

Office of the Ombudsman
State of Hawaii
Fiscal Year 2004-2005
Report Number 36





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

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

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

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

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

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State of Hawaii

Report of the Ombudsman

For the Period July 1, 2004 - June 30, 2005
Report No. 36

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

December 2005

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2006:

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 2004-2005. This is the thirty-sixth annual report since the establishment of the office in 1969.

On behalf of all the members of the office, I would like to thank the State Legislature for its continued support of the office. I would also like to thank the Governor, the Mayors of the various counties, and the State and County department heads and employees for their ongoing cooperation and assistance in our efforts to resolve citizen complaints and to assure fair treatment for the people of Hawaii.

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

Respectfully submitted,

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

ROBIN K. MATSUNAGA
Ombudsman

December 2005

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Chapter I

THE YEAR IN BRIEF

The Office Workload

During fiscal year 2004-2005, the office received a total of 4,824 inquiries. Of these inquiries, 3,398, or approximately 70 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 414 non-jurisdictional complaints and 1,012 requests for information.

The 4,824 inquiries received represent a 9 percent decrease from the 5,295 inquiries received the previous fiscal year. We received 488 fewer jurisdictional complaints, a decrease of 12.6 percent from the prior fiscal year.

For the second year in a row, the reduction in the number of prison-related complaints contributed greatly to the decrease in the overall number of jurisdictional complaints.

A comparison of inquiries received in fiscal year 2003-2004 and fiscal year 2004-2005 is presented in the following table.

TWO-YEAR CASELOAD COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2003-2004	5,295	932	477	3,886	2,177	1,709
2004-2005	4,824	1,012	414	3,398	1,760	1,638
Numerical Change	-471	80	-63	-488	-417	-71
Percentage Change	-8.9%	8.6%	-13.2%	-12.6%	-19.2%	-4.2%

Personnel Changes

On July 9, 2004, Jeffrey Keating left his position as an analyst to join the State Department of the Attorney General as a deputy attorney general in the Employment Law Division.

James Tanabe joined the office as an analyst on September 16, 2004. Mr. Tanabe received his Bachelor of Science in Education from Illinois State University and his Master of Business Administration from the University of Alaska Fairbanks. His diverse work experience included 15 years as a special education teacher in the Hawaii and Alaska public school systems and several years working with computer systems, networks, and Web site development and management. Mr. Tanabe was previously employed as an analyst for the Hawaii State Office of the Auditor in 2003-2004.

Gillman Chu retired on December 31, 2004, after more than 35 years of dedicated public service. Mr. Chu was a Senior Analyst at the time of his retirement, and his presence in this office will be missed.

On January 3, 2005, Gansin Li joined our professional staff as an analyst. Mr. Li brings significant investigative skills and experience after more than ten years of service with the Hawaii State Office of the Auditor and as a staff member of both the Hawaii State Senate and Hawaii House of Representatives. Mr. Li received his Bachelor of Science in Computer Science from Washington University in St. Louis, Missouri, and his Juris Doctor degree from the University of Hawaii William S. Richardson School of Law.

First Assistant Donna Woo resigned on March 8, 2005, to accept the position of First Deputy Corporation Counsel with the City and County of Honolulu. Senior Analyst David Tomatani was appointed Acting First Assistant immediately thereafter. Mr. Tomatani possesses a Bachelor of Arts in Sociology and a Master in Social Work from the University of Hawaii, and has 23 years of employment with the Office of the Ombudsman.

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

Training and Professional Development

Ombudsman Robin Matsunaga attended the VIII World Conference of the International Ombudsman Institute (IOI) in Quebec City, Canada, from September 7-10, 2004. The conference offered seminars and workshops on

current issues facing the ombudsman community, and provided the Ombudsman with opportunities to discuss and compare investigative procedures with colleagues from around the world. As President of the United States Ombudsman Association (USOA) and a voting member of the IOI, Ombudsman Matsunaga served as moderator of a workshop on Group Stigmatization for the conference.

The USOA's 25th Annual Conference, "Building Bridges to Meet Tomorrow's Challenges," was held in Portland, Oregon, from October 19-22, 2004. Ombudsman Matsunaga, First Assistant Donna Woo, and analysts Yvonne Faria and James Tanabe represented the office in workshops and plenary sessions attended by ombudsman representatives from across the United States and Canada.

The USOA continues to be the primary source for training and professional development for governmental ombudsman offices, primarily through its annual training conference. In May 2005, Ombudsman Matsunaga completed his sixth and final consecutive year as a Director on the USOA Board, his fourth as President. Term limits established in the USOA By-laws limited him from contributing additional terms as a Director. However, as the immediate past president, Ombudsman Matsunaga continues to serve on the USOA Board as an ex-officio member and provides guidance and advice to the new Directors.

In June 2005, analysts Herbert Almeida, Yvonne Faria, Alfred Itamura, and James Tanabe attended a 3-day investigative training seminar in Honolulu conducted by John E. Reid and Associates, a nationally and world-renown training organization based in Chicago. The analysts learned various techniques and investigative skills that will help them in their work.

Outreach Efforts

Ombudsman Robin Matsunaga addressed the incoming class of the University of Hawaii at Manoa's Public Administration Program on August 21, 2004. The Ombudsman commended the incoming students for their commitment to public service and shared with them his own perspective on public service.

On September 17, 2004, Ombudsman Matsunaga participated in a training workshop for staff of the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, explaining the role and powers of the Office of the Ombudsman.

Several members of the Ombudsman staff manned our display booth at the 20th Anniversary Hawaii Seniors' Fair--"The Good Life Expo"--held at

the Neal Blaisdell Exhibition Hall from September 24-26, 2004. The office looks forward to participating in this popular event visited by hundreds of Hawaii's senior citizens, families, and friends.

The Office of the Ombudsman began a pilot observer/shadow program in coordination with the University of Hawaii Public Administration Program in November 2004. Our first student participant was Zarina Chekirbaeva, a student from the Republic of Kyrgystan. She was in the program until January 2005 and learned firsthand about the role and function of the office. It is our hope that the experience will be beneficial to Ms. Chekirbaeva as she pursues her career in public service.

Chapter II

LEGISLATIVE RECOMMENDATION

In the course of investigating a complaint, we learned that a provision in the Hawaii Revised Statutes (HRS) was made obsolete by a conflicting provision in the Hawaii State Constitution (Constitution).

We received a complaint that the Department of the Prosecuting Attorney (PA), City and County of Honolulu, refused to prosecute an attorney for not taking an oath of office when he was appointed First Deputy Attorney General. The complainant noted that Section 28-8(c), HRS, stated that “[t]he first deputy attorney general and all of the other deputies shall take the oath required of other public officers.” The PA indicated that a violation of Section 28-8(c), HRS, is not a criminal action that it can prosecute.

Upon review of the complaint, the Department of the Attorney General (AG) advised that the First Deputy Attorney General and all other deputies are not required to take an oath of office pursuant to Section 28-8(c), HRS, because of an amendment to the Constitution. In 1992, Article XVI, Section 4, of the Constitution was amended so that only certain “eligible public officers” are now required to take and subscribe to a Constitutional oath. The First Deputy Attorney General is not among the “eligible public officers” who are required to take the oath. As amended, Article XVI, Section 4, of the Constitution states:

All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as to best of my ability." As used in this section, "eligible public officers" means the governor, the lieutenant governor, the members of both houses of the legislature, the members of the board of education, the members of the national guard, State or county employees who possess police powers, district court judges, and all those whose appointment requires the consent of the senate. (Emphasis added.)

The amendment also deleted a provision in Article XVI, Section 4, which previously authorized the Legislature to provide further oaths or affirmations.

Additionally, in 1993 the Legislature repealed Part II, Chapter 85, HRS, which prescribed the oath required of public officers. The repeal of this part, for all practical purposes, removed any oath that the First Deputy Attorney General and other deputies were required to take.

Based on the foregoing, and with the concurrence of the AG, we recommend that the Legislature repeal Section 28-8(c), HRS.

We also recommend that the Legislature consider amending or repealing other sections of the HRS that are similarly affected by the amendment to the Constitution. The list of affected sections includes, but is not limited to, the following: 88-27; 128-16; 281-11(d); 382-4; 431:2-105(a); 456-2; 485-3(a); and 502-2. We would like to recognize the Legislative Reference Bureau for its assistance in identifying the HRS sections listed here.

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 2004-2005

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	403	294	28	81
August	458	323	43	92
September	426	316	26	84
October	380	279	32	69
November	394	295	31	68
December	368	269	25	74
January	398	267	49	82
February	348	241	22	85
March	409	268	39	102
April	431	297	44	90
May	416	283	42	91
June	393	266	33	94
TOTAL	4,824	3,398	414	1,012
% of Total Inquiries	--	70.4%	8.6%	21.0%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2004-2005

Month	Telephone	Mail	E-mail	Fax	Visit	Other
July	369	19	10	5	0	0
August	430	18	6	2	2	0
September	390	21	6	1	8	0
October	345	25	8	0	2	0
November	342	37	11	1	1	2
December	324	31	10	0	3	0
January	358	21	13	1	3	2
February	315	13	16	0	3	1
March	367	21	17	0	3	1
April	373	22	21	2	12	1
May	373	20	10	5	8	0
June	361	12	14	0	6	0
TOTAL	4,347	260	142	17	51	7
% of Total Inquiries (4,824)	90.1%	5.4%	2.9%	0.4%	1.1%	0.1%

**TABLE 3
DISTRIBUTION OF POPULATION AND
INQUIRERS BY RESIDENCE
Fiscal Year 2004-2005**

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	899,593	71.2%	3,528	73.1%
County of Hawaii	162,971	12.9%	645	13.4%
County of Maui	138,347	11.0%	366	7.6%
County of Kauai	61,929	4.9%	82	1.7%
Out-of-State	--	--	203	4.2%
TOTAL	1,262,840	--	4,824	--

*Source: The State of Hawaii Data Book 2004, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "Resident Population, by Counties: 1990 to 2004."

**TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2004-2005**

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	2,528	74.4%	254	61.4%	746	73.7%
County of Hawaii	440	12.9%	66	15.9%	139	13.7%
County of Maui	269	7.9%	32	7.7%	65	6.4%
County of Kauai	52	1.5%	11	2.7%	19	1.9%
Out-of-State	109	3.2%	51	12.3%	43	4.2%
TOTAL	3,398	--	414	--	1,012	--

**TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2004-2005**

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	E-mail	Fax	Visit	Other
C&C of Honolulu	3,528	3,215	141	102	13	51	6
% of C&C of Honolulu	--	91.1%	4.0%	2.9%	0.4%	1.4%	0.2%
County of Hawaii	645	605	21	16	3	0	0
% of County of Hawaii	--	93.8%	3.3%	2.5%	0.5%	0.0%	0.0%
County of Maui	366	338	21	6	1	0	0
% of County of Maui	--	92.3%	5.7%	1.6%	0.3%	0.0%	0.0%
County of Kauai	82	76	4	1	0	0	1
% of County of Kauai	--	92.7%	4.9%	1.2%	0.0%	0.0%	1.2%
Out-of- State	203	113	73	17	0	0	0
% of Out- of-State	--	55.7%	36.0%	8.4%	0.0%	0.0%	0.0%
TOTAL	4,824	4,347	260	142	17	51	7
% of TOTAL	--	90.1%	5.4%	2.9%	0.4%	1.1%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2004-2005

Agency	Jurisdictional Complaints	Percent of Total	Completed Investigations		Discontinued	Declined	Assisted	Pending
			Substantiated	Not Substantiated				
<u>State Departments</u>								
Accounting & General Services	51	1.5%	12	18	1	11	7	2
Agriculture	11	0.3%	2	6	1	1	1	0
Attorney General	222	6.5%	12	40	15	25	125	5
Budget & Finance	70	2.1%	9	30	6	19	5	1
Business, Economic Devel. & Tourism	8	0.2%	0	5	0	2	0	1
Commerce & Consumer Affairs	49	1.4%	3	22	8	10	3	3
Defense	3	0.1%	1	1	0	1	0	0
Education	117	3.4%	24	45	18	22	0	8
Hawaiian Home Lands	6	0.2%	1	2	0	2	0	1
Health	132	3.9%	18	52	15	33	6	8
Human Resources Development	11	0.3%	2	5	1	3	0	0
Human Services	337	9.9%	41	171	29	69	11	16
Labor & Industrial Relations	78	2.3%	2	40	8	22	1	5
Land & Natural Resources	146	4.3%	7	25	10	92	7	5
Office of Hawaiian Affairs	1	0.0%	0	0	0	1	0	0
Public Safety	1,792	52.7%	250	626	78	700	86	52
Taxation	48	1.4%	13	5	8	6	15	1
Transportation	83	2.4%	14	31	5	18	12	3
University of Hawaii	31	0.9%	2	16	4	6	0	3
Other Executive Agencies	3	0.1%	0	0	0	2	0	1
<u>Counties</u>								
City & County of Honolulu	129	3.8%	19	47	5	41	6	11
County of Hawaii	42	1.2%	1	11	2	20	1	7
County of Maui	15	0.4%	2	2	3	6	1	1
County of Kauai	13	0.4%	1	2	4	5	0	1
TOTAL	3,398	--	436	1,202	221	1,117	287	135
% of Total Jurisdictional Complaints	--	--	12.8%	35.4%	6.5%	32.9%	8.4%	4.0%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED
JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2004-2005

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
<u>State Departments</u>			
Accounting & General Services	12	11	1
Agriculture	2	2	0
Attorney General	12	12	0
Budget & Finance	9	9	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	3	3	0
Defense	1	1	0
Education	24	24	0
Hawaiian Home Lands	1	1	0
Health	18	17	1
Human Resources Development	2	2	0
Human Services	41	39	2
Labor & Industrial Relations	2	2	0
Land & Natural Resources	7	7	0
Office of Hawaiian Affairs	0	0	0
Public Safety	250	236	14
Taxation	13	13	0
Transportation	14	14	0
University of Hawaii	2	2	0
Other Executive Agencies	0	0	0
<u>Counties</u>			
City & County of Honolulu	19	18	1
County of Hawaii	1	1	0
County of Maui	2	2	0
County of Kauai	1	1	0
TOTAL	436	417	19
% of Total Substantiated Jurisdictional Complaints	--	95.6%	4.4%
% of Total Completed Investigations (1,638)	26.6%	25.5%	1.2%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2004-2005

Agency	Information Requests	Percent of Total
<u>State Departments</u>		
Accounting & General Services	39	3.9%
Agriculture	12	1.2%
Attorney General	25	2.5%
Budget & Finance	28	2.8%
Business, Economic Devel. & Tourism	11	1.1%
Commerce & Consumer Affairs	104	10.3%
Defense	0	0.0%
Education	13	1.3%
Hawaiian Home Lands	1	0.1%
Health	88	8.7%
Human Resources Development	7	0.7%
Human Services	48	4.7%
Labor & Industrial Relations	38	3.8%
Land & Natural Resources	24	2.4%
Office of Hawaiian Affairs	1	0.1%
Public Safety	53	5.2%
Taxation	13	1.3%
Transportation	21	2.1%
University of Hawaii	4	0.4%
Other Executive Agencies	23	2.3%
<u>Counties</u>		
City & County of Honolulu	130	12.8%
County of Hawaii	14	1.4%
County of Maui	5	0.5%
County of Kauai	3	0.3%
Miscellaneous	307	30.3%
TOTAL	1,012	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2004-2005

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	30	7.2%
County Councils	6	1.4%
Federal Government	30	7.2%
Governor	13	3.1%
Judiciary	75	18.1%
Legislature	14	3.4%
Lieutenant Governor	1	0.2%
Mayors	1	0.2%
Multi-State Governmental Entity	0	0.0%
Private Transactions	238	57.5%
Miscellaneous	6	1.4%
TOTAL	414	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2004-2005 AND
THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER
TO FISCAL YEAR 2005-2006

Types of Inquiries	Inquiries Carried Over to FY 04-05	Inquiries Carried Over to FY 04-05 and Closed During FY 04-05	Balance of Inquiries Carried Over to FY 04-05	Inquiries Received in FY 04-05 and Pending	Total Inquiries Carried Over to FY 05-06
Non-Jurisdictional Complaints	2	2	0	1	1
Information Requests	3	3	0	4	4
Jurisdictional Complaints	152	140	12	135	147
		<u>Disposition of Closed Complaints:</u> Substantiated 40 Not Substan. 77 Discontinued 23 140			
TOTAL	157	145	12	140	152

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 organization.

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DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(05-1513) Delay in payment of court-ordered judgment. About a month after he won a monetary judgment against the State in district court, a man complained that he did not receive payment.

The complainant's vehicle was struck from behind by a vehicle driven by a Department of Human Services (DHS) employee. He filed a claim for \$877 to cover the repair cost of the damage to his vehicle. The State's Risk Management Office (RMO) felt that the \$877 cost included the repair of prior existing damage to the vehicle's rear bumper, so it offered a settlement of \$438 to cover only the repair it attributed to the accident with the State vehicle. The complainant rejected the offer and filed a claim in district court. When the State failed to appear at the scheduled hearing, the court entered a default judgment awarding the complainant \$920, which included the \$877 claim plus court costs and postage expenses incurred by the complainant. The complainant sent a copy of the judgment to the RMO, but did not receive payment.

We contacted the RMO, which reported that it was aware of the judgment. The RMO informed us that because it was a default judgment, the RMO was in consultation with the Department of the Attorney General as to whether the judgment should be paid. The RMO believed that a State representative would have appeared in court if the State received proper notification of the hearing. Thus, the RMO questioned whether service of the notice of the hearing by mail, as was done by the complainant, was proper.

We reviewed Chapter 633, Hawaii Revised Statutes (HRS), titled "Small Claims, District Courts." Section 633-28, HRS, which was applicable to claims not in excess of \$3500, required that the mode of service of the claim be "by registered mail or by certified mail with return receipt signed by the addressee"

We also reviewed the Judiciary's "Rules of the Small Claims Division of the District Courts." Rule 10 stated that if the claim was for a liquidated amount, "[j]udgment by default may be rendered on a verified claim without further proof upon failure of defendant to appear" Furthermore, Rule 11 stated in pertinent part:

Default judgment. A notice of entry of a default judgment shall be served by the plaintiff on the defendant. It shall be sufficient if a copy of the judgment showing the date of entry is mailed to defendant's last known address.

We asked the complainant how he served the State with notice of his claim and the scheduled hearing in district court. He informed us that he sent the notice to the DHS by certified mail and that a return receipt was signed by a DHS employee. After the default judgment was rendered, he mailed copies of the judgment to the RMO and to the DHS. Subsequently, the complainant provided us with documentation verifying what he told us.

We informed the RMO of what we learned. The RMO questioned whether the complainant's documentation included a receipt, signed by a State employee, of the notice of the claim and scheduled hearing. We furnished the RMO with a copy of the certified mail receipt that was signed by the DHS employee. Thereafter, the RMO informed us that it would pay the complainant the \$920 ordered by the court.

In consideration of the delay the complainant experienced in receipt of the payment, the RMO offered to deliver the check to him in person. This proved to be impractical as the complainant resided on a neighbor island. However, the RMO mailed the check as soon as possible.

The complainant later informed us that he received payment in full.

DEPARTMENT OF AGRICULTURE

(05-3336) Service on more than one State board. A member of the Molokai-Lanai Soil and Water Conservation District (Conservation District) informed us that he was told by Board of Agriculture (BOA) staff that he could not serve on the Molokai Irrigation System Water Users Advisory Board (Advisory Board) because by law, no person could serve on more than one State board at a time. The complainant asked whether this was correct.

We reviewed Chapter 78, Hawaii Revised Statutes (HRS), titled “Public Service,” and confirmed that service on more than one State board or commission was prohibited, provided that such board or commission was created by State statute or the State Constitution. Section 78-4(a), HRS, stated in part:

Any other provision of law to the contrary notwithstanding, no person shall be allowed to serve on more than one state board or commission expressly created by a state statute or the state constitution.

We also reviewed the statutes pertaining to the Advisory Board and the Conservation District to determine whether each was actually a State board or commission. With regard to the Advisory Board, we reviewed Chapter 167, HRS, titled “Irrigation Water Development.” Section 167-23(a), HRS, stated in part:

There is established a Molokai irrigation system water users advisory board, to be appointed by the governor under section 26-34. The advisory board shall consist of six members, as follows:

. . . .

- (5) The designee (by name rather than office) of the Molokai-Lanai soil and water conservation district. (Emphasis added.)

The Advisory Board was expressly created by statute and therefore, pursuant to Section 78-4(a), HRS, a member of the Advisory Board could not simultaneously serve on any other State board or commission. However, Section 167-23(a)(5), HRS, also specified that a member of the Advisory Board be a designee of the Conservation District.

We reviewed Chapter 180, HRS, titled “Soil and Water Conservation Districts,” to determine whether the Conservation District was created by State statute or the State Constitution. Section 180-1, HRS, defined “soil and water conservation district” as:

[A] governmental subdivision of this State, and a public body corporate and politic, organized in accordance with this chapter.

The chapter described the process through which a conservation district was established. The process was initiated by a petition to the Department of Land and Natural Resources (DLNR) from the occupants of land within a certain area. The DLNR administered a procedure by which public input was solicited and a vote by the occupants of the proposed conservation district determined whether the district was established. Upon a favorable vote, the DLNR was required to submit a statement to the Lieutenant Governor (LG) describing the conservation district, certifying that required procedures were followed, and requesting the issuance of a certificate of organization to the district. The conservation district was created when the LG recorded the statement and issued the certificate to the district.

It was apparent that a conservation district, although described in statute, was not expressly created by a State statute or the State Constitution. It was instead created through an administrative process by which the occupants of the land decided whether a conservation district would be established. Thus, the prohibition in Section 78-4, HRS, against serving on more than one State board or commission did not apply. Service as a Conservation District director did not constitute service on a State board or commission, and service on the Advisory Board at the same time did not violate Section 78-4(a), HRS.

We contacted the BOA and learned that a staff member from the Governor's office previously informed the BOA that no person could serve on more than one State board at a time. However, the matter was resolved and the BOA Chair understood that someone could serve as a Conservation District director and Advisory Board member at the same time.

We confirmed with the complainant that he was notified that his membership on the Advisory Board was allowed.

DEPARTMENT OF THE ATTORNEY GENERAL

(03-1741) First name on identification card. Any person who wished to obtain a civil identification (ID) card was required to provide documentation that verified the applicant's identity, such as the applicant's birth certificate and social security card. If an applicant wanted an ID card issued in a name other than what appeared on the official documents, then he or she needed to obtain a name change.

In the course of investigating a complaint, we learned that the Civil Identification Section (ID Office) of the Department of the Attorney General allowed any person whose first name was of Asian origin and who unofficially adopted the use of an English first name, but who did not obtain a legal name change, to have the unofficial English name appear on the ID card if he or she presented either a marriage certificate or a social security computer printout with the unofficial English name. However, any person whose first name was not Asian and who had adopted the use of an unofficial English name was required to obtain a legal name change in order to have the English name on their ID cards. We were concerned that this practice was inequitable.

It was our understanding that the ID Office planned to allow an applicant with any "foreign" first name to have an adopted unofficial English name on an ID card. We believed that this practice would still be inequitable, as it would not apply to people whose first names were not Asian or "foreign."

Section 846-28, Hawaii Revised Statutes (HRS), required the Attorney General to collect, secure, make, and maintain specified items of information from an applicant for an ID card, including the name of the applicant. We felt it was reasonable that the name required and secured from the applicant would be the applicant's true legal name.

We also noted that Chapter 574, HRS, titled "Names," prescribed the manner in which names were conferred and changed. Pursuant to the chapter, a person's legal family name and given name were registered by the Department of Health at birth or shortly thereafter. Furthermore, any name registered under the chapter could be lawfully changed only through certain specified processes.

We believed that unless one of the name change processes specified in Chapter 574, HRS, was completed, a person's mere use of a name other than the name registered at birth did not constitute a legal name change. We further believed that the issuance of an ID card in a name that was not legally conferred or changed undermined the system established by Chapter 574, HRS, and could lead to confusion over the ID cardholder's true identity.

Based on the foregoing, it appeared that a fair and equitable practice was for the ID Office to issue ID cards only in the legal name of the applicant. Anyone who adopted the use of an English first name (or first name of any other origin), but who had not gone through a legal name change procedure as prescribed in Chapter 574, HRS, would be required to legally change his or her name if he or she wanted an ID card issued in that name.

We asked the ID Office to review its practice and suggested consultation with its legal counsel.

Upon advice of its legal counsel, the ID Office informed us that Section 846-30, HRS, authorized the Attorney General to determine what information was displayed on the ID card. The ID Office decided that it would issue an ID card with both the applicant's legal name and the "everyday" name (adopted English or Anglicized foreign name), with the "everyday" name enclosed in quotation marks. The ID Office stated that, for example, the name on an ID card might be Hanako "Bertha" Fujitani (i.e., the adopted English name) or Juan "John" Ramos (i.e., the Anglicized foreign name). Any name that appeared on an ID card would be required to appear either on a certified birth certificate, a social security card, or a current marriage certificate.

Although it was our opinion that the best practice would be to issue an ID card only in the legal name of an applicant, we acknowledged that the law does not explicitly preclude the issuance of an ID card with the applicant's legal name and "everyday" name.

(05-3709) Confiscation of passport. A man who earned his living doing business overseas complained that his passport was confiscated because the Child Support Enforcement Agency (CSEA) erroneously claimed he was delinquent in his child support payments. The complainant contended that he was current in his payments and possessed documents to substantiate his claim.

In our investigation, we reviewed the pertinent CSEA records and information from the complainant. According to CSEA's records, the complainant owed approximately \$56,000 in past due child support.

We also reviewed the Federal "Personal Responsibility and Work Opportunity Reconciliation Act" that authorized the Secretary of State to revoke, deny, or restrict U.S. passports to individuals who owed more than \$5,000 in past due child support. Title 42, Section 654(31) of the United States Code required CSEA to establish procedures to certify the delinquency and notify the Federal Office of Child Support (OCS) of the debt.

Accordingly, CSEA notified OCS of the complainant's debt, OCS notified the Secretary of State, and the complainant's passport was confiscated.

We learned from the complainant's records that he made some child support payments directly to the custodial parent. However, CSEA did not receive any acknowledgement of these direct payments from the custodial parent, so the complainant was not credited with these payments, which resulted in his child support debt. Subsequently, the custodial parent submitted an affidavit to CSEA which verified her receipt of over \$37,000 in child support directly from the complainant.

We also learned from the complainant's records that there was a consent order from a New Jersey court by which over \$26,000 was transferred from a trust account to the custodial parent for payment of child support. This order was not included in CSEA's records, so the payment was not credited to the complainant's account. We brought the consent order to the attention of CSEA.

Based on the custodial parent's affidavit and the consent order, CSEA recalculated and adjusted the complainant's child support balance, which resulted in the satisfaction of his debt and an overpayment credited to his account. Thereafter, CSEA notified the OCS that the complainant did not have a child support debt, OCS informed the Secretary of State, and the complainant received his passport.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

(05-0759) Confidentiality of faxed correspondence. A man complained that the Regulated Industries Complaints Office (RICO) faxed a letter to him at his place of employment and, as a result, his coworkers could read the letter. The letter informed the complainant that a contractor he hired to perform work at his home was under investigation by RICO for unlicensed activity. RICO did not inform the complainant in advance that the letter would be faxed to his place of employment, resulting in what he perceived as a violation of his privacy because the investigation concerned a personal matter not related to his work. Although the RICO staff member who faxed the letter agreed to henceforth send all correspondence by postal delivery, the complainant asked that the staff member's supervisor be informed.

We contacted the RICO Complaints and Enforcement Officer (CEO) and informed her of the complaint. She indicated that RICO had no written policy regarding faxed correspondence, but would generally not send correspondence by fax. She agreed to follow up with her staff.

Subsequently, the CEO reported that a written policy was adopted, instructing RICO staff to obtain the permission of the recipient before sending correspondence to the recipient's work place by fax. The new policy was sent to all of the RICO offices.

We informed the complainant, who voiced his appreciation of the action taken and stated that it gave him "new faith" in government workers.

DEPARTMENT OF EDUCATION

(05-2185) Charged for parking in a school lot. A woman who ran an adult softball league complained that the principal of a public school planned to charge the league for parking in the school's parking lot. The school was adjacent to a park where the league played its games at night and on weekends. The complainant believed that the lot in which the players parked belonged to the City and County of Honolulu (C&C), not to the school. She stated that whereas the league was never before assessed a fee for parking in the lot, the principal planned to charge a fee of approximately \$650 for the season.

We inquired with the C&C park director, who informed us that the school owned the parking lot in question and that the C&C park did not have a parking lot of its own.

We reviewed Chapter 302A, Hawaii Revised Statutes (HRS), titled "Education." We found that the public use of school facilities was provided for in Section 302A-1148, HRS, which stated in part:

Use of school facilities for recreational and community purposes. All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils. . . . The department may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment.

We also reviewed Title 8, Chapter 39, Hawaii Administrative Rules, titled "Use of School Buildings, Facilities, and Grounds." The rules established three types of users and established fees that varied depending on the type of user. Included as Type II users were "not for profit community educational or recreational activities, youth clubs, athletic teams." The rules provided that Type II users would not be charged a rental fee for use of school facilities, but could be charged a fee for utilities and custodial services if such services were required beyond the school day. The Department of Education (DOE) superintendent was authorized to determine and revise the fees and service charges to recover costs.

We contacted the DOE Office of Business Services (OBS) and asked whether the adult softball league would qualify as a Type II user of the school's parking lot. The OBS staff informed us that the league would be considered a Type II user, and therefore could not be charged a rental fee for use of the parking lot. The OBS staff informed the school principal that the complainant's softball league should not be assessed the planned rental fee.

The rules, however, provided that the school could assess a utilities charge for the parking lot lights that would be turned on during the evenings in which the softball league played its games. Furthermore, if custodial services for the parking lot were deemed necessary, the league could be charged a minimum of two hours for the custodian's work.

We informed the complainant that the league would not be assessed a rental charge for use of the parking lot, but could be assessed a utilities charge for the parking lot lights and a custodial service charge if clean up of the parking lot became necessary. The complainant was concerned that the league could be charged custodial fees for clean up of trash left in the parking lot by park users other than the league's players. We acknowledged that this could become an issue, but felt it would need to be addressed on a case-by-case basis. We invited the complainant to contact us again in the future should a problem arise.

(05-3215) Reimbursement of educational expenses incurred by special needs student. The father of a 6-year-old boy with Mosaic Down Syndrome complained that the Department of Education (DOE) refused to provide full reimbursement of his expenses for tuition to a private school and for services from a private speech therapy company. The total reimbursement sought by the complainant amounted to more than \$35,000, but the department issued only one check for \$2,990.

The complainant reported that the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, conducted a hearing regarding the appropriateness of the placement of his son in the private school and that the hearing officer's decision was in his favor.

We contacted the hearings office and obtained a copy of the decision. We found the hearings officer determined that under the requirements of the Individuals with Disabilities Education Act (Title 20, Chapter 33, United States Code), the complainant was entitled to reimbursement for the costs of his son's attendance at the private school and for the speech therapy that he received. However, the complainant was responsible for providing the DOE with appropriate documents substantiating such costs.

The complainant claimed that the reimbursement was denied because the payments he made to the school and speech therapy company were drawn from his parents' checking account. He believed the DOE determined that he personally did not make any payments and therefore refused to reimburse him.

We contacted the DOE Special Education Office (SEO) and learned that the complainant was mistaken as to the reason he was not reimbursed.

The office staff explained that in accordance with DOE's routine operational procedures, they required copies of the cancelled checks so they could verify the payments made to the private school and the speech therapy company. The complainant had already been reimbursed \$2,990 because he submitted cancelled checks which verified payments in that amount. Although the complainant submitted single-page statements from both the school and the speech therapy company that purported to list all payments he made, the office determined that the statements were inadequate and that the most direct proof of payment would be copies of the cancelled checks.

We believed it was reasonable for the department to require that the complainant provide the most direct proof of payment in order to receive reimbursement. Thus, we advised the complainant to submit copies of the cancelled checks. He stated, however, that his bank would assess a charge of \$6 for each copy of a cancelled check and he did not want to incur such an expense. Upon review of the statements from the school and speech therapy company, we counted 34 checks by which the complainant made payments. At \$6 per copy, the total charge for copies of the 34 checks would exceed \$200.

We informed the SEO of the complainant's reason for not submitting copies of the cancelled checks and asked whether bank statements or carbon copies of the checks would suffice. The office staff informed us that the bank statements would not suffice and rejected the notion of carbon copies of the checks because such copies could be easily altered. The staff reported that it was carrying out a requirement of the DOE Office of Business Services (OBS) from which it was not authorized to deviate.

We brought the matter to the attention of an administrator of the OBS. We explained that the complainant would incur a substantial cost to obtain copies of the cancelled checks and asked whether the statements submitted by the private school and the speech therapy company listing all payments received from the complainant would suffice as documentary evidence in support of reimbursement. The administrator acknowledged that the statements might suffice if the department could independently verify the information in the statements. He assigned staff to seek such verification from the school and speech therapy company.

Subsequently, the administrator informed us that his staff was able to verify the payments listed in the statements with the school and the speech therapy company. On that basis, the administrator authorized reimbursement to the complainant.

Thereafter, the complainant happily informed us that he received full reimbursement from the department.

(05-4218) Denial of request for leave sharing. A Department of Education (DOE) employee suffering from an illness submitted a sick leave application to cover her absence from work. However, the employee did not have any sick leave credits available so her sick leave request was denied. Because the employee also did not have any vacation leave credits, her absence was deemed to be leave without pay. A coworker was willing to donate sick leave credits to her, but the school told the employee that the leave sharing program was not available to her. The employee complained to our office.

We reviewed Section 78-26, Hawaii Revised Statutes (HRS), which authorized the chief executive of a jurisdiction to establish a leave sharing program to allow employees to donate leave credits to other employees within the same jurisdiction. We also reviewed Title 14, Subtitle 1, Chapter 8.1, Hawaii Administrative Rules (HAR), titled "Leave Sharing Program Requirements." The leave sharing program was established to allow employees to ease the burden of a fellow employee who would otherwise need to take leave without pay to recover from a serious personal illness or injury or to care for a family member with a serious personal illness or injury.

Chapter 8.1, HAR, required each department to administer the leave sharing program for its respective employees. We contacted the DOE's human resources office and were informed that the information the complainant received from the school was erroneous. The DOE had a leave sharing program and the human resources office assured us that it would send a leave sharing application to the complainant.

We noted that the rules established a deadline for an employee to apply for shared leave. Although the deadline in the complainant's case had passed, the human resources office informed us that it would consider the complainant's application because the delay was caused by the erroneous information the complainant received from the school.

We informed the complainant of the requirements of Chapter 8.1, HAR. We noted that she could apply for leave sharing with the department's human resources office, but would have to satisfy certain requirements to be eligible. Among the more notable requirements, an employee must have at least six consecutive months of creditable service in a position with at least 50 percent full-time equivalency. Also, the leave must be for a personal illness or injury, not covered under Chapter 386, HRS (the workers' compensation program), and the employee must exhaust all paid leave and wage loss replacement benefits.

DEPARTMENT OF HEALTH

(05-1913) Delay in payment to motor vehicle dealer. In 1993, the Legislature enacted the “Hawaii Public Procurement Code,” Chapter 103D, Hawaii Revised Statutes (HRS), to promote economy, efficiency, and effectiveness in the procurement of goods and services. The Legislature declared that it was the State’s policy to ensure fair and equitable treatment of all persons who deal with the procurement systems of the State and counties and to encourage full and open competition. The Legislature stated that with competition, the State and counties would benefit economically with lowered costs.

Accordingly, Section 103D-302, HRS, required procurement contracts to be awarded by competitive sealed bidding, with certain exceptions. One of the exceptions to the competitive bidding requirement was for small purchases, which were defined as purchases of less than \$25,000 of goods, services, or construction. Section 103D-305, HRS, provided that small purchases shall be made in accordance with rules designed to ensure administrative simplicity and as much competition as practicable. Section 3-122-74, Hawaii Administrative Rules (HAR), provided that small purchases subject to Section 103D-305, HRS, did not require public notice or public bid openings.

Three months after delivery of two motor vehicles to a Department of Health (DOH) agency, a motor vehicle dealer complained that he was not paid. The dealer submitted a request for payment of over \$25,000 a few days after delivering the vehicles.

We inquired with the DOH Administrative Services Office (ASO) and were informed that payment was delayed because a violation of the State procurement code may have occurred. We learned that the initial price quoted by the dealer for the two vehicles was \$23,988. Since that amount was less than \$25,000, the DOH agency did not make the purchase through the competitive bidding procedure. However, after delivering the two vehicles, the dealer submitted an invoice seeking payment of \$25,719. The dealer stated that the \$23,988 represented the agreed upon *net* prices of the vehicles, and did not include charges for tax, license, and document fees. The dealer noted that in a previous correspondence, it was stated that the quoted price “assumes NO TAX and NO LICENSE FEES.” The agency maintained, however, that \$23,988 was supposed to be the final price.

The ASO informed us that it contacted the State Procurement Office (SPO), which administered Chapter 103D, HRS, about the possible violation. We also contacted the SPO and learned that it was reviewing several issues brought on by this case, including the amount to which the dealer was entitled.

We contacted the DOH agency and obtained copies of the purchase agreements for the two vehicles. We noted that the purchase prices in the two agreements totaled \$25,719, and that agency personnel signed the two agreements on the date the vehicles were received by the agency. Thus, agency personnel knew or should have known, at the time they accepted delivery of the vehicles from the dealer, that the total price of the two vehicles was \$25,719, and not \$23,988. As the final purchase price exceeded \$25,000, it appeared that the competitive bidding process should have been utilized. We shared copies of the purchase agreements with the SPO.

Subsequently, pursuant to Chapter 131, HAR, titled "Procurement Violations," the ASO submitted a "Report of Findings and Corrective Actions" to the SPO to cure the violation and request after-the-fact approval of payment. Upon review, the SPO approved the after-the-fact payment with an admonishment to the DOH that proper procurement training must be instituted and written policies and guidelines distributed to the agency personnel to prevent future violations.

The dealer finally received payment of \$25,719 nearly five months after delivery of the vehicles to the agency. We confirmed with the DOH and the SPO that the dealer would be paid interest on the amount owed, as provided by State law, amounting to \$503.

DEPARTMENT OF HUMAN SERVICES

(04-4719) Placement of name at bottom of housing waiting list.

When there were more applicants than units available in public housing projects, the names of applicants were placed on a waiting list according to the date of their application. Additionally, applicants were given preference if they fell into one of three categories. First priority went to applicants who were involuntarily displaced, victims of domestic violence, and homeless families who were residing in transitional shelters for the homeless and who were in compliance with a social service plan. Applicants who were living in substandard housing or who were paying more than 50 percent of their annual income for rent received second priority. Third priority went to veterans and veterans' surviving spouses; residents who lived and/or worked in the jurisdiction (by county); families who contributed to meeting the corporation's income targeting requirements; victims of reprisals or hate crimes; and working families and those unable to work because of age or disability.

An applicant in a priority preference group, regardless of standing on the waiting list, was considered before applicants who were in a lower priority preference group or who did not qualify for any preference. Within each priority preference group, applicants were considered in the order of the dates of their applications.

In the course of investigating a complaint about the Housing and Community Development Corporation of Hawaii (HCDCH), we learned that an applicant for a public housing project on Oahu could lose preference and priority for a period of one year and be placed at the bottom of the waiting list if the applicant accepted an offer for a project but later changed his or her mind and declined the offer after HCDCH started the administrative process of placing the applicant in the project.

Chapter 190 of Title 15, Hawaii Administrative Rules (HAR), titled "Federally-Assisted Housing Projects," governed the administration of the particular public housing project. Section 15-190-35, HAR, stated:

Loss of preference. An applicant who declines three offers of a housing unit, without just cause, or who voluntarily requests cancellation of the application after declining an offer, shall lose all preferences and priorities for a period of twelve months from the date the offer was declined or from the date of the request for cancellation.

Section 15-190-39(d), HAR, stated:

Upon refusal of three offers, without good cause, the applicant's name will be cancelled from all waiting lists on which the applicant's name has been placed.

These rules appeared to apply only to an applicant who at the outset declined three offers of a housing unit without good cause or who requested cancellation of the application after declining an offer. The rule did not appear to apply to an applicant who accepted an offer of a housing unit, but who then subsequently declined the unit after the placement process was begun.

Since this practice appeared to implement an agency policy that affected the rights of the public and procedures available to the public, we asked HCDCH whether the practice needed to be promulgated as an administrative rule, as required by Chapter 91, Hawaii Revised Statutes, titled "Administrative Procedure."

HCDCH subsequently informed us that rather than promulgating a rule, it decided to terminate the practice. If an applicant accepted a unit in a public housing project, but later changed his or her mind without good cause, that change of mind would be treated as one of the three declines of an offer without good cause that applicants were afforded under the rule. Also, if the refusal or change of mind was for good cause, it would not count against the applicant. As a result, an applicant who accepted a unit in a public housing project but later changed his or her mind without good cause, would no longer automatically lose his or her preference and priority and would not be placed at the bottom of the waiting list.

As the termination of the practice brought the HCDCH into compliance with the existing rules, we closed the case.

(05-1392) Delay in receipt of food stamps. On the eleventh day of a month, a woman complained that she did not receive her family's food stamp benefits for that month. She was required to submit a completed monthly eligibility report by the seventh day of the preceding month and acknowledged that she was a day late in submitting the report. However, since she normally received her food stamp benefits on the third day of a month, she felt that an eight-day delay was excessive.

We reviewed Title 17, Chapter 650, Hawaii Administrative Rules (HAR), titled "Reporting Requirements," and Chapter 17-681, HAR, titled "Issuance of Benefits." The rules established a deadline of the seventh day of each month for the filing of a monthly eligibility report and provided that

when the deadline was missed, a notice should be sent to inform the recipient that benefits would be discontinued. However, the rules also provided for an extended filing period of ten additional days from the date that the notice was sent. If the report was then filed within the extended filing period, the department was required to provide the recipient with benefits not later than ten days after the normal receipt date.

On the twelfth day of the month, we contacted the complainant's worker, who informed us that notice of discontinuation of food stamps was sent to the complainant as soon as she failed to file her monthly eligibility report on time. The worker verified that the complainant filed the report within the ten-day extended filing period, but maintained that the department had until the end of the month to provide her benefits. We informed the worker that according to the department rules, the complainant should receive benefits no later than the tenth day following her normal receipt date, which in her case would have been the thirteenth of the month. As the worker was not familiar with these rules, she said she would consult her supervisor.

The next day, the worker informed us that our reading of the rules was correct. Because the complainant filed her monthly eligibility report within the ten-day extended period, she was entitled to receive food stamp benefits by the thirteenth of the month. The worker reported that she had already processed the complainant's food stamps, which would be available to her as soon as possible, which was the fourteenth, or a day late.

We informed the complainant, who was pleased with the action taken.

(05-1842) Child care payments. A federally funded program provided payments to cover child care expenses incurred by "caretakers" (parents or other persons responsible for a child) to enable the caretakers to work, go to school, or participate in a job training program. The Department of Human Services (DHS) previously contracted with a private company to administer the program. However, the DHS terminated its contract and the program's duties were transferred to DHS employees.

Subsequent to the assumption of the program's duties by the DHS, a mother of six children complained that she did not receive the correct amount of child care payments and thus was unable to pay in full the person who provided care for her children in her absence. The complainant stated that the payments were erratic as they were between 50 to 75 percent less than what she previously received from the private contractor.

We contacted the complainant's caseworker and her supervisor and asked for an explanation of the irregular monthly payments. After reviewing the complainant's file, the supervisor informed us that computational errors were made, but the errors were rectified and the complainant was correctly

paid. Although we obtained an explanation of the discrepancies and the resolution, the explanation seemed ambiguous.

At our request, the supervisor audited the complainant's file for the period in question. Upon its completion, we met with the supervisor and caseworker to review the results of the audit. The audit revealed that, over the course of eight months, the department overpaid the complainant twice, underpaid her four times, and correctly made payments twice. The net result was an underpayment of \$834. The department corrected its error by issuing a check to the complainant for that amount.

The supervisor noted that the payments in this case were particularly difficult to calculate because the child care was for six children who ranged in age from 3 to 12 years old. While the youngest child stayed at home, the other children attended different schools that operated on different schedules. Thus, at any given time, there were differences in the type of payments for which each child was eligible (i.e., before school, after school, regular, or evening). For example, on a particular day while one child was eligible for payments at the after school care rate, another child had the day off from school and was eligible at the regular rate. The caseworker constantly compared school calendars to ascertain the correct rate for each of the five children in school. The mother also worked varying shifts, which resulted in varying hours for the child care that was required. The worker needed to determine the correct rate of reimbursement based on each child's school schedule, in conjunction with the mother's varying work schedule.

The complainant confirmed her receipt of the \$834 payment and was very thankful for our assistance.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

(05-1530) Clothes do not make the man. An unemployed man, who was dressed in a pair of shorts and a T-shirt, went to a State employment office to seek a job referral. He possessed an accounting background and was interested in a supervisory accounting position that was available with a private employer. When he asked for a referral to the employer, an employment office staff member refused because she felt he was not suitably dressed for the position. The man complained that how he was dressed should not have precluded his referral to the employer because the employer would not be holding the job interview that day, and he would be able to dress appropriately later for the interview.

We spoke with the supervisor of the employment office, who informed us that the office acted as a screening agent for employers. The office previously received complaints from employers about the manner in which some applicants were dressed. Thus, applicants would be referred to employers only if they came to the employment office appropriately dressed for a job interview. The supervisor believed that if the applicants were dressed appropriately when they came to the employment office for a job referral, even if they were not referred to an employer that same day, it was an indication that they would dress appropriately for a job interview at a later date. Notice of this practice was posted in the employment office, but the practice was not promulgated as a rule nor published.

We questioned how applicants would know on their first visit to the employment office that they had to dress as if they were going to a job interview. We also noted there was no assurance that applicants would be sent to a job interview the same day that they went to the employment office. Finally, we questioned the supervisor's assumption that applicants who were appropriately dressed when they went to the employment office would dress appropriately for a job interview at a later date, and that applicants who were not appropriately dressed when they went to the employment office would not dress appropriately for a later job interview.

As we were not satisfied with the supervisor's answers to these questions, we spoke with the Workforce Development Division Administrator. The administrator informed us that the division's operational procedures did not require persons seeking a job referral to be dressed in any particular fashion. The administrator did not believe that staff should refuse job referrals to applicants based on the way they were dressed. She subsequently met with staff, including the supervisor of the employment office in question, and reminded them that how an applicant is dressed should not determine whether he or she is given a job referral.

We informed the complainant of the outcome.

DEPARTMENT OF LAND AND NATURAL RESOURCES

(05-2098) Refund of facility key deposits. A woman obtained a 30-day temporary mooring permit for her vessel at a small boat harbor under the jurisdiction of the Department of Land and Natural Resources (DLNR). She was required to deposit \$25 with the department to receive a key to access harbor facilities, such as areas beyond the security gates and restrooms. Subsequently, she obtained a regular mooring permit and was required to deposit \$10 for the same key.

The woman complained that the department did not refund to her both the \$25 and \$10 deposits after she terminated her regular mooring permit and returned the gate key.

We inquired with the harbormaster about this matter. According to the harbormaster, the complainant received a refund of the \$25 deposit when she terminated the temporary mooring permit and obtained the regular mooring permit. The harbormaster provided us a copy of a receipt that the complainant signed when she received the refund. He also explained that she was not entitled to the \$10 refund because she returned the key three months after she terminated her regular mooring permit.

We reviewed the pertinent DLNR rules. The rules established facility key deposits of \$10 if a use permit is valid for more than 30 days and \$25 if a use permit is valid for 30 days or less. Furthermore, Section 13-234-32(c), Hawaii Administrative Rules, stated:

The key deposit shall be forfeited in the event the permittee does not return the key to the department on or before the termination of the use permit, . . . (Emphasis added.)

We found that the complainant was notified in writing of the deposit forfeiture rule at the time the facility key was issued to her.

We informed the complainant that she received a refund of the \$25 deposit and explained that according to the forfeiture rule, she was not entitled to a refund of the \$10 deposit. The complainant did not recall receiving the \$25 refund, so we sent her a copy of the receipt that she signed when she received it.

DEPARTMENT OF PUBLIC SAFETY

(04-5012) Garnishment of inmate's account. An inmate complained that his account was garnished to cover the cost of postage to return to the sender two cashier's checks that were sent to the inmate but which were rejected by the facility for noncompliance with the facility's monetary donation policy. The checks were returned to the sender by certified mail and the total amount garnished from the inmate's account was \$5.40. The inmate complained that this garnishment was not allowed by law. He filed grievances, but his grievances were denied at all three steps of the procedure.

We contacted the facility and confirmed that the complainant's account was garnished to return the checks to the sender.

We reviewed Chapter 353, Hawaii Revised Statutes (HRS), titled "Corrections." Section 353-22, HRS, stated:

Earnings exempt from garnishment, etc. No moneys earned by a committed person and held by the department, to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except as provided for in section 353-22.5. (Emphasis added.)

Section 353-22.5, HRS, prioritized the causes of action or claims for which garnishment was allowed, and stated in part:

Garnishment to cover nonbudgeted costs. All moneys received by windfall or earned by a committed person shall be subject to garnishment, levy, or any like process of attachment by the director for a cause of action or claim against the committed person in the following order of priority:

- (1) Restitution to victims;
- (2) Child support payments by order of the court;
- (3) Replacement costs for any facility damage that may have been caused by the committed person and all other costs associated with the facility damage; and
- (4) Reimbursement for the extraordinary cost of photocopying or postage which has been advanced by the department for litigation purposes.

Upon inquiry with the business office at the facility that garnished the

complainant's account, we were informed that the facility's written policy authorized the garnishment. All inmates at the facility were reportedly informed of the policy provisions.

We did not believe, however, that a facility had the authority to adopt a policy that was contrary to law. Therefore, we brought the matter to the attention of an administrator at the Department of Public Safety (PSD). The administrator supported the facility's garnishment of the complainant's account, noting that the facility complied with its policy.

Therefore, we contacted the deputy attorney general who served as legal counsel to the PSD. We asked the deputy to review the issue to determine whether the garnishment of the complainant's account in this instance was in compliance with Sections 353-22 and 353-22.5, HRS.

Upon review, the deputy attorney general concurred with our interpretation of the law and informed us that the complainant's account would be reimbursed the amount that was garnished from his account. Thereafter, we verified with the facility business office that \$5.40 was credited to the complainant's account.

We inquired further with the PSD to ensure that all facilities were informed of this case. We learned that instructions were issued to all PSD wardens describing the garnishment of the complainant's account and stating that, "Henceforth, facilities are not authorized to garnish an inmate's account for postage."

We advised the complainant of the corrective action taken.

(05-1916) Unable to obtain shoes. An inmate complained that he was unable to obtain athletic shoes. He suffered from a medical problem with his right foot since childhood and was unable to use the rubber "flip flop" footwear that the facility issued to all inmates; instead, he needed to wear shoes. Although the facility allowed inmates to purchase white athletic shoes, he did not have money to make such a purchase. He claimed that although the medical staff issued a memorandum authorizing him to wear shoes at all times, the staff would not purchase the shoes for him, so he still had no shoes to wear.

The complainant arrived at the facility with his own athletic shoes, which were blue. However, the facility allowed inmates to only use shoes that were predominantly white, as colored shoes could indicate gang affiliation. The complainant submitted a written request to the warden, asking to be allowed to use his blue shoes, but did not receive a response.

We contacted the facility medical staff, who confirmed that the

complainant suffered from a foot problem and that authorization was granted to allow him to wear shoes at all times. By contrast, other inmates were allowed to wear shoes only during recreation or movement within the facility. The medical staff informed us that the facility health care program lacked the funds to purchase shoes for an inmate, even though an orthopedic problem might require the inmate to wear shoes.

We contacted the warden's office regarding the lack of response to the complainant's request to wear his blue shoes. We learned that the issue was referred to the chief of security (Chief). We discussed the matter with the Chief who, after due consideration, decided not to grant an exception to allow the complainant to wear his blue shoes.

In our review of department policies, we found that Policy No. COR.10.1G.11, titled "Prostheses," established a procedure that allowed an inmate who had insufficient funds to purchase a prosthetic device. A prosthetic device was defined, in part, as an artificial device to compensate for a defective physical function. The inmate was required to sign a purchase agreement authorizing the withdrawal of funds from his account to pay for the prosthesis on a gradual basis. Whenever the inmate's account balance exceeded \$10, the excess amount would be applied toward payment of the prosthesis.

Since shoes were deemed to be medically necessary for the complainant, we inquired with the medical staff as to why the inmate could not be allowed to purchase shoes through the prosthesis purchase agreement procedure. The staff met to consider the matter and decided to allow the complainant to purchase the shoes in this manner. The inmate was informed of the decision and happily agreed to buy the shoes through the purchase agreement procedure.

(05-2856) Required to complete program that he already completed. An inmate at a Hawaii correctional facility complained that he was required to complete a Department of Public Safety (PSD) residential substance abuse treatment program. He contended that he already completed a similar program at a mainland correctional facility.

In our investigation, we spoke with the Hawaii facility staff, who maintained that the inmate in fact did not complete the program on the mainland. Moreover, the mainland program was not considered to be a residential treatment program equivalent to the PSD program.

We contacted the PSD's substance abuse office and learned that the mainland facility's program was recently deemed the equivalent of the PSD residential treatment program. Thus, the Hawaii facility staff erred when they informed the inmate that the mainland program was not the equivalent of the

PSD residential treatment program. However, the requirement that the inmate complete the PSD residential treatment program was determined to be reasonable because after completing the mainland program, the inmate became involved with drugs upon his return to Hawaii and was deemed to have suffered a relapse.

When we provided the inmate with this information, he argued that he should be considered for an accelerated version of the PSD residential treatment program. He reasoned that if the Hawaii facility staff did not err in concluding that the mainland program was not an equivalent residential treatment program, he would not have been referred to the PSD residential treatment program in the first place. Instead, he would have been considered for the accelerated program.

We inquired further with the Hawaii facility staff and were informed that the inmate's program would be reconsidered if his contention that he completed the mainland program was verified. We asked PSD staff responsible for monitoring the contract with the mainland facility to verify that the inmate completed the program there. Subsequently, the contract monitor reported that the inmate did not complete the mainland program. Thus, the Hawaii correctional facility did not consider the inmate for the accelerated program and he remained in the residential treatment program.

(05-3641) Mail not processed in a timely manner. An inmate at a correctional facility complained that incoming mail was not delivered to inmates and outgoing mail was not picked up by staff in a timely fashion. The inmate alleged that facility staff was not processing mail for several days at a time.

We reviewed the facility's policies and procedures, which stated that incoming and outgoing mail was to "be processed daily, Monday through Friday, except for official holidays." In our follow up, the facility admitted that due to staff shortages, there were occasions when the mail was not being picked up or delivered on a daily basis.

We spoke to the warden about the situation. He thereafter issued a memorandum reminding staff that it was "imperative that all inmate mail is processed (collected and delivered) on a daily basis."

The inmate was notified of the result of our investigation.

(05-4072) Required parole form not available. In Hawaii, the court sentences an inmate to a maximum term of imprisonment and the Hawaii Paroling Authority (HPA) fixes the minimum term that the inmate must serve. The HPA is required by law to conduct a hearing within six months of the

inmate's commitment to the custody of the Department of Public Safety (PSD) and, based on the hearing, fix the inmate's minimum term of incarceration. At a later time, after meeting certain conditions, an inmate may request that the HPA reduce its previously fixed minimum term.

The procedure governing the request for reduction of an inmate's minimum term was described in HPA rules. The procedure required an inmate to submit his or her request on forms approved by the HPA. Section 23-700-27, Hawaii Administrative Rules, stated in part:

Request for reduction of minimum term of imprisonment; procedure. (a) An inmate, to initiate a request for reduction of minimum term of imprisonment . . . must complete and transmit to the Authority a copy of an Authority approved form

(b) When the inmate qualifies for reconsideration of previously fixed minimum, the Authority or its designee shall conduct an investigation. The Authority shall request written information from the Department of Public Safety and the inmate on Authority approved forms. The forms shall be completed and returned to the Authority within sixty days of their receipt. If the inmate fails to return the form within the designated time, the Authority shall discontinue consideration of the request and inform the inmate of its actions.

The form to initiate the request for reduction of minimum term, referred to in Subsection (a), was designated Form 10029. The form to provide written information, required from the inmate in Subsection (b), was Form 10031.

An inmate complained that he was unsuccessful in his attempts to obtain the HPA-approved forms to request a reduction of his minimum sentence. He was unable to obtain the forms from facility staff and from the facility law library. We inquired with a supervisor at the facility who reported that the forms should be available at the facility law library.

As the HPA rules seemed to imply that the HPA would furnish the inmate with the approved forms, we also inquired with HPA staff. The HPA informed us that it already met with facility staff and discussed the procedure. Subsequently, the PSD issued a memorandum to library staff at all facilities, instructing that Forms 10029 and 10031 be made available to inmates at all facility law libraries.

We advised the complainant that he would be able to obtain the required forms from the facility's law library.

(05-4483) Multiple charges for the same misconduct. An inmate

complained that she was charged with rule violations for engaging in a sexual act, unauthorized contact with another inmate, and refusing to obey an order because an adult corrections officer (ACO) observed her with another inmate in the shower. The adjustment committee (AC) that presided over the disciplinary hearing found the complainant not guilty of engaging in a sexual act but guilty of refusing to obey an order and unauthorized contact with another inmate. The complainant denied being in the shower with the other inmate and contended that she should not have been found guilty of any of the charges.

In our investigation, we reviewed the investigation and AC reports and spoke with the correctional facility staff. The chairman of the AC informed us that the complainant violated a "standing order" prohibiting inmates from showering with other inmates. As such, she was found guilty of refusing to obey an order. The chairman also informed us that the complainant was found guilty of the unauthorized contact charge because she was in the shower with the other inmate.

Because the two charges stemmed from the same conduct--being in the shower with another inmate--we believed that it was not fair to find the complainant guilty of both charges. The sanction for each charge, 14 days in disciplinary segregation, ran consecutively so the complainant was required to spend a total of 28 days in segregation.

We explained our concern to the AC chairman and recommended that one of the charges be dismissed. The AC chairman agreed that the complainant should not have been found guilty of both charges and dismissed the unauthorized contact charge. Thus, the complainant would have to spend only 14 days in segregation for disobeying an order. We obtained a copy of the AC chairman's memo to the complainant, verifying the modification of the original AC disposition.

We thereafter advised the complainant of the dismissal of one of the charges, but that we also believed it was reasonable for the AC to have found her guilty of disobeying an order based on the ACO's report.

DEPARTMENT OF TAXATION

(05-4285) Sympathy for a bereaved taxpayer. A man complained that the Department of Taxation (TAX) was unsympathetic toward his personal situation. After his father passed away, he served as the trustee of his father's estate. As he lived in Arizona, he had difficulty obtaining information on his late father's assets and liabilities from sources in Hawaii. He said he encountered problems due to the time zone difference between Hawaii and Arizona, as well as unresponsive agencies in Hawaii.

The complainant ended up filing his late father's general excise tax about 70 days after the deadline, and TAX assessed him a penalty and interest of \$36. The man paid the \$36 but felt that TAX should have taken into account his circumstances and given him due consideration.

According to Section 231-3(12), Hawaii Revised Statutes, TAX is permitted to waive the late payment penalty and interest in certain circumstances. In the case of a deceased taxpayer, TAX considered the deceased taxpayer's filing history, whether the taxpayer previously paid on time, and whether he or she had any other delinquency. A late taxpayer's surviving spouse or child could initiate a request for the waiver of the penalty and interest.

We contacted TAX and after researching the filing history of the complainant's late father, TAX decided to waive the penalty and interest. Subsequently, a refund of the penalty and interest payment was issued to the complainant.

We informed the complainant, who wrote to express his appreciation of the resolution to his complaint.

DEPARTMENT OF TRANSPORTATION

(05-3752) Not allowed to sleep overnight at a State harbor. A man complained that he was confronted by security officials on the premises of a pier in Honolulu Harbor and asked to leave the area. This occurred in the early morning hours after he laid down an air mattress on which to sleep.

According to law, the Department of Transportation (DOT) has jurisdiction over State commercial harbors, such as Honolulu Harbor. Furthermore, Section 266-2(a)(1), Hawaii Revised Statutes, stated that the department shall:

Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same.

We conducted an onsite visit of the pier. We observed a sign posted at the entrance to the pier area which stated: **“NO PERSONS OR PRIVATE VEHICLES ALLOWED ON STATE PIERS UNLESS AUTHORIZED BY HARBOR MASTER.”** Security officials at the pier informed us that the public is generally allowed on the premises for legitimate business purposes. However, after the terrorist attacks upon the United States on September 11, 2001, security was increased in commuter and commercial transit centers. Thus, sleeping on the Honolulu Harbor premises was not allowed.

We notified the complainant that the department acted within its authority in asking him to leave the premises and that we found such action to be reasonable.

UNIVERSITY OF HAWAII

(05-2160) Violation of procurement and civil service laws in securing flood cleanup contract. A man complained that the University of Hawaii (UH) did not follow the State's procurement laws when it entered into a contract with a company to provide cleanup services following a flood at the UH Manoa campus on October 30, 2004. Specifically, he contended that the competitive bid process under the Hawaii Public Procurement Code (Code), Chapter 103D, Hawaii Revised Statutes (HRS), was bypassed and that the State's prevailing wage rate requirements for the contractor's employees were ignored. Chapter 103D, HRS, required procurements of \$25,000 or more to be awarded by competitive sealed bidding. The cost of the work at the UH far exceeded that amount.

The complainant brought his concerns to the attention of the legal affairs office at the UH, but was not satisfied with the response he received.

The flood from the heavy rains caused extensive damage to the contents of several buildings at the UH. The damage was considered a threat to the health, welfare, and safety of the public and demanded an emergency cleanup. After receiving at least two unsolicited proposals from companies for the cleanup work, on November 4, 2004 the UH contracted with the company that submitted the lowest proposal to provide flood cleanup services at four of the affected buildings. The UH did not follow the Code procedure for awarding contracts on the basis of competitive bidding.

In determining the appropriateness of the UH entering into the contract without issuing an invitation for bids, we reviewed the applicable laws at the time the contract was executed. We also inquired with the UH Director for Procurement and Real Property Management as to the procedures for emergency procurement.

We found that the UH is not required to comply with the Code, pursuant to Chapter 304, HRS, titled "University of Hawaii." Section 304-4(d), HRS, authorized the UH Board of Regents to develop procurement policies and procedures not subject to the Code and stated:

The board shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the board is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver

of the exemption of chapter 103D and shall not subject the board to any other provision of chapter 103D. (Emphasis added.)

We also reviewed the UH's Administrative Procedure No. A8.260, titled "Emergency Procurement," which stated in part:

Normal procurement procedures may be suspended for the purchase of goods, services, or construction in emergency situations. Emergency procurement may be utilized only to purchase that which is necessary to cover the emergency; subsequent requirements shall be obtained using normal purchasing procedures.

For this purpose, emergency procurement shall be considered only when the following conditions exist:

- a. A situation exists which creates a threat to public health, welfare, or safety; and
- b. The existence of such condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods, and the lack of such goods, services or construction would seriously threaten the continued function of the University or its programs and operations, the preservation or protection of property, or the health or safety of any person.

We concluded that because the flood created an emergency situation, it was reasonable that the UH did not follow the public bidding process in the Code. Instead, the UH properly followed its administrative procedures for procurement of services in emergencies, without issuing an invitation for bids.

As to whether the contractor's employees were required to be paid the prevailing wage rate for such work, we reviewed Chapter 103, HRS, titled "Expenditure of Public Money and Public Contracts." Section 103-55, HRS, provided that a contractor's employees shall be paid at wages or salaries not less than the wages paid to public officers and employees for similar work. However, the section also provided that the wage requirement did not apply to contracts to perform services under certain paragraphs of Section 76-16, HRS, including Section 76-16(2), HRS.

We reviewed Chapter 76, HRS, titled "Civil Service Law." Section 76-16(2), HRS [which was renumbered by Act 128, Session Laws of Hawaii 2004, as Section 76-16(b)(2)] stated in part:

The civil service to which this chapter applies shall comprise

all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

. . . .

- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. (Emphasis added.)

We found that the Director of the Department of Human Resources Development issued a Certificate of Exemption From Civil Service on November 15, 2004 for the contract in question. As such, the contractor was not required to comply with Section 103-55, HRS, in the payment of wages to its employees.

We contacted the complainant and advised him of our findings. Upon his request, we provided the complainant with copies of the applicable laws and administrative procedures.

COUNTY OF HAWAII

(04-2575) Treatment by ambulance paramedic after automobile accident. A woman complained that she was left behind by an ambulance at the scene of an automobile accident. She was a passenger in one of the cars involved in a two-car accident. A paramedic approached her to see if she was in need of medical attention. Because she reported that she felt all right at the time, no medical attention was given and she was left sitting on the side of the road. After a while, she did not feel well, but no one returned to check on her condition. After the ambulance left with the other victims, the police offered to call another ambulance. Instead, she decided to go to the hospital with a friend who arrived at the scene after the accident.

The Emergency Medical Services System (EMSS), Department of Health, oversees the ambulance program. In the County of Hawaii, where the accident occurred, the Fire Department was responsible for the provision of ambulance services. Therefore, the complainant was advised to submit a written complaint to both the Fire Department and the EMSS.

The Fire Department later reported that there was no record that the complainant was treated. As a result, the Fire Chief issued a memo which stated that:

[A]mbulance unit personnel shall make a diligent effort to assess, and document the assessment or patient refusal of assessment and treatment, for all parties directly involved in a multi-victim incident. . . .

The last fire unit leaving the scene should double-check that the involved parties are still refusing assistance; inform a police officer (if present) of the situation; and request assistance if needed later. This should be documented in the narrative section of the . . . Incident Report.

We advised the complainant of the Fire Chief's memo and she expressed satisfaction of the positive outcome.

(05-3658) Lack of notice of hearing. At a regularly scheduled meeting, the Hawaii County Planning Commission conducted a hearing and approved a special permit for a business to operate on land situated in an agricultural district. A man who leased property adjacent to the land in question complained to our office that he did not receive proper notice of the hearing.

We reviewed the Commission rules on this matter. Rule 1, titled “General Rules,” stated in part:

1-4 Meetings.

....

(c) Notice of Regular and Special Meetings.

....

(3) The Commission shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the agenda to such persons at their last recorded address.

Rule 6, titled “Special Permits,” stated in part:

6-5 Public Hearing.

....

(b) Promptly after the Planning Commission’s fixing a date for the public hearing, the petitioner shall mail a notice of the application and hearing to owners of interests in properties within three hundred feet of the perimeter boundary of the affected property and to owners of interests in other properties which the Planning Commission may find to be directly affected by the proposed request.

We contacted staff at the Commission. According to staff, the complainant was not a property owner, nor did he request to have his name placed on the list of persons requesting notification of Commission meetings, so he was not notified of the meeting agenda.

When we asked for the list of names of people who were notified of the hearing in question, Commission staff discovered that not all persons who were required to receive notice may have received such notice. After consulting with its legal counsel, Commission staff decided that the Commission would reopen the public hearing to entertain a motion to rescind the Commission’s initial approval of the special permit. Upon approval of the motion to rescind the permit, the Commission would then conduct a public hearing on the permit application.

The Commission thereafter notified the required parties of the public hearing. Although it was not required to do so, the Commission also notified the complainant of the hearing.

COUNTY OF KAUAI

(05-3191) Invalidation of a foreign driver's license. In the course of investigating a complaint, we learned that the practice of a county driver licensing office, upon the issuance of a Hawaii driver's license to a person who possessed a foreign driver's license, was to invalidate the person's foreign driver's permit or translation document, but not necessarily the actual foreign driver's license.

We reviewed the driver licensing laws in Chapter 286, Hawaii Revised Statutes (HRS), titled "Highway Safety." Section 286-102(c), HRS, stated in part:

No person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses in the person's possession. All licenses so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; . . . a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; . . . No person shall be permitted to hold more than one valid driver's license at any time. (Emphasis added.)

We informed the driver licensing office that the statute required the office to invalidate a foreign driver's license before returning it to the person. The driver licensing staff was not aware that the office was not following the requirements of the law and reported that it would henceforth comply with the statutory requirement.

We also contacted the Motor Vehicle Safety Office (MVSO), Department of Transportation, which supervised driver licensing in all counties. We asked that all counties be reminded of the statutory requirement to invalidate a foreign driver's license when issuing a Hawaii driver's license.

The MVSO notified each county that simply invalidating the international driving permit or translation of the foreign driver's license alone did not comply with the law, and that punching a hole through the foreign driver's license was a proper method to invalidate it.

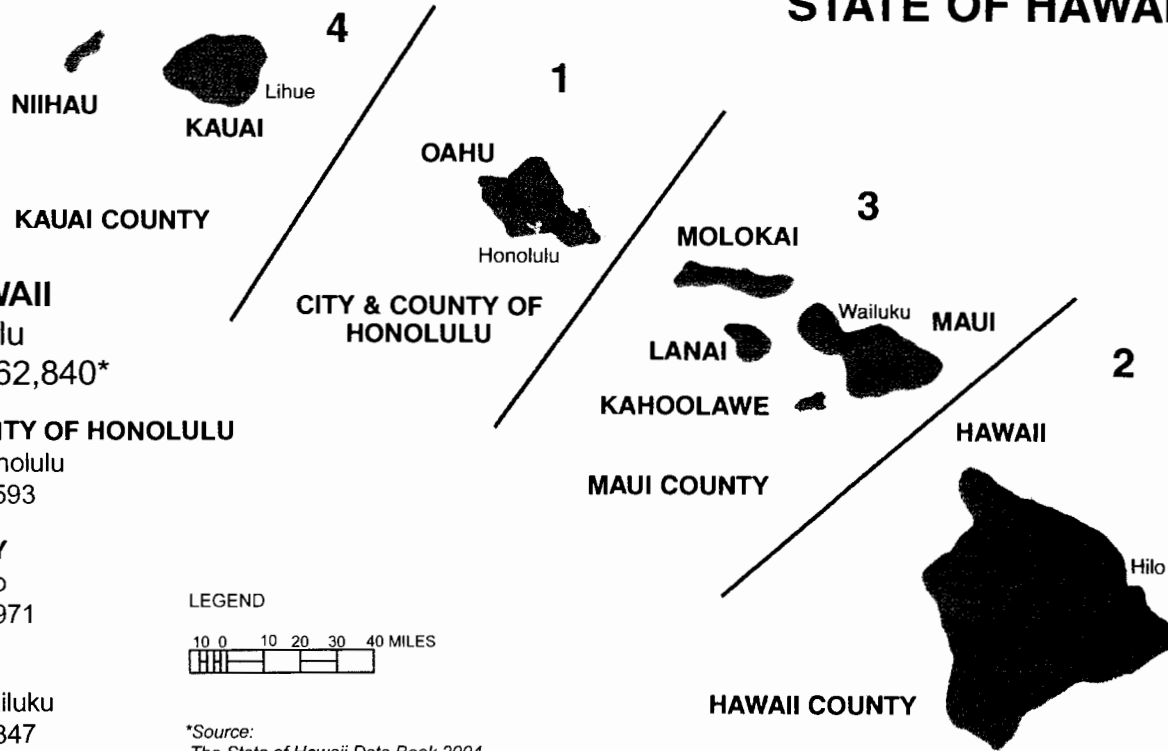
Appendix

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 36, please visit our Web site at www.ombudsman.hawaii.gov and select the “Annual Reports” link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.

STATE OF HAWAII



STATE OF HAWAII

Capital: Honolulu

Population: 1,262,840*

1. CITY AND COUNTY OF HONOLULU

County Seat: Honolulu

Population: 899,593

2. HAWAII COUNTY

County Seat: Hilo

Population: 162,971

3. MAUI COUNTY

County Seat: Wailuku

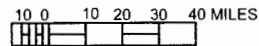
Population: 138,347

4. KAUAI COUNTY

County Seat: Lihue

Population: 61,929

LEGEND



*Source:
*The State of Hawaii Data Book 2004,
A Statistical Abstract, Hawaii State
Department of Business, Economic
Development, and Tourism, Table 1.06,
"Resident Population, by Counties:
1990 to 2004."*