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1ST CIRCUIT COURT  
 STATE OF HAWAII  
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2016 JUN -9 PM 2:17

F. OTAKE  
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Attorneys for Plaintiff  
 AARON WILLS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

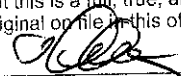
STATE OF HAWAII

AARON WILLS,	)	CIVIL NO. <u>16-1-1109-06</u> E C N
	)	(Other Civil Action)
Plaintiff,	)	
	)	COMPLAINT AND SUMMONS
vs.	)	
	)	
DEPARTMENT OF LAND AND	)	
NATURAL RESOURCES OF THE STATE	)	
OF HAWAII; JOHN DOES 1-50; JANE	)	
DOES 1-50; DOE CORPORATIONS 1-50;	)	
DOE PARTNERSHIPS 1-50; DOE	)	
GOVERNMENTAL ENTITIES 1-50; DOE	)	
NON-PROFIT ENTITIES 1-50; AND DOE	)	
DEFENDANTS 1-50,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff AARON WILLS, doing business as Lokahi Consulting, a registered Hawaii sole proprietorship (hereinafter "Plaintiff"), by and through his undersigned counsel, hereby files this complaint for declaratory, injunctive, and other relief against Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES OF THE STATE OF HAWAII (hereinafter "Defendant" or "DLNR") for violations of the Uniform Information Practices Act

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

  
 Clerk, Circuit Court, First Circuit

("UIPA"), Hawai'i Revised Statutes ("HRS") chapter 92F, and its accompanying administrative rules, Hawai'i Administrative Rules ("HAR") chapter 2-71.

Plaintiff alleges as follows:

## **INTRODUCTION**

1. Plaintiff submitted a request to Access Government Records pursuant to the UIPA on April 8, 2016, in connection with the appointment of Riki May Amano (hereinafter "Ms. Amano) as Hearings Office in connection with the dispute involving Thirty Metre Telecope pending before the Land Board of DLNR. Defendant has neglected, failed and/or refused to provide the requested records in violation of applicable law.

## **PARTIES**

2. Plaintiff AARON WILLS, doing business as Lokahi Consulting, is a sole proprietorship, registered in Hawai'i. As a legal entity, Plaintiff is a "person" within the meaning of HRS § 92F-3

3. Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES is the state governmental department that has possession and control of the records that are the subject of this action. The DEPARTMENT OF LAND AND NATURAL RESOURCES is an "agency" within the meaning of HRS §92F-3.

## **JURISDICTION AND VENUE**

4. This action is brought pursuant to HRS §§ 92F-15(a) and (b).

5. This Court has jurisdiction over this action pursuant to HRS §§ 92F-15(e) and 603-21.5(a)(3).

6. Venue is proper in this Court pursuant to HRS §§ 92F-15(e) and HRS § 603-36, because the acts and omissions complained of occurred in this Circuit.

## FACTS

7. On April 8, 2016 Plaintiff submitted a request to Access Government Records (hereinafter, "Initial Request") to Defendant pursuant to UIPA concerning the appointment of Ms. Amano as Hearings Officer and the process that was used.

8. The records requested by Plaintiff in his Initial Request are "government records" within the meaning of HRS § 92F-3.

9. Plaintiff requested access to these government records pursuant to HRS chapter 92F, via a "formal request" within the meaning of HAR § 2-71-2.

10. Plaintiff was the legal entity that requested the government documents.

11. By Notice to Requester dated April 22, 2106, DLNR provided only a redacted copy of the contract it had executed on March 31, 2016, with Amano.

12. By letter dated May 4, 2016, from Deputy Attorney General Harvey E. Henderson, Jr. (hereinafter "Mr. Henderson), DLNR supplemented its Notice stating: "A copy of the contract with Judge Amano was previously sent to you... Information concerning the contract amount, Judge Amano's hourly rate, and the negotiated changes to the General Conditions were also redacted and will not be disclosed 'at this point in time' because disclosure would compromise the State's bargaining position if Judge Amano is removed and the State is required to negotiate with the second and/or third ranked applicants... Upon Judge Amano's commencement of the administrative hearing in this case, the contract amount, her hourly rate, and the negotiated changes to the General conditions will be disclosed."

13. By email dated May 10, 2016, Mr. Henderson said on behalf of the DLNR "...there are still avenues for her selection to be challenged...there will probably be a motion for reconsideration...Until Amano's selection is final and unchallengeable, we cannot release the

unredacted contract or the other requested documents...Could potentially jeopardize the selection process and could result in having to start the procurement procedure all over again.”

14. On May 12, 2016, Mr. Henderson responds to email sent on Wednesday May 11, 2016 and states, “...We (DLNR) will release the unredacted contract and the other non-privileged documents regarding appointment of Judge Riki Amano when any motion for reconsideration of her appointment is resolved.”

15. On Monday, June 6, 2016, Plaintiff sent an email to Mr. Henderson citing the Land Board’s final decision filed Friday, June 3, 2016, to affirm Riki May Amano as the Hearings Officer and requesting the release of the requested government documents.

16. By voicemail message Wednesday, June 8, 2016, Mr. Henderson advised Plaintiff that the requested documents would continue to be withheld “...until the actual contested case hearing starts.”

#### **DECLARATORY AND INJUNCTIVE RELIEF**

17. An actual and immediate controversy has arisen and now exists between Plaintiff and Defendant, which parties have genuine and opposing interests and which interests are direct and substantial. Defendant has failed to comply with provisions of HRS chapter 92F and HAR chapter 2- 71 for at least the reasons set forth herein. Plaintiff is thus entitled to a declaratory judgment, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

18. Plaintiff has no adequate remedy at law. Unless enjoined by the Court, Defendant will likely continue to deny Plaintiff access to a government record for the foreseeable future. Plaintiff is entitled to access this government record pursuant to HRS chapter 92F. This violation requires temporary, preliminary, and permanent injunctive relief against Defendant.

## **FIRST CLAIM FOR RELIEF**

Violation of HRS §92F-11

(Failure to disclose government records, actionable pursuant to HRS § 92F-15(a))

19. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in the preceding paragraphs.

20. HRS § 92F-11(a) provides that "[a]ll government records are open to public inspection unless access is restrict or closed by law.

21. HRS § 92F-11(b) provides that "each agency upon request by any person shall make government records available for inspection and copying during regular business hours."

22. HRS § 92F-15(a) provides that "a person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.

23. Defendant has unlawfully denied Plaintiff access to government records, which records are required to be open to public inspection and are not protected from disclosure by law.

## **SECOND CLAIM FOR RELIEF**

Violation of HRS § 92F-11 and HAR §§ 2-71-13 and 2-71-15

(Failure to disclose government records within established time limits, actionable pursuant to HRS § 92F-15(a))

24. Plaintiff realleges and incorporates by reference as though full contained herein, the allegation set forth in the preceding paragraphs.

25. Defendant has not produced the government records requested in violation of HAR § 2-71-13.

26. Defendant has not given Plaintiff notice of “extenuating circumstances” pursuant to HAR § 2-71-15(a) justifying a delay beyond the ordinary requirement that government records be produced within the ten to 20 business days required by HAR § 2-71-14.

27. Defendant has failed to prove that a statutory exception in HRS chapter 92 or elsewhere, exists to allow Defendant to withhold or delay production of records.

28. HRS § 92F-15(a) provides that “A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.”

29. Defendant has unlawfully denied Plaintiff access to government records, which records are required to be open to public inspection and are not protected from disclosure by law.

30. In failing to produce the government records with the time deadlines specified by law, Defendant’s actions constitute a “denial of access” within the meaning of HRS § 92F-15(a).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendant has violated HRS chapter 92 and HAR chapter 2-71 for failing to produce government record and failing to produce government records within a timely manner.

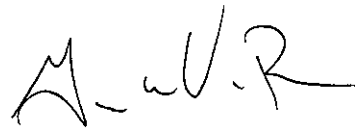
C. Issue a preliminary and permanent injunction ordering Defendant to grant Plaintiff access to all requested government records;

D. Award attorneys' fees, costs, and all other expenses to Plaintiff pursuant to HRS§ 92F-15(d) and/or the Private Attorney General doctrine, including but not limited to all expenses incurred by Plaintiff in attempting to obtain the government records prior to filing the instant Complaint;

E. Retain jurisdiction over Defendant until such time as the Court is satisfied that Defendant's noncompliance no longer exists and will not recur; and

F. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawaii; June 9, 2016



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GEORGE W. VAN BUREN  
JOHN B. SHIMIZU  
Attorneys for Plaintiff  
AARON WILLS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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DEFENDANTS 1-50,	)	
	)	
Defendants.	)	
_____	)	

SUMMONS

STATE OF HAWAII

TO THE ABOVE-NAMED DEFENDANTS: DEPARTMENT OF LAND AND NATURAL RESOURCES OF THE STATE OF HAWAII; JOHN DOES 1-50; JANE DOES 1-50; DOE CORPORATIONS 1-50; DOE PARTNERSHIPS 1-50; DOE GOVERNMENTAL ENTITIES 1-50; DOE NON-PROFIT ENTITIES 1-50; AND DOE DEFENDANTS 1-50

You are hereby summoned and required to file with the court and serve upon VAN BUREN & SHIMIZU LLP, Plaintiff's attorneys, whose address is Hawaii Kai Corporate Plaza, 6600 Kalaniana'ole Highway, Suite 212, Honolulu, Hawaii 96825, an answer to the Complaint which is herewith served upon you, within 20 days after service of this Second Amended Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.



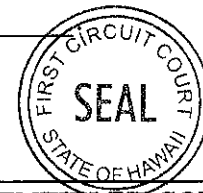
THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND A DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

JUN - 9 2016

DATED: Honolulu, Hawaii, \_\_\_\_\_

F. OTAKE



\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

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In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.