

April 7, 2021

VIA EMAIL

Members of the Senate
Members of the House of Representatives

Re: State Auditor Working Group Report

Dear Senators and Representatives:

We are compelled to address the mischaracterizations and untruths about our office and our work in the report issued by Speaker Scott Saiki's State Auditor Working Group. We received a copy of the report on April 1, 2021, after the report had apparently been disseminated to selected media. We had expected to discuss the draft report with the Working Group before it was issued, as Edwin Young, the Working Group chairperson, had represented in his initial email to me; however, that never happened.

I am open to – and, frankly, welcome – review and honest criticism of our work. The Working Group, citing anonymous sources, has said I feel I am “not required to answer to the Legislature.” Not for a moment do I believe that, and I never have. I make every effort to be responsive to the Legislature. But part of being responsive to the Legislature is doing my job. It is part of my job to conduct audits impartially and objectively, without fear or favor. A government auditor cannot waver from that central task. An auditor cannot raise a finger to the political winds before drafting conclusions and recommendations nor bend to any political influence exerted by others, including individual legislators. The reasons for this should be obvious.

The review by the Working Group was never going to be objective or fair. Not surprisingly, their report about the office's productivity and the day-to-day running of the office was completed without ever talking to me or any current staff – or making any effort to do so. The report is primarily a collection of opinions based on selective data, inaccurate assumptions, and unattributed snippets of critical comments from former employees. It is slipshod and riddled with errors and omissions.

No Interest in Understanding Our Work

The Working Group first contacted me by email from Mr. Young on January 29, more than two weeks after Speaker Saiki announced that he had single-handedly formed the Working Group purportedly “to determine whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawai'i Constitution.” In that email, the Working Group requested access to thousands of documents, most of which were not relevant to the Working Group's stated purpose and included confidential personnel records of both current and former employees as well as audit files that are confidential by law. (See Attachment No. 1)

In response, I asked Mr. Young to clarify Speaker Saiki's authority to unilaterally form the Working Group and their scope of review. It would be irresponsible – perhaps even unlawful – for me to allow access to confidential records without a clear understanding of the Working Group's authority and how they intended to use and protect the information, especially given the Working Group's narrow purpose as described by Speaker Saiki. (See Attachment No. 2) After receiving no response, I repeated my requests to the Working Group twice more. (See Attachment Nos. 3 and 4) The Working Group made no effort to address my concerns or to meet with me.¹

To say that I refused to cooperate with the Working Group or acted unprofessionally is simply not true. I expected to be interviewed and, in writing, expressed my willingness to meet: "And, again, I am available to meet with the Working Group to discuss these issues and any reasonable request for information." It was the Working Group that had no interest in understanding my office's work or learning about our supportive and collegial office culture.

A Fishing Expedition

While the Working Group tries to characterize its review as akin to an audit, it does not remotely resemble one. Our audits are objective assessments conducted in accordance with Government Auditing Standards. Among other things, those standards require findings to be based on competent, appropriate, and sufficient *evidence*, and reports are subject to a tedious, thorough independent review to ensure the accuracy of and support for audit findings. Auditors must also be unbiased and independent, both in fact and in appearance. The Working Group's review, and its reliance on "alternative audit techniques and methods," meet none of those requirements.

It is more accurate to simply state the obvious – that the Working Group was a fishing expedition trolling for some "cause" to support Speaker Saiki's blatant efforts to undermine the Office of the Auditor. As shown by the email string mistakenly forwarded to our office, Rona M. Suzuki, Speaker Saiki's senior advisor, was actively directing the Working Group and assisting with its effort to dig up support for Speaker Saiki's narrative about late reports. (See Attachment No. 5) Clearly, the Working Group's review was never independent from the reach of the Speaker's office.

Most disappointing – though not surprising – are the inaccurate and manipulated "facts" that the Working Group recites to support their conclusion that the office is not fulfilling its constitutional duties. Whether the Working Group review was just careless or intentionally misleading, that conclusion is supported by nothing more than the Working Group's preexistent determination to support Speaker Saiki's agenda, not objective facts.

For example, Appendix 11: *Legislative Requests to the Auditor for Calendar Years 2016-2020*, which contains the gist of the Working Group's contention that the office has issued late reports, was produced by the Speaker's office, not the Working Group. The Working Group simply

¹ At no time did I prevent any current or former employee from talking to the Working Group. When I received Speaker Saiki's memo, I informed current employees that I expected some or all might be contacted and that they could speak with the Working Group, if they chose to do so. At no time was staff ever directed not to cooperate.

incorporated the material gathered by the Speaker's office apparently without verifying the accuracy of the list, reporting that 10 of the 25 audits requested in the last 4 years were never performed or completed. That contention is both false and misleading.

The *only* audit that we have not completed during my tenure is the audit of the Office of Hawaiian Affairs (OHA) under Act 37 (Session Laws of Hawai'i 2019), which we suspended because the Board of Trustees has refused to provide us with complete minutes of its executive sessions that we determined are necessary to complete the audit. The other work that the Working Group asserts was not completed (none of which are audits) are requests contained in single-body resolutions (i.e., Senate resolutions or House resolutions), not concurrent resolutions that are required by law to trigger our review. Others were not undertaken *after and based on discussions* with committee chairs and other legislators.

For instance, the list compiled by the Speaker's office identifies H.R. No. 100 (2016 Regular Session) and S.R. No. 76 (2019 Regular Session) as work that was "Not Done." Both resolutions requested the Auditor to assess the impact of proposals to mandate certain health insurance coverage. However, that type of assessment is triggered by a concurrent resolution, not by a single House resolution or Senate resolution: "Before any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be *concurrent resolutions* passed requesting the auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage."² The concurrent resolutions, H.C.R. No. 149 (2016 Regular Session) and S.C.R. No. 104 (2019 Regular Session), were never heard by the committees in the Senate and House to which they were respectively referred.

The Speaker's office also asserts that H.R. No. 69 (2018 Regular Session) was "Not Done." That resolution requested the Auditor to conduct a "management audit" of the Special Land and Development Fund. However, at the time, we were already in the midst of an audit of the Special Land and Development Fund pursuant to Act 209 (Session Laws of Hawai'i 2017). In June 2019, we issued a report, *Audit of the Department of Land and Natural Resources' Special Land and Development Fund*, which focused on the Land Division's management of its public lands and its administration of the Special Land and Development Fund.³

For various reasons, the Legislature did not expect reports on those items listed as "Not Done," with the lone exception being the audit of OHA. The Working Group would have easily reached that conclusion – the correct conclusion – had they done minimal work to verify the information compiled by the Speaker's office.

It is equally disingenuous for the Working Group to cite missed deadlines as a violation of our constitutional duties. The Working Group made no effort to gain an understanding as to *why* the reports were "late." Circumstances outside of the office's control often impact the timing of reports, which the Working Group surely knows. Our audit of OHA is late because the Board of

² Section 23-51, HRS (emphasis added).

³ <https://files.hawaii.gov/auditor/Reports/2019/19-12.pdf>.

Trustees has refused to cooperate. We also suspended work on ongoing audits last year because of the pandemic so those auditees could adjust to performing their work remotely and address COVID-19-related issues. Nevertheless, we were able to issue the report of our audit of the Agribusiness Development Corporation on January 14, 2021, just 14 days after the date requested by the Legislature. Moreover, auditees often request additional time to provide us requested information or to schedule meetings. We are mindful that auditees have responsibilities other than responding to our requests and routinely agree to reasonable requests for extensions, which often require other deadlines to be adjusted accordingly. However, in stark contrast to an audit, the Working Group made no effort to determine the reasons why reports may have been late, i.e., the cause of the delays, or to assess any impact caused by the reports issued after the requested date, i.e., the effect. As the Working Group surely noted but intentionally omitted from their report, most of the reports the Speaker's office identified as late were issued within a matter of a few days of the requested date.

Working Group Conclusions Based on Questionable “Interviewee Results”

I would be remiss if I did not address the Working Group's outrageous assertion that our current staffing is negatively impacting our work. That conclusion is based on selective comments from nine unidentified former employees who left the office more than a year ago, and perhaps as far back as 2016. According to the comments included in Appendix 4: *Interviewee Results*, some of the former employees who were interviewed claimed to have left the office because of my inexperience with auditing.⁴ The Working Group further reports some of those former employees complained about “the audit deadlines, work demands, and Legislature's deadlines during the holiday season” as contributors to staff turnover.

Citing the critical comments of nine former employees as the only support for its conclusion that the office is not complying with its constitutional mandate is reflective of the shoddy and biased nature of the report. It goes without saying that former employees, especially those who were asked to leave the office, may harbor certain frustrations or resentments. Our job is demanding. It involves asking tough questions, exercising appropriate judgment, and taking into account the full spread of relevant evidence and information. And, we have deadlines, which we strive to meet. This simply is not a job for everyone. And while a 2019 external peer review report found that the office includes experienced and well-educated staff, the Working Group clearly was not interested in obtaining a complete picture of our process or the perspective of our current employees.⁵

It is noteworthy that, while they attempt to paint the office as dysfunctional, the Working Group stops short of criticizing our work product. Our reports are thorough, accurate, and impactful.

⁴ In 2016, I was confirmed unanimously by the Senate and House of Representatives, in joint session, to serve as the Auditor for an eight-year term that started on May 1, 2016. The members of the Senate and House did not consider my background to be an impediment to being able to perform the constitutional duties of the Auditor. I now have nearly five years of experience serving as the Auditor.

⁵ The 2019 external peer review team reported many positive aspects of the office's work, including the work atmosphere. The team also noted, “The Office of the State Auditor includes experienced, well-educated staff. The staff's diverse backgrounds and skills are beneficial to the Office of the State Auditor. The staff assigned to perform audits collectively possess adequate professional competence for the tasks required.”

They provide transparency into agency programs, include findings that are supported by real evidence, and offer meaningful recommendations to improve the program's operations. We are a valuable resource for the Legislature and expect to continue being so.

The OHA Controversy and the Working Group's Recommendation We Employ "Alternative Procedures"

The Working Group dedicates six pages of the report to what it calls the "Office of Hawaiian Affairs Controversy." Like the rest of the report, that section is replete with mischaracterizations and false statements. For instance, the Working Group claims that their "research showed that the State Auditor requested and approved the proviso in Act 37 that required a financial and management audit of OHA be completed by the Office of the State Auditor and the report be issued to the Legislature before general funds could be released to OHA." That statement is flatly wrong. Our testimony on H.B. No. 172 (2019 Regular Session), the bill that became Act 37, noted state law already required us to audit OHA every four years. We were unaware of the Legislature's plan to condition the release of certain general funds on the completion of the audit until the conference draft was issued.

The Working Group also questions our suspension of the audit after OHA refused to provide access to certain unredacted minutes. As noted above, our audits are performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States. In contrast to the Working Group's process, those standards require audit findings to be supported by sufficient, appropriate evidence, which in our professional judgment we do not have without the complete minutes. It is absurd for the Working Group to question that decision – i.e., our professional judgment – based on the limited information they gathered from legislative bills and public court records; it is equally irresponsible for the Working Group to speculate that we should employ "alternative procedures" to achieve the audit objectives without any understanding of the audit evidence we have obtained and why we do not have confidence in the conflicting, incomplete, and likely inaccurate testimony of current and former trustees. If the alternative procedures the Working Group is suggesting are the same type of alternative procedures they used to complete their report, the result would be a meaningless audit report, full of inaccuracies, and based on opinions and unsupported accusations. We do not issue those types of reports.

We do agree with the Working Group that the lawsuit is unwarranted and a waste of public funds as well as Native Hawaiian Trust Fund moneys. However, we did not initiate the lawsuit and, therefore, do not have the discretion to dismiss the complaint. OHA sued the Office of the Auditor and me, in my official capacity, asking the court to declare that we "violated" Act 37 by not issuing an audit report before the 2020 legislative session. Like the Working Group, OHA apparently believes the *reason* we suspended the audit – i.e., OHA's refusal to cooperate – is not relevant and we should have issued an incomplete, unsupported report. However, OHA is not asking the court to direct us to complete the audit, and we are not holding the \$3 million in general funds that was appropriated to OHA under Act 37. Frankly, there is no purpose for the declaration that OHA seeks or for OHA to continue its lawsuit, except for reasons that are

unrelated to OHA and its beneficiaries. Nevertheless, OHA seems intent on pressing forward with the litigation.

An Office “Vested with Certain Independence Both from the Constitution and in the HRS”

Neither I nor this office is untouchable, without oversight, or above the law. As the report notes, we are subject to an external peer review every three years conducted by competent audit professionals from other state audit offices, a process that we have passed both times during my tenure. Additionally, our office’s financial statements are annually audited by an independent public accounting firm. But, more importantly, our reports are public and always subject to public scrutiny. We provide drafts of our reports to auditees so that they can respond, comment, and point out any possible inaccuracies before the reports are issued to the Legislature, the Governor, and the public. And, I am subject to review and removal under the Constitution. To say that this office has unchecked power is again, a gross mischaracterization.

However, it is equally important to understand and respect that the State Constitution intends the Auditor to be non-partisan and independent. In our letters to the Working Group, we repeatedly expressed our concern that Speaker Saiki’s desire to influence and control the office may be posing undue influence threats to our independence and impairing our ability to conduct future audits requested by the Legislature.⁶ While it is part of the Legislative Branch, the Office of the Auditor is not under the direct control of the Legislature. Ironically, Working Group member Colleen Hanabusa, as a State Senator, understood this in 2003 when she affirmed: “Mr. President, the obligations of the auditor is (sic) set forth not in the legislative portion of the constitution, but in Article VII, Section 6, which speaks to none other than taxation and finances. That’s Article VII.” She went on to say, “It just happens [the Auditor’s] budget comes under the Legislature[.]”⁷

⁶ Government Auditing Standards include as examples of “undue influence threats for an auditor or audit organization” a variety of external interferences or influences, including:

- External interference or influence that could improperly limit or modify the scope of an engagement or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees.
- External interference with the selection or application of engagement procedures or in the selection of transactions to be examined.
- Unreasonable restrictions on the time allowed to complete an engagement or issue the report.
- External inference over assignment, appointment, compensation, and promotion.
- Restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization’s ability to carry out its responsibilities.
- Authority to overrule or to inappropriately influence the auditors’ judgment as to the appropriate content of the report.
- Threat of replacing the auditor or the audit organization based on a disagreement with the contents of an audit report, the auditors’ conclusions, or the application of an accounting principle or other criteria.
- Influences that jeopardize the auditors’ continued employment for reasons other than incompetence, misconduct, or the audited entity’s need for GAGAS engagements.

⁷ Haw. S. Journal, 22nd Leg., Special Sess., 32-33 (July 8, 2003) (statement of Sen. Colleen Hanabusa).

Other legislators have also recognized the Auditor’s independence. During the very same 2003 floor debate about whether the Auditor was the “Legislative Auditor” or, more correctly, the “State Auditor,” Senator Rosalyn Baker noted:

Just a point of clarification, since our colleagues on the other side of the aisle seem to be constantly referring to the position as the legislative auditor. This is the state auditor. Actually, the references in both the constitution and the original organic HRS document, and subsequent revisions, all speak to the auditor. To call that office holder the legislative auditor is to imply that somehow the Legislature controls that office. That’s not the case. The duties, as outlined by the Senator from Wai‘anae [Senator Hanabusa], clearly indicate that there’s a degree of independence from legislative influence. That office has been vested with certain independence both from the constitution and in the HRS giving that position additional power and authority in the audit function. She’s not beholden to the Legislature. She’s appointed by the Legislature and her budget is authorized as an agency of the legislative branch, but her role is clearly that of a statewide watchdog.⁸

The Working Group’s Real Work

We do question Speaker Saiki’s true motive in forming the Working Group. He has never spoken to me, either personally or through his surrogate Wes Machida, about concerns he has about my management of the office or our work – including the quality or timing of reports. The only feedback I have received from legislators – both senators and representatives – has been uniformly positive and supportive. If he truly had concerns, I would expect that Speaker Saiki would have discussed them with me before forming a working group.

Instead, the Working Group appears to be part of Speaker Saiki’s campaign to undermine our independence and exert influence on the Office of the Auditor. Five days after announcing that he had formed the Working Group, Speaker Saiki introduced House Bill No. 1, which proposed cutting the Office of the Auditor’s budget by more than 50 percent. Five days later, he and House Majority Leader Della Au Belatti introduced House Bill No. 354, which would give lawmakers control over the Auditor’s salary (which currently is set by the Salary Commission). And, two days after that, Representative Au Belatti introduced House Bill No. 1341, which would establish an office of public accountability to assume oversight and administrative responsibility for (i.e., control over) all of the State’s watchdog agencies, including the Office of the Auditor.

Even before the current legislative session, we were told by the then-Department of Human Services director that Speaker Saiki had instructed him to disregard requests for information necessary for us to report on the department’s Supplemental Nutrition Assistance Program (or SNAP). The director said his department was in the process of compiling the information when he was told to stop. More recently, it is our understanding that the Governor’s office was told by

⁸ Haw. S. Journal, 22nd Leg., Special Sess., 34-35 (July 8, 2003) (statement of Sen. Rosalyn Baker).

Speaker Saiki, directly or through his staff, not to cooperate with the Office of the Auditor unless the work was approved by him and the Senate President. That directive was apparently conveyed by the Governor's chief of staff to executive department heads, which we learned when the Department of Public Safety initially responded that it was not authorized to cooperate in an audit of adult correction officers' leave.

Speaker Saiki also inserted himself into the ongoing OHA lawsuit, seemingly to bolster OHA's argument that the audit could be completed without the executive session minutes. And, letters from the Speaker directing us to complete the audit were referred to by OHA's attorney as support for arguments against us. If Speaker Saiki is truly interested in transparency, he should be directing OHA to cooperate and supporting legislation, like H.B. No. 517, introduced this session by Representative Daniel Holt, which underscores the need for transparency.⁹ Others have reported that Speaker Saiki is trying to protect OHA and information in those executive session minutes by demanding that we complete the audit without the complete minutes. In any case, Speaker Saiki's deliberate interference is clearly inappropriate and the use of his position in this regard is an overreach.

A Personal Attack with a Public Toll

The relative ease by which we are able to respond to the points raised in this report should not belie the immense disappointment we feel at both its authors and the process. While the overtly personal nature of the report is inappropriate, my efforts to call into question the Working Group's legitimacy and refute its conclusions have always been about ensuring this office's integrity and independence and protecting my staff, whose livelihoods have been directly threatened and their work unfairly questioned. Yet, they continue to do the work with the same level of professionalism and commitment to their jobs that they have always shown.

I am likewise concerned the Speaker's very public campaign against me has also caused serious damage to the institution of the Office of the Auditor, affecting both auditors and staff members who the public expects and trusts to conduct their work independently and objectively, producing reports that are fact-based, nonpartisan, non-ideological, fair, and balanced. Even the insinuation that our work is guided or influenced by other parties or considerations is a betrayal of that public trust. The framers of the State Constitution knew the importance of that promise, shielding the office from the slings and arrows of personal vendettas and political fights by setting the Auditor's term at eight years and requiring a two-thirds vote of *both* the House and the Senate for appointment and removal.

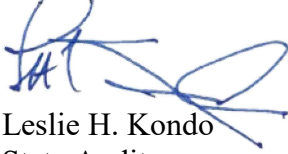
Unfortunately, the nature of this job is such that not everyone will be happy with our work or our audit findings. This is not the first time, nor will be the last, that this office will come under criticism and attack. And we will do everything we can to preserve the public's trust in government, vigorously protecting our independence so we can continue working to improve government through unbiased and objective analyses.

⁹ H.B. No. 517 was passed by the House Committee on Legislative Management but was never heard by the House Committee on Judiciary and Hawaiian Affairs.

Members of the Senate
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I look forward to the opportunity to provide further clarity on our office's processes, productivity, projects, and many accomplishments. Please feel free to contact me any time.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'L. Kondo', with a large, stylized flourish extending to the right.

Leslie H. Kondo
State Auditor

Attachments

From: eswyoung@aol.com
To: [Kondo, Les](#)
Cc: [LAO Auditors](#)
Subject: [EXTERNAL] Fwd: State Auditor Review
Date: Friday, January 29, 2021 2:36:30 PM
Attachments: [Personnel Info.xlsx](#)
[State Auditor Background Information and Questions.docx](#)

Hello Les,

From the news, it sounds like it has been a difficult time for you.

As you probably know, our Working Group has been tasked to review your office operations. Like a peer review, we would like to perform an independent and objective assessment of your office operations. The review is designed to provide a 360 degree assessment of the State Auditor Office operations.

We would like to perform the review and analysis during February and start drafting the report in early March. So that there will be no surprises, we plan to discuss the draft report with your office in late March and release the report around April 1, 2021.

To complete the review by April 1, we will need background information about your office operations, policies, procedures, and practices. A list of the information, documents, files, and other data we will need is attached.

Since the project is time sensitive, if the information is not readily available, please tell us who has the data, where we can obtain the data, and how we can access the information requested. If none exists, please let us know. Hopefully, your review liaison can help us gather the information.

We also have attached a list of questions regarding your office. We would appreciate your responses by February 5. Your e-mailed responses to us is okay. We will probably follow-up on your written responses with a virtual Zoom meeting.

For your information, we plan to send a questionnaire to current and former employees, contractors, consultants, auditees, legislators, peers, and others who have worked with the State Auditor Office. This will help provide us a 360 degree assessment of your office.

The questionnaire responses will be anonymous and confidential. However, we anticipate including a summary of the questionnaire results in the report.

For the questionnaire, we will need the contact information for the recipients. For your convenience, we have attached a spreadsheet for the information we will need for all current and former employees. Since personnel information is sensitive and often confidential, on the spreadsheet provide only an identifier such as the employee number. Please send us a separate list of employee names and employee numbers so we can correlate the spreadsheet data with the employees. We would appreciate this information by February 5.

Thank you for your assistance and cooperation with this review. Hopefully, you can use the review results to satisfy your triennial peer review requirements.

Edwin Young
Working Group Chair

Questionnaire					
Employee Number					
Employee Title					
When did you start?					
When did you leave?					
What did you do at the State Auditor's Office					
Why did you leave?					
Where you satisfied with your job?					
What did you like about your job?					
What did you NOT like about your job?					
Would you go back to the State Auditor's Office to work if you could?					
Why or why not?					
What improvements would you make?					
What changes would you make?					
What is needed to improve production?					
What changes are needed to reduce personnel turnover?					

Information Requested from State Auditor Office

Provide name and contact info for Working Group liaison.

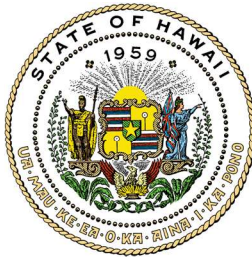
For the period June 30, 2016 to December 31, 2020:

1. Provide access to audit files, data, and documents.
2. Provide access to audit policies and procedures, management reports, internal and external auditor reports, peer reviews, organization charts, and personnel lists.
3. Provide copies of organization charts including the names and titles of those filling the positions as of June 30, 2016 to December 31, 2020
4. Provide copies of personnel rosters and contact information as of June 30, 2016 to December 31, 2020.
5. Provide office Audit Manual/Guides, audit policies and procedures, and standards for its operations.
6. Provide access to continuing professional education (CPE) and certification requirements and training records for the last 5 years.
7. Provide copies of budget for last 5 fiscal years.
8. Provide copies of end of fiscal year expenditure reports for last 5 fiscal years.
9. Provide copies of budget surpluses by fiscal year.
10. Provide the names of those currently employed by the office.
11. Provide list of former employees and contact information for the last 5 fiscal years
12. Provide list of audit reports for the last 5 fiscal years. Show dates started, completed, and issued and resources used for each audit.
13. Provide reports produced over the last 5 years by report category, type, resources and time needed to perform and complete the reports.
14. Provide list and copies of House and Senate Resolutions related to each audit.
15. Provide policies and procedures for planning and prioritizing audits.
16. Provide list of Legislature resolutions and self-initiated audits.
17. Provide reports that show the status of the audits
18. Provide copies of work plans, accomplishment reports, progress reports, monetary benefits reports, etc. for the last 5 fiscal years
19. Provide list of audits started, completed, dropped, cancelled, in process, or not started. Include reason for cancelling, stopping, or not starting the audits.
20. Provide list of audits started but not completed (include start date, stop date, cancellation date, and reason for not completing the audit).
21. Provide data to show project costs, timeliness of reports, etc.
22. Provide access to files for lawsuits, subpoenas, and claims.
23. Provide list of lawsuits, subpoenas, and outcomes over last 5 years.
24. Provide reasons for the litigation.
25. Provide source of funds for the lawsuits
26. Provide start date and end date for the litigation.
27. List results of each litigation.
28. Provide access to contract files.
29. Provide access to consultant and lawyer files.
30. Provide access to competitive bids solicitations
31. Provide funding for the contracts.
32. Provide list of media battles and outcomes over last 5 years.
33. Provide data on personnel turnover.
34. Provide data on employees' date of hire, audit experience prior to employment by the Auditor's Office.

STATE AUDITOR INTERVIEW QUESTIONS
(AFTER DATA ANALYSIS OF FACTS AND FIGURES ARE COMPLETED)

1. Explain the criteria and methodology (when, why, how) are used for planning audit work.
2. What criteria is used for initiating litigation actions and media battles.
3. What performance measures are used to evaluate audit office performance?
4. Are audit production trends and personnel turnover included in the evaluations?
5. How does personnel turnover affect production and office performance?
6. Explain the reasons for missing deadlines, ignoring Legislature resolutions, not completing audits, and lack of timely audits.
7. What performance measures are used for timeliness and meeting deadlines?
8. Explain why and when subpoenas, lawsuits, and media battles are used.
9. When executive committee minutes are not available, what alternative audit techniques are used and explain the rationale for not using these alternative audit methods?
10. Are open communications, informal briefings, point papers, interim briefings, or other communication techniques used to keep the Legislature informed of audit progress? Why or why not?
11. Are draft audit results discussed with the Legislature or the auditees before the final audit reports are released? Why or why not?
12. When is information conveyed to legislators that they need to make decisions, to vote on legislation, or to answer constituents?
13. Are annual performance evaluations by the State Legislature needed? Why or why not?
14. Should the State Legislature approve State Auditor annual audit plans? Why or why not?

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
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State Auditor

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February 3, 2021

VIA EMAIL (eswyoung@aol.com)

Mr. Edwin Young
Chairperson, State Auditor Working Group

Re: State Auditor Working Group

Dear Mr. Young:

This letter is in response to your January 29, 2021 email requesting information related to the Office of the Auditor. You request access to thousands of documents, including numerous confidential personnel records and other documents that are confidential or protected from disclosure by law. You also ask that I answer written questions, many of which are premised on erroneous factual assumptions. However, I am unclear about the Working Group's authority, including its ability to access confidential documents. I request clarification.

First, I am unclear as to the authority by which the Working Group was created. House Rule 2, which was cited by Speaker Saiki in his January 14, 2021 memorandum to members of the House of Representatives, describes the Speaker's duties, one of which is to notify members of the House about the names of individuals who the Speaker appoints or nominates to "a task force, commission, working group, or other similar position requiring the Speaker to nominate individuals for such a position." House Rule 2.1(17) (emphasis added). As both sentences of Rule 2.1(17) make clear, the rule is expressly limited to the notification duties of the Speaker. The rule does not by its language somehow empower or appear to authorize the Speaker to unilaterally establish a working group or, indeed, any other official body. Rather, it appears to simply reflect the Speaker's discretion to appoint individuals to working groups and similar bodies – once such positions are created through legislation or another formal process – whose composition includes individuals appointed by the House.

Second, even if the Working Group was legitimately formed, I am confused as to the scope of the Working Group based on the questions you have posed and the documents you have requested. In his memorandum, Speaker Saiki stated that he created the Working Group "to determine whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawaii Constitution." However, in your email, you represent that "the Working Group has been tasked to review your office operations" and that the Working Group intends "to provide a 360 degree assessment of the State Auditor Office operations." These tasks and the records requested are not in line with my understanding of the Speaker's intent for the Working Group. Please clarify the scope of the work intended by the Working Group and, if it is beyond simply assessing whether our work is consistent with the Constitutional provision, the authority to do so.

In relevant part, Art. VII, section 10, which is the Constitutional provision that establishes the position of Auditor and defines the Auditor's duties, states:

It shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions, to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor's findings and recommendations to the governor and to the legislature at such times as shall be provided by law. The auditor shall also make such additional reports and conduct such other investigations as may be directed by the legislature.

Our work is consistent with the Constitutional provision, which you likely have already confirmed. Specifically, we conduct audits of state program performance as well as other work as directed by the legislature; we report our findings and recommendations to the governor and the legislature as well as to the audited agency. Our reports are accessible through our website: <http://auditor.hawaii.gov/>.

However, most, if not all, of the requested documents and questions seem unrelated to and well outside the Working Group's purpose, as defined by the Speaker. You request, for example, confidential personnel files, including private contact information for former employees; audit work papers which are confidential pursuant to Section 23-9.5, Hawai'i Revised Statutes; litigation files, including "lawyer files"; and information about "media battles," staff evaluations and staff turnover.

While you describe the Working Group's review to be akin to a "peer review," Government Auditing Standards promulgated by the Comptroller General of the United States require our office to regularly undergo an external and independent peer review. External reviews conducted by competent audit professionals from other state audit offices are *already* an integral and regular part of the existing process to ensure that our performance as an audit office meets or exceeds professional standards for quality and professionalism in government auditing and accountability. The most recent peer review report, issued in December 2019 through the National Legislative Program Evaluation Society (NLPES), which is part of the National Conference of State Legislators (NCSL), found "the Hawai'i Office of the Auditor has a quality control system that is suitably designed and followed, providing reasonable assurance that the office is performing and reporting performance audit engagements in conformity with applicable *Government Auditing Standards*." The report as well as the reports of prior peer reviews are accessible through our website: <http://auditor.hawaii.gov/>.

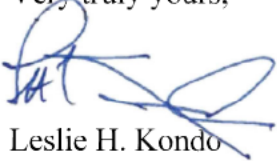
Professionalism is an integral part of our job, and independence is part of that professionalism. Independence from undue political or other pressures is crucial, and without it, government auditors cannot properly do their job. That is why the 1950 Hawai'i Constitutional Convention, which embedded the Auditor's office in the State Constitution, sought to create safeguards that would "eliminate" the prospect of the Auditor's "removal for political reasons." That is also why the Government Auditing Standards that govern our work include as examples of "undue influence threats for an auditor or audit organization" a variety of external interferences or influences, such as "restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization's ability to carry out its responsibilities," "external interference over assignment, appointment, compensation, and promotion," "threat of replacing the auditor or the audit organization based on disagreement" with audit

Mr. Edwin Young
February 3, 2021
Page 3

reports, and “influences that jeopardize the auditors’ continued employment for reasons other than incompetence” or misconduct.

I cannot emphasize enough the importance of protecting the Office of the Auditor’s independence and credibility, to avoid even the appearance that our work is being inappropriately influenced by others. As you surely must agree, it is absolutely critical that the office be seen as unbiased and objective, free of political interference. I trust the Working Group shares my concern about the need to ensure the office continues to be – and continues to be seen as – nonpartisan, neutral, and insulated from political agendas. I also trust the Working Group appreciates my need for it to clarify the legal basis of its authority as well as the scope of its work.

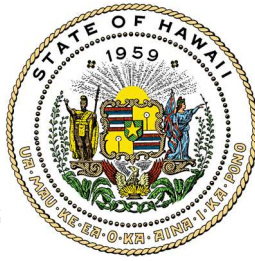
Very truly yours,

A handwritten signature in blue ink, appearing to read 'L. Kondo', with a large, stylized flourish extending to the right.

Leslie H. Kondo
State Auditor

c: Senators
Representatives

STATE OF HAWAI'I
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917



LESLIE H. KONDO
State Auditor

(808) 587-0800
lao.auditors@hawaii.gov

February 10, 2021

VIA EMAIL (eswyong@aol.com)

Mr. Edwin Young
Chairperson, State Auditor Working Group

Re: State Auditor Working Group

Dear Mr. Young:

I am in receipt of your email dated February 8, 2021, requesting that I answer questions regarding the lawsuit filed by the Office of Hawaiian Affairs (OHA) against me, in my official capacity, and the Office of the Auditor as well as questions about, among other things, procurement of and the source of funds to pay for our legal counsel. Like your earlier questions and request for documents, these questions seem to be well-outside the purpose of the Working Group, which Speaker Saiki stated was “to determine whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawaii Constitution.”¹

By letter to you dated February 3, 2021, I asked you to clarify the authority by which the Working Group was created and how the scope of the work that you described is consistent with the purpose for which the Speaker formed the Working Group. To date, I have not received any response to my request. Instead, your February 8 email seems to reflect that the Working Group is determined to press forward without clarifying how House Rule 2 authorized the Speaker to unilaterally establish the Working Group or how the scope of the Working Group’s inquiries align with the purpose for which the Working Group was created. I again request clarification and, because of the importance of protecting the office’s independence and credibility, ask that the Working Group suspend its work until the questions are resolved.

I understand that the Working Group started interviewing people outside of the Office of the Auditor, even before you first contacted me, and continues to meet with others, including the Acting City Auditor and the Audit Manager for the Office of the City Auditor of the City and County of Honolulu, both of whom previously worked for you. I am unclear how those individuals can offer *any* information about “whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawaii Constitution.” Rather, from your questions

¹ Art. VII, section 10 of the State Constitution states, in relevant part:

It shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions, to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor’s findings and recommendations to the governor and to the legislature at such times as shall be provided by law. The auditor shall also make such additional reports and conduct such other investigations as may be directed by the legislature.

to me and based on the people whom you are interviewing, it seems that the Working Group's purpose is to find some "cause" to support the Speaker's apparent objective to remove me.

Also concerning is an email that you sent to us last week, likely by mistake. That email includes a string of emails between members of the Working Group, Rona M. Suzuki, who is the Speaker's senior advisor, and a current Executive Branch employee. The email string shows that Ms. Suzuki is working with and directing the Working Group in its efforts to find reports that were submitted less than 20 days before the convening of a legislative session. That email string seems to again reflect that the Working Group is looking for support for the Speaker's narrative that some of our reports have been "late." More concerning is Ms. Suzuki's involvement in the Working Group's efforts to dig up that support. It was my understanding – perhaps misunderstanding – that the Working Group was supposed to be working independently and objectively. However, it appears that the Speaker and his office are actively assisting the Working Group in its efforts to find issues with our work.

As you surely know, the timing of reports is often outside of the Auditor's control. If an agency is unable to provide us with timely access to information – or, in the case of OHA, refuses to give us documents – it could delay the issuance of a report, even indefinitely in the case of OHA. The Government Auditing Standards promulgated by the Comptroller General of the United States require that we have sufficient and appropriate evidence to provide a reasonable basis for supporting our audit findings and conclusions. We simply cannot ignore those professional standards which provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence. We are very mindful of our responsibility to provide accountability and to help improve government operations and services through thorough, unbiased, and objective assessments of agency performance. Anything less would be unfair to the audited agency and would be of much less value to the Legislature. I trust that the Working Group and Ms. Suzuki will not simply be reporting the number of times reports were issued less than 20 days before a legislative session, but are considering these and other reasons that may have affected the timing of issuance of those reports.

The Working Group's questions about the lawsuit filed by OHA against me and the office – a lawsuit that is ongoing – are also wholly inappropriate and can only help OHA in the litigation. There is absolutely no purpose in requesting confidential information that can harm our defense, except to hunt for something – anything – to "support" the Speaker's narrative that the Office of the Auditor has gotten into what he has reportedly called "unnecessary litigation."

We suspended our audit of the OHA Board of Trustees' use and oversight of OHA's limited liability companies (LLCs) in accordance with Government Auditing Standards after OHA refused to provide us with the complete minutes from executive sessions in which the Trustees considered matters relating to the LLCs, which we had repeatedly told OHA that we would be compelled to do. We did *not* initiate any legal action; rather, *OHA sued us*. In fact, according to OHA's complaint, litigation was "imminent and inevitable."

I reiterate that our work is consistent with Art. VII, section 10 of the State Constitution. Specifically, we conduct audits of state program performance as well as other work as directed by the Legislature; we report our findings and recommendations to the governor and the

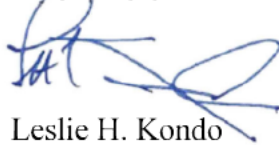
Mr. Edwin Young
February 10, 2021
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Legislature as well as to the audited agency. Multiple external and independent reviews conducted by competent audit professionals from other state audit offices have confirmed that our performance as an audit office meets or exceeds professional standards for quality and professionalism in government auditing and accountability.

Lastly, I must emphasize the importance of maintaining our objectivity and independence – both of mind and appearance. As you should know, independence from undue political or other external influences or pressures that may affect an auditor’s ability to make objective judgments is the foundation of the government audit work we are tasked to perform. I am deeply concerned that the Working Group is failing to consider the potential harm that it is causing to the Office of the Auditor by posing undue influence threats to our independence. The position of the Auditor is established by the State Constitution, and the office is intended to be nonpartisan, unbiased, objective, and free of political interference.

In a continuing effort to protect the Office of the Auditor’s credibility and independence, I maintain my request for the Working Group to clarify the legal basis of its authority as well as the scope of its work.

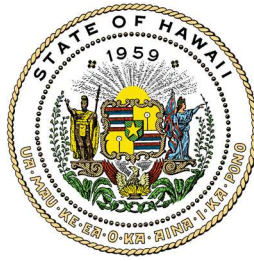
Very truly yours,



Leslie H. Kondo
State Auditor

c: Senators
Representatives

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



LESLIE H. KONDO
State Auditor

(808) 587-0800
lao.auditors@hawaii.gov

February 24, 2021

VIA EMAIL (eswyoung@aol.com)

Mr. Edwin Young
Chairperson, State Auditor Working Group

Re: State Auditor Working Group

Dear Mr. Young:

I renew my multiple unanswered requests to you for clarification as to the legal authority under which the Working Group was formed and how the scope of its work is consistent with the purpose stated by Speaker Saiki. I also repeat my request that the Working Group suspend its work until my questions are addressed. The need for clarification has become even more evident in light of recent reports we have received from former employees and others about unsolicited and unwelcome contact by the Working Group.

The lack of any response from you is puzzling. You surely must agree it is reasonable to get clarification before we proceed – and irresponsible to do otherwise – given the significant threat to the office’s independence caused by what seems to be a deliberate attempt by Speaker Saiki to inject politics into and political influence over an office that the State Constitution established to be independent. I remain ready to meet with you or any member of the Working Group to directly discuss my questions and concerns.

Recently, I and other staff have received calls from many former employees expressing their concerns about being contacted by the Working Group or others on the Working Group’s behalf, many through their personal email accounts and personal cell phones. These former employees have questioned why they are being contacted and how the Working Group obtained their personal contact information. Most were last employed by the Office of the Auditor in 2018, some left the office in 2017. These calls have been described as intrusive and unwelcome. According to Speaker Saiki’s January 14 memorandum to members of the House of Representatives, he intended the Working Group “to determine whether the Office of the State Auditor is in compliance with Art. VII, section 10 of the Hawaii Constitution.”¹ There is absolutely no purpose for the Working Group to contact former employees, and especially those who have had no involvement with the office for three or more years. It is an unwarranted and unwanted intrusion into their personal privacy; it is simply harassment.

¹ Art. VII, section 10 of the State Constitution states, in relevant part:

It shall be the duty of the auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions, to certify to the accuracy of all financial statements issued by the respective accounting officers and to report the auditor’s findings and recommendations to the governor and to the legislature at such times as shall be provided by law. The auditor shall also make such additional reports and conduct such other investigations as may be directed by the legislature.

Mr. Edwin Young
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A number of our contractors also have called me about the Working Group contacting them, including the former director of audit services for the City of Portland (Oregon), who conducted training for the office in January 2017. Partners of public accounting firms that the office procured to audit the financial statements of state departments and programs have also expressed their discomfort with the nature of the questions they were asked, describing the Working Group's efforts as a "fishing expedition."

You presumably have already confirmed that the office is "in compliance with Art. VII, section 10 of the Hawaii Constitution," which was Speaker Saiki's stated purpose for creating the Working Group. As is clear and irrefutable, we conduct audits of the performance of departments and programs; we report our audit findings and recommendations to the governor and the Legislature as well as to the agency being audited; and we do other work as the Legislature may direct. That is precisely what the plain and unambiguous language of the Hawai'i Constitution intends the Auditor to do.

As I have repeatedly explained, external and independent reviews conducted by competent audit professionals from other state audit offices have confirmed that our performance as an audit office meets or exceeds professional standards for quality and professionalism in government auditing and accountability. In addition to regularly scheduled peer reviews, the office undergoes a financial audit every year. The Office of the Auditor is subject to more external oversight than most other state offices.

I am unaware of any complaints about our work, including about the timeliness or accuracy of our reports. I am also unaware of any complaints about my management of the office. If Speaker Saiki or another legislator has concerns about our work, my management, or any other aspect of the office's operations, I expect that Speaker Saiki would have raised those concerns directly with me, which he has never done, and not attempt to "create" issues through the Working Group.

In fact, Deputy Auditor Daria Loy-Goto and I had been meeting regularly with Wes Machida, who at the time was Speaker Saiki's Special Assistant. At no time during these meetings did Mr. Machida convey any complaint about our work, including the timeliness or accuracy of the reports, or the management of the office's operations. We openly communicated the situation involving our audit of the Office of Hawaiian Affairs (OHA), including the decision to suspend the audit. Mr. Machida never conveyed any concern about that decision and, in fact, expressed his support for that decision. We continued to meet with Mr. Machida through the summer of 2020; but by August, emails addressed to Mr. Machida to schedule future meetings were unanswered. We, in fact, were unaware of Mr. Machida's employment status with Speaker Saiki until he was named to the Speaker's Working Group. Mr. Machida's motive in meeting with us for those many months now is unclear.

The only comments about our work that I have received from legislators – both Representatives and Senators – have been positive and supportive. They seem to understand the Office of the Auditor is a nonpartisan, independent office.

Having learned that Speaker Saiki's Senior Advisor Rona Suzuki is coordinating and directing the Working Group from an email string you mistakenly sent to us as well as comments from the former employees and contractors who have called me and others, I have little expectation that the Working Group's "fact-finding" efforts are an "independent and objective assessment of [our] office operations" as your January 29 email purports.

Mr. Edwin Young

February 24, 2021

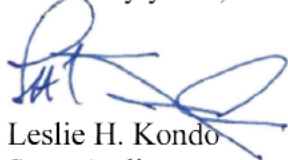
Page 3

The Working Group's refusal to respond to my repeated requests for clarification and explanation only confirms the illegitimacy of both the Working Group as well as its "work," which is only made clearer by Speaker Saiki's other actions: One day after announcing the formation of the Working Group and presumably well-before it began its investigative efforts, Speaker Saiki introduced House Bill No. 1, which slashes the Office of the Auditor's operating budget by roughly 53 percent; eliminates funding for the financial statement audits of 22 state departments and programs as well as the State of Hawai'i Comprehensive Annual Financial Report, all of which are paid through the Audit Revolving Fund that he removed from the Office of the Auditor's budget; excludes funding for special studies by the Auditor; and removes boilerplate language that allows the Auditor to expend funds appropriated to the office. Additional bills seek to reduce the salary of the Auditor (House Bill No. 354) and exert political influence and control over the Auditor through the creation of another level of bureaucracy to oversee the activities of the Office of the Auditor and other "good government" offices (House Bill No. 1341).

Not only has Speaker Saiki unilaterally formed the Working Group, chosen its members, and specified what they are to "investigate," as evident by the proposed legislation, he also seems to have pre-determined the group's findings and proposed corrective measures. And, the Working Group's efforts seem only to further that conclusion. Auditors, peer reviewers, and other legitimate professionals do not come to their conclusions and propose their recommendations *before* completing or even starting their inquiries; they do not go "fishing," especially well-beyond any reasonable construction of the intended purpose of any review.

I renew my request for clarification about the Working Group's authority and its scope. Your lack of response, in the light of your continuing actions, is telling, as is the outreach to former employees, public accounting contractors, and even people who have previously conducted training for the office. I remind you that the State Constitution envisions an independent Office of the Auditor that is accountable to the people of Hawai'i, not any one individual legislator. And, again, I am available to meet with the Working Group to discuss these issues and any reasonable request for information.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'L. Kondo', with a large flourish extending to the right.

Leslie H. Kondo
State Auditor

c: Senators
Representatives

From: eswyoung@aol.com
To: wmachida@aol.com; [LAO Auditors](#)
Cc: hanac841@yahoo.com
Subject: [EXTERNAL] Re: Review of State Auditor Office
Date: Friday, February 5, 2021 4:53:52 PM

Hello Wes,

Based on Rona's information, 25 resolutions were passed from 2016 to the present that requested an audit.

Of the 25 audits requested,

- 15 were completed and 10 are outstanding from 2016 to the present.
- 22 of the audits reports were late and only 3 were completed on time.

The information reaffirms most of the State Auditor reports to the State Legislature are not timely. We can discuss further.

For the interviews with the Office of the Honolulu City Auditor, I will set them up for February 11. i will provide the host platform, but i should not participate in the interview as I used to supervise Van Lee and Troy Shimasaki and would have a conflict of interest in the interview results.

Thanks for your understanding,

Edwin

-----Original Message-----

From: Rona Suzuki <r.suzuki@capitol.hawaii.gov>
To: eswyoung@aol.com <eswyoung@aol.com>; wmachida@aol.com <wmachida@aol.com>; hanac841@yahoo.com <hanac841@yahoo.com>
Cc: ronald.t.shiigi@hawaii.gov <ronald.t.shiigi@hawaii.gov>; ron.shiigi@hawaii.gov <ron.shiigi@hawaii.gov>
Sent: Fri, Feb 5, 2021 1:55 pm
Subject: RE: Review of State Auditor Office

Hi Edwin: The Actual Fulfillment Date on the table shows when the report was received. Generally, 20 days prior to the convening of the Regular Session would require the report to be submitted in the last week of December.

Based on this, 3 reports were on time:

1. SCR 105 (2017): Health insurance coverage assessment for cognitive rehabilitation therapy.
2. SCR 83 (2018): Mandated health insurance assessment for port-wine stains.
3. SCR 171 (2019): Mandated health insurance coverage for clinical victim support for victims of sexual violence and abuse

The rest were late or not done.

Thanks, rona

From: eswyoung@aol.com <eswyoung@aol.com>
Sent: Friday, February 5, 2021 12:02 PM
To: wmachida@aol.com; hanac841@yahoo.com

Cc: ronald.t.shiigi@hawaii.gov; ron.shiigi@hawaii.gov; Rona Suzuki
<r.suzuki@capitol.hawaii.gov>

Subject: Review of State Auditor Office

Hello Folks,

I found the list of personnel for the State Auditor Office on Civil Beat's government salaries data base. From the public information, I identified the current and former employees by year and identified the former employees and highlighted their names in yellow. If Ron or someone can provide their emails, we can hopefully send out the questionnaire.

The list shows personnel as follows:

- 2020: 24 employees (3 former employees)
- 2018: 25 employees (11 former employees)
- 2016: 21 employees (13 former employees)
- 2013; 26 employees (27 former employees)
- 2012: 25 employees (20 former employees)
- 2011: 26 employees (21 former employees)

Rona sent us a list of the 25 resolutions that requested audits (2016- present). The list shows 15 of the audits were issued and 10 audits are outstanding.

I could not determine if any of the 15 audits were late. Could someone tell me which of the 15 audits missed the requested fulfillment dates or perhaps the session dates?

Thanks for any help you can provide,
Edwin