

CLARE E. CONNORS 7936  
Attorney General of Hawaii

GARY S. SUGANUMA 6960  
KRISTEN M.R. SAKAMOTO 9279  
Deputy Attorneys General  
Department of the Attorney General,  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: (808) 586-1470

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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N. MIYATA  
CLERK

Attorneys for DEPARTMENT OF TAXATION,  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In re

OFFICE OF INFORMATION PRACTICES  
OPINION LETTER NO. F19-05.

S.P. NO.

19-1-0191

DEO

DEPARTMENT OF TAXATION, STATE  
OF HAWAII'S COMPLAINT TO  
INITIATE SPECIAL PROCEEDING;  
CERTIFICATE OF SERVICE

DEPARTMENT OF TAXATION, STATE OF HAWAII'S  
COMPLAINT TO INITIATE SPECIAL PROCEEDING

DEPARTMENT OF TAXATION, STATE OF HAWAII ("DEPARTMENT"), by and  
through its attorneys, brings this Complaint to Initiate Special Proceeding pursuant to section  
92F-43, Hawaii Revised Statutes (HRS), and alleges and avers as follows:

JURISDICTION AND VENUE

1. The DEPARTMENT is an agency as defined in section 92F-3, HRS.
2. Jurisdiction and venue are proper in this Court pursuant to section 92F-43(a),

HRS.

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

FACTUAL ALLEGATIONS:

3. On or about April 15, 2016, Ray Kamikawa, Esq. made a written request to the DEPARTMENT for the following government records:

Assumptions, bases, computations, source data and documents, and analysis relied upon in connection with the Department of Taxation's revenue estimates contained in its testimonies (copies attached) for House Bill 2744, HD1, SD1 (Relating to Housing) and Senate Bill 2833, SD2, HD1 (Relating to the Low-Income Housing Tax Credit), both bills currently pending in the Hawaii State Legislature, Twenty-Eighth Legislative (2016).

4. On or about May 13, 2016, the DEPARTMENT denied Mr. Kamikawa's request pursuant to sections 92F-13(3) and 92F-13(5), HRS.

5. On or about May 26, 2016, Mr. Kamikawa appealed the DEPARTMENT'S denial of the April 15, 2016 request to the Office of Information Practices (OIP).

6. On or about June 27, 2016, the DEPARTMENT provided OIP with its response to Mr. Kamikawa's appeal, including copies of the records to which access was denied for purposes of OIP's *in camera* review.

7. On or about February 8, 2019, upon OIP's request, the DEPARTMENT provided OIP with a supplemental response to Mr. Kamikawa's appeal, in which it addressed issues discussed in the Hawaii Supreme Court opinion *Peer News LLC v. City and County of Honolulu*, 143 Hawaii 472 (2018).

8. On or about May 20, 2019, OIP issued Opinion Letter F19-05 (hereinafter "Opinion"), opining that the DEPARTMENT may not withhold the underlying assumptions, source data and documents, and computations it uses to create revenue estimates presented in legislative testimony.

9. The Opinion is palpably erroneous because disclosure is not required pursuant to sections 92F-13(3), HRS, which exempts government records that, by their nature, must be

confidential in order for the government to avoid the frustration of a legitimate government function, and 92F-13(5), HRS, which exempts inchoate and draft working papers of legislative committees, as discusses in the DEPARTMENT'S responses to OIP, dated June 27, 2016 and January 31, 2019.

10. The Opinion fails to analyze whether the government function identified by the DEPARTMENT—the production of objective and independent revenue estimates—would likely be frustrated by disclosure. Instead, OIP concludes, contrary to law, that "decisionmaking fundamentally is not a government function that may be frustrated under section 92F-13(3), HRS, even if the nature of the frustration is explained in detail and even if the function is described by a term other than decisionmaking."

11. Further, the Opinion concludes that revenue estimates are not inchoate and draft working papers of legislative committees, despite the fact that the revenue estimates are provided for the benefit and use of legislative committees and, upon information and belief, no other staff or agency in the Executive and Legislative Branches is able to perform this revenue estimation function.


#### REQUEST FOR RELIEF

WHEREFORE, the DEPARTMENT prays that:

1. OIP Opinion Letter F19-05, dated May 20, 2019, is reversed as palpably erroneous;
2. The Court finds and adjudges that the DEPARTMENT'S denial of Mr. Kamikawa's April 15, 2016 request to access a government record was correct and proper; and
3. The DEPARTMENT have such other and further relief as this Honorable Court may deem just and equitable.

DATED: Honolulu, Hawaii, JUN 19 2019.

CLARE E. CONNORS  
Attorney General

By:   
KRISTEN M.R. SAKAMOTO  
Deputy Attorney General

Attorneys for DEPARTMENT OF  
TAXATION, STATE OF HAWAII

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STATE OF HAWAII

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on JUN 19 2019 a copy of the foregoing was served  
via hand delivery to the following:

OFFICE OF INFORMATION PRACTICES  
No. 1 Capitol District Building  
250 South Hotel Street, Suite 107  
Honolulu, HI 96813

RAY KAMIKAWA, ESQ.  
CHUN KERR LLP  
999 Bishop Street, Suite 2100  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, JUN 19 2019.



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KRISTEN M.R. SAKAMOTO  
Deputy Attorney General