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JUDICIAL WATCH, INC.

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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J. KUBO  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

JUDICIAL WATCH, INC., a foreign  
corporation,

Applicant,

v.

CLYDE W. NĀMU'O, and STATE OF  
HAWAII NATIVE HAWAIIAN ROLL  
COMMISSION,

Respondents.

S.P. 15-1-0059 (JHC)  
(Special Proceedings)

REPLY IN SUPPORT OF APPLICATION  
FOR AN ORDER ALLOWING INSPECTION  
OF PUBLIC RECORDS OF THE STATE OF  
HAWAII NATIVE HAWAIIAN ROLL  
COMMISSION FILED FEBRUARY 18,  
2015; DECLARATION OF MICHAEL A.  
LILLY; EXHIBITS "I" & "J"; CERTIFICATE  
OF SERVICE

HEARING:

DATE: June 3, 2015

TIME: 9:00 a.m.

JUDGE: Hon. Jeannette Castagnetti

REPLY IN SUPPORT OF APPLICATION FOR AN ORDER ALLOWING  
INSPECTION OF PUBLIC RECORDS OF THE STATE OF HAWAII  
NATIVE HAWAIIAN ROLL COMMISSION FILED FEBRUARY 18, 2015

**I. INTRODUCTION.**

On February 18, 2015, Judicial Watch, Inc. ("Judicial Watch") filed its Application for an Order Allowing Inspection of Public Records of the State of Hawaii's Native Hawaiian Roll Commission ("Application").

On May 26, 2015, Respondents filed Respondents' Memorandum in Opposition to that application ("Resp. Memo"), along with a supporting declaration and exhibits.<sup>1</sup>

As a member of the public, Judicial Watch has a compelling right to review the requested government records. Further, the Uniform Information Practices Act ("UIPA") places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c). Consequently, the Native Hawaiian Rolls Commission ("NHRC") has the burden to establish that an exception in § 92F-13 allows it to withhold the requested records.

Because the NHRC has failed to meet that burden, Judicial Watch's Application must be granted.

## **II. ARGUMENT.**

### **A. RESPONDENTS' RELIANCE ON A WORD GAME TO WITHOLD WRITTEN RECORDS THEY ADMIT HAVING, SHOULD BE REJECTED.**

Judicial Watch's September 5, 2014 request asked the NHRC for "[t]he enrollment list of Native Hawaiians, known as the Kana'iowalu, as it existed at any one point in time following your receipt of this request." Application, Ex. B.

Respondents' opposition repeats the argument they previously made in denying the request. They maintain that, because "the roll has not yet been completed and certified and

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<sup>1</sup> While Respondents' memorandum and supporting documents were filed on May 26, 2015, neither Judicial Watch nor its counsel received those documents that day. In fact, they were served by U.S. mail. *See* Resp. Memo, Certificate of Service. As Respondents well knew, Judicial Watch's reply was due three days later, on May 29, 2015, and Judicial Watch lost a day contacting Respondents' counsel and ultimately securing hand delivery of its filing. Acting in this way to abridge Judicial Watch's time to reply is unprofessional and greatly inconvenienced counsel who had a shortened time to prepare their reply. As a result, we respectfully request that the Court sanction Respondents by striking their memorandum pursuant to the Court's inherent powers under HRS § 603-21.9(6).

does not yet exist,” the “NHRC does not maintain a government record that is responsive to Judicial Watch’s request.” Resp. Memo at 3. Respondents make this argument despite the fact that an enrollment list is conceded to exist and to contain over 125,000 names, including that of the NHRC employee who submitted a declaration in support of Respondents. *See* Application at 3-4; Resp. Memo, Declaration of Raynette Suganama-Carlson, dated May 26, 2015.

Respondents emphasize in particular that no enrollment list has been “certified.” They assert that Judicial Watch asked for the “Kana’iolowalu, or the certified roll of qualified Native Hawaiians,” and further assert that the “sole purpose of the NHRC is to compile and certify the roll of qualified Native Hawaiians.” Resp. Memo at 3, citing HRS § 10H-3. Respondents also argue, without any supporting citations, that “[u]ntil the roll is completed,” the NHRC is not obligated to publish it pursuant to an open records request under UIPA. Resp. Memo, at 4.

Every part of Respondents’ argument is factually or legally wrong. To begin with, *Judicial Watch never at any time asked for a “certified” enrollment list* (or even used the word). Moreover, the “Kana’iolowalu” is not defined in HRS § 10H-3 (or elsewhere) as a “certified” list. And, contrary to Respondents’ assertion, HRS § 10H-3 does not set forth a single, “sole” purpose for the NHRC, but charges it with, among other things, “[p]reparing and maintaining” an enrollment list of qualified Native Hawaiians, *as well as* the task of “[c]ertifying” that list. HRS § 10H-3(a), (b). Judicial Watch is obviously seeking the enrollment list of 125,000 names – including that of Ms. Suganama-Carlson – that the NHRC has prepared and maintained to date. Such a request for the records maintained by the NHRC sweeps broadly and includes any information controlled by the NHRC, whether or not it is a

final “certified” list. *See Nuuanu Valley Ass’n v. City & County of Honolulu*, 119 Haw. 90, 97, 194 P.3d 531, 538 (2008) (“Hawaii’s legislature has indicated an intent to base the UIPA on the UIPC of the National Conference of Commissioners on Uniform State Laws. *See Kaapu v. Aloha Tower Dev. Corp.*, 74 Haw. 365, 387-88, 846 P.2d 882, 891-92 (1993) (interpreting Sen. Stand. Comm. Rep. No. 2580, in 1988 Senate Journal, at 1093-95). The UIPC defines the word ‘maintain’ to mean ‘hold, possess, preserve, retain, store or administratively control.’ Unif. Info. Practices Code (UIPC) § 1-105. The commentary suggests that the word ‘maintain’ is ‘to sweep as broadly as possible. It includes information possessed or controlled in any way by an agency.’ *Id.* cmt.”).

The fact that the NHRC will one day formally publish a certified enrollment list has nothing to do with its obligations to produce the current, uncertified enrollment list in response to a valid request under Hawai’i’s open records laws. “All government records are open to public inspection unless access is restricted or closed by law.” HRS § 92F-11(a). The burden is on the NHRC to justify its nondisclosure of government records by citing and establishing an exception in HRS § 92F-13. Respondents have failed to do so.

Respondents cite OIP Op. Ltr. No. 03-08 (June 18, 2003), but the facts in that case are completely different from the facts here. Resp. Memo at 4. In that case, the Subdivision Committee of the Kauai Planning Commission met and voted on zoning permits and subdivision applications, and recorded its votes in writing, immediately prior to the meeting of the full commission. A member of the public complained that, under the “Sunshine Law,” Part I of HRS § 92 – which is not at issue here – these materials should have been made available at the time an agenda was posted, which was six days prior to the commission’s hearing. A second complaint was that these materials should have been made available under

the UIPA. The OIP determined that there was no violation of the Sunshine Law on a variety of grounds peculiar to that statute. *See* Exhibit “I”; OIP Op. Ltr. No. 03-08 at 3-5. The OIP also noted that the UIPA was not violated because, at the time the agenda was posted six days prior to the hearing, the Subdivision Committee had not met or voted or created any written records. *Id.* at 6. The records sought in that case literally did not exist at the time they were requested.

By contrast, the written records relating to the 125,000-plus registrants on the NHRC’s enrollment list of Native Hawaiians are conceded to exist right now. The NHRC is lawfully required to produce those records in response to Judicial Watch’s request.

As a final matter, we note that the NHRC’s interpretation, pursuant to which a document does not exist if it is not “certified” or “complete,” is a word game that is contrary to common sense. A document, record, or list exists even though the agency that produced or managed it is not, in some technical sense, “finished” with it. If agencies actually could withhold any document that they assert is not “complete” or “done,” then agencies will constantly make that claim, effectively eviscerating Hawai’i’s open records laws. Respondents’ argument should be rejected.

**B. THERE IS A STRONG PUBLIC INTEREST IN MANDATING THE RELEASE OF THE NAMES ON THE ENROLLMENT LIST OF NATIVE HAWAIIANS.**

Although only some 40,000 Native Hawaiians are enrolled on its list, the NHRC, by its own admission, artificially boosted that number by 87,000 by transferring names from three Office of Hawaiian Affairs lists: Kau Inoa, Hawaiian Registry, and Operation ‘Ohana. *See* <http://www.kanaiolowalu.org/news/story/?id=49>; Declaration of Michael A. Lilly. Judicial Watch respectfully requests that this Court take judicial notice of this state agency web site

pursuant to Rule 201, Hawai'i Rules of Evidence.<sup>2</sup>

As might be expected given this tactic, registrants were placed on the enrollment list without their knowledge or consent. For example, Robert Freitas found his name on both the Kau Inoa and Kana'iowalu lists without having signed up for either. *See* Exhibit "J", Declaration of Robert Freitas, Jr., dated May 27, 2015, ¶ 2. Both we and Mr. Freitas have good reason to believe that there are many tens of thousands of other "registrants" who were placed on that list without being informed of the fact.

Judicial Watch is not the only member of the public questioning the propriety of the conduct of NHRC in departing from the Legislature's directive by transferring names from an existing OHA list to Kana'iowalu without asking permission first. Free Hawai'i TV is a production of the Koani Foundation, a Hawai'i General Domestic Partnership of "dedicated Kanaka Hawai'i Maoli (native Hawaiians) and multi-ethnic supporters ... to promote unity through education and capacity building." *See*

[http://koanifoundation.org/Mission\\_%26\\_Purpose.html](http://koanifoundation.org/Mission_%26_Purpose.html). The Court is also respectfully requested to take judicial notice of this web site.<sup>3</sup>

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<sup>2</sup> *See Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005) ("fail[ing] to see any merit to an objection" to appellate court taking judicial notice of the contents of a state agency's website); *Dulaney v. United States*, 472 F. Supp. 2d 1085, 1086 (S.D. Ill. 2006) (taking judicial notice of the contents of the website for the U.S. Department of Veterans Affairs, and citing other cases in which courts have done the same); *United States ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003) (collecting cases for the proposition that government documents are generally subject to judicial notice of "congressional documents" and "public records and government documents available from reliable sources on the Internet").

<sup>3</sup> "It is not uncommon for courts to take judicial notice of factual information found on the world wide web." *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224 (10th Cir. 2007), quoted with approval in, *inter alia*, *Juniper Networks, Inc. v. Shipley*, 394 F. App'x 713, 713 (Fed. Cir. 2010) and *Jeandron v. Bd. Of Regents of Univ. Sys. of Md.*, 510 Fed. App'x 223, 227 (4th Cir. 2013). *See, e.g., Magnoni v. Smith & Laquercia, LLP*, 701 F. Supp. 2d 497, 501 (S.D.N.Y. 2010)

The Koani Foundation produced an online video blogspot known at Free Hawai'i TV. Its partner and spokesman 'Ehu Kekahu Cardwell appears on these videos on issues important to Native Hawaiians. In a blogspot entitled "Did They Steal Your Name," Cardwell questioned the NHRC padding its supposed roll by thousands of names of people who never consented to being included on the roll. [https://www.youtube.com/watch?v=\\_WWrVSp4qWM](https://www.youtube.com/watch?v=_WWrVSp4qWM). This shows that even Native Hawaiians seriously question the propriety of transferring names to the Native Hawaiian Roll without the consent of the person involved. There is a strong public interest in ensuring that the Legislative purpose stated in Act 195 is properly carried out.

**C. JUDICIAL WATCH IS ENTITLED TO RECOVER ITS ATTORNEY'S FEES AND COSTS FOR HAVING TO BRING THIS ACTION.**

As set forth above and in the original application, Judicial Watch requested government records subject to UIPA and not covered by any exception (*see* HRS §§ 92F-11, 92F-13) and properly directed that request to an "agency," as that term is defined by law (*see* HRS § 92F-3). The NHRC's failure to produce requested documents means that Judicial Watch is entitled to recover "attorney's fees and expenses reasonably incurred in litigation." HRS § 92F-15(d).

In fact, Judicial Watch directed two requests to the NHRC. The first request, discussed above, asked for the Native Hawaiian enrollment list. Application, Ex. B. Judicial Watch is entitled to the attorney's fees and expenses it reasonably incurred in obtaining that list.

The second request sought documents concerning "the decision to reopen, in or about August 2014, registration for the Kana'iowalu." Application, Ex. C. This request was denied in a September 25, 2014, letter to Judicial Watch from Clyde Nāmu'o, Executive Director of the NHRC. Application, Ex. F.

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(judicially-noticing brand name on private web site); *Patsy's Italian Restaurant, Inc. v. Banas*, 575 F. Supp. 2d 427, 443, n. 18 (E.D.N.Y. 2008) ("It is generally proper to take judicial notice of articles and Web sites published on the Internet").

However, the possibility of producing documents responsive to the second request was raised by Mr. Nāmu’o in an October 16, 2014, letter to OIP in response to Judicial Watch’s appeal. Application, Ex. H at 2. (Judicial Watch was not served with that letter but subsequently obtained a copy.) Notwithstanding the apparent concession in that letter, Judicial Watch did not receive any documents responsive to its second request prior to the commencement of this action.

On May 19, 2015 – about eight months after the NHRC denied Judicial Watch’s second request and about three months after Judicial Watch filed its application commencing this action – the NHRC produced a single document in response to Judicial Watch’s second request. Resp. Memo, Ex. A. This tardy production should not in any way diminish the extent of the attorney’s fees and expenses that Judicial Watch had to expend in order to obtain documents responsive to its second request.


### **III. CONCLUSION.**

For the foregoing reasons, Judicial Watch requests that this Court GRANT this Application and order the following:

1. That Respondents be ordered to produce the following records:
  - Copies of the complete enrollment list of Native Hawaiians, known as the Kana’iolowalu.
  - Copies of the enrollment list of Native Hawaiians, known as the Kana’iolowalu, as it existed at any one point in time following your receipt of this request.
  - Copies of all documents discussing the decision to reopen, in or about August 2014, registration for the Kana’iolowalu.
  - The list of people who have registered with the NHRC.
2. That Respondents be ordered to reimburse Judicial Watch’s reasonable attorney fees and costs; and
3. That Judicial Watch be granted such other relief as shall be appropriate.



DATED: Honolulu, Hawai'i, May 29, 2016

  
MICHAEL A. LILLY  
Attorney for Applicant  
JUDICIAL WATCH, INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

JUDICIAL WATCH, INC., a foreign  
corporation,

Applicant,

v.

CLYDE W. NĀMU'O, and STATE OF  
HAWAII NATIVE HAWAIIAN ROLL  
COMMISSION,

Respondents.

S.P. 15-1-0059 (JHC)  
(Special Proceedings)

DECLARATION OF MICHAEL A. LILLY

DECLARATION OF MICHAEL A. LILLY

I, MICHAEL A. LILLY, declare as follows:

1. I am an attorney duly licensed to practice law in the State of Hawaii, and am a partner in the law firm of Ning, Lilly & Jones, attorneys for Judicial Watch ("Judicial Watch"), Applicant herein.

2. I make this declaration of my own personal knowledge and would be competent to testify to the facts thereto.

3. <http://www.kanaiolowalu.org/news/story/?id=49> is a true and correct web address for the NHRC's in which it admits that the NHRC only signed up some 40,000 Native Hawaiians and then artificially boosted that number by 87,000 by transferring names from three Office of Hawaiian Affairs lists - Kau Inoa, Hawaiian Registry, and Operation.

4. All the references to the Koani Foundation and its web site contained in the foregoing Reply are true and correct information acquired by me from its website.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND  
CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

Executed this 29<sup>th</sup> day of May, 2015, at Honolulu, Hawaii.



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MICHAEL A. LILLY

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR



LESLIE H. KONDO  
DIRECTOR

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June 18, 2003

The Honorable Ian K. Costa  
Director of Planning  
Department of Planning, County of Kauai  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96766-1326

Re: Kauai Planning Commission and Subdivision Committee Meetings

Dear Mr. Costa:

This is in response to your request to the Office of Information Practices ("OIP") dated May 7, 2003 for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether written reports of the Subdivision Committee ("Committee") of the Kauai Planning Commission ("Commission") containing the Committee's recommendations to the Commission on subdivision applications must be available to the public at the time that the Commission provides notice of the public meeting at which the subdivision applications are to be considered.

BRIEF ANSWER

No. The "Sunshine Law" at part I of chapter 92, Hawaii Revised Statutes, does not require that reports prepared by subcommittees of boards for consideration of the full board be available for public inspection at the time the board's notice and agenda for a public meeting are filed.

The Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), requires that agency records that are open for public inspection and copying be available upon request, thus the written reports should

OIP Op. Ltr. No. 03-08

EXHIBIT "I"

be made public once they are completed. Haw. Rev. Stat. § 92F-11(b) (1993). If the reports are not yet in existence at the time an agenda is posted, they need not be created in order to satisfy a record request. Haw. Rev. Stat. § 92F-11(c) (1993).

### FACTS

The Kauai Planning Commission conducts hearings and approves certain types of zoning permits and subdivision applications. The Commission meets twice a month. The Commission's Subdivision Committee meets one hour before each Commission meeting to review subdivision applications that will be considered by the Commission.

The following language is an example of what the Committee would discuss at a meeting, based on the sample agenda that you provided:

D. NEW BUSINESS

1. Tentative Subdivision Action:

a. S-2003-39 = Grove Farm Company

17-lot Subdivision, TMK: 3-3-16-90  
Pahi, Lihu'e, Kaua'i

At Committee meetings, members vote on each subdivision application on the agenda. The Committee's votes and recommendations are memorialized in a report as required by Planning Commission Rules of Practice and Procedure 1-2-13. A blank report form entitled "Subdivision Committee Report No. 17" was provided for review. This form does not contain detailed information. Instead, it lists each "tentative subdivision action" and then the Committee's recommendation and vote for each is recorded. At the adjournment of each Committee meeting, staff prepares the written report.

A summary of the Committee's action is verbally reported to the Commission at its meeting immediately subsequent to the Committee meeting. These recommendations are verbal because the written reports may not yet be completed at the time an application is discussed by the Commission. The Commission's rules do not require that the Committee's reports be in written form at the time Committee recommendations are made to the Commission. The Commission then votes on the subdivision applications.

You provided a sample Commission agenda from its April 22, 2003 meeting which included the following language:

C. SUBDIVISION - Action of subdivision matters listed in the Subdivision Committee Agenda (attached).

The Commission agenda did not include a description of the subdivision matters to be considered by the Commission. Rather, the Commission's "SUBDIVISION" agenda item referred to the Committee's agenda for the same day regarding subdivision applications and attached the Committee agenda. The applications listed on the Committee agenda were available for public inspection at the time both agendas were posted. Records relating to a particular application were made available to the public once received by the Department of Planning. The public is allowed to testify on agenda items at both Commission and Committee meetings.

A member of the public complained to the Kauai Department of Planning that the Commission's current practice of including on its agenda items for which the Committee's written reports are not available violates the Sunshine Law. According to the member of the public, the written reports of the Committee should be made publicly available at the time the Commission agenda is filed, which is six days prior to when the Commission takes action on it. As you note, to do so would require the Committee to meet one week prior to the Commission in order for the report to be available by the time the Commission agenda is posted.

## DISCUSSION

### I. SUNSHINE LAW

The Sunshine Law governs the manner in which State and county boards<sup>1</sup> must conduct their meetings and is intended to make government more accountable to the public by mandating that board meetings<sup>2</sup> be public in most instances.<sup>3</sup> The Sunshine Law also dictates the manner in which a board must give notice of its meetings. More specifically, the Sunshine Law states with regard to notice of meetings:

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<sup>1</sup> "Board" means "any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions." Haw. Rev. Stat. § 92-2 (1993).

<sup>2</sup> "Meeting" means "the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power." Haw. Rev. Stat. § 92-2 (1993).

<sup>3</sup> See Haw. Rev. Stat. § 92-3 (1993).

**§ 92-7 Notice.** (a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated.

Haw. Rev. Stat. § 92-7 (Supp. 2002). In addition, section 92-7(b), Hawaii Revised Statutes, requires that county boards subject to the Sunshine Law shall file a notice and agenda in the county clerk's office at least six calendar days before the meeting.

Other than the notice and agenda, the Sunshine Law does not require a board to file or make publicly available any document prior to a meeting nor does the Sunshine Law specifically require that all documents relevant to agenda items be available for public inspection at the time a notice and agenda are filed. Although the Commission's practice does not violate the letter of the statute, the OIP must consider whether the policy and intent of the law would require that the Committee's report be available at the time the Commission's agenda is posted.

The legislature expressed the policy and intent of the statute as follows:

**§ 92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy -the discussions, deliberations, decisions, and action of governmental agencies -shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and

- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

Haw. Rev. Stat. § 92-1 (1993).

It is widely recognized that the statute's notice and agenda requirements "are at the very heart of the Sunshine Law." In re Order Declaring Annexation, 637 P.2d 1270, 1273 (Okla. App. 1981). Requiring that a board give notice of its meeting and include with that notice an agenda describing the items to be considered is essential to protecting the public's ability to meaningfully participate in the meeting. The public simply must be informed as to the matters to be discussed at the meeting.

After reviewing the agenda for the Commission, including the Committee's agenda attached thereto, the OIP finds that the Commission notice and agenda provided sufficient notice to the public of the items to be considered by the Commission. The Commission's agenda advised the public that the Commission would consider action on certain subdivision matters. The attached Committee agenda specifically described the type of subdivision action that the Commission would discuss and identified the petitioner and the parcel by tax map key number. The OIP finds that such information was sufficiently detailed as to have reasonably allowed members of the public to provide meaningful testimony if they so chose.

The fact that the Committee's report was not available at the time the Commission's notice and agenda were filed does not restrict or even change the public's ability to participate in the Commission's meeting. The Committee's report, like public testimony, was an item to be considered by the Commission in its decision-making process at its meeting. It did not represent the Commission's decision. Moreover, the public had the opportunity to attend and provide testimony at the Committee meeting. In addition, the written reports do not contain a detailed analysis of the Committee's recommendation. Instead, it merely lists the recommendation and vote for each subdivision application. Thus, the OIP finds that the current procedure of the Commission and its Committee do not violate the spirit of the Sunshine Law. Requiring that the Committee's report be available at the time that the Commission's notice and agenda are posted would not further the statutory intent of protecting the public's right to know.

The OIP emphasizes that boards should always consider the policy and intent of the Sunshine Law. The current practices of the Commission and the Committee regarding subdivision applications should never be used to prevent or



hinder public access to or participation in meetings. Such action would most likely be a violation of the Sunshine Law.

## II. UIPA

The UIPA governs access to government records<sup>4</sup> maintained by agencies<sup>5</sup>. The UIPA requires that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (1993). The UIPA does not require agencies to respond to record requests by creating records where none exist, unless such records are readily retrievable. Haw. Rev. Stat. § 92F-11(c) (1993). Here, Committee written reports do not yet exist at the time the Commission's agendas are posted. They are, however, available shortly after the Commission's meeting begins. The information in the reports is not readily retrievable at the time the Commission's agenda is posted because the Committee has not yet taken any action that it can report on. Therefore, the Committee is not obligated under the UIPA to make its written reports available for public inspection and copying until such time as they are completed.

## CONCLUSION

The Sunshine Law clearly does not require that written reports of a committee of a board that are relevant to an item on the board's agenda be public at the time a notice and agenda are filed. Because the Commission notice attaches the Committee's agenda, which is sufficiently detailed; and because both meetings are open to the public, the public has the opportunity to attend and provide meaningful testimony at both meetings. Thus, the current procedure of the Commission and its Committee do not violate the spirit of the Sunshine Law.

There is no requirement in the UIPA that a record pertaining to an item on a board's agenda be available in final form at the time the agenda is posted. In addition, the UIPA does not require agencies to respond to record requests by creating records where none exist, unless such records are readily retrievable. Haw. Rev. Stat. § 92F-11(c) (1993). As Committee written reports do not yet exist

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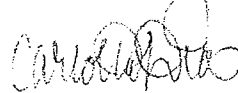
<sup>4</sup> "Government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993).

<sup>5</sup> "Agency" means "any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State." Haw. Rev. Stat. § 92F-3 (1993).

The Honorable Ian K. Costa  
June 18, 2003  
Page 7

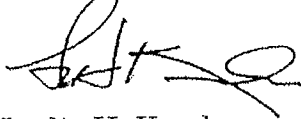
and are not readily retrievable at the time the Commission's agenda is filed, the Committee is not obligated under the UIPA to make written reports available for public inspection and copying until they are completed.

Very truly yours,



Carlotta Dias  
Staff Attorney

APPROVED:



Leslie H. Kondo  
Director

CMD: ank

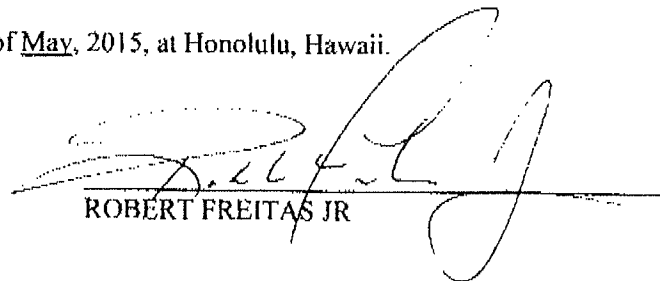
DECLARATION OF ROBERT FREITAS JR

I, ROBERT FREITAS JR, declare as follows:

1. I make this declaration of my own personal knowledge and would be competent to testify to the facts thereto.
2. I never signed up for Kau Inoa or Kana'iowalu, established and maintained by the Native Hawaiian Roll Commission ("NHRC Roll"), and yet I discovered my name on their list and needed to go through a lot of hassle just to get it removed. The only thing I ever signed up for was Operations Ohana through the Office of Hawaiian Affairs because it supposedly would allow my family and I access to various parks and activities.
3. I believe my name and well as many others were fraudulently transferred without our knowledge and/or authorization.
4. I recently discovered that my name was placed on the enrollment list of Native Hawaiians, known as Kana'iowalu,
5. I never gave permission for my name to be on the NHRC Roll.
6. No one asked me if I wanted my name to be included on the NHRC Roll.
7. No one contacted me about putting my name on the NHRC Roll.
8. I do not want my name on the NHRC Roll.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27 day of May, 2015, at Honolulu, Hawaii.

  
ROBERT FREITAS JR

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUDICIAL WATCH, INC., a foreign  
corporation,

Applicant,

v.

CLYDE W. NĀMU'O, and STATE OF  
HAWAII NATIVE HAWAIIAN ROLL  
COMMISSION,

Respondents.

S.P. 15-1-0059 (JHC)  
(Special Proceedings)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document  
will be served on the following identified parties at their respective address by hand delivery on  
May 29, 2015:

DOUGLAS S. CHIN

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Attorneys for Respondents

CLYDE W. NĀMU'O and STATE OF HAWAII

NATIVE HAWAIIAN ROLL COMMISSION

DATED: Honolulu, Hawai'i, May 29, 2015.

A handwritten signature in black ink, appearing to read "Michael A. Lilly", written over a horizontal line.

MICHAEL A. LILLY  
Attorney for Applicant  
JUDICIAL WATCH, INC.