Office of the Ombudsman
State of Hawaii
Fiscal Year 2019-2020
Report Number 51





As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the The Ombudsman is empowered to legislature. obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations, or statutes.

By law, the Ombudsman cannot investigate actions of the governor, the lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

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State of Hawaii Report of the Ombudsman

For the Period July 1, 2019 - June 30, 2020 Report No. 51

> Presented to the Legislature pursuant to Section 96-16 of the Hawaii Revised Statutes

> > April 2021

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Mr. President, Mr. Speaker, and Members of the Hawaii State Legislature of 2021:

In accordance with Section 96-16, Hawaii Revised Statutes, I am pleased to submit the report of the Office of the Ombudsman for fiscal year 2019-2020. This is the fifty-first annual report since the establishment of the office in 1969.

I apologize for the tardiness of this report, which is due to my decision to focus my office's staff resources during the past 12 months toward dealing with the complaints we received from the public during the COVID-19 pandemic. I also note that for the same reason, this year's report does not contain any summaries of cases that were investigated during fiscal year 2019-2020.

On behalf of the members of the office, I would like to thank the Governor, the Mayors of the various counties, and the State and County department heads and employees for their continuing cooperation and assistance, especially at the close of the fiscal year when the focus of everyone was shifted to responding to the COVID-19 pandemic.

I would also like to recognize the professional and support staff of the Office of the Ombudsman for their continued commitment to independently and impartially investigate citizen complaints against government and to improve the level of public administration in Hawaii. And I would like to thank each of them, personally, for adapting without complaint to the changes that needed to be made in response to the challenges that the pandemic presented, not only to our office, but to themselves.

Respectfully submitted,

ROBIN K. MATSUNAGA

Ombudsman

April 2021

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TABLE OF CONTENTS

LET	TER OF	TRANSMITTAL	Page
I.	THE CO	PRONAVIRUS PANDEMIC	1
II.	THE YE	AR IN BRIEF	3
	Total Inc	quiries Received	3
		- b-Year Comparison	
	Staff No	tes	4
	Staff Act	tivities	4
III.	STATIS	TICAL TABLES	7
	Descript	ion of Terms Used in Statistical Tables	7
	•	Numbers and Types of Inquiries	
	Table 2	Means by Which Inquiries Are Received	11
	Table 3	Distribution of Population and Inquirers by Residence	13
	Table 4	Distribution of Types of Inquiries by	
		Residence of Inquirers	15
	Table 5	Means of Receipt of Inquiries by Residence	17
	Table 6		40
	T-1-1- 7	Complaints by Agency	19
	Table 7	Distribution and Disposition of Substantiated Jurisdictional Complaints by Agency	21
	Table 8	Distribution of Information Requests	
		Distribution of Non-Jurisdictional Complaints	
	Table10	Inquiries Carried Over to Fiscal Year 2019-2020 and	
		Their Dispositions, and Inquiries Carried Over to	
		Fiscal Year 2020-2021	27
		Appendix	
CUI		/E INDEX OF SELECTED CASE SUMMARIES	20

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Chapter I

THE CORONAVIRUS PANDEMIC

On December 31, 2019, health officials in Wuhan, China, notified the World Health Organization (WHO) of a cluster of pneumonia-like illnesses, the origin of which was unknown. On January 9, 2020, the WHO announced that the illness may be caused by a new coronavirus, which would later be identified as the 2019 Novel Coronavirus, or 2019-nCoV. On January 20, 2020, cases of this illness were reported in Thailand and Japan, and on January 21, the Centers for Disease Control and Prevention (CDC) confirmed the first case of 2019-nCoV in the United States in the state of Washington. The illness continued to spread through human-to-human transmission and on January 30, with more than 9,800 confirmed cases and over 200 deaths around the globe, the WHO declared the 2019-nCoV a global health emergency. On February 11, the WHO announced an official name for the 2019-nCoV as COVID-19, short for "coronavirus disease 2019," and on March 11, 2020, declared the COVID-19 outbreak a global pandemic.

With COVID-19 spreading rapidly and confirmed cases being reported in 78 countries, on March 4, 2020, Governor David Ige issued an emergency proclamation allowing for certain statutes to be suspended so that government agencies could prepare themselves and the public to combat the outbreak. On March 22, 2020, Honolulu Mayor Kirk Caldwell issued an emergency order requiring all persons in the City and County of Honolulu to stay at their place of residence, except to perform essential government or business functions and to access essential services. On March 23, 2020, Governor Ige issued a third supplementary emergency proclamation ordering all persons in the State of Hawaii to stay in their place of residence starting March 25, 2021, except for work in essential businesses or operations. The proclamation also mandated social distancing and other requirements to help prevent the spread of COVID-19. These orders were extended and remained in place through the end of the fiscal year.

We consider the services that our office provides to the public to be essential and the Legislature agreed, so in order to continue operations, we immediately took steps to prevent the spread of COVID-19 within the office, including installing partitions in shared work areas, purchasing hand sanitizer dispensing stations, and establishing protocols for temperature checks, movement by staff within the office, and disinfecting of high-touch surfaces. In addition, although it would negatively impact our efficiency, we restricted the number of employees who could work within the office at any given time from 14 employees to 5 employees and stopped accepting walk-in complainants to further minimize the potential for spreading COVID-19 in the office. We continued to accept complaints via telephone, postal mail, email, and fax and to investigate complaints that were determined to be appropriate

for investigation as timely and thoroughly as possible without jeopardizing the health of our employees.

As agencies at the state and county levels of government in Hawaii acted to comply with the emergency orders, including configuring their work spaces and adjusting in-office staffing levels to prevent the spread of COVID-19, we expected a decrease in the level and timeliness of government services being provided to the public, and a resulting increase in the number of complaints filed with our office. In total, we did not experience the increase in number of complaints that we expected during the first three months following the Governor's third supplementary emergency proclamation, as a 9.2 percent decrease in the number of prison-related complaints offset a 9.3 percent increase in complaints against other jurisdictional agencies.

However, from July 1, 2020, through December 31, 2020, we received over 20 percent more jurisdictional complaints than we did during the corresponding period in 2019. Prison-related complaints increased by 8.6 percent and complaints against other jurisdictional agencies increased by 41.7 percent. In addition, complainants, in general, have followed up more frequently on their complaints, in some cases with multiple telephone calls or emails daily, requiring our office to spend significantly more time on each case just in responding to and documenting the inquiries. Consequently, while our caseload during the first half of the current fiscal year increased by 20 percent, our workload increased by approximately 40 percent during this period.

It is important for the Legislature and public to know that the stress on the staff of our office to continue to provide timely service to the public during this period has been compounded by a significant and troubling increase in the frequency of threats by complainants against our staff when we are unable to provide the complainant the remedy the complainant is seeking. The office is fortunate to have staff who are tolerant of the threats and abusive language directed toward them; who understand the important role our office serves and who continue to treat each complainant respectfully and professionally, while remaining empathetic to the complainant's situation.

Chapter II

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2019-2020, the office received a total of 4409 inquiries. Of these inquiries, 3535, or 80.2 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 416 non-jurisdictional complaints and 458 requests for information.

The number of non-jurisdictional complaints was the same as for last fiscal year. There was a considerable decline this year in the number of requests for information. There was an increase in the number of jurisdictional complaints.

A comparison of inquiries received in fiscal year 2018-2019 and fiscal year 2019-2020 is presented in the following table.

TWO-YEAR COMPARISON

				Jurisdictional Complaints		
Years	Total Inquiries	Information Requests	Non- Jurisdictional Complaints	Total Jurisdictional	Prison Complaints	General Complaints
2019-2020	4,409	458	416	3,535	2,175	1,360
2018-2019	4,325	555	415	3,355	2,055	1,300
Numerical Change	84	-97	1	180	120	60
Percentage Change	1.9%	-17.5%	0.2%	5.4%	5.8%	4.6%

Staff Notes

In July 2019, Drake Akiyoshi joined our office as an Analyst. Prior to joining our team, Mr. Akiyoshi was employed at the Department of Commerce and Consumer Affairs. Mr. Akiyoshi is a graduate of Wayland Baptist University, where he earned a Bachelor of Applied Science degree in Justice Administration.

In March 2020, Analyst Sean Aronson resigned from our office. We wish Mr. Aronson the best in his new endeavors.

In June 2020, Analyst Drake Akiyoshi accepted a position with the federal government. We wish Mr. Akiyoshi the best as he pursues his new career.

At the end of fiscal year 2020, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant Melissa Chee; Senior Analyst Rene Dela Cruz, Analysts Herbert Almeida, Yvonne Jinbo, Gansin Li, Marcie McWayne, and Ryan Yeh; Administrative Services Officer Cindy Yee; and Administrative Assistants Sheila Alderman, Carliza Elido, and Debbie Goya.

Staff Activities

In September 2019, our office hosted the 40th Annual Conference of the United States Ombudsman Association (USOA) in Honolulu, Hawaii. The USOA Annual Conference continues to provide the most relevant training for public sector ombudsman offices that investigate complaints about administrative acts of government agencies. In addition to providing attendees new ideas, skills, and tools for handling complaints, it provides opportunities for attendees to network with peers for technical and moral support. The 40th Annual Conference also provided attendees, over 100 individuals from 27 states and 11 countries, an opportunity to experience the unique culture of Hawaii.

We sincerely thank Kumu Hula Todd Punawai Jinbo for providing a Hawaiian chant and Senator Jarett Keohokalole for his warm welcome remarks to the attendees at the opening of the 40th Annual Conference. We also thank Kumu Hinaleimoana Wong-Kalu for her engaging keynote address that captured the attention and emotions of each attendee.

Ombudsman Matsunaga was one of several instructors who conducted a two-day training workshop for new ombudsman that immediately preceded the 40th Annual Conference. Other conference attendees from our office included Herbert Almeida, Drake Akiyoshi, Sean Aronson, Yvonne Jinbo, Marcie McWayne, and Ryan Yeh. At the annual membership meeting during the 40th Annual Conference, Ombudsman Matsunaga was elected by

the 2019-2021 USOA Board of Directors to serve a fifth consecutive term as President of the USOA Board.

On January 2, 2020, Mr. Ryuhei Kawada, a member of the House of Councillors, the National Diet (Parliament) of Japan, and his wife, Mika, visited our office. The House of Councillors is the upper house of the bicameral Japanese Parliament. Mr. Kawada is the Chair of the Committee on Oversight of Administration. During their visit, Ombudsman Matsunaga discussed our office's complaint handling process and standards of practice for governmental ombudsman offices, as well as Mr. Kawada's efforts to establish similar services in Japan.

On January 14, 2020, Ombudsman Matsunaga met with delegates from the Myanmar Anti-Corruption Commission, along with their support staff and interpreters. Commission Chairman U Aung Kyi shared information on the Commission's role and function and Ombudsman Matsunaga answered questions from the delegates regarding our office's complaint handling process and the classical model of ombudsman practice.

On March 17, 2020, Ombudsman Matsunaga was an online guest lecturer for a graduate course on Public Sector Ombudsman Practices and Principles at California State University, Dominguez Hills. Ombudsman Matsunaga provided 13 highly motivated students a background of the public sector ombudsman models of practice before discussing the future of the profession in the United States.

CHAPTER III

STATISTICAL TABLES

Description of Terms Used in Statistical Tables

The statistical tables provide information on two basic types of **inquiries** – information requests and complaints.

Information requests are inquiries regarding matters not related to the operations of our office for which we provide a response or referral, such as to another government agency or a private entity. Thus, requests for records and queries regarding our office's function, jurisdiction, etc., are not included in this statistic.

There are two types of **complaints** - jurisdictional and non-jurisdictional. A **jurisdictional** complaint is one that our office is authorized to investigate; that is, a complaint about an administrative act of a Hawaii state executive branch or county agency, except for the governor, lieutenant governor, and county mayors and councils. All other complaints are **non-jurisdictional**. For a non-jurisdictional complaint, we try to refer the complainant to a governmental agency or private entity that we believe may be able to help the complainant.

Table 6 provides statistical information on the **disposition of jurisdictional complaints**. Our office has authority to decide whether to investigate or not investigate a jurisdictional complaint. There are four ways that a jurisdictional complaint may be disposed of - declined, assisted, discontinued, or completed. Complaints that are still open at the close of the fiscal year are reported as **pending** complaints.

A **declined** complaint is one that we determine is not appropriate for investigation by our office at the time the complaint is received. There are various reasons why we may decline to investigate, the most common of which are that there is a formal administrative appeal process that the complainant should use; the complainant has not yet attempted to informally resolve the complaint with the agency; or the action being complained of occurred too long ago. We also decline to investigate secondhand complaints due to concerns about the accuracy of information provided by the complainant and because we do not know if the aggrieved individual wants our office to investigate.

An **assisted** complaint is one that we determine is not appropriate for investigation, but due to the nature of the complaint, we contact the agency the complaint is against, inform it of the nature of the complaint, and ask it to contact the complainant directly to address the matter. We invite the complainant to contact us again if the complainant does not hear from the agency or is unable to resolve the complaint.

A **discontinued** complaint is one that we decide to investigate based on the nature and circumstances of the complaint, but for certain reasons we do not investigate to completion. Reasons for discontinuing an investigation include when the complainant withdraws the complaint or fails to submit additional information that is required to properly investigate the complaint, or no further action is required because the complaint is resolved.

A **completed investigation** is one in which we conducted a full and thorough investigation and arrived at a finding. Table 7 provides information on the disposition of the completed investigations, which are reported as either substantiated or not substantiated.

A **not substantiated** complaint is one in which we determine that the agency's actions were in accordance with the law and were appropriate and reasonable. We include in this category for statistical purposes complaints that were investigated to completion but for which there was insufficient evidence to determine whether the complaint was substantiated or not substantiated.

A **substantiated** complaint is one that in which we determined that the agency did not act properly or reasonably, based on the preponderance of the evidence. For substantiated complaints, we report if the complaint is rectified or not rectified.

A complaint is **rectified** when the agency complies with our recommendation and the desired remedy is provided to the complainant and/or action is taken to prevent similar problems from arising in the future. A complaint is **not rectified** when the agency does not adopt our recommendation or when we are unable to make a recommendation because no resolution is possible.

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1 NUMBERS AND TYPES OF INQUIRIES Fiscal Year 2019-2020

Month	Total Inquiries	Jurisdictional Complaints	Non- Jurisdictional Complaints	Information Requests
July	466 375		49	42
August	390	300	46	44
September	342	287	28	27
October	396	330	32	34
November	349	280	30	39
December	312	243	38	31
January	309	240	24	45
February	342	275	31	36
March	390	311	37	42
April	422	359	31	32
May	388	297	44	47
June	303	238	26	39
TOTAL	4,409	3,535	416	458
% of Total Inquiries		80.2%	9.4%	10.4%

TABLE 2 MEANS BY WHICH INQUIRIES ARE RECEIVED Fiscal Year 2019-2020

Month	Talanhana	Mail	Email	- Fave	Visit	Own
Month	Telephone	IVIAII	Email	Fax	VISIT	Motion
July	409	31	20	0	5	1
August	331	33	21	1	2	2
September	287	26	23	0	6	0
October	334	29	32	0	0	1
November	305	13	29	0	1	1
December	263	28	16	0	3	2
January	261	15	23	0	10	0
February	302	15	21	0	1	3
March	316	25	46	0	1	2
April	377	5	40	0	0	0
May	342	12	34	0	0	0
June	271	4	26	1	0	1
TOTAL	3,798	236	331	2	29	13
% of Total Inquiries (4,409)	86.1%	5.4%	7.5%	0.0%	0.7%	0.3%

TABLE 3 DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE Fiscal Year 2019-2020

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	974,563	68.8%	3,249	73.7%
County of Hawaii	201,513	14.2%	473	10.7%
County of Maui	167,503	11.8%	385	8.7%
County of Kauai	72,293	5.1%	52	1.2%
Out-of-State			250	5.7%
TOTAL	1,415,872		4,409	

*Source: The State of Hawaii Data Book 2019, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06,

"Resident Population, by County: 2000 to 2019."

TABLE 4 DISTRIBUTION OF TYPES OF INQUIRIES BY RESIDENCE OF INQUIRERS Fiscal Year 2019-2020

		TYPES OF INQUIRIES								
	Jurisdictiona	I Complaints		sdictional plaints	Information	Information Requests				
Residence	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total				
C&C of Honolulu	2,674	77.5%	239	54.0%	336	65.4%				
County of Hawaii	376	10.9%	43	9.7%	54	10.5%				
County of Maui	325	9.4%	34	7.7%	26	5.1%				
County of Kauai	40	1.2%	7	1.6%	5	1.0%				
Out-of- State	37	1.1%	120	27.1%	93	18.1%				
TOTAL	3,452		443		514					

TABLE 5 MEANS OF RECEIPT OF INQUIRIES BY RESIDENCE Fiscal Year 2019-2020

		Means of Receipt						
Residence	Total Inquiries	Telephone	Mail	Email	Fax	Visit	Own Motion	
C&C of Honolulu	3,249	2,877	115	217	2	25	13	
% of C&C of Honolulu	-	88.6%	3.5%	6.7%	0.1%	0.8%	0.4%	
County of Hawaii	473	429	6	37	0	1	0	
% of County of Hawaii		90.7%	1.3%	7.8%	0.0%	0.2%	0.0%	
County of Maui	385	337	2	44	0	2	0	
% of County of Maui		87.5%	0.5%	11.4%	0.0%	0.5%	0.0%	
County of Kauai	52	51	0	0	0	1	0	
% of County of Kauai		98.1%	0.0%	0.0%	0.0%	1.9%	0.0%	
Out-of- State	250	104	113	33	0	0	0	
% of Out- of-State		41.6%	45.2%	13.2%	0.0%	0.0%	0.0%	
TOTAL	4,409	3,798	236	331	2	29	13	
% of Total		86.1%	5.4%	7.5%	0.0%	0.7%	0.3%	

TABLE 6 DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY Fiscal Year 2019-2020

				2019-2				
				oleted gations				
Agency	Juris- dictional Complaints	Percent of Total	Substan- tiated	Not Substan- tiated	Discon- tinued	Declined	Assisted	Pending
State Departments	·							
Accounting & General Services	17	0.5%	0	4	2	7	0	4
Agriculture	1	0.0%	0	0	0	0	1	0
Attorney General	37	1.0%	0	2	5	24	5	1
Budget & Finance	41	1.2%	0	5	1	31	3	1
Business, Economic Devel. & Tourism	6	0.2%	0	0	2	4	0	0
Commerce & Consumer Affairs	34	1.0%	2	4	8	16	2	2
Defense	1	0.0%	0	0	0	1	0	0
Education	83	2.3%	1	8	20	44	3	7
Hawaiian Home Lands	22	0.6%	1	2	6	10	1	2
Health	108	3.1%	1	19	21	49	10	6
Human Resources Development	13	0.4%	1	3	4	2	0	3
Human Services	233	6.6%	3	16	31	147	35	1
Labor & Industrial Relations	237	6.7%	1	11	28	179	14	4
Land & Natural Resources	34	1.0%	2	4	3	16	2	7
Office of Hawaiian Affairs	1	0.0%	1	0	0	0	0	0
Public Safety	2,293	64.9%	49	553	181	1,320	144	46
Taxation	20	0.6%	0	0	6	10	4	0
Transportation	31	0.9%	2	4	1	19	3	2
University of Hawaii Other Executive	44	1.2%	1	5	4	33	0	1
Agencies	11	0.3%	0	0	7	5	0	0
Counties City & County of Honolulu	187	6.8%	4	12	29	124	12	6
County of Hawaii	31	0.9%	0	2	1	26	2	0
County of Maui	44	1.2%	1	4	9	26	0	4
County of Kauai	6	0.2%	0	0	1	5	0	0
TOTAL	3,535		70	658	370	2,098	241	97
% of Total Jurisdictional Complaints		1	2.0%	18.6%	10.5%	59.3%	6.8%	2.7%

TABLE 7 DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY Fiscal Year 2019-2020

	1		
Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments Accounting &			
General Services	0	0	0
Agriculture	0	0	0
Attorney General	0	0	0
Budget & Finance	0	0	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	2	2	0
Defense	0	0	0
Education	1	1	0
Hawaiian Home Lands	1	0	1
Health	1	1	0
Human Resources Development	1	1	0
Human Services	3	3	0
Labor & Industrial Relations	1	1	0
Land & Natural Resources	2	2	0
Office of Hawaiian Affairs	1	1	0
Public Safety	49	40	9
Taxation	0	0	0
Transportation	2	2	0
University of Hawaii	1	1	0
Other Executive Agencies	0	0	0
Counties City & County of Honolulu	4	4	0
County of Hawaii	0	0	0
County of Maui	1	1	0
County of Kauai	0	0	0
TOTAL	70	60	10
% of Total Substantiated Jurisdictional Complaints		85.7%	14.3%
% of Total Completed Investigations (730)	9.6%	8.2%	1.4%

TABLE 8 DISTRIBUTION OF INFORMATION REQUESTS Fiscal Year 2019-2020

Agency	Information Requests	Percent of Total		
State Departments				
Accounting & General Services	7	1.5%		
Agriculture	2	0.4%		
Attorney General	5	1.1%		
Budget & Finance	10	2.2%		
Business, Economic Devel. & Tourism	1	0.2%		
Commerce & Consumer Affairs	14	3.1%		
Defense	1	0.2%		
Education	2	0.4%		
Hawaiian Home Lands	2	0.4%		
Health	27	5.9%		
Human Resources Development	1	0.2%		
Human Services	17	3.7%		
Labor & Industrial Relations	18	3.9%		
Land & Natural Resources	6	1.3%		
Office of Hawaiian Affairs	0	0.0%		
Public Safety	85	18.6%		
Taxation	3	0.7%		
Transportation	11	2.4%		
University of Hawaii	0	0.0%		
Other Executive Agencies	2	0.4%		
Counties City & County of Honolulu	53	11.6%		
County of Hawaii	7	1.5%		
County of Maui	2	0.4%		
·	1	0.4%		
County of Kauai	I	U.Z70		
Miscellaneous	181	39.5%		
TOTAL	458			

TABLE 9 DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS Fiscal Year 2019-2020

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	14	3.4%
County Councils	3	0.7%
Federal Government	25	6.0%
Governor	14	3.4%
Judiciary	43	10.3%
Legislature	6	1.4%
Lieutenant Governor	0	0.0%
Mayors	5	1.2%
Multi-State Governmental Entity	3	0.7%
Private Transactions	205	49.3%
Miscellaneous	98	23.6%
TOTAL	416	

TABLE 10 INQUIRIES CARRIED OVER TO FISCAL YEAR 2019-2020 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2020-2021

Types of Inquiries	Inquiries Carried Over to FY 19-20	Inquiries Carried Over to FY 19-20 and Closed During FY 19-20	Balance of Inquiries Carried Over to FY 20-21	Inquiries Received in FY 19-20 and Pending	Total Inquiries Carried Over to FY 20-21
Non-Jurisdictional Complaints	2	3	0	0	0
Information Requests	1	1	0	4	4
Jurisdictional Complaints	189	174	15	96	111
		Disposition of Closed Complaints: Substantiated Not Substan. 112 Discontinued 174			
TOTAL	192	178	15	100	115

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

To view a cumulative index of all selected case summaries that appeared in our Annual Report Nos. 1 through 50, please visit our website at ombudsman.hawaii.gov and select the "Cumulative Index" link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.

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