
Study of Costs Incurred by Financial Institutions to Comply with Investigative Subpoenas

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 92-15
November 1992

Foreword

This report was prepared in response to Act 273, Session Laws of Hawaii 1992. The act required our office to study the actual costs incurred by financial institutions in producing materials in response to investigative subpoenas issued by the attorney general or the county prosecuting attorneys under Section 28-2.5, Hawaii Revised Statutes.

Our study sought to determine whether the financial institutions' charges reflect the actual costs of researching and reproducing financial records in compliance with the subpoenas. We focused on the 14 banks and savings and loans institutions which accounted for most of the subpoena activity.

We acknowledge the cooperation of state and county law enforcement officials, members of the banking industry, and members of the savings and loan industry whom we contacted during the course of our study.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

In the past, the Department of the Attorney General and the Honolulu prosecuting attorney have complained that financial institutions have charged substantial fees to reproduce documents in response to investigative subpoenas. The Legislature, in Act 273 of 1992, requested the State Auditor to study the actual costs incurred by financial institutions in providing the materials. This report responds to the Legislature's request.

Background on Investigative Subpoenas

Section 28-2.5, Hawaii Revised Statutes, authorizes the attorney general, when conducting civil, administrative, or criminal investigations, to subpoena witnesses and compel them to produce documents and other items. The law gives county prosecuting attorneys the same subpoena power when conducting criminal investigations.

Both the attorney general and the county prosecutors use investigative subpoenas to obtain information prior to taking legal action. The police or investigators employed by the attorney general or the prosecutors usually request subpoenas when a complaint has been filed and there is reason to suspect that a crime has been committed.

In Hawaii, most investigative subpoenas served on financial institutions are issued on Oahu by the attorney general or the Honolulu prosecuting attorney. The Criminal Investigation Division (CID) of the Honolulu Police Department is the most frequent requester of investigative subpoenas. These are mostly used in cases that involve suspected white-collar crimes such as embezzlement, theft, forgery, racketeering, money laundering, and fraud. The CID has a specialized white-collar crime unit which usually handles complex cases involving substantial dollar amounts.

The investigators use subpoenas to obtain records for cash flow analysis. These records include the deposits, withdrawals, and balances of personal, business, or government accounts. The amount of supporting documentation that is sought depends on the case.

Typically the investigative subpoena is issued when the police need more evidence to establish probable cause that a crime has been committed. Police investigators meet with members of the prosecutor's office to request subpoenas.

Normally the financial institutions send a bill for producing the documents. The bill is paid by the agency that made the request—the attorney general, the prosecutor, or the police department.

Request for the Study

House Bill No. 3303 (which became Act 273) was introduced in 1992 at the request of the Honolulu Police Department. The attorney general testified that in complying with investigative subpoenas, financial institutions were charging rates for research that ranged from \$10 to \$40 per hour and rates for reproduction that ranged from 20 cents to \$3 per copy. The institutions had not disclosed their actual costs or justified their charges.¹

The purpose of the bill was to set reasonable and uniform rates. It proposed to adopt the reimbursement rates established by the federal government of \$10 per hour for research time and 15 cents per page for reproduction.² The attorney general testified to the House and Senate judiciary committees that a similar bill had been introduced in 1991 but had not passed because the financial institutions had pledged to set fair, uniform rates voluntarily. But the financial institutions had not carried out their pledge.³

The bill was subsequently amended to delete the reference to the federal reimbursement rates and to establish reimbursements of \$15 per hour for research time and 50 cents per page for reproduction. Although these rates are now set by law, the bill was further amended to request that the State Auditor study the financial institutions' actual costs and report to the Legislature prior to the 1994 session.

Objective of the Study

This study sought to determine whether the charges reflect the actual costs incurred by financial institutions in researching and reproducing financial records in compliance with investigative subpoenas.

Scope and Methodology

To accomplish the objective of the study, we gathered information on charges made by the financial institutions and how they were developed. We interviewed representatives of the Department of the Attorney General, the prosecuting attorneys' offices and police departments of the four counties, the Hawaii Bankers Association, and the Hawaii League of Savings Institutions. We reviewed documents provided by law enforcement officials including records of investigative subpoenas issued and payments made.

We surveyed 14 banks and savings and loan associations in Honolulu on their charges and the basis for these charges immediately prior to June 19, 1992, the effective date of Act 273. These institutions accounted for nearly all of the investigative subpoenas issued to financial institutions in Hawaii. The survey response was 100 percent.

The information in this report pertains to the island of Oahu only. Few investigative subpoenas are issued on the neighbor islands.

Our work was performed from June 1992 through September 1992 in accordance with generally accepted government auditing standards, except we did not audit the data we received from law enforcement agencies and the financial institutions.

Chapter 2

Findings

In this chapter we provide information on the amounts that law enforcement agencies paid to financial institutions (prior to Act 273) for documents produced in response to investigative subpoenas. We then examine the charges made by the institutions, the costs they incurred, and the relationship between the charges and the costs.

Summary of Findings

1. In FY1991-92 the Department of the Attorney General and the Honolulu Police Department paid a total of about \$40,000 to Hawaii's financial institutions for documents and other materials provided in response to 106 investigative subpoenas.
2. The financial institutions charged a wide range of rates for research and reproduction.
3. No consistent relationship was evident between the amounts the institutions charged and their costs.

Enforcement Agencies Paid About \$40,000 to Financial Institutions

The attorney general and the Honolulu prosecuting attorney issued investigative subpoenas primarily for investigations into white-collar crimes. The subpoenas were used to obtain financial information on cash flow data that may be useful in establishing probable cause.

In FY1991-92, the attorney general issued 24 investigative subpoenas and paid a total of \$15,821.25. The charges for individual subpoenas ranged from \$7.70 to \$4,000. The major payments were for seven subpoenas with charges totaling \$13,949.75. Seven other payments were for less than \$50 each.

The prosecuting attorney issued 148 investigative subpoenas to financial institutions during the same fiscal year. The prosecutor's staff requested 16 of these but was unable to identify any costs for the 16. The other 132 subpoenas were requested by the Honolulu Police Department (HPD). The HPD received invoices for 82 subpoenas and paid \$23,629. The invoices billed a total of \$10,003.15 for 403.5 research hours (an average charge of \$24.79 per hour) and \$13,368.85 for 8,655 pages of documents (an average of \$1.54 per copy).

Charges by Financial Institutions Varied Widely

We surveyed 14 banks and savings and loan associations in Honolulu about what they charged immediately prior to Act 273 (June 19, 1992) for research, reproduction, and other items. We also asked for a cost breakdown of their charges.

All of the financial institutions responded to our survey. As shown in Figures 2.1 and 2.2, they reported widely varying fees for research and reproduction. Research charges ranged from \$10 to \$40 per hour with the most common charge being \$20. Reproduction charges ranged from 15 cents to \$3 per page with the two most common charges varying widely at \$2 per page and 20 cents per page.

As seen in Table 2.1, generally the institutions charging less for reproduction also charged less for research.

Table 2.1
Financial Institutions' Charges Prior to Act 273

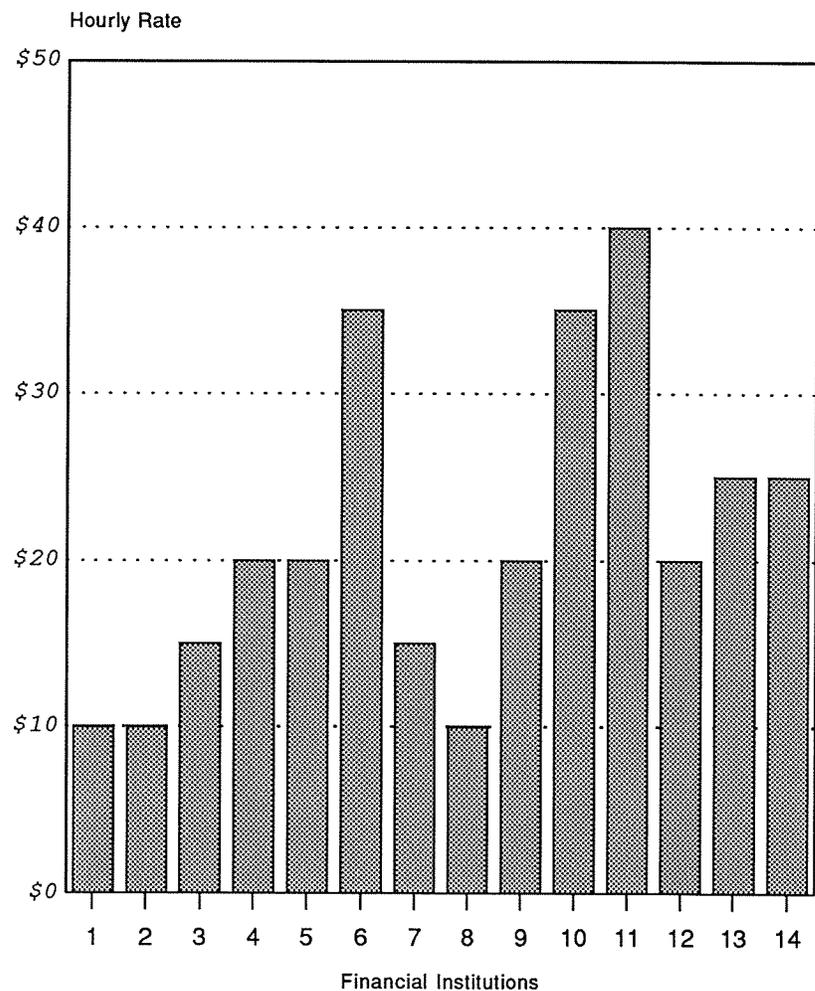
Financial Institution	Reproduction Per Copy	Research Hourly Rate
1	\$.15	\$10
2	\$.20	\$10
3	\$.20	\$15
4	\$.20	\$20
5	\$.50	\$20
6	\$.60	\$35
7	\$1.00	\$15
8	\$1.50	\$10
9	\$2.00	\$20
10	\$2.00	\$35
11	\$2.00	\$40
12	\$2.50	\$20
13	\$3.00	\$25
14	\$3.00	\$25

Source: Responses to Auditor's Survey, July 21, 1992.

Financial Institutions Vary in Describing Costs

To study the actual costs incurred by financial institutions, our survey asked them to break down their charges. The institutions did this in a wide variety of ways. For example, they differed in what they identified as the components of costs, in the level of detail of cost breakdowns, and in the values assigned to cost items. This is not unexpected since financial institutions differ in their size, organization, and mode of operation.

FIGURE 2.1
Charges for Research Per Hour



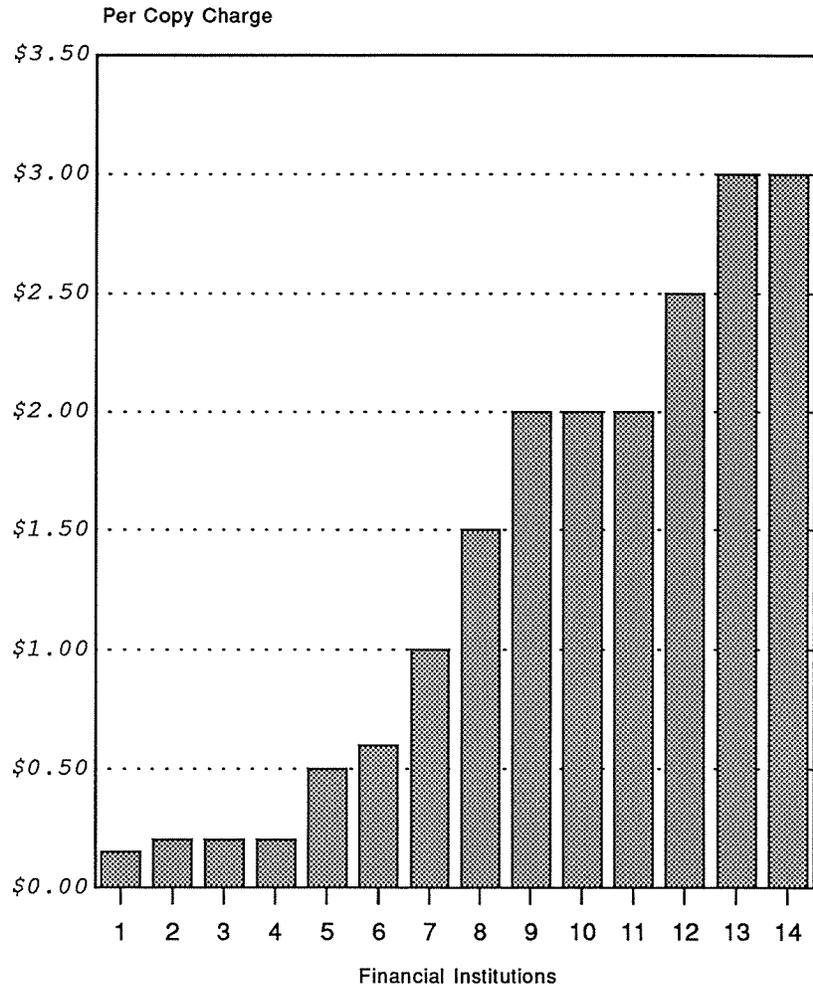
Source: Responses to Auditor's Survey, July 21, 1992.

Components of costs

The financial institutions differed in what they reported as cost items. Most included direct salary costs. Others identified administrative expenses, employee benefits, overhead, allocated costs, or a combination of these.

Cost items for reproduction included various combinations of salaries, benefits, equipment lease, equipment repair, rent, equipment depreciation, maintenance, supplies, storage, and allocated costs.

FIGURE 2.2
Charges for Reproduction



Source: Responses to Auditor's Survey, July 21, 1992.

Level of detail

Cost breakdowns ranged from being highly detailed to having none at all. At one end of the spectrum, an institution gave a breakdown of its research costs for clerks, supervisors, and a vice president showing the percentage of time spent by each. These costs were further broken down into FICA, workers compensation, medical, life insurance, and employer matching costs for retirement.

Another institution divided its research costs into direct and indirect costs and then allocated the costs in each category to the custodian of records, records management, and the institution's branches. Still another institution gave us a cost per copy derived from a detailed analysis of the cost of paper, microfilm, microfiche, storage, equipment, and maintenance.

At the other end of the spectrum were institutions that had no cost data for their charges.

Values assigned to cost items

The financial institutions assigned different values to cost items. Direct hourly costs for research ranged from \$8.03 to \$27.68. Additional hourly costs for administrative expenses, employee benefits, overhead, or allocated costs ranged from \$2.33 to \$13.25. One financial institution included a cost item for "other expenses" of \$13.75 per hour, while another reported a record retrieval charge of \$5 per hour.

For reproduction, one financial institution reported a cost of \$2.90 per copy, consisting of \$1.90 in salaries and benefits and \$1.00 for other expenses. Another institution showed a cost of \$2.17 per page made up of labor at \$1.84, supplies and maintenance at 4 cents, and postage at 29 cents.

Other institutions reported much lower costs for reproduction. For example one charged 50 cents per copy to cover equipment depreciation, supplies, and employee expense, and another charged 20 cents per copy for equipment lease, equipment repairs, paper, and supplies.

Relationship of charges to costs

We found no consistent relationship between charges and the costs reported by financial institutions. In some cases, charges were higher than reported costs; in other cases they were lower; in still others it was impossible to tell because of the nature of the cost breakdown. This was true for both research and reproduction.

Four institutions had research charges that were higher than their costs. One of these, for example, charged \$25 per hour and reported \$23.65 in costs; another charged \$35 per hour with \$31.74 in costs. Four institutions had research charges lower than costs. For example, one charged \$25 with \$25.25 in costs and another another charged \$20 per hour with \$35.52 in costs. Some institutions said that their charges equalled costs but they provided little data to substantiate this.

For reproduction, several institutions had charges that were higher than their reported costs. One institution charged \$3 per page with \$2.17 in costs; a second charged \$2 per page with \$1.17 in costs; the third charged \$1.50 with 89 cents in costs; and the fourth charged \$2 with 9 cents in costs. Two other institutions had reproduction charges lower than costs (\$2.50 per copy with \$4.25 in costs and \$1.00 per copy with \$2.40 in costs).

Conclusions

From the information we obtained, it is clear that financial institutions are not uniform in (1) how they determine their charges and (2) what they consider to be costs for complying with subpoenas. Some institutions reported charges that exceeded their costs, some reported charges that were less than their costs, and some reported that they broke even.

We could not pin down the actual costs for all financial institutions, but the fees set in Act 273 (\$15 per hour for research time and 50 cents per page for reproduction) appear reasonable. They exceed the amounts financial institutions receive from federal law enforcement agencies.¹ The new fees also equal or exceed the fees that some institutions were charging prior to Act 273. At the same time, Hawaii's law enforcement agencies will be paying fees that are lower than what most of the institutions were charging prior to Act 273.

In light of these factors we believe that Act 273 offers a reasonable compromise.

Notes

Chapter 1

1. Testimony on House Bill No. 3303 submitted by Warren Price III, Attorney General, State of Hawaii, to the Honorable Russell Blair, Chairperson, Senate Committee on Judiciary, March 27, 1992.
2. *Code of Federal Regulations*, Part 219, Section 219.3.
3. Testimony by Warren Price III on House Bill No. 3303.

Chapter 2

1. *Code of Federal Regulations*, Part 219, Section 219.3.

Responses of the Affected Agencies

Comments on Agency Responses

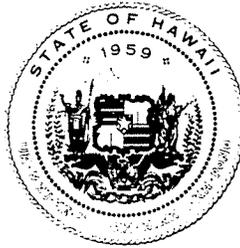
We transmitted a draft of this report to the Department of the Attorney General and to the prosecuting attorneys' offices and police departments of the City and County of Honolulu and the counties of Hawaii, Maui, and Kauai on October 13, 1992. A copy of the transmittal letter to the Department of the Attorney General is included as Attachment 1. Similar letters were sent to the other law enforcement agencies. The Department of the Attorney General and the Honolulu Police Department submitted written responses which are included as Attachments 2 and 3 respectively. The other agencies did not submit responses.

The Department of the Attorney General supports our conclusion that the fees of \$15 per hour for research time and 50 cents per page for reproduction set by Act 273 are a reasonable compromise. The department also suggests that there is no reason for financial institutions to charge the State more than they charge the federal government.

The Honolulu Police Department concurs with our conclusions. It supports Act 273 as an acceptable compromise which mandates reasonable and consistent reimbursement to financial institutions for costs incurred in complying with administrative subpoenas.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

C O P Y

October 13, 1992

The Honorable Robert Marks
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Marks:

Enclosed are three copies, numbered 6 through 8, of our draft report, *Costs Incurred by Financial Institutions in Complying With Investigative Subpoenas*. We ask that you telephone us by Friday, October 16, 1992, on whether you intend to comment on our conclusions. If you wish your comments to be included in the report, please submit them no later than Tuesday, October 26, 1992.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

ROBERT A. MARKS
ATTORNEY GENERAL
RUTH I. TSUJIMURA
FIRST DEPUTY ATTORNEY GENERAL

October 26, 1992

Ms. Marion Higa
State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawaii 96813

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OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

We have reviewed the preliminary draft of the report entitled "Costs Incurred by Financial Institutions in Complying With Investigative Subpoenas" and submit the following comments for inclusion in the final report.

As the report notes, we have long felt that there was a need to place a reasonable cap on the fees charged by financial institutions for the research and reproduction of records in response to an investigative subpoena issued pursuant to Section 28-2.5, HRS. While these institutions are limited by federal law to charging federal investigative agencies just \$10.00/hour for research and \$0.15/copy for reproduction of records, we are charged anywhere from \$10.00 to \$25.00/hour and \$0.15 to \$3.00/copy for reproduction.

In our unsuccessful 1991 attempt to legislate fee caps, the financial institutions were, in our opinion, unable to substantiate their claim that the federal rates are unreasonably low. Therefore, it comes as no surprise to us that the report concludes that "[n]o consistent relationship was evident between the amounts the institutions charged and their costs." In light of the fact that these institutions engage in one of the most highly regulated industries, responded to approximately 180 federal subpoenas compared to 104 issued by State and county agencies this past year, and are requested to respond to law enforcement subpoenas because of important public, as opposed to private, interests, we wholeheartedly support the report's

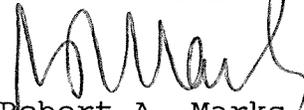
Ms. Marion M. Higa
October 26, 1992
Page 2

conclusion that \$15.00/hour and \$0.50/copy is a "reasonable compromise."

Although it was not specifically called for by the legislation mandating the study of costs, we believe it would have been useful to draw some comparison between the burden imposed by response to subpoenas issued by state and county agencies and that imposed by response to subpoenas issued by federal investigative agencies because there is no apparent reason to charge more for one than the other. It would also have been useful to know to what extent the research and reproduction capacity exists due to the necessity to respond to subpoenas issued by public agencies and private litigants as opposed to that which is necessary to comply with regulatory requirements.

We believe that such an inquiry would demonstrate that the new fee caps are more than favorable to the financial institutions from a public policy point of view. Perhaps this issue can be addressed when the issue is, inevitably, revisited in the future. Thank you for this opportunity to review the draft report and to submit our comments.

Very truly yours,



Robert A. Marks
Attorney General

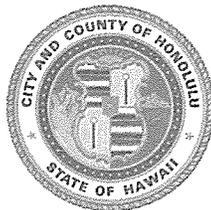
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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

ATTACHMENT 3

1455 SOUTH BERETANIA STREET
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FRANK F. FASI
MAYOR



MICHAEL S. NAKAMURA
CHIEF

HAROLD M. KAWASAKI
DEPUTY CHIEF

OUR REFERENCE

KB-LLC

October 16, 1992

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
State of Hawaii
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for your prompt action on the matter of Costs Incurred by Financial Institutions in Complying With Investigative Subpoenas.

We have reviewed your draft report of October 14, 1992, and we concur with its conclusions. We fully support Act 273 of 1992 as it mandates reasonable and consistent reimbursement to financial institutions for cost incurred in complying with administrative subpoenas.

Act 273 is an acceptable compromise, and it may also improve relationships between the law enforcement community and the financial institutions by eliminating tension associated with financial charges.

Sincerely,

MICHAEL S. NAKAMURA
Chief of Police

By 

ROBERT KANE, Assistant Chief
Investigative Bureau