



May 14, 2007

MEMORANDUM

TO: Recipients of Report No. 07-04, *Audit of the Child Support Enforcement Agency*

FROM: 
Marion M. Higa
State Auditor

SUBJECT: OIP Opinion Letter No. 07-08

We have been advised by the Office of Information Practices that the public interest in disclosure outweighs the privacy interest of a former staff member of our office who violated national auditing standards as well as office policy while conducting the audit of the Child Support Enforcement Agency (CSEA). The former staff member applied for the then-vacant position of administrator of CSEA while he was still a member of the CSEA audit team. The individual had been assigned to the area of personnel management and customer service, and had been privy to confidential information involving agency employees. Because the infraction and our subsequent actions were personnel actions, in an abundance of caution we redacted information in the publication of the report that the OIP has now opined should have been disclosed. The Attorney General's response to our draft report revealed the specifics of the violation. Despite our belief that the infraction was egregious, we had decided to redact the details in the Attorney General's response to our draft report while we sought OIP's opinion. We were concerned that, if we had left the Attorney General's letter intact and the OIP had opined in favor of protecting the former employee's privacy interest, we would have revealed information that we would not be able to take back.

Although the OIP opinion narrowly refers to any request we may receive for an unredacted copy of the Attorney General's letter, we have decided to amend the report with the distribution of that letter, which is enclosed. Please substitute this letter for pages 54-67 of Report No. 07-04. Also enclosed is OIP Opinion Letter No. 07-08.

Enclosures

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

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January 12, 2007

Ms. Marion M. Higa
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State of Hawaii
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OFC. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa,

This letter constitutes the response of the Department of the Attorney General to your draft report entitled, "Audit of the Child Support Enforcement Agency", dated December 29, 2006. Our response will address specific issues of concern that we have with the findings reported herein.

The Audit is Flawed due to the Improper Actions of an Important Member of the Audit Team

DURING THE COURSE OF YOUR AUDIT, ONE OF YOUR SENIOR AUDIT TEAM AUDITORS APPLIED FOR THE THEN OPEN POSITION OF ADMINISTRATOR OF THE CSEA. As the Auditor later acknowledged in writing, this was totally improper. As the Auditor indicated to me, this violated written ethical standards applicable to auditors. This auditor who applied for the CSEA Administrator position during the audit had significant audit responsibilities, including the parts of the audit relating to customer service and human resources.

I also believe that the description in the draft audit of what occurred is inadequate:

"Further, during the course of our audit, it came to our attention that one of our auditing staff had engaged in an activity that constituted a personal independence impairment with respect to this audit engagement."

I believe that the State Auditor should fully and accurately describe the situation, rather than using the term: "Personal independence impairment."

General Comments on the Audit

We believe this audit relies far too heavily on the results of past audit efforts and imputes the same findings to the current audit report. This is hardly a fair approach when four years have elapsed since the last audit, and material improvements have been made. And yet despite this, we also believe this audit fails to appropriately credit the CSEA for fixing problems identified in previous audits.

Prior audit findings criticized the agency for lacking planning and sound financial management. There have been significant improvements in each of these areas, and yet, this report fails to appropriately acknowledge CSEA's progress. Indeed, it is ironic, that the improvements in the CSEA's financial management are so obvious, that the Hawaii Supreme Court has acknowledged this publicly, "The financial management of CSEA has improved significantly since the publication of the 2000 Audit," Kemp v. CSEA, 141 P.3d 1014, 1020 (2006), and yet the Auditor has not.

We note some highlights in CSEA performance that we believe are not appropriately acknowledged in the draft audit:

- 1) Customer service has significantly improved, as objectively measured;¹
- 2) Distributed child support has increased from \$66.5 million in FY 2000 to \$83.5 million in FY 2005, an increase of almost 26%, despite the CSEA having one of the highest per employee caseloads in the nation;
- 3) The CSEA has continually done well in cost effectiveness, which measures the amount of child support collected against the costs of doing so;
- 4) IT has significantly improved, including reducing system downtime from 25-30 hours per month during business hours previously to virtually nothing now, eliminating manual processes to streamline Child Support Enforcement steps, and reducing by up to 80% the time necessary to back up the system;
- 5) No negative findings relating to the CSEA's financial management by the independent auditors;
- 6) The CSEA passing federal data reliability audits every year beginning with FY 2003;
- 7) Significant increases in electronic funds transfer utilization; and
- 8) Increased internet use by the CSEA.

¹ Unfortunately, because of the "personal independence impairment" of a senior staff member of the Auditor, there is no report on customer service in the Audit.

Audit Report's "Summary of Findings" (pp. 11-12)

On Page 12, under the summary of findings, the following statement is made: "Lacking coherent analysis and planning for improvement projects and the agency as a whole, CSEA is unable to provide information on the exact nature of the problems these projects are to solve and the outcomes to be delivered. As a result, the agency lacks the capability to demonstrate the relationship of its actions to outcomes achieved." We believe this statement is overly broad and lacking in specific discussion or analysis that would justify this conclusion.

On page 12, the audit finds: "Reactive management deprives the agency of direction and accountability." This statement is ironic. Over the past six years, there have been several Legislative Audits of the CSEA. In each of the audit reports there have been findings criticizing the information systems, lack of planning, and lack of sound financial management. It was essential to deal with these findings as a priority, which indeed CSEA sought to do over recent years. This audit improperly equates trying to deal with the very issues prior audits have identified as "reactive management."

Since the last audits, CSEA has developed its first ever strategic plan that was delivered in 2006 and guided by the Federal Government's strategic plan for child support. There have been dramatic improvements in the financial management of the agency, including a reconciliation of all funds in the agency's Trust fund and documentation as to funds that are being held. These are dramatic improvements regarding agency accountability. The fact that every aspect of accounting cannot be fully reconciled relates more to the fact that proper information on cases existent prior to the year 2000 continues to be unavailable. Also, the 2003 audit, focusing on the Keiki System, found the need for numerous changes to make the system more effective. There have been many positive changes to the Keiki system, including virtually eliminating material system downtime--something that is very significant and highlighted as a flaw in a prior audit--that are ignored in this audit. This is unfair.

Our agency, like others the Auditor audits and criticizes, can ill-afford not to react to the Auditor's audit findings. And yet, when we do, the Auditor accuses the Agency of being "reactive." Though we have accomplished much, the audit either ignores or acknowledges by "faint praise" our accomplishments. We believe that though we can and must improve, the audit is inappropriately imbalanced, failing to appropriately note our successes, while emphasizing only our shortcomings.

The best example is the audit's off-handed and totally inappropriate way of discounting improvements in customer service at the agency measured by the extraordinary decline in the number of complaints to the Ombudsman. The 2003 Audit discussed at

great length the large number of complaints to the Ombudsman about CSEA, with the 2003 Audit emphasizing again and again how this indicated grave failings on the part of the Agency. We wrote to the Auditor in September of this year, that according to the Ombudsman's own statistics, complaints to the Ombudsman regarding CSEA had dropped 72% from FY 2000 to FY 06. The draft audit states that the declining numbers of complaints to the Ombudsman are merely "indirect indications for improvement."

This seems to suggest that when statistics demonstrate poor performance, the Auditor (as in 2003) will view them as direct evidence, but when those same, previously relied-upon statistics show improved performance, they are discounted by the Auditor. This unfortunately suggests a bias on the part of the Auditor toward finding fault, rather than recognizing improvement.

Audit Report Regarding "Reactive Management" (pp.12-24)

Regarding "The Agency Developed a Strategic Plan to Address Prior Auditor Recommendations"

The audit criticizes CSEA's strategic plan and the workings of the CSEA Advisory Council for not being, in essence, ideal models of what the audit envisions. First, the council did not exist prior to 2003 and the plan was only recently finally approved, both helping to build what will hopefully be a long-term foundation for the agency. Ideal models are rarely achieved, and certainly not in a few years. Further, the report seems to suggest that goals in the strategic plan and efforts by the council toward "compliance" are *not* good things. But, for any agency like CSEA, where federal benchmarks are set to measure the performance of the states -- and incentive funding levels are based on meeting those benchmarks -- compliance oftentimes is the road to "improved performance". Indeed, it is therefore doubly curious how the audit can suggest that the plan "lacks benchmarks and performance indicators," when the plan *specifically* includes targeted outcomes of increased percentages in the areas measured by the federal government.

It is important to note, which the audit does not, that 2006 was the first year that the Federal Department of Health and Human Services came out with a strategic plan for the Child Support Program. With this guidance from the federal agency with oversight of child support, states now have clearer direction on where their programs should be headed, and this is reflected in our strategic plan for our state. Importantly, and what the audit ignores, is that the national plan was a key guideline around which CSEA's strategic plan was built. Moreover, other states' plans were also reviewed in preparing CSEA's strategic plan.

Regarding: "Top Down Planning Process Excluded Important Stakeholders"

On page 13, the draft audit states that the top-down planning process excluded important stakeholders. We agree that the planning process should have been more inclusive at the front end. Proper inclusion of a broad cross-section of staff and administrators is an important issue which we have sought to emphasize and expand. However, the draft audit fails to note that in the fall of 2006, meetings were held with all CSEA employees, branch by branch and statewide, to discuss the plan directly with employees. During these meetings, we acknowledged that it would have been better to have had fuller in-input from employees on the front end, but informed employees that they could provide suggestions for revising the plan as part of the process of reviewing it within their respective branches. Employees were further advised that recommendations for amending the plan would be taken, as a comprehensive package, to the Advisory Council for consideration.

Pages 13-14 of the draft audit assert that the Advisory Council had little contribution into the strategic plan and that most Advisory Council members were "excluded" from the process. This is not accurate, as in fact the audit recognizes that the council formed a subcommittee in order to prepare the strategic plan. Moreover, and contrary to the audit's assertion, the subcommittee did have significant input into the strategic planning. The five member subcommittee, formed in July 2003, consisted of: the former Administrator as Chair; a member of the 2003 audit team; an administrative manager at CSEA; a member from the Department of Human Services; and a member representing the Association for Children for Enforcement of Support. I also attended the Advisory Council's meeting in July 2003 regarding strategic planning and during which the strategic planning subcommittee was formed. According to the subcommittee member from the Department of Human Services (who was not interviewed for the draft audit): at least four meetings were held; leading the initial drafting and work for the plan was the individual who had been on the team which conducted the 2003 audit; subcommittee members were given assignments, such as determining best practices in certain areas; planning material and responses were communicated between members; and overall, it was a good project with plenty of input from subcommittee members. It is unclear why this member was not interviewed.

The Advisory Council as a whole also had ample opportunity to address the strategic plan, including the draft plan which was disseminated to the council in September 2005 and continuing discussions soliciting input from council members. The fact that there were not significant changes is not surprising since the Council had delegated most of the work to the subcommittee, and 5 of the council's 14 members were on the subcommittee. Adding to this is that federal outcomes are prescribed by law. This fact can be verified by comparing the Hawaii strategic plan to the

Office of Child Support Enforcement (OCSE) strategic plan. The contents are consistent. Therefore, it is incorrect to suggest that the strategic plan itself should have undergone significant amendment based on the review by the Advisory Council.

In terms of the draft audit's criticism on p.14 that development of the strategic plan did not involve "many of the agency's operational managers and staff," it must be pointed out that, in addition to the former Administrator, the Advisory Council itself consisted of the Administrative Processing Branch chief, an administrative manager, the Maui branch chief, and the deputy assigned to advise CSEA.

Regarding: "The Advisory Council's Role in Agency Planning is Unclear"

On pages 14-15 there is a finding that the role of the Advisory Council is unclear. The report goes on to say that because the strategic plan does not provide full information on where the program is headed, that it does not compare favorably with other state plans or best practice guides. We believe this criticism also to be unfair. States prepare and implement strategic plans and implementation action plans in a variety of ways.

What happens most often is that the planning effort is truncated to focus on initiatives that are positively correlated to improvements in performance outcomes. For the Hawaii CSEA, the first strategic plan has been developed, with guidance from the National plan, and at the initiation and behest of the Advisory Council. Moreover, with regard to the draft audit's criticism that the plan itself "lacks focus on measureable goals and objectives," it appears the desire is to have specific numerical or other benchmarks. In addition to the federal objectives, which are addressed in the plan, each branch has also set forward on drafting action plans for their specific branches to focus on how to improve agency outcomes based on the goals set out in the strategic plan. Such action planning by each individual branch was part of the overall planning process anticipated and discussed at the Advisory Council. See minutes from the September 7, 2005 Advisory Council minutes. Further, preparation of action plans has been addressed as part of the statewide branch-by-branch meetings on the strategic plan, during Executive Committee meetings with branch heads and other management staff, and in meetings of the individual branches. The process is underway and we believe the draft audit should have recognized this as part of the planning process.

Regarding: "Lacking Performance Measures, the Agency's Strategies Provide no Means for Assessment"

On page 17, there is a finding that "poor planning perpetuates Keiki inaccuracies and vulnerability." It is hard to tell what this statement means. The Keiki System comprises the

flow and business model of the program. In fact, many system functions are automated and are generated based on the amount of money owed by the non-custodial parents (NCP). Therefore, the system is clearly designed to support the Child Support Program. The system should be continually reviewed to gain efficiency. We believe it can better support Program Outcomes, and we plan to align system function and operation to closely support and monitor outcome results.

Regarding: "Enhancements to Automated Systems Lack Focus and Foster Skepticism"

On page 18, the finding states that automated systems lack focus and foster skepticism. This criticism is levied because there has not been an IT strategic plan developed based on the audit from 2003. While it is true that a *formal* IT strategic plan may not have been developed, it does not mean that the IT projects that have been undertaken lack focus.

The IT projects undertaken provided the following benefits: (1) flexibility in making program changes to Keiki (Documentation and Data Modeling) which is needed so that changes can be made in a timely manner to support order establishment, enforcement and collections; (2) the ability to analyze order and enforcement deficiencies (Decision Support System) which then allows staff effort to be focused on activities specifically related to enhancing program outcomes; (3) a stable computing environment (Network Infrastructure and Desktop Computer Upgrade), that does not crash is valuable to keep the system operational so that staff can accomplish their work; (4) improved system availability (KEIKI Mainframe Tuning) to keep the system operational; and (5) improving system functioning by cleaning and clearing storage space (Archive, Retrieval, and Purge).

The auditors also expressed skepticism on the potential effectiveness of the ongoing Decision Support System (DSS) project because of their concern of the data quality. This doubt apparently stems from the auditors' misunderstanding of the complete scope of the project. The first step in the DSS development process is to analyze data quality and to ensure systematic data cleanup, if necessary, based on collaborative efforts among the information technology staff and the functional leads. The DSS project is designed to accomplish the following:

Problems	Before	After
Lack of credible data - decision-makers unsure of decisions made because of unsurety of the data quality in the automated system.	<ol style="list-style-type: none"> 1. Difficult to assess the quality of the data in the system. 2. Unsurety of reliability of information gleaned from the system. 	<ol style="list-style-type: none"> 1. First step in assuring quality of the system data. 2. More reliable reports and other information from the system.
<ol style="list-style-type: none"> 1. Operational data not easily accessible and historical data will be less accessible after the archive/purge project completes. 2. Difficulty in getting information to make informed decisions to meet the performance measures and to achieve the agency' goals. 	<ol style="list-style-type: none"> 1. Reliance on overloaded information technology resources for reports. 2. Inability to obtain timely ad hoc reports. 	<ol style="list-style-type: none"> 1. Both management and operational staff have easy access to business intelligence and make queries for case management and customer service purposes. 2. Management able to do analysis of data to improve decisions and to proactively deal with issues.

The auditor's finding seems to be based on a comment by *one* of the management staff. This hardly seems sufficient documentation for such a finding. See the attached report (Attachment I) regarding the IT projects criticized in the audit report.

We also again note the following. At page 29, the 2003 audit stated:

"Scheduled and unscheduled KEIKI outages have materially affected staff's ability to process child support workflow

through the system. Scheduled downtimes—which account for approximately 50 percent of total downtime—occur because of the extensive processing requirements for system backups, month-end processing, and certain management reports. As a result, system downtime often overlaps into working hours. As more data is added to the system from increasing case volumes and longer historical information on current cases, backup and reporting timeframes will continue to lengthen.

Downtime schedules and logs show that KEIKI is offline from 25 to 30 hours per month during business hours, depending on the particular office. This equates to an average downtime during working hours of 15 to 17 percent. Comparable mission-critical systems at other businesses and government agencies are typically offline less than 1 percent during working hours.

Areas that are highly dependent on KEIKI, such as collection and processing of incoming checks, are especially impacted by downtimes. Over 1,900 checks per day flow into the agency. Many of these must be processed and disbursed within 48 hours to meet federal regulations, but downtime prevents this goal from being reached at times. This situation is aggravated by the fact that much of the scheduled downtime is at the start of each month, coinciding with a peak time for collection of checks."

The draft audit fails to even acknowledge the fact that downtime has been essentially eliminated, while at the same time stating that "overall impact [of IT projects] on, or improvement to, agency operations has been minimal, so far." Draft Audit at 19.

It is difficult to conclude other than that the audit itself is improperly biased when: 1) the 2003 audit at great length criticized the CSEA for system downtime; 2) as we pointed out to the Auditor in writing in September 2006, this criticized downtime has been essentially eliminated; 3) the body of the draft audit never acknowledges this downtime elimination (much less complimenting the CSEA for it); and 4) the draft audit essentially claims no meaningful IT improvements have been made.

Regarding: "Questionable Data Has Resulted in Waste and Customer Complaint"

On page 20 there is a finding that questionable data has resulted in waste and customer complaints. The narrative on these findings indicate that GAO reports have indicated that

missing and erroneous data contribute significantly to undistributed support payments.

Undistributed support payments, as indicated in this audit, total about \$1,100,000. Collections for FY 2006 amount to \$109,837,505. The current holds represent about 1% of the 2006 collections. Further, CSEA is constantly working to get clarifying information so that these holds can be released. There are unfortunately many custodial parents that move and do not provide CSEA with address forwarding information.

The auditors also indicated that the agency has no knowledge of the amount of duplicate cases in the system. This statement is not true because the agency does have a report listing all the duplicate cases. As of January 8, 2007, there are approximately 500 cases (i.e. 0.5% of the agency's IV-D case population based on the case count for Federal Fiscal Year 2005) that have the same combination of non-custodial and custodial parents. In addition, the agency has been working on correcting the problem.

There is also a statement that CSEA does not have addresses or Social Security numbers for a large number of non-custodial parents. This is not surprising as many cases are created through an interface with the Department of Human Services for Temporary Assistance for Needy Family cases. While we always *want* address and Social Security number information, it is not always available. In fact, that is one of the primary functions of CSEA, to locate the absent parent and establish the address and social security number so that financial and medical support orders can be established. Therefore, it is expected that there would be cases that lack this information.

On page 22, there is a statement that the agency lacks policies and procedures to prevent, detect, or correct data errors. There are, however, Keiki policies and procedures which assist in this purpose. While the Keiki Policies and Procedures should be updated, it is incorrect to say that they don't exist or are grossly inadequate.

Regarding: Lacking Disaster Planning Raises Risk of Major Service Disruption

The agency does not disagree with the need for disaster planning. System redundancy is critical to be able to recover from disasters. Efforts will continue to work with ICSD on a viable Disaster Recovery Plan. We will also attempt to secure funding from the Legislature to make Disaster Recovery possible.

Audit Report: The Agency Has Been Slow to Improve Deployment of Existing Resources (pp. 24-33)

The finding in this section is that because Hawaii's performance is low in some performance efforts, that there has

been no attempt to improve by re-deploying existing resources or trying new strategies. This is inaccurate.

Examining the measure of paternity establishment shows that there has been a high level of success in that area due to a concerted effort by CSEA to improve. Just two years ago, paternity establishment figures were of great concern. However, the 2006 statistics show that Hawaii exceeded 100% performance on the paternity measure. Similar efforts are underway for order establishment and collections.

Indeed, the incentive payments received for arrears collections demonstrate both real progress by the Agency and real inaccuracy in the audit report. We first note that the federal method for measuring arrears collection is flawed. The federal method gives credit for every case in which *any* money is collected, rather than focusing on the total amount collected. Thus, far more credit is given for collecting one dollar each in one thousand individual cases, than in collecting one thousand dollars each in five hundred cases. Regardless, the CSEA set out to improve, because it had been receiving zero incentive funds in this area. And, the CSEA succeeded in raising its arrears collection threshold for the last two years above the minimum, so that rather than collecting zero in this category, we have collected 50% and 51% of the incentive monies available. Rather than both criticize the Agency for the low level and praise the Agency for its efforts to get to the 50% incentive level, the audit, page 29, is wholly and inaccurately one-sided, again apparently evidencing a bias.²

Regarding: "The agency Has Been Passive in Closing Obsolete Cases"

In truth, the finding should be that the Agency has not been as successful as it would have hoped, rather than that it has been *passive*. The Auditor is fully aware of the Agency's efforts and the position of the federal government. We are continuing to work on this issue.

Increased Use of Electronic Funds Transfer (EFT) Could Reduce Costs and Free-up Resources

The auditors cited that the agency sends out approximately 3,000 - 5000 paper checks each business day. The number is overstated. According to an internal accounting report as of

² In testimony to the Legislature in 2006, we pointed out our excellent cost effectiveness ratios over several years, including one year when we were number one in the nation. The Audit improperly criticizes this testimony by claiming we failed to note that in the year we were first in the nation, a contributing factor was a significant refund of overcharges for several prior years. While this was a contributing factor, obviously if the overcharges had not been paid in the *prior* years, the cost effectiveness rankings for those years would have been even higher than they were.

December 31, 2006, the average number of paper checks disbursed per month is 32,824. This translates to 1,492 paper checks per business day, assuming there are 22 business days in a month. In January 2006, the agency's percentage of disbursements via the electronic fund transfer method (i.e. direct deposit) was 6%. However, since the first rollout of the direct deposit system, (August 31, 2006), the percentage has increased substantially. By the end of December 2006, the percentage of payments using EFT had increased to 30% of all disbursements. The agency believes that the upward trend will continue, as there are continuous efforts to make customers aware of the service.

Audit Report Regarding: Problems with the Agency's Trust Fund Persist

The auditors pointed out that the agency has not been expensing the IRS fees according to the government accounting principles. This statement is not correct. The agency has reported the IRS fees on the federal report, OCSE-396A, in a timely manner for reimbursement purposes. Because the IRS automatically deducts the fees from the total amount of income tax offset submitted to the agency, there is no *physical* invoice. In other words, it is not necessary for the agency to create an accounts payable in the State accounting system and to have it expensed simultaneously. However, during the year end financial audit the auditors will recognize the IRS fees as expenses by booking an adjustment entry.

In addition, the auditors suggest that the agency should pursue an initiative to reduce the cash shortfall. It was suggested that we seek an appropriation from the Legislature and/or use contractors to collect on returned checks.

In 2004, the agency made the attempt to get additional funding to make up for unrecoverable expenses such as the IRS adjustments, the IRS tax intercept fee, and the non-sufficient-fund checks from custodial parents, but the request was not successful. As to boosting the collection of returned checks, the agency has designated a full-time accountant for this responsibility.

The agency is also being criticized for having a substantial amount of unidentified difference on the bank reconciliation (i.e. \$999,797 and \$348,431 for SFYs 05 and 06, respectively) as shown on Exhibit 2.5. The Agency has further reviewed its internal records, and believes that it failed to fully take into account the category of uncollected "insufficient" funds prior to the KEIKI system. We believe it likely that taking that factor into account would significantly reduce what the report describes as the "unexplained difference." We would be happy to share our figures with the Auditor prior to the release of the final audit report. We do note, however, a problem with perfect reconciliation because of insufficient records predating the current automated system in certain categories

According to the auditors, the agency violates generally accepted accounting principles (GAAP) by co-mingling the interest income with the federal funds. GAAP requires funds to be segregated and independently accounted for only if they do not belong to the same business entity. The federal funds referred in the audit report represent the federal share of the TANF collection, which is authorized to be used for the agency's operations; they belong to the agency. There are records to keep track of both sources of revenue. In this situation, co-mingling the funds does not obscure accountability.

Additionally, the auditors brought up the fact that pursuant to HRS, Section 576D-10, there are only two ways for the agency to spend the interest earnings: 1) for related costs of the maintenance and operations of the bank account, or 2) to improve the CSEA's ability to promptly disburse payments to the custodial parent. The auditors apparently believe that the agency may not be in compliance with the statute by using the interest income for operating costs. To date, the agency has not used any of the interest to pay for operating expenditures other than the bank analysis fee and the IRS income tax offset fee, which are automatically deducted from the bank account.

Audit Recommendations

The audit report contains numerous recommendations as follows:

With regard to strategic planning: that the agency adopt a strategic planning process that is inclusive of stakeholders; identify agency's strengths and weaknesses, opportunities and challenges and so forth.

The agency agrees to continue to improve the strategic planning process and to continue its ongoing process of articulating outcomes and performance measures. It also agrees to be specific about what issues need to be addressed and what initiatives are being undertaken to address those issues and enhance outcomes.

Recommendations regarding the Advisory Council will be considered.

The agency agrees to clarify the role of the Advisory Council. We do not concur with increasing the oversight role of the Advisory Council. We believe that this would amount to transforming the council into a policy council which was not the intent.

Recommendations relative to Information Technology will be addressed as follows:

The agency agrees to: (1) adopt data reliability as a priority strategy; (2) improve training in an attempt to ensure that staff enter data correctly; (3) dedicate or obtain resources to clean up the Keiki system; (4) develop an Information Technology strategic plan; (5) to develop a plan for disaster recovery; and (6) continue to encourage families to use the Electronic Fund Transfer to receive fund distribution.

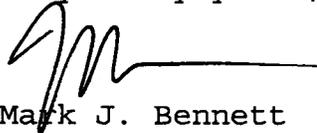
Improving the use of existing resources will be addressed as follows:

The agency agrees to develop a routine process to identify cases eligible for closure.

The Child Support Payment Trust Fund will be addressed as follows:

The agency agrees to establish a reconciliation process to account for the differences between the cash available and Keiki subsidiary accounts.

Very truly yours,

A handwritten signature in black ink, appearing to be 'MJB', followed by a horizontal line extending to the right.

Mark J. Bennett
Attorney General



RECEIVED

2007 MAY -8 AM 10:08

OFC. OF THE AUDITOR
STATE OF HAWAII

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

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OPINION

Requester: State Auditor
Agency: Office of the Auditor
Date: May 4, 2007
Subject: Personnel Information in Agency's Response to Audit Report
(U RFO-G 07-52)

REQUEST FOR OPINION

Requester seeks an opinion on whether the Office of the Auditor (the "Auditor") may, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), redact personnel information from an agency's response to an audit in order to protect the personal privacy of an audit analyst (the "Analyst"). Specifically, the information in question describes employee misconduct committed by the Analyst.

This case concerns the Auditor's audit of the Child Support Enforcement Agency (the "CSEA"), an agency under the purview of the Department of the Attorney General (the "AG"). At the time this request for an opinion was made, the Auditor had issued a draft audit of the CSEA (the "Audit Report") to which the AG had responded (the "AG's Response").¹ Since that time the final Audit Report, which includes the AG's Response as an attachment, has been issued and made public. However, the Auditor redacted the AG's descriptions of the Analyst's misconduct from the copy of the AG's Response attached to the Audit Report (the "Redacted Language").²

¹ The legislature directed the Auditor to review the performance of the CSEA since the issuance of the Auditor's January 2003 report "Study of the Automated Child Support Enforcement System (KEIKI)." Audit of the CSEA, Report No. 07-04 at 1.

² The AG's Response does not identify the Analyst by name. However, the Analyst's privacy is at issue because the descriptions of the misconduct combined with other information in the Audit Report, the AG's Response, and available public information would reveal the identity of the Analyst.

The Auditor contacted OIP for guidance prior to making the redactions. Specifically, the Auditor initially asked OIP whether the Redacted Language may properly be removed prior to attachment of the AG's response to the final Audit Report in order to protect the Analyst's privacy.³ OIP informed the Auditor that the UIPA did not dictate what information the Auditor must include in an audit report and, therefore, the proper form of the agency response to be attached to, i.e., included in, the final Audit Report was outside the purview of OIP. OIP thus confirmed to the Auditor that redaction of the personnel information from the AG's Response attached to the Audit Report would not be a violation of the UIPA.

However, OIP informed the Auditor that the UIPA issue presented by the redactions was whether, in response to a UIPA request for a copy of the AG's Response, the Auditor must provide that record without redaction. OIP advised that an agency may generally withhold personnel misconduct information that does not result in suspension or discharge for privacy reasons, and that the Auditor could request a written advisory opinion from OIP specifically addressing whether withholding of the Redacted Language is allowed. This request followed.

Unless otherwise indicated, this advisory opinion is based solely upon the facts presented in Requester's letter dated January 30, 2007 and attached materials, including a copy of the draft Audit Report and the AG's Response; and the final Audit Report (accessed on the Auditor's website).

QUESTION PRESENTED

Whether the Auditor may, in response to a UIPA request, redact from the AG's Response individually identifiable employee misconduct information about an audit analyst where that information directly impacts on the performance of the Auditor.

BRIEF ANSWER

No. OIP believes that the Auditor cannot redact this information under the UIPA's privacy exception because the public interest in the information, which directly sheds light on the performance of the Auditor, outweighs any privacy interest the Analyst may have in the information. Thus, in response to a UIPA request, the Auditor must provide a copy of the AG's Response without redaction.

³ Prior to issuing a final audit report, the Auditor creates a numbered draft of the report that is sent to the Governor, the legislative leadership, and to the affected agency. The agency being audited is allowed to review the draft report and to offer comment. The final audit report, which responds to and includes a copy of the agency's response to the draft report, is made public.

FACTS

The CSEA audit team consisted of a supervisor, an analyst-in-charge, and three analyst team members, whose audit tasks were assigned as follows:

- Team Member 1: Strategic planning
- Team Member 2: Information technology, including KEIKI
- Team Member 3: Customer service and personnel management

The Analyst was Team Member 3. During the course of the audit and after over three months of work performed on the audit, the Analyst applied for the CSEA's then-vacant position of administrator.⁴ After becoming aware of this application, Requester investigated and determined that the Analyst had violated both generally accepted government auditing standards ("GAGAS") and the Auditor's internal policies.

To address this violation with respect to the audit, the Auditor, pursuant to GAGAS, removed the Analyst from the audit team and issued a draft Audit Report that did not rely on any of the Analyst's analyses or conclusions. The Auditor explained its mitigation of this violation, deemed in audit terms a "personal independence impairment," as follows:

Further, during the course of our audit, it came to our attention that one of our auditing staff had engaged in an activity that constituted a personal independence impairment with respect to this audit engagement. Generally accepted government auditing standards require an audit organization and all individual auditors to be free, both in fact and appearance, from personal impairments of independence and that appropriate, timely measures be taken if independence is impaired. Such measures can include reporting the impairment, taking mitigating steps to remove the impairment, or withdrawing from the audit engagement.

⁴ The AG publicly disclosed the nature of the misconduct in an interview reported in the newspaper. See Jim Dooley, Child Support Enforcement Ripped, The Honolulu Advertiser, February 14, 2007, at B6. This disclosure raises the question of whether the Auditor could still withhold the Redacted Language even if it fell within the UIPA's privacy exception, given that it has already been published. Cf. OIP Op. Ltr. No. 03-02 at 6; OIP Op. Ltr. No. 05-16 (disclosure of information of public record would not constitute a clearly unwarranted invasion of personal privacy, making UIPA's privacy exception inapplicable). However, OIP need not address the question of whether the AG's action waived the application of the privacy exception for all agencies, since OIP concludes for the reasons set forth in this opinion that the privacy exception does not protect this information from disclosure.

We determined that the impairment was limited to one individual audit staff and did not impact the remaining auditors' ability to maintain objectivity and impartiality in their findings and conclusions. Thus, in accordance with generally accepted government auditing standards, the personal impairment was mitigated by immediately removing the impaired audit staff from this audit engagement. We were, therefore, not required to withdraw from the audit engagement, however, all work performed by the impaired staff member has been discounted and has not been relied upon to support any findings or conclusions contained in this report.

Draft Audit Report at 9.⁵ The Analyst subsequently resigned.

In the AG's Response, the AG claimed that the CSEA audit was flawed due to the improper actions of an important member of the audit team and objected to the Auditor's failure to fully and accurately describe the misconduct in the Audit Report. Audit Report at 54. The AG's Response included specific descriptions of the misconduct, which, as noted above, the Auditor redacted from the AG's Response attached to the final Audit Report.

DISCUSSION

The UIPA allows an agency to withhold records or information where an individual has a significant privacy interest in the records or information that outweighs the public interest in disclosure. See Haw. Rev. Stat. § 92F-13(1) (1993). The public interest to be considered is the public interest in the disclosure of official information that sheds light on an agency's performance of its statutory purpose and the conduct of government officials, or which otherwise promotes governmental accountability. See OIP Op. Ltr. No. 91-19; OIP Op. Ltr. No. 92-17.

Generally, an individual has a significant privacy interest in information in his or her personnel file and personnel file type information contained in other records. See Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2006); OIP Op. Ltr. No. 99-1. This includes information related to employment misconduct, except where the misconduct results in the employee's suspension or discharge. See Haw. Rev. Stat. § 92F-14(b)(4). In this case, the Analyst resigned from his position with the Auditor. However, OIP need not make a determination here as to whether the Analyst's misconduct would have resulted in suspension or discharge. Even assuming the Analyst would not have been suspended or discharged and, therefore,

⁵ The Auditor provided the draft Audit Report for OIP's *in camera* review in connection with this opinion. OIP maintains the confidentiality of records provided for *in camera* review and information in those records; however, the statement quoted above is no longer confidential because the Auditor has already made it public by including it verbatim in the final Audit Report.

has a significant privacy interest in the Redacted Language, OIP finds that the public interest here outweighs that significant privacy interest. See Haw. Rev. Stat. § 92F-14(a) (Supp. 2006).

The information describing the nature of the Analyst's misconduct sheds substantial light on the Auditor's performance of the CSEA audit, as well as on the overall agency functioning of the Auditor, because the misconduct directly impacted the Auditor's performance of its primary statutory purpose. Specifically, because the Analyst's misconduct violated GAGAS, the Auditor was forced to mitigate that misconduct by negating all of the Analyst's work performed on the audit over a three month period, thereby wasting government resources. Further, the timing of the misconduct apparently precluded the Auditor's ability to reassign the Analyst's portion of the audit. This reduced the scope and therefore the completeness and effectiveness of the audit. Lastly, the misconduct at a minimum caused an appearance of impropriety that raised questions regarding the impartiality and integrity of the CSEA audit.

In light of the foregoing, OIP concludes that the public interest in disclosure of the misconduct information here is significant and outweighs the Analyst's privacy interest in the information.⁶ Accordingly, OIP concludes that the Auditor cannot withhold the Redacted Language in response to a UIPA request for access to an unredacted copy of the AG's response.

OFFICE OF INFORMATION PRACTICES


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APPROVED:


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Director

⁶ The information of public interest is the description of the Analyst's misconduct relating to the CSEA audit, rather than the Analyst's identity. However, given the balancing of interests above, disclosure of the misconduct information must be made even though it will reasonably lead to identification of the Analyst.