

STATE OF HAWAII OFFICE OF THE LIEUTENANT GOVERNOR OFFICE OF INFORMATION PRACTICES NO. 1 CAPITOL DISTRICT BUILDING

NO. 1 CAPITOL DISTRICT BUILDING 250 SOUTH HOTEL STREET, SUITE 107 HONOLULU, HAWAI'I 96813 Telephone: (808) 586-1400 FAX: (808) 586-1412 E-MAIL: oip@hawaii.gov www.hawaii.gov/oip CHERYL KAKAZU PARK DIRECTOR

SENATE COMMITTEE ON WAYS AND MEANS HOUSE COMMITTEE ON FINANCE

INFORMATIONAL BRIEFING TESTIMONY FOR FISCAL BIENNIUM 2013-2015 BY CHERYL KAKAZU PARK, DIRECTOR (Program ID LTG105IA)

January 7, 2013

Honorable Chairs and Members of the Committees:

I am Cheryl Kakazu Park, Director of the Office of Information Practices. I am here today to present OIP's informational budget briefing for the Fiscal Biennium 2013-2015.

OVERVIEW:

A. <u>Mission Statement</u>

OIP's main mission is to provide legal guidance and assistance to the public as well as to all state and county boards and agencies in the application of Hawaii's open government laws: (1) the Uniform Information Practices Act (Modified) ("UIPA"), HRS chapter 92F, providing public access to government records; and (2) the "Sunshine Law," Part of HRS chapter 92, requiring open access to public meetings and decisionmaking. OIP also administers the State's Record Report System ("RRS") under HRS Section 92F-18(b), and rules on appeals from Department of Taxation decisions as to what constitutes written opinions available for public inspection and copying under HRS Sec. 231-19.5(f) and (h).

OIP's duties include assisting the public in obtaining access to government records, unless withholding is allowed by law; assisting government agencies and boards in complying with the UIPA and Sunshine Law; providing formal and informal legal guidance under both laws to the general public or to governmental entities; investigating and resolving complaints relating to the public's access to and participation in government board meetings under the Sunshine Law; ruling on appeals of denials of access to records under the UIPA as an alternative method to

NEIL ABERCROMBIE GOVERNOR

BRIAN SCHATZ

court appeals for members of the public; keeping government accountable to individuals in the collection, use and dissemination of information about them; providing education under both laws to inform the public of their rights and the procedures for exercising those rights; and providing education and training to government boards and agencies regarding their responsibilities under, and compliance with, the Sunshine Law, the UIPA, and OIP's administrative rules.

B. <u>Current Conditions</u>

The economic and fiscal conditions in recent years have resulted in a net reduction in work hours and salaries, which has negatively impacted OIP's ability to eliminate its backlog of cases and is leading to concerns about the retention of OIP's experienced employees. Nevertheless, OIP was able in the past fiscal year to reduce its case backlog by 13%, while seeing a 30% increase in the number of requests for assistance that it received (including a 39% increase in attorney of the day requests), a doubling in the numbers of live training sessions and training materials produced by OIP, and a quadrupuling in the number of communications to agencies and the general public. A significant factor in OIP's successes in FY 2012 was due to the addition of an experienced staff attorney, so that all of OIP's 7.5 FTE positions (including the Director) were filled for the first time since 2007.

Looking ahead to the future, however, OIP anticipates a continued increase in requests for assistance, especially with respect to its attorney of the day (AOD) service for general advice that is usually given on the same day and presently constitutes 87% of total requests for assistance. In October 2012, OIP also launched its new UIPA Record Request Log to all State Executive Branch departments and the Judiciary, and intends to expand this effort to include all counties during FB 2013-15, which is expected to result in additional requests for training and assistance. Experienced attorneys are needed to provide same-day AOD advice and training, and OIP is fortunate to have 3.5 FTE knowledgeable staff attorneys who have been with the office from 3 to 19 years. OIP is also fortunate to have three staff members providing administrative support who have been with OIP from 6 to 13 years. Retaining experienced staff is a key goal and will become an increasing challenge in the future. Given the small size of the office in comparison to other departments or divisions, the loss of experienced staff would adversely and disproportionately impact OIP's productivity and effectiveness.

C. <u>FEDERAL FUNDS:</u>

Not applicable. OIP only receives state general funds.

BUDGET REQUEST:

D. & E.: Process and Adjustments

After (1) examining OIP's substantial increases in requests for assistance and its continued backlog of cases, (2) realizing demonstrable benefits from the hiring an additional experienced staff attorney in the past fiscal year, and (3) conferring with the Department of Budget and Finance, OIP is now requesting that its longest serving staff attorney's position be increased from .5 FTE to 1.0 FTE and \$29,000 in funds allocated so that her work hours can be increased to assist the office in meeting workload demands in FB 2013-15.

Additionally, OIP examined the impact of past job vacancies necessitated in large part by the unfunded vacation and sick leave payouts to former employees and the reduction in state funding. OIP projected that without a substantial restoration of the \$39,099 "vacancy savings" amount that was eliminated from its budget in FY 2011, it would not have sufficient funds in FB 2013-15 to meet the payroll for its full complement of 7.5% FTE employees, which is the same number of positions that it has had since FY 2007. Consequently, OIP is requesting the restoration of at least \$25,000 per year in FB 2013-15 to meet its payroll requirements. Without the additional funds, OIP may find it necessary to reduce work hours or positions, which (1) would negatively impact its ability to meet the anticipated increases in requests for assistance, (2) would lengthen the time for OIP's provision of services, (3) would increase the case backlog, and (4) could adversely affect the operations of the thousands of units of state and government agencies that are subject to the UIPA and Sunshine Law and reliant upon OIP for advice and assistance.

<u>Context</u>

The current fiscal conditions had resulted in a delay in filling a staff attorney position within OIP until three months into fiscal year 2012. Because a staff attorney position had been largely unfilled since FY 2008 due to budget restrictions, and in light of the previous furloughs, OIP has had difficulty reducing its backlog of approximately 70 cases at the end of fiscal year 2012.

Tables 1-20.

Please see attached tables.

Department of Lieutenant Governor Prioritized List of Functions

Priority	Description of Function	Activities	Prog ID(s)	Statutory Reference
1	Administration of the state's open records law, the Uniform Information Practices Act (Modified)	(1) Review and rule on appeals from an agency's denial of access; 2) render opinions concerning the public's right to access records; (3) assist the public in obtaining responses to record requests where an agency fails to respond to a request as required under the UIPA and associated administrative rules; (4) provide general legal guidance concerning records access issues; (5) assist agencies in complying with legal requirements; (6) produce training materials, presentations, and other communications directed to agency personnel and the public; (7) monitor lawsuits; (8) track and recommend legislation; and (9) prepare annual report to legislature.	LTG105IA	Chapter 92F, HRS
2	Administration of the state's open meetings law, the Sunshine Law	 Render advisory opinions concerning the public's right to participate in meetings of government boards; (2) investigate and resolve complaints concerning a board's noncompliance with the requirements of the Sunshine Law; provide general guidance concerning open meetings issues; (4) assist boards and agency staff in complying with legal requirements; (5) produce training materials, presentations, and other communications directed to board members, staff, and the public; (6) monitor lawsuits; (7) track and recommend legislation; and (8) prepare annual report to legislature. 	LTG105IA	Part 1, Chapter 92, HRS
3	Administration of the state's records report system (RRS)	 (1) Assist agencies to meet their annual statutory obligations in maintaining their reports; (2) provide ongoing RRS workshops for state and county RRS coordinators; (3) produce RRS instructional materials and perform other functions necessary to administer the RRS system. 	LTG105IA	Section 92F-18(b), HRS
4	Determination of certain appeals from the Department of Taxation	(1) Review and rule on appeals from the Department of Taxation's decision as to what constitutes a written opinion that is available for public inspection and copying.	LTG105IA	Section 231-19.5(f) and (h), HRS

Department of Lieutenant Governor Department-Wide Budget Summary

	Fisc	al Year 2013		
Act 106/12		Emergency		
Appropriation	Restriction	Appropriation	Total FY13	MOF
			\$ -	
			\$ -	
			\$ -	
\$ 390,934.00	\$ (19,544.00)	\$ -	\$ 371,390.00	Α
(390,870 + 64cb)				
	Fisc	al Year 2014		
Act 106/12				
Appropriation	Reductions	Additions	Total FY14	MOF
			\$ -	
			\$ -	
			\$ -	
\$ 401,935.00	\$ -	\$ 54,000.00	\$ 455,935.00	Α
	Fisc	al Year 2015		
Act 106/12				
Appropriation	Reductions	Additions	Total FY15	MOF
			\$ -	
			\$ -	
			\$ -	
\$ 455,935.00	\$-	\$-	\$ 455,935.00	Α

Department of Lieutenant Governor Funding by Program ID

			As budget	ed in Act 10	06/12 (FY13)	Go	overnor's Su	ubmittal (FY1	.4)	Governor's Submittal (FY15)					
									Percent				Percent		
									Change of				Change of		
Prog ID	Program Title	MOF	<u>Pos (P)</u>	<u>Pos (T)</u>	<u>\$\$\$</u>	Pos (P)	<u>Pos (T)</u>	<u>\$\$\$</u>	<u>\$\$\$\$</u>	Pos (P)	<u>Pos (T)</u>	<u>\$\$\$</u>	<u>\$\$\$\$</u>		
Enforcement of															
LTG105IA Ir	nformation Practices	Α	5.00	2.50	\$ 371,390	5.00	3.00	\$ 455,935	23.0%	5.00	3.00	\$ 455,93	5 23.0%		

Department of Lieutenant Governor Budget Decisions

				Ini	tial Departn	nent Reque	ent Requests Budget and Finance Recommendat				endations		Governor			r's Decisions				
				FY14			FY15		FY14		FY15			FY14			FY15			
Prog ID	Description	MOF	Pos (P)	Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>
	Convert Position #102257 .50FTE to 1.0FTE;																			
LTG105IA Add Funding		Α		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000
LTG105IA	LTG105IA Restore Vacancy Savings				\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000

Department of Lieutenant Governor Proposed FY14 and FY15 Reductions

				FY14				FY15		
										<u>Carry-over?</u>
Prog ID	Description of Reduction	Impact of Reduction	MOF	<u>Pos (P)</u>	<u>Pos (T)</u>	<u>\$\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$\$</u>	<u>(Y/N)</u>
LTG105IA	N/A									

Department of Lieutenant Governor Proposed FY14 and FY15 Additions

							FY14			FY15	
			Dept-								
	Request	Prog ID	Wide								
Prog ID	Category	Priority	<u>Priority</u>	Description of Addition	Explanation	MOF	Pos (P) Pos (T)	<u>\$\$\$</u>	Pos (P)	Pos (T)	<u>\$\$\$</u>
				Convert Position #102257 .50FTE to							
LTG105IA	AR	1		1.0FTE; Funding Request	See attached explanation.	Α	0.50	\$ 29,000		0.50	\$ 29,000
				Restore Vacancy Savings Removed to meet							
LTG105IA	FE	2		payroll requirements	See attached explanation.	Α		\$ 25,000			\$ 25,000

DEPARTMENT OF THE LIEUTENANT GOVERNOR OFFICE OF INFORMATION PRACTICES

Table 6: Explanation

1. Due to OIP's doubling of its training materials and live sessions, an over 400% increase in OIP's communications with agencies and the general public, and the deployment of the new UIPA Records Request Log, there has been heightened awareness of the UIPA and Sunshine Law requirements. This has resulted in a 31% increase in requests for OIP's assistance in FY 2013, including a 39% increase in requests for attorney of the day (AOD) assistance. To provide the general legal advice sought by AOD requesters, OIP staff attorneys need to be experienced and well versed in the UIPA and Sunshine laws. OIP's request for an additional \$29,000 each year would allow OIP to convert its longest-serving, experienced staff attorney from a part-time to a full-time position to help with the AODs and the increase in other requests for assistance.

2. Budget cuts over the years and the unfunded payouts to former OIP employees have devastated the office's operating budget, which was already small and lean in comparison to other State departments. Although OIP was able in the past to continue its operations by cutting down the work hours of employees, delaying the hiring of replacement employees, and eliminating unnecessary expenses, OIP will reach the tipping point in FB 13-15 where supplemental funds are necessary to meet its current and anticipated increases in workload, to reduce its case backlog, and to effectively administer Hawaii's open government laws. Without the supplemental funds, OIP will not have sufficient payroll funds for its existing 7.5 positions and may face the further challenges of retaining experienced employees who are more knowledgeable and productive than inexperienced, untrained people who may be hired as replacements. Therefore, OIP will need the restoration of at least \$25,000 per year in forced "vacancy savings" that had been cut from its budget since FY 2011.

Department of Lieutenant Governor Current Year (FY13) Restrictions

			Percent of Act 106/12	
Prog ID	MOF	Restriction \$\$\$	Appropriation	<u>Impact</u>
				This restriction will leave OIP unable to meet its payroll requirements for the last
LTG105IA	А	\$ 19,544	5.0%	quarter of FY13.

Table 7

Department of Lieutenant Governor Emergency Appropriation Requests

				Pos (P)	Pos (T)	
Prog ID	Description of Request	Explaination of Request	MOF	FY13	FY13	<u>\$\$\$ FY13</u>
LTG105IA	Lift Restriction Imposed of \$19,544	Funds needed to meet payroll requirements in last quarter of FY13.	Α	5.00	2.50	\$ 390,934

Department of Lieutenant Governor Expenditures Exceeding Appropriation Ceilings

				Amount				
			Appropriation	Exceeding	<u>Increase</u>		Recurring	<u>GF Impact</u>
Prog ID	MOF	Date	<u>Ceiling</u>	Appropriation	Percent	Reason for Exceeding Ceiling	<u>(Y/N)</u>	<u>(Y/N)</u>
LTG105IA	A			N/A				

Table 9

Department of Lieutenant Governor Intradepartmental Transfer of Funds

Anticipated								
or Actual				Percent of Imparting		Percent of Receiving		
Date of		Amount of	<u>From</u>	Program ID	<u>To</u>	Program ID		Recurring
Transfer	<u>MOF</u>	Transfer	Prog ID	Appropriation	Prog ID	Appropriation	Reason for Transfer	<u>(Y/N)</u>
N/A								

Department of Lieutenant Governor Active Federal Awards

<u>State</u> Expending Agency	Program ID	<u>Award</u> Number	CFDA Number	<u>Award</u> Description	<u>Awarding</u> <u>Federal</u> <u>Agency</u>	<u>Award</u> Amount	<u>Award</u> <u>Amount</u> <u>Allocated to</u> <u>the Pgm ID in</u> <u>Column B</u>	<u>State</u> Appropriation Symbol	<u>At Risk for</u> <u>Federal</u> <u>Sequestration</u> (Y/N)	<u>Contact Name</u>	<u>Contact</u> <u>Phone</u>	<u>Contact</u> <u>Email</u>
	LTG105	No active federa	al awards provided a	is a prime recipie	nt as of Decembe	r 17, 2012.						

Department of Lieutenant Governor Active Federal Awards

<u>State</u>					Awarding		<u>Award</u> <u>Amount</u> <u>Allocated to</u>	<u>State</u>	<u>At Risk for</u> Federal			
Expending		Award		Award	<u>Federal</u>	Award	the Pgm ID in	Appropriation	Sequestration		<u>Contact</u>	<u>Contact</u>
Agency	Program ID	<u>Number</u>	CFDA Number	Description	Agency	<u>Amount</u>	<u>Column B</u>	<u>Symbol</u>	<u>(Y/N)</u>	Contact Name	<u>Phone</u>	Email

A State Expending Agency State only authorized to expend the funds as authorized by the appropriation or as delegated by the Governor. B Program I.D. The unique identifier for the specific program responsible for carrying out the program consisting of the abbrevation for the State entity followed by the organization number for the program. C Award Number The identifying number assigned by the awarding Federal Agency, such as the federal grant number, federal contract number or the federal can number that bepares in the federal award document. D CFDA No. The individe reasociated with the published description of Federal assistance program in the Catalogo I Federal Agency. Such as the federal grant number, federal Contract number or the federal can be assistance program in the Catalogo I Federal Agency. E Award Description Award Monore CFDA codes can be searche as: the state add description of Federal additionation of the federal agency want do administers the award on behall of the funding agency. Select from drow-down meuro. See agency list below. G Award Amount Allocated to the Program ID in Enter the portion of the total amount of the each allocated to in the admount allocated to the Program Constract: The total amount of the total award amount allocated to the Program Constract. The total amount of solo is allocated to the Program Constract and the appropriation of the federal agency. H Award Amount Allocated to the Program ID in Enter the portion of the total award amount fallocated to the Program ID. For example, if a federal agency in the agover and administract and the			DEFINITION
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Fourier Direction Conference on the search and			federal contract number or the federal loan number that appears in the federal award document.
the the second sec	D	CFDA No.	The number associated with the published description of Federal assistance program in the Catalog of
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		U.S. Agency for International Development	

Department of Lieutenant Governor Non-General Fund Balance

								Estimated FY13	
				Beginning FY13		Estimated FY13		Ending	
		Statutory		Unencumbered Cash	Estimated FY13	Expenditures and	Estimated FY13	Unencumbered	Balance in Excess of
Name of Fund	Purpose	Reference	MOF	Balance	Revenues	Encumbrances	Net Transfers	Cash Balance	Program Needs
LTG105 is entirely general funded and has no									

Department of Lieutenant Governor Positions Vacant as of November 30

						Perm						<u>Authority</u>	Occupied	
	Date of	Position		<u>SR</u>	BU	Temp			Budgeted	Actual Salary	Exempt	to Hire	<u>by 89 Day</u>	# of 89 Hire
Prog ID	Vacancy	<u>Number</u>	Position Title	Level	<u>Code</u>	<u>(P/T)</u>	FTE	MOF	<u>Amount</u>	Last Paid	<u>(Y/N)</u>	<u>(Y/N)</u>	Hire (Y/N)	Appointments
LTG105IA			No position vacancies.											

Department of Lieutenant Governor Overtime Expenditures

			FY12 (actual)			FY	'13 (estimat	ed)	FY14 (budgeted)			
			Base			Base			Base			
			<u>Salary</u>	Overtime	<u>Overtime</u>	<u>Salary</u>	Overtime	<u>Overtime</u>	<u>Salary</u>	Overtime	<u>Overtime</u>	
Prog ID	Program Title	MOF	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>	Percent	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>	Percent	<u>\$\$\$\$</u>	<u>\$\$\$\$</u>	Percent	
	Enforcement of											
LTG105IA	Information Practices	Α	No overtin	ne Expendit	ures.							

Department of Lieutenant Governor Overpayments as of November 30

						Cate	egory			
							Not	<u>Not</u>		Referred
	Date of	Gross			Employed	Employed	Employed	Employed		<u>to</u>
	<u>Over-</u>	<u>Amount</u>	Amount		Occurred >	Occurred <	Occurred >	Occurred <	Reason for	Attorney
Name	<u>payment</u>	<u>Overpaid</u>	<u>Recovered</u>	Balance	2 Years	<u>2 Years</u>	<u>2 Years</u>	<u>2 Years</u>	<u>Overpayment</u>	General
Enforcement of Inform	nation Pract	tices								
LTG105										
	No overpay	ments as of	November 3	0.						

Department of Lieutenant Governor Active Contracts

		Free	quency			Ter	m of Contr	act		Category		Explanation of	
				Max	Outstanding	Date				<u>E/L/P/C/</u>		How Contract is	POS
Prog ID	MOF	Amount	(M/A/O)	Value	Balance	Executed	<u>From</u>	<u>To</u>	Organization	<u>G/S</u>	Description	Monitored	<u>Y/N</u>
LTG105IA	Α	No active	contracts.										

Department of Lieutenant Governor CIP Requests

		Dept-					
	Prog ID	Wide					
Prog ID	<u>Priority</u>	<u>Priority</u>	<u> </u>	Project Title	<u>MOF</u>	<u>FY14 \$\$\$</u>	FY15 \$\$\$
LTG105IA			There are no CIP requests.				

Department of Lieutenant Governor CIP Lapses

	Act/Year of				
Prog ID	Appropriation	Project Title	<u>MOF</u>	Amount \$\$\$\$	Reason
LTG105IA		There are no CIP lapses by OIP.			

Department of Lieutenant Governor Division Resources

Division	Associated Program IDs							
There are no division resources to report by								
OIP (LTG105).								

Department of Lieutenant Governor Organization Changes

Year of Change	Page							
<u>FY13/FY14</u>	<u>Number</u>	Description of Change						
		There have been no organization changes within OIP (LTG105).						



NEIL ABERCROMBIE GOVERNOR

BRIAN SCHATZ

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CHERYL KAKAZU PARK DIRECTOR

Table 20: Organizational Chart

OIP is an attached agency to the Office of the Lieutenant Governor for administrative purposes only.

