



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

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CHERYL KAKAZU PARK
DIRECTOR

SENATE COMMITTEE ON WAYS AND MEANS
HOUSE COMMITTEE ON FINANCE

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

January 7, 2013

Honorable Chairs and Members of the Committees:

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

OVERVIEW:

A. Mission Statement

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

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

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

B. Current Conditions

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

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

C. FEDERAL FUNDS:

Not applicable. OIP only receives state general funds.

BUDGET REQUEST:

D. & E.:Process and Adjustments

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

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

Context

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

Tables 1-20.

Please see attached tables.

Department of Lieutenant Governor
Prioritized List of Functions

Table 1

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

Department of Lieutenant Governor
 Department-Wide Budget Summary

Table 2

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

Department of Lieutenant Governor
Funding by Program ID

Table 3

Prog ID	Program Title	MOF	As budgeted in Act 106/12 (FY13)			Governor's Submittal (FY14)				Governor's Submittal (FY15)			
			Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$	Percent Change of \$\$\$\$	Pos (P)	Pos (T)	\$\$\$	Percent Change of \$\$\$\$
LTG1051A	Enforcement of Information Practices	A	5.00	2.50	\$ 371,390	5.00	3.00	\$ 455,935	23.0%	5.00	3.00	\$ 455,935	23.0%

Department of Lieutenant Governor
Budget Decisions

Table 4

Prog ID	Description	MOF	Initial Department Requests						Budget and Finance Recommendations						Governor's Decisions					
			FY14			FY15			FY14			FY15			FY14			FY15		
			Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$	Pos (P)	Pos (T)	\$\$\$
LTG105IA	Convert Position #102257 .50FTE to 1.0FTE; Add Funding	A		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000		0.50	\$ 29,000
LTG105IA	Restore Vacancy Savings	A			\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000			\$ 25,000

Department of Lieutenant Governor
Proposed FY14 and FY15 Reductions

Table 5

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

Department of Lieutenant Governor
Proposed FY14 and FY15 Additions

Table 6

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

DEPARTMENT OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

Table 6: Explanation

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

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

Department of Lieutenant Governor
 Current Year (FY13) Restrictions

Table 7

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

Department of Lieutenant Governor
Emergency Appropriation Requests

Table 8

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

Department of Lieutenant Governor
Expenditures Exceeding Appropriation Ceilings

Table 9

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

Department of Lieutenant Governor
 Intradepartmental Transfer of Funds

Table 10

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

Department of Lieutenant Governor
Active Federal Awards

Table 11

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

Department of Lieutenant Governor
Active Federal Awards

Table 11

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

COLUMN	DATA ELEMENT	DEFINITION
A	State Expending Agency	State entity authorized to expend the funds as authorized by the appropriation or as delegated by the Governor. Select from drop-down menu. See legend below.
B	Program I.D.	The unique identifier for the specific program responsible for carrying out the program consisting of the abbreviation for the State entity followed by the organization number for the program. Format: XXX###
C	Award Number	The identifying number assigned by the awarding Federal Agency, such as the federal grant number, federal contract number or the federal loan number that appears in the federal award document.
D	CFDA No.	The number associated with the published description of Federal assistance program in the Catalog of Federal Domestic Assistance. Only applies to grants and loans. A list of CFDA codes can be searched at: https://www.cfda.gov/index?s=program&tab=list&mode=list Format: ##.###.
E	Award Description	Award title and description with purpose of funding action
F	Awarding Federal Agency	Name of the federal agency that awarded and administers the award on behalf of the funding agency. Select from drop-down menu. See agency list below.
G	Award Amount	For Grants: The total amount of the award. For Loans: The total amount of the loan obligated by the Federal Agency; the face value of the loan. For Contracts: The total amount obligated by the Federal Agency
H	Award Amount Allocated to the Program ID in Column B	Enter the portion of the total award amount allocated to this Program ID. For example, if a federal award in the amount of \$500 is allocated to only AGR100, the "Award Amount" and the "Award Amount Allocated to the Pgm ID in Column B" would both be \$500. However, if the \$500 will be allocated to AGR100, AGR200 and AGR300, in the amounts of \$100, \$250 and \$150, respectively, the "Award Amount" would be the \$500 for all three program IDs but the "Award Amount Allocated to the Pgm ID in Column B" would be \$100 for AGR100, \$250 for AGR200 and \$150 for AGR300
I	State Appropriation Symbol	The account number established in FAMIS. The appropriation account is a combination of 4 fields: Fund Type, Fiscal Year, Appropriation Account Number, and Dept. Code. If an award has appropriation symbols for multiple fiscal years, enter the symbol for the first fiscal year. Format: X-YY-###-X
J	Contact Name	Name of the individual at the program level responsible for performance of the award
K	Contact Phone No.	Phone no. of the individual at the program level responsible for performance of the award
L	Contact Email	Email of the individual at the program level responsible for performance of the award
	LEGEND:	
	State Expending Agency	
A (AGR)	Department of Agriculture	
B (BED)	Department of Business, Economic Dev & Tourism	
C (LNR)	Department of Land and Natural Resources	
D (TRN)	Department of Transportation	
E (EDN)	Department of Education	
F (UOH)	University of Hawaii	
G (DEF)	Department of Defense	
H (HTH)	Department of Health	
I (HHL)	Department of Hawaiian Home Lands	
J (JUD)	Judiciary	
K (HMS)	Department of Human Services	
L (LBR)	Department of Labor and Industrial Relations	
M (AGS)	Department of Accounting and General Services	
N (ATG)	Department of Attorney General	
O (BUF)	Department of Budget and Finance	
P (HRD)	Department of Human Resources Development	
Q (GOV)	Office of the Governor	
R (CCA)	Department of Commerce and Consumer Affairs	
S (LTG)	Office of the Lieutenant Governor	
T (TAX)	Department of Taxation	
V1 (PSD)	Department of Public Safety	
Z1 (OHA)	Office of Hawaiian Affairs	
	Federal Agency	
	Dept. of Agriculture	
	Dept. of Commerce	
	Dept. of Defense	
	Dept. of Education	
	Dept. of Energy	
	Dept. of Health and Human Services	
	Dept. of Homeland Security	
	Dept. of Housing and Urban Development	
	Dept. of Justice	
	Dept. of Labor	
	Dept. of State	
	Dept. of the Interior	
	Dept. of the Treasury	
	Dept. of Transportation	
	Dept. of Veterans Affairs	
	Corporation for National & Community Svc	
	Environmental Protection Agency	
	General Services Administration	
	NASA	
	National Science Foundation	
	Nuclear Regulatory Commission	
	Office of Personnel Management	
	Small Business Administration	
	Social Security Administration	
	U.S. Agency for International Development	

Department of Lieutenant Governor
 Non-General Fund Balance

Table 12

<u>Name of Fund</u>	<u>Purpose</u>	<u>Statutory Reference</u>	<u>MOF</u>	<u>Beginning FY13 Unencumbered Cash Balance</u>	<u>Estimated FY13 Revenues</u>	<u>Estimated FY13 Expenditures and Encumbrances</u>	<u>Estimated FY13 Net Transfers</u>	<u>Estimated FY13 Ending Unencumbered Cash Balance</u>	<u>Balance in Excess of Program Needs</u>
LTG105 is entirely general funded and has no non-general fund balance.									

Department of Lieutenant Governor
Positions Vacant as of November 30

Table 13

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

Department of Lieutenant Governor
Overtime Expenditures

Table 14

<u>Prog ID</u>	<u>Program Title</u>	<u>MOF</u>	<u>FY12 (actual)</u>			<u>FY13 (estimated)</u>			<u>FY14 (budgeted)</u>		
			<u>Base Salary</u> \$\$\$\$	<u>Overtime</u> \$\$\$\$	<u>Overtime</u> Percent	<u>Base Salary</u> \$\$\$\$	<u>Overtime</u> \$\$\$\$	<u>Overtime</u> Percent	<u>Base Salary</u> \$\$\$\$	<u>Overtime</u> \$\$\$\$	<u>Overtime</u> Percent
LTG1051A	Enforcement of Information Practices	A	No overtime Expenditures.								

Department of Lieutenant Governor
Overpayments as of November 30

Table 15

<u>Name</u>	<u>Date of Over-payment</u>	<u>Gross Amount Overpaid</u>	<u>Amount Recovered</u>	<u>Balance</u>	<u>Category</u>				<u>Reason for Overpayment</u>	<u>Referred to Attorney General</u>
					<u>Employed Occurred > 2 Years</u>	<u>Employed Occurred < 2 Years</u>	<u>Not Employed Occurred > 2 Years</u>	<u>Not Employed Occurred < 2 Years</u>		
Enforcement of Information Practices										
LTG105										
No overpayments as of November 30.										

Department of Lieutenant Governor
Active Contracts

Table 16

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

Department of Lieutenant Governor
CIP Requests

Table 17

<u>Prog ID</u>	<u>Prog ID</u> <u>Priority</u>	<u>Dept- Wide</u> <u>Priority</u>	<u>Project Title</u>	<u>MOF</u>	<u>FY14 \$\$\$</u>	<u>FY15 \$\$\$</u>
LTG1051A			There are no CIP requests.			

Department of Lieutenant Governor
CIP Lapses

Table 18

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

Department of Lieutenant Governor
Division Resources

Table 19

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

Department of Lieutenant Governor
Organization Changes

Table 20

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



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Table 20: Organizational Chart

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

