increase the complaint's custody level to medium custody by utilizing a manual override function in Offendertrak.

We questioned the ICO about the facility's use of the Offendertrak manual override function to bypass the authorization procedures cited in the PSD Policy. We learned that the manual override function was accessible to various staff at the correctional facilities and that it was intended to be used only in emergency situations; for example, when the facility believed an inmate needed to be immediately housed at a higher level of security due to a significant health or safety concern and until an exception case request could be completed. However, we learned that staff at this particular facility had been using the Offendertrak manual override function to finalize exception case reclassifications in non-emergency situations because the ICO had not been issuing a determination on their exception case forms within the five-day limit required by the PSD Policy.

While we did not necessarily disagree with the reason the facility sought to increase the complainant's classification level, or its rationale for utilizing the manual override to temporarily house him in a medium facility, we found that its subsequent failure to submit the approval forms for the

exception case to the ICO within a timely manner was not reasonable, and thus a violation of PSD Policy. We recommended that the ICO notify the facility that the complainant's current medium custody level designation was not authorized and that his custody level should be returned to the level computed on his reclassification instrument. The ICO agreed with our recommendations and thus the complainant's custody level was reduced to minimum custody. In addition, the facility subsequently decided to suspend its efforts to reclassify the complainant to a higher custody level via the exception case, and the complainant was assigned for transfer to a minimum custody level facility.

We also discussed our findings with the PSD Institutions Division Administrator (IDA) in an effort to prevent any facility staff from using the manual override function in an inappropriate manner. The IDA did not believe removing the manual override function was prudent, but did subsequently amend the PSD Policy by clarifying that exception case reclassifications were not to be "finalized" but instead saved/forwarded as a "draft" to the ICO. The IDA also reminded the ICO of the requirement under the policy to process exception case forms within five days of receipt.

(16-02536) Adjustment committee erroneously amended misconduct violation. Inmates housed in a correctional facility under the jurisdiction of the Department of Public Safety (PSD) are expected to abide by certain rules of conduct. In order to address violations of these rules, the PSD adopted Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations" (PSD Policy).

The PSD Policy establishes five categories of misconduct violations -- minor, low moderate, moderate, high, and greatest -- which are based on the gravity of the inmate's action on the safety, security, and welfare of the facility. The sanctions for a misconduct violation range from a temporary loss of privileges to placement in disciplinary segregation, not longer than 60 days, and are commensurate with the seriousness of the misconduct, the severity of the violation, and the inmate's/detainee's needs. An inmate's record of misconduct violations is a factor in determining the inmate's level of security, programming needs/eligibility, and suitability for parole.

When facility staff suspects that an inmate has violated a rule of conduct, the staff submits an incident report. The facility warden then assigns another staff member to conduct an investigation of the suspected violation. If the investigator determines that there is sufficient basis to believe the inmate committed at least a moderate level misconduct, the inmate is issued a Notice of Report of Misconduct and Hearing (Notice). The PSD Policy requires that the Notice provide the inmate information about the specific misconduct(s) the inmate is being charged with, as well as the time

and place of the adjustment committee (committee) hearing for the adjudication of the alleged misconduct(s).

An inmate complained that a committee found him guilty of harassing a PSD employee, an act that was categorized as a moderate level misconduct and the sanction for which was placement in segregation for up to 14 days. The complainant did not believe his actions met the definition of harassment so he filed a grievance to appeal the findings. However, in his response to the complainant's formal grievance, the warden upheld the committee's findings and the resulting sanction. The complainant thereafter filed a grievance to the PSD Institutions Division Administrator (IDA) asking her to overturn the committee's findings.

In our investigation, we reviewed the complainant's statements and the incident reports, and we agreed that there was sufficient evidence for the committee to have found the complainant guilty of harassing a PSD employee. However, we also noted that the committee's findings stated that it had "upgraded" the misconduct violation and the sanction to an unspecified high level misconduct. As a result, the complainant was given 30 days in disciplinary segregation, which was commensurate with a high level misconduct.

In our review of the PSD Policy, we found that the pertinent section stated that "[t]he Adjustment Hearings Officer has the discretion to amend the misconduct violations that are substantiated by the facts in the reports and investigation for misconduct violations in the same or lower category." (Emphasis added.) In the complainant's case, the committee amended the misconduct violation to a higher category misconduct, which was contrary to policy.

We discussed our concerns with the committee chairman, but he declined to make any changes to his findings. He informed us that he had been instructed to upgrade the misconduct violation.

Since the warden had already responded to the complainant's initial grievance and upheld the findings, and as the IDA had not yet responded to the complainant's current grievance, we decided to contact the IDA directly to discuss this complaint. We recommended that the IDA overturn the findings in this case due to non-compliance with the PSD Policy. After reviewing the matter, the IDA agreed with our analysis, vacated the committee's findings, and remanded the case to the facility for a re-hearing. The IDA also asked the facility administration to issue a memo to remind all committee members about the requirements of the pertinent policy.

At the complainant's re-hearing, the committee found the complainant guilty of the moderate level harassment misconduct violation. We believed this finding was reasonable and so informed the complainant.

(16-03145) Correctional facility refused to return personal property to inmate released on a weekend. An inmate complained after the fact that his personal property was not returned to him at the time of his release from a correctional facility on a Saturday. During his release, he had asked the facility staff to return his personal property, including the keys to his car and house, which the police had sealed in a bag during his arrest. Staff informed the complainant that his personal property had been placed in the facility's property storage room, but due to a lack of staff, this room was not opened on weekends or holidays. The complainant was informed that he would have to return to the facility the following Monday to pick up his belongings. The complainant claimed that he pleaded with the facility staff to give him his personal property because he would have no place to stay while waiting for his property, but no one assisted him. The complainant received his property when he went to pick it up the following Monday.

Although we were not able to assist the inmate who had called us, we decided to review the facility's process because other inmates might be similarly affected if they were released during a weekend. We found that Department of Public Safety (PSD) Policy No. COR.16.02, titled "Procedures for Release of Persons in Custody" (PSD Policy), stated in part:

> **4.0 PROCEDURE**
>
> . . . .
>
> .4 Release Procedures from Facilities
>
> . . . .
>
> g. All inmate personal items and money shall be returned to the offender upon his/her release or as soon as practical.

We contacted the facility's property room staff to see if the facility had considered alternatives for returning personal property to inmates/detainees who are released from custody on a weekend or holiday. The staff confirmed that the property room was unmanned and secured on the weekends and holidays. The staff also informed us that no correctional officers were given authority to access the property room during weekends and holidays. The staff believed the only way for property to be released on a weekend or holiday was to create an additional staff position to operate the property room during these times.

We interviewed the property room staff at each PSD correctional facility in the State to find out how the other facilities were managing the return of personal property to inmates who were released on weekends and holidays. Based on our interviews, we determined that there might be other

ways that the correctional facility in this case could return personal property during weekends and holidays to inmates without jeopardizing the security of the facility.

We contacted the facility's Chief of Security (COS) about this issue. We were informed that the intake/release module of the facility no longer handled property for inmates released during the weekends or holidays because there was no secured storage room in that area and some inmates released from the intake/release module previously had complained about items missing from their property bags. However, the COS agreed that they should reconsider options for returning property to inmates released on a weekend or holiday in order to comply with the PSD Policy. The COS agreed to talk to the facility warden about this issue.

The COS subsequently informed us that the facility would use in-house labor to construct a separate, secured property storage area in the facility's intake/release module to store property for inmates. Prior to an inmate's scheduled weekend or holiday release, the property room staff would transport the inmate's sealed property bag to the intake/release module for placement in the new secured storage area so that the property could be returned to the inmate upon release. The COS said that access to the new storage area would be limited to authorized staff only.

We believed the facility's response to this complaint was reasonable.

(17-01246) Erroneously found guilty of misconduct. An inmate at a correctional facility complained that an adjustment committee (committee) found him guilty of recruiting gang members and lying during an investigation. The complainant denied the charges. He appealed the findings but they were upheld by the facility warden.

The complainant was found guilty of the following violations of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

4.0 <u>MISCONDUCT RULE VIOLATIONS AND SANCTIONS</u>

. . . .

.2 Greatest Misconduct Violations (6).

a. . . .

. . . .

6 (20) Any act of recruiting or participating in the initiation process of prospective STG members and/or participating in any event that can be determined to be STG related, including but not limited to fights, assaults, work stoppage, etc.

6 (21) The use of physical interference or obstacle to an investigation, including refusal to cooperate with an ongoing investigation and/or lying during the course of the ongoing investigation that results in the obstruction, hindrance, or impairment of the investigation.

According to the committee reports, although the complainant was not identified as a gang member, he was involved with other inmates who were known gang members and who assaulted another inmate. As such, we found that the guilty finding for the 6 (20) violation was supported by the evidence and was reasonable.

However, we did not believe that the evidence supported the guilty finding for the 6 (21) violation as the complainant's actions during the investigation did not appear to demonstrate that he used any physical interference or obstacle that resulted in the obstruction, hindrance, or impairment of the investigation.

We spoke with the committee chairperson, who said that the complainant had lied during the investigation. However, the committee chairperson was unable to provide evidence that the complainant's actions actually resulted in the obstruction, hindrance, or impairment of the investigation.

We thereafter asked the committee chairperson's supervisor to review the matter. However, she was not convinced that the guilty finding for the 6 (21) violation was erroneous. She also informed us that the warden told her that he agreed with the guilty finding.

During our investigation, we learned that the complainant had filed a Step 3 grievance and that the PSD Institutions Division Administrator (IDA) had upheld the committee's findings. As such, we discussed the complaint with the IDA. The IDA and her legal advisor reviewed the committee's findings and they agreed with our assessment of the case. As a result, the IDA revised her response to the Step 3 grievance by overturning the 6 (21) violation guilty finding based on a lack of detail justifying the charge.

We subsequently notified the complainant of our findings and the action taken by the IDA.

DEPARTMENT OF TRANSPORTATION

(15-01846) Highways Division refused to enforce laws governing advertising sign on private property but visible from a State highway. Our office received an anonymous complaint that the Highways Division (HWY), Department of Transportation (DOT), was allowing a business to place billboard advertisements along a major State highway. The complainant believed there was a law prohibiting billboards in Hawaii.

When we contacted the DOT Complaints Office, we learned that it had already received this complaint from a member of the public and that an inspector was assigned to review the case. The inspector informed us that several of the business's signs were erected in the State highway right-of-way. Thus, the inspector asked the business owner to remove those signs, which the owner removed. However, the inspector informed us that the DOT was unable to remove one of the business's signs because it was on private property.

In our investigation, we reviewed the applicable statutes regarding outdoor advertising.

Section 264-71, Hawaii Revised Statutes (HRS), defined "Outdoor advertising" as any device which was:

> [(1)] A writing, picture, painting, light, model, display, emblem, sign, billboard, or similar device situated outdoors, which is so designed that it draws the attention of persons on any federal-aid or state highway, to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering or other trading is carried on;
>
> [(2)] A sign, billboard, poster, notice, bill, or word or words in writing situated outdoors and so designed that it draws the attention of and is read by persons on any federal-aid or state highway; or
>
> [(3)] A sign, billboard, writing, symbol, or emblem made of lights, or a devise or design made of lights so designed

that its primary function is not giving light, which is situated outdoors and draws the attention of persons on any federal-aid or state highway.

Section 264-72, HRS, titled "Control of outdoor advertising," stated:

> No person shall erect or maintain any outdoor advertising outside of the right-of-way boundary and visible from the main-traveled way of any federal-aid or state highway within the State, except the following:
>
> (1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by law.
>
> (2) Signs, displays, and devices advertising the sale or lease of the property upon which they are located.
>
> (3) Signs, displays, and devices advertising activities conducted on the property upon which they are located.
>
> (4) Signs lawfully in existence on October 22, 1965, determined by the director to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purpose of this section.

Section 264-73, HRS, titled "Regulations," stated:

> The director of transportation may promulgate rules and regulations governing the erection and maintenance of outdoor advertising permitted under section 264-72, consistent with the safety and welfare of the traveling public and with the national standards promulgated by the Secretary of Transportation pursuant to Title 23, United States Code.

Thus, the DOT promulgated Title 19, Subtitle 4, Chapter 103, Hawaii Administrative Rules (HAR), titled "Outdoor Advertising Along State Highways and Federal Aid Secondary County Highways," to regulate outdoor advertising. Section 19-103-1, HAR, titled "Application," stated that Chapter 103, HAR, applied to "signs which are erected and maintained outside of the highway right-of-way of any state or federal-aid highway and which are

visible from the main traveled way of the highway." Section 19-103-3, HAR, titled "Exceptions," restated the exact language of Section 264-72, HRS. In addition, Section 19-103-12, HAR, titled "Unlawful signs," stated in part:

> [T]he following signs shall not be considered on-premise and it shall be unlawful to erect or maintain these signs:
>
> (1) Any sign which advertises or publicizes an activity not conducted on the premises upon which the sign exists.
>
> (2) Signs located on land which is not used for any purpose related to the activity being advertised other than as a location for the sign although the lands are under the same ownership.

We wrote a letter to the HWY District Administrator citing our research of the applicable laws. We stated that although we did not dispute that the remaining business sign was on private property and outside of the State's right-of-way boundary, it was visible from the highway and was not a directional sign or a sign indicating the sale or lease of the property on which it existed. In addition, the activity that was being advertised by this sign was not being conducted on the premise on which the sign was erected and there was no indication that this sign existed on October 22, 1965. Thus, the sign did not appear to meet any of the exceptions listed in Section 264-72, HRS, or Section 19-103-3, HAR, and should be considered an unlawful outdoor advertisement subject to the DOT regulation. However, the inspector's statement about this sign suggested that the DOT believed analyzing property ownership was a necessary element when deciding whether it can regulate an outdoor advertisement. The inspector was unable to provide us with the legal basis for this additional element. Therefore, we respectfully asked the HWY District Administrator to explain why the DOT could not take any regulatory action on an outdoor advertisement that was erected on private property, but visible from a State highway.

The HWY District Administrator orally reaffirmed the inspector's position that the DOT lacked the authority to compel the removal of advertising signs that were erected on private property. The administrator also informed us that he believed local ordinances gave the county government the authority to have this sign removed, and that he had asked the county to look into the matter. The administrator later informed us that the county had in fact succeeded in getting the business owner to remove the remaining sign and thus he believed the issue had been resolved.

The HWY District Administrator, however, was still unable to explain why the HWY did not believe it had the authority to have this advertising sign

removed. Thus, although we agreed the issue had been resolved, we still believed that the DOT itself was required by law to remove outdoor advertising signs that were visible from the main traveled way of the highway, regardless of whether the signs were located in the highway right-of-way or on private land.

We later met with the DOT Director to discuss the HWY's position on this issue. The Director did not provide us with a definitive answer, but agreed to consult with the Department of the Attorney General and respond to our inquiry.

The HWY subsequently informed us that it agreed it had the authority and obligation to have outdoor advertising signs visible from a State highway removed, regardless of whether the sign was located in the State right-of-way or on private property. The HWY assured us that it would attempt to work with the owner of a sign to have it removed and, if necessary, to take any other action within its authority to enforce the laws governing such advertisements.

(16-03549) Employee without an electrician's license allowed to work in a position that required one. We received a complaint that the Department of Transportation (DOT) had placed an employee in a position that required an electrician's license even though the employee did not possess this license.

We contacted a DOT supervisor, who informed us that the employee in question was an Electrician's Helper who was temporarily assigned (TA) into the Electrician I position. The supervisor further informed us that over the years, the employee learned to do most of the work required of an Electrician I and was able to do that work with minimal supervision. The supervisor confirmed that the Electrician I position required an electrician's license and that the employee did not possess one, but explained that the employee was only allowed to work in the TA position while an Electrician Supervisor II, who possessed an electrician supervisor's license, was on duty.

We reviewed Chapter 448E, Hawaii Revised Statutes, titled "Electricians and Plumbers." We also reviewed Hawaii Administrative Rules Title 16, Department of Commerce and Consumer Affairs, Chapter 80, titled "Electricians and Plumbers." According to our research, an unlicensed person, such as an Electrician's Helper, was allowed to perform electrical work so long as it is performed under the supervision and within the scope of a person licensed in any of the journey worker electrician or supervising electrician categories.

However, we also found that the DOT's "Position Description" for an Electrician I stated that a journeyman electrician's license was required. Therefore, we questioned the DOT Personnel Officer (Officer) why this requirement was not followed. The Officer informed us that the Electrician's Helper was TA into this position because the DOT was very short staffed and had difficulty recruiting, especially positions in the skilled trades, such as electricians. He stated that if employees such as the Electrician's Helper could not be TA into such positions, there would be serious repercussions to the operations of the DOT. The Officer said that the electricians do maintenance work on a day-to-day basis and there would be risks to public safety if they did not have a sufficient number of employees.

We did not find the Officer's response to be reasonable and consulted with the Department of Human Resources Development (DHRD). The DHRD is the State agency that conducts recruitment activities; provides guidance and support for personnel actions; classifies positions based on duties and responsibilities; ensures compensation of employees at proper pay levels; supports the collective bargaining process; directs effective employee-employer relations; administers workers' compensation benefits; and ensures a safe and healthy work environment.

The DHRD staff informed us that if a position requires a license, the employee filling the position is required to possess such a license. Based on our discussions with the DHRD, we asked the Officer to reconsider the practice of allowing the Electrician's Helper to be TA into the Electrician I position. In response, the Officer informed us that the DOT still had the authority to have this employee TA into the position. He referred us to the collective bargaining agreement which stated: "The Employer reserves and retains, solely and exclusively, all management rights, powers and authority, including the right of management to manage, control and direct its work forces and operations . . . ." The Officer cited the "Related Series Procedure" of the collective bargaining agreement which stated: "The qualified Employee at work in the class immediately below the class of the temporary assignment in the related series with the greatest Baseyard/Workplace . . . Seniority." The Officer stated that by definition, the "class" is Electrician I and the related series was Electrician Helper. He said the TA employee had the greatest seniority and was in a related series; thus the DOT maintained it was reasonable to have this Electrician's Helper TA into the Electrician I position.

We again did not find the Officer's response to be reasonable and discussed it with the DHRD. The DHRD informed us that they agreed with our position that the Electrician's Helper could not be TA into the Electrician I position without the requisite license. The DHRD agreed to follow up with the Officer to resolve this issue.

Thereafter, the DHRD informed us that the Officer removed the Electrician's Helper from the TA Electrician I position. The Officer also informed us of this action and stated that in the future, he would ensure that all employees obtain the necessary licensure before being TA into a position.

We contacted the complainant and informed him that the Electrician's Helper was no longer TA into the Electrician I position. He was satisfied with the outcome of our investigation.

CITY AND COUNTY OF HONOLULU

(16-03307) Homeowners association held responsible for increase in water usage due to broken water pipe. The Board of Water Supply (BWS) of the City and County of Honolulu (C&C) manages the island of Oahu's municipal water resources and distribution system. The BWS provides residents with water service at reasonable cost. Monies collected from BWS customers finance the BWS's operations and projects.

The secretary of a homeowners association (association) complained about an increase in a water bill from the BWS due to a leak caused by a break in the association's water pipe. He did not believe the association should be held responsible for the increase in the water bill.

The complainant lived on a lot that included seven other properties. There was a single water meter for the eight properties, and the BWS billed the association for water usage. The meter was located 250 feet from the edge of the property. The water pipe from the meter to the property ran under an adjacent property, which was owned by the C&C. A portion of this pipe ran under a road that was used to access the C&C property.

The complainant informed us that there was a large wastewater project and a cellular phone tower on the C&C property, and large utility vehicles that used the road to access the property were the cause of the break in the association's water pipe. The complainant also informed us that the water pipe had been broken three times in the last five years that he lived there, and each time there was a large spike in water usage and the association's water bill. Although the BWS always repaired the broken pipe and never charged the association for the repairs, the BWS only credited the association's account once for the increase in water use. The BWS informed the association it would not credit their account again, even though the BWS accepted responsibility for the break in the water pipe.

The complainant proposed moving the water meter closer to the edge of the association's property line so that vehicles would not damage the

water pipe. The BWS said that could be done, but the association would have to pay for the cost of moving the meter. The complainant believed that the BWS, not the association, should pay the cost of moving the meter.

We contacted the BWS regarding the complaint. A supervisor was aware of this issue because of a similar complaint to the BWS years earlier. However, nothing was done in the prior complaint due to other priorities. The supervisor could not explain why the water meter was located where it was years earlier, but agreed that it was unfair to hold the association liable for leaks in the water pipe caused by vehicles accessing the C&C property or for relocating the existing meter. He agreed to conduct a site inspection of the area to see what could be done to resolve the problem.

The BWS supervisor subsequently informed us that a work crew replaced the aging water pipe connecting the meter to the association's property with a stronger copper pipe. In addition, the crew was able to bury this new pipe deeper underground so as to further minimize damage caused by heavy vehicles using the road to get to the adjacent C&C property.

The BWS supervisor informed us that relocating the water meter closer to the association's property line would be a challenge from an engineering standpoint because the resulting water pipe would have to cross under nearby railroad tracks. In addition, because of land ownership and other jurisdictional issues in the area, a new BWS water pipe would require coordination with several other governmental agencies. The supervisor informed us that he would prepare a proposal for moving the water meter closer to the association's property and he would place the proposal in a queue of work orders to be completed when manpower and resources were available.

During our investigation, we asked the BWS supervisor to further assist the complainant by informing the BWS billing office of the circumstances leading to the recent water pipe leak so that the association could resolve the increase in its most recent billing problem. He agreed to do so, and the billing issue was resolved.

We discussed the outcome of our investigation with the complainant. He was satisfied with the results and thanked us for our assistance.

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 48, 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.