

# REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: 1-2-15

TO: Ricky Watanabe

FROM: Joan Conrow  
Name or Alias

joanconrow@gmail.com  
Contact Information

RECEIVED

15 JAN -2 PM 12:22

OFFICE OF  
THE COUNTY CLERK

Although you are not required to provide any personal information, you ~~could provide enough~~ information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

## I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

The County Council's investigative report into the Ron Rawls complaint, conducted by Honolulu attorney Lynn Toyofuku.

## I WOULD LIKE: (please check one or more of the options below)

☐ To inspect the government record.

☒ A copy of the government record: (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

☐ Pick up at agency (date and time):

☐ Mail

☐ Fax (toll free and only if available)

☒ Other, if available (please specify): email

☐ If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

☒ Electronic ☐ Audio ☐ Other (please specify):

☒ Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

## SEE BACK FOR IMPORTANT INFORMATION

I am requesting a waiver of fees because this information:

- (1) pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

As a journalist and author of the Kauai Eclectic blog, I have the intention and ability to widely disseminate information from the government record to the public at large.

# NOTICE TO REQUESTER

TO: Ms. Joan Conrow

FROM: County Attorney's Office, County of Kauai – (808) 241-4930, ATTN: Stephen Hall  
(Agency/name & telephone number of contact person at agency)

DATE REQUEST RECEIVED: January 2, 2015

DATE OF THIS NOTICE: January 12, 2015

## GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. The County Council's investigative report into the Ron Rawls complaint, conducted by Honolulu attorney Lynn Toyofuku.
- 2.
- 3.
- 4.

## NOTICE IS PROVIDED TO YOU THAT YOUR REQUEST:

- ☐ Will be granted in its entirety.
- ☐ Cannot be granted in its entirety because:
- ☐ Agency does not maintain the records. (HRS § 92F-3)
  - ☐ Agency that is believed to maintain records: \_\_\_\_\_
  - ☐ Agency needs a further description or clarification of the records requested. Please contact the agency and provide the following information: \_\_\_\_\_
  - ☐ Request requires agency to create a summary or compilation from records not readily retrievable. (HRS § 92F-11(c))
- ☒ Is denied in its entirety ☐ Will be granted only as to certain parts  
based upon the following exemption provided in HRS § 92F-13 and/or § 92F-22 and other laws cited below.  
(Portions of records that agency will not disclose should be described.)

RECORDS OR  
INFORMATION WITHHELD  
Toyofuku Report

APPLICABLE  
STATUTES  
HRS §§ 92F-13(2) and (3)

AGENCY  
JUSTIFICATION  
The unredacted version of this document is presently part of the discovery in an ongoing lawsuit with the County of Kauai. Additionally, the report was produced at the request of the County Council by its hired attorney, Lynn Toyofuku, for the purpose of creating said report.

As a courtesy, a redacted version of the report which has previously been filed with the Circuit Court for the Fifth Circuit, County of Kauai, will be sent to you in the manner requested.

## REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request

and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

### **METHOD & TIMING OF DISCLOSURE:**

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

#### **Method of Disclosure:**

- ☐ Inspection at the following location: \_\_\_\_\_
- ☒ As requested, a copy of the record(s) will be provided in the following manner:
- ☐ Available for pick-up at the following location: \_\_\_\_\_
- ☐ Will be mailed to you.
- ☒ Will be transmitted to you by other means requested: joanconrow@gmail.com

**Timing of Disclosure:** All records, or first increment where applicable, will be made available or provided to you:

- ☒ On     January 12, 2015.
- ☐ After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- ☐ The prior increment (if one prepayment of fees is required and received), or
- ☐ Receipt of each incremental prepayment, if prepayment for each increment is required.

Disclosure is being made in increments because the records are voluminous and the following extenuating circumstances exist:

- ☐ Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- ☐ Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- ☐ Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- ☐ A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

### **ESTIMATED FEES & COSTS:**

For personal record requests, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests, the agency is authorized to charge you certain fees to search for, review, and segregate your request (even if no record is subsequently found to exist). The agency must waive the first \$30 in fees assessed for general requesters, OR the first \$60 in fees when the agency finds that the request is made in the public interest. See HAR §§ 2-71-19, -31 and -32.

In addition to fees, the agency may also charge you for the costs of copying and delivering government or personal records in response to your request, outstanding fees and costs from a prior request, and other lawful fees and costs.

The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. The following is the estimate of the fees and costs that the agency will charge you, with the applicable waiver amount deducted:

#### **For public record requests only:**

<b>Fees:</b> Search	Estimate of time to be spent: _____ hours (\$2.50 for each 15-minute period)	\$
Review & segregation	Estimate of time to be spent: _____ hours (\$5.00 for each 15-minute period)	\$
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60)	<\$ _____>
Other	_____	\$
(Pursuant to HAR §§ 2-71-19 & 2-71-31)		
<b>Total Estimated Fees:</b>		\$

**For all record requests:**

<b>Costs:</b> Copying	Estimate of # of pages to be copied: _____ (@ \$ _____ per page, pursuant to HRS § 92-21)	\$
Delivery	Postage	\$
Other	_____	\$
<b>Total Estimated Costs:</b>		\$ 0.00

- ☐ **PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$  
 Payment may be made by cash or: ☐ personal check payable to \_\_\_\_\_  
☐ other \_\_\_\_\_
- ☐ **The estimated fees and costs above are for the first incremental disclosure only. Also, only one waiver will be allowed per request, not per incremental disclosure.**

For questions about this notice, please contact the person named at the beginning of this form.  
 Questions regarding compliance with the UIPA may be directed to the Office of Information Practices at  
 808-586-1400 or oip@hawaii.gov.

# MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

*Labor and Employment Law*

November 9, 2012

**CONFIDENTIAL**

Council Chair [REDACTED] and  
Members of the Council  
County of Kauai  
Council Services Division  
4396 Rice Street  
Lihue, HI 96766

**Re: Fact-Finding Investigation for the County of Kauai**

Dear Chair [REDACTED] and Members of the Council:

Following is my report on a fact-finding investigation of allegations of harassment/retaliation allegedly experienced by Staff Auditor [REDACTED] after he reported concerns about County Auditor Ernest Pasion's ("Pasion") management of the Office of the County Auditor ("OCA").

## **I. PURPOSE AND SCOPE**

I was retained on August 29, 2012 by the County of Kauai ("County") to serve as an independent fact-finding investigator with respect to allegations of harassment/retaliation allegedly experienced by [REDACTED] as a result of his reported concerns of poor management to Pasion in April, 2012. The concerns allegedly raised by [REDACTED] to Pasion and the retaliation he allegedly experienced were reported to the County Council by way of a Memorandum dated June 25, 2012 from [REDACTED] see Exhibit 1, and are summarized as follows:

- [REDACTED] reported concerns regarding the management of the Office of the County Auditor to Pasion as follows:
  - Lack of meaning supervision
  - Lack of productivity

Panahi Tower • 1003 Bishop Street, Suite 1500 • Honolulu, Hawaii 96813  
Phone: (808) 536-4900 • Fax: (808) 536-6700 • Direct: (808) 566-5680 • E-mail: [REDACTED]@marrjones.com

Exhibit "D"

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Members of the Council  
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- Lack of independence<sup>1</sup> in handling an anonymous complaint
- Failure to follow government auditing standards
- [REDACTED] experienced the following harassment/retaliatory conduct<sup>2</sup> after reporting the concerns to Pasion:<sup>3</sup>
  - Deterioration of his working relationship with [REDACTED] Audit Analyst
  - Verbally antagonistic conduct toward [REDACTED] at a June 15, 2012 staff meeting

<sup>1</sup> Section II of the OCA Audit Manual describes the general standard related to independence of conducting audits as follows:

In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be free from personal, external, and organizational impairments to independence, and must avoid the appearance of such impairments of independence.

Audit Manual, p. II-6 et seq.

<sup>2</sup> [REDACTED] confirmed during the investigation that he does not believe that any of the harassment/retaliation allegedly experienced is due to his race, gender, age, national origin, or any other protected class. As such, none of the allegations fall within conduct considered inappropriate under the County of Kauai's Policy Against Discrimination and Harassment or any federal or state discrimination laws. Further, this investigator is unaware of any County of Kauai policy/rule which specifically prohibits harassment/retaliatory conduct that is not due to the individual's protected class unless the conduct is a threat or an engagement in violent activities, examples of which are set forth on page 22 of County of Kauai's Employee handbook. However, if any of his reported concerns to Pasion in April, 2012 fall within the category of "protected activity" under the Hawaii Whistleblower Protection Act, Rev. Stat. § 378-61, *et seq.* ("HWPB"), [REDACTED] activity is "protected" and if he is then subjected to discharge or discrimination by Pasion *because of* the protected activity, the County of Kauai may be exposed to liability under HWPB. *See, Crosby v. State Dep't of Budget & Fin.*, 876 P.2d 1300, 1310 (1994). Protected activity however under the HWPB is limited to *reports to the employer of a violation or a suspected violation of a law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States* or a contract executed by the State, a political subdivision of the State, or the United States.

<sup>3</sup> In the Memorandum, [REDACTED] also mentions as a form of retaliation "unequal treatment (in the form of a "double-standard" between expectations regarding his work products and the expectations of others). However, during his multiple interviews and memoranda transmitted to me during the investigation, he did not mention Pasion having higher expectations of him than others as a form of retaliation that he experienced. Moreover, objectively, he is the only Staff Auditor and the other OCA employees have job descriptions that are significantly different. And further, even if you are to compare his work load/completed audits with that of [REDACTED], who is an Audit Manager, whose primary job duties involve the management of audits handled by external contractors, she was assigned as many, if not more, audits, than [REDACTED]

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- o Being "shunned" or "iced-out" by staff and their holding of secret meetings excluding him

By way of a Memorandum dated August 30, 2012, [REDACTED] identified additional retaliatory conduct he experienced as follows:

- o Work assignments being taken away
- o Stonewalling or impeding progress on assigned audit
- o Revocation/removal of computer access

During the course of the investigation, [REDACTED] identified the following additional retaliatory conduct he allegedly experienced:

- o Hiding of his Fuel audit workpapers in a locked cabinet making them inaccessible to him

I was retained to conduct fact-finding only. While the scope of my investigation included uncovering the background and details of the concerns reported to Pasion to provide context for the reported concerns, my investigation specifically excludes any finding as to the legitimacy or merit of the reported concerns. Rather the focus of the investigation is on (1) whether the reports were made to Pasion and (2) whether [REDACTED] experienced retaliation as a result of his reported concerns.

## **II. CHARTER PROVISION/POLICIES/PROCEDURES**

I was provided and reviewed the following policies/procedures that may be relevant to the concerns raised by [REDACTED] and the alleged harassment/retaliation experienced by [REDACTED]:

- County of Kauai's :Policy Against Discrimination and Harassment
- County of Kauai Employee Handbook
- Office of the County Auditor Audit Manual
- Article XXXII of the Kauai County Charter regarding the County Auditor

## **III. RESOURCES**

During the course of the investigation, the witnesses listed below were interviewed on the dates indicated.

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A. Witness Interviews<sup>4</sup>

Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
[REDACTED] <sup>5</sup>	In Person	September 6, 2012	[REDACTED] was generally very forthcoming in answering questions and had fairly good recall as to events set forth in his memoranda but was at times extremely defensive and non-responsive when it appeared he felt that a direct/candid answer would not support his position or conclusions of poor management by Pasion. He provided numerous opinions to support his conclusions as to the motivations/misdeeds on the part of Pasion and at times made self-serving statements. This investigator discounted the opinions and self-serving statements and focused instead on factual information he provided. Further, this investigator has suspicions that the memoranda he created during the investigation may be an elaborate attempt to rewrite history by turning professional discussion/disagreement as to the conducting of audits by OCA into the reporting of violations of government audit standards.
	By Telephone	November 1, 2012 November 7, 2012	
[REDACTED]	In Person with HGEA representative [REDACTED]	September 13, 2012	[REDACTED] answered questions directly, candidly, and thoughtfully. On specific issues, her memory is precise and is generally corroborated by other witnesses.

<sup>4</sup> Exhibits for each witness are attached to this report. The exhibits include signed disclosure statements and relevant documents authored by or provided by the witness.

<sup>5</sup> [REDACTED] provided this investigator numerous memoranda and emails detailing concerns regarding Pasion's management of OCA and the handling of audits and other related matters. Many of the concerns outlined in his memoranda were never reported to Pasion. Since they were not reported to Pasion, they are excluded from this report. A list of the concerns are set forth in Section V.



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Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
	By Telephone with HGEA representative [REDACTED]	November 1, 2012	She was careful to distinguish information about which she had first-hand knowledge and information she heard from others. Her recall of the June 5, 2012 incident was detailed and supported by [REDACTED]. Like [REDACTED], she claims to have experienced offensive contact by [REDACTED] but her responses to questions were not conclusory but instead measured and precise. As such, this investigator found her credible.
[REDACTED]	In Person	September 13, 2012	[REDACTED] was very forthcoming and provided information in a direct, candid and succinct fashion. She had very good recall and took contemporaneous notes of certain events, which she provided to this investigator. Although [REDACTED] reported offensive conduct by [REDACTED] (which she reported to Pasion), most of her answers were factual and she offered very little by way of opinion, which enhanced her credibility in the view of this investigator.
	By Telephone	November 2, 2012	
Ernie Pasion	In Person, with his attorney, [REDACTED]	September 10, 2012	Pasion provided candid and direct answers to questions pertaining to himself and other background information but his responses to questions pertaining to the areas of concern (especially as to his management of the office/audits and the handling of the anonymous complaint pertaining to

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Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
	By Telephone. with his attorney, [REDACTED]	November 1, 2012 November 2, 2012	Prosecutor [REDACTED] were evasive, vague, non-responsive, and inconsistent. On occasion, rather than answer a question directly, Pasion focused attention on the (not always relevant) alleged misdeeds of [REDACTED]. In several instances, he simply deferred to his notes, saying that he didn't have a present day memory of the event. At other times, his answers were extremely inconsistent raising serious doubts as to his credibility on certain events/decision.

Each witness, except [REDACTED]<sup>6</sup>, reviewed and signed a disclosure statement<sup>7</sup> that outlined the purpose and parameters of the interview, prior to the witness' first interview. The disclosures note, among other things, that the interview is voluntary, the importance of providing honest and accurate information to the best of the witness' knowledge and recollection, and the importance of maintaining confidentiality during the investigation.

This investigator took notes of each interview during the interview. After the interviews, this investigator typed up an interview summary, e-mailed the interviewees their respective interview summaries for their review, revision, signature. All witnesses complied.

Exhibits for each witness, in the order of their interviews (as stated in the above chart), are attached to this report. The exhibits include the witness' signed disclosure statement, interview summaries, and documents provided by each witness.

#### **B. Documents Reviewed**

Please see attached lists of documents I received from the County and from each witness attached as Exhibit 3.

<sup>6</sup> [REDACTED] refused to sign the disclosures and provided instead a written statement as to the terms under which she was participating in the interview(s).

<sup>7</sup> Pasion signed his disclosure statement prior to the commencement of his initial interview on September 10, 2012. This investigator has mislaid the executed disclosure. By way of a telephone conference with Pasion on November 9, 2012, she confirmed with Pasion that prior to his interview, this investigator went over the disclosure statement with him and that he signed it. Pasion has agreed to execute the same disclosure statement that he originally executed on September 10 upon his arrival back to Kauai on November 12, 2012. This investigator will transmit a copy of the executed disclosure upon its receipt from Pasion.

#### IV. INVESTIGATOR'S FINDINGS<sup>8</sup>

##### A. General Overview and Observations

OCA was established as a result of an amendment to the County Charter approved by the electorate during the November, 2008 General Election. Pasion was appointed as the County Auditor ("CA") on November 16, 2009 by the then County Council, pursuant to Section 32.01 of the Charter which states in relevant part as follows:

1. There is established within the legislative branch an office of the county auditor, to be headed by a county auditor who shall be appointed by the county council and shall serve for a period of six years, and thereafter, until a successor is appointed. . . The county council, by two-

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<sup>8</sup> Based upon interviews conducted, although I make no findings as to whether concerns reported by [REDACTED] have any legitimacy or affect the productivity, efficiency, and staff morale, when questioned about some of the concerns conveyed by [REDACTED] Pasion's answers raise serious questions with this investigator as to his ability to effectively manage OCA for maximum productivity and efficiency with the allocated resources (audit manager, staff auditor, analyst, and administrative clerk). For example, he was not able to articulate under direct questioning what audit work [REDACTED] was performing while she was in Honolulu for almost eight months (9/11-5/12). He claimed that she was working with consultant [REDACTED] of Manthos Engineering on three audits (follow up audit of the County of Kauai Building Division, Department of Public Works (Kilauea Gym), Audit of County Capital Project Management (Kaiakea Fire Station Project), and Audit of County Capital Project Management (Road Maintenance Program). However, both the Kilauea Gym and the Kaiakea Fire Station audits had been issued in draft form in 6/11 and thus should not require much by way of work, if any, since a draft report is considered completed. Another example of poor management and decision-making is his assignment of an audit to [REDACTED] on 4/24/12 after having no expectation of [REDACTED] performing an audit for the next fiscal year on 4/23/12 because he did not believe she was ready to start performing audits but did so because of [REDACTED] complaint to him that [REDACTED] was overpaid and underutilized. This investigator specifically found that Pasion's assignment of the audit to [REDACTED] led to the confrontation between [REDACTED] and [REDACTED] which resulted in [REDACTED] saying he was going to slap [REDACTED] because he was so mad. Also questionable is Pasion's failure provide any legitimate business reason to explain why the anonymous complaint alleging that Prosecuting Attorney [REDACTED] and Deputy Prosecuting Attorney [REDACTED] misused County vehicles was not expeditiously handled by way of an investigation by OCA or a referral to an enforcement agency. Undisputedly, the complaint was received by OCA in 8/11 and was not assigned for investigation until 6/12. Additional examples of poor management of staff include Pasion's admitted failure to provide discipline/counseling to [REDACTED] when he personally observed [REDACTED] conduct to be oppositional and unprofessional towards [REDACTED], allowing interaction between and among professional staff to become unprofessional and unproductive and engaging in unprofessional conduct at staff meetings himself ("Are you calling me a liar?"), informing [REDACTED] that he was no longer assigned to an audit by way of being copied on an email to [REDACTED] and providing no explanation as to why the audit is being reassigned, and admittedly assigning no work to [REDACTED] since 8/12 because he is waiting to terminate him.

thirds vote of its membership, may remove the county auditor for office at any time for cause.

2. The county auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years of experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant *shall be preferred*. The county auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the county auditor shall be a certified public accountant.<sup>9</sup>

Based upon my interview with Pasion and the resume he provided, Pasion has a B.S. degree in Commerce from St. William's College in the Philippines and an M.B.A. in General Management from Roosevelt University in Illinois. Prior to his appointment to CA, he worked in various capacities in accounting and finance in the private sector and preparing financial analysis as a Deputy County Clerk for Kauai County, but he had no background in the field of government auditing and does not hold a CPA/CIA license. Although Pasion said he did not have a job description, I was provided a position description for CA dated January 28, 2009 signed by [REDACTED]. According to the CA position description, his duties include spending thirty-five percent of his time performing project management tasks, including fieldwork, analysis, report development, accomplishing phases of the audit within planned milestones and deadlines, determining agency and program activities and developing workplans detailing data and analysis, and compiling and analyzing data collected and drawing conclusions of the evaluations. In short, according to the position description, the CA is supposed to spend over one-third of his time on performing audit functions. While Pasion supervises all audits, which involves the performance of supervisory reviews of the audit working papers, he does not perform field work, analysis, or draft audit reports.

Under Section 32.01 of the Charter, the CA may appoint necessary staff for which appropriations have been made by the county council. The CA has the same powers with respect to office personnel as department heads have over their personnel. Staff shall be appointed by the CA in a manner consistent with merit principles, devoid of any bias or prejudice.

According to Pasion, the initial budget for OCA was prepared by the County Clerk and reflected four positions (County Auditor, Audit Manager, Staff Auditor, and Audit Analyst). All positions are non-civil service appointed positions. He hired [REDACTED] for the position of Audit Manager. She had been a finalist for the position of CA. Pasion says that he was provided with no other applicants for that position by the County's Personnel Department.

<sup>9</sup>

No financial audits are performed by OCA. They are performed by outside consultants.

Council Chair [REDACTED] and  
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[REDACTED]'s post-graduate degree is a J.D., and prior to her appointment, she had work experience in procurement and auditing but not specifically in the field of government performance auditing. She was the former County Attorney for the County of Kauai and held other positions in county and state government as well as legal positions in the private sector. The job description for the Audit Manager assigns seventy percent of her time to directing/reviewing the conduct of projects by outside or in-house auditors, providing guidance to personnel assigned to projects, assuming direct project management responsibilities when assigned, working with project personnel to draft/review/edit reports, overseeing agency comments and preparing responses, conducting legal research as required by projects, preparing procurement specifications for outside consultant work and monitoring outside consultant work.

Pasion hired [REDACTED] on June 20, 2010 after a protracted application process, as the Staff Auditor. He was selected from a number of applicants because he was the most qualified for the position being a CPA and having fifteen years with the State of Oregon and fifteen years with several health care organizations conducting audits. According to the Staff Auditor's job description eighty-five percent of the auditor's time should be spent on performing audits and analysis of county organizations.

On March 20, 2011, Pasion hired [REDACTED] as a Program Audit Analyst V. Her job description indicates that forty percent of her time is to be spent on performing independent fact finding and program analysis and evaluations as they pertain to establishing program goals, objectives, costs, conducting research on economic, legal, and social and other factors inherent in programs under review, recommending remedial measures where required to programs, and drafting reports, studies, and other work, and fifty-five percent of her time assisting higher level personnel in gathering information and reviewing and analyzing data, conducting interviews and other fact finding, locating source material, preparing reports and correspondence, reviewing draft legislation, drafting and developing presentations, and identifying program issues for in-depth study.

Under Section 32.02 of the Charter, the duty of the CA is to conduct or cause to be conducted (in addition to the independent annual or biennial audit of all county funds and accounts), performance audits of the funds, programs, and operations of any agency or operation of the county as requested by the County Council and as determined by the CA. Before the commencement of each fiscal year, a plan of audits proposed to be conducted by the CA during the fiscal year must be transmitted to the County Council for review and comment, as well as the Mayor, and filed with the County Clerk. Audit reports containing audit findings and recommendations must be transmitted to the Mayor and County Council and filed with the County Clerk as public record.

It requires the CA to conduct all audits in accordance with government auditing standards ("Yellow Book") and requires the CA's performance to be evaluated annually by the County Council. It further requires the CA's audit activities to be subject to quality (peer) review in accordance with applicable government auditing standards by a professional, non-

Council Chair [REDACTED] and  
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partisan, objective group and that a written report of the independent review be transmitted to the County Council and Mayor and filed with the County Clerk as public record.

OCA follows government auditing "Yellow Book" standards. OCA's Audit Manual dated June, 2011 follows closely the City and County of Honolulu's audit manual with input from Pasion, [REDACTED], and [REDACTED]. OCA's Manual deviates from the C&C's in the areas of the audit review process (fewer levels of reviews due to the small size of OCA's composition and in the retention of documents).

The performance audit process involves three phases: (1) planning; (2) field work; and (3) report writing. OCA generally plans that each phase will take on average about three months. The auditing standards adopted by OCA require two reviews: (1) evidence of a supervisory review of the evidence (i.e. work papers) that supports the audit's findings, and (2) independent review of the referenced draft report to ensure that there is documentary support for the findings contained in the audit, referred to as an IRR.

The organizational structure of OCA is that each staff position reports directly to Pasion. As such, Pasion serves as the supervisor for every audit.

On June 28, 2010, Pasion submitted OCA's first plan of proposed audits for FY2010-11 proposing five audits and stating that OCA anticipates being able to complete three-five audits each fiscal year. Two of the audits were postponed, and based upon this investigator's understanding, out of the remaining three audits, [REDACTED] completed one audit, Audit of the County's Implementation of the Cost Control Commission's Energy Conservation Recommendations and one part of the County Capital Project Planning and Implementation Processes (Kaiakea Fire Station), the technical part of which was performed by outside consultant, Manthos Engineering. [REDACTED] was assigned one audit, Audit of the County's Fuel Costs, Consumption and Management, which was not completed during FY2011, due to the discovery of potential irregularities in the use of fuel by county employees that required investigation by external investigators. An interim report was issued in April 2012.

On May 19, 2011, Pasion submitted OCA's plan of audits for FY2011-12 proposing four audits and stating that OCA anticipates completing three audits each fiscal year. [REDACTED] was assigned the Audit of the County's Cash Management Practices, which he completed within the fiscal year. According to [REDACTED] she was still working on the second part of the County Capital Project Planning and Implementation Processes (Road Maintenance) with consultant Manthos Engineering (handling the technical aspects and [REDACTED] was handling the internal/procurement/training aspects). She was also working on final completion of the Kaiakea Fire Station audit and follow up on a prior audit of Kilauea Gym by Manthos Engineering. She was in Honolulu from September, 2011 to mid-May, 2012. The Road Maintenance audit was completed during the fiscal year. The Furlough audit which was assigned to [REDACTED] was not completed by June 30, 2012.

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[REDACTED] also worked on a pre-audit assessment regarding Hazardous Work at the Kekaha Landfill. According to [REDACTED] and [REDACTED], [REDACTED] assisted [REDACTED] in this pre-audit assessment during the period February-March, 2012.

On June 15, 2012, Pasion submitted OCA's plan of audits for FY2012-13 proposing four audits (three ongoing and one new), stating that OCA anticipates completing two audits this fiscal year. [REDACTED] committed to complete the Furlough audit during the fiscal year. [REDACTED] was also assigned to the Audit of the County Programs to Manage Employee Costs: Partial Hiring Freeze. [REDACTED] was assigned to perform the Economy and Efficiency Audit of the Department of Parks and Recreation. [REDACTED] completed the scoping plan for the audit but it has not been approved by Pasion because he wants to terminate [REDACTED]. [REDACTED] is assigned to manage the contract that outsources the performance of the Audit of the County's Take-Home Car Policy and Compliance to PFK Hawaii. This audit evolved out of the Fuel audit that was assigned to [REDACTED].

Based upon the foregoing, OCA completed two audits during FY2010-11, two audits during FY2011-12 (plus the issuance of an interim Fuel audit), which is clearly less than anticipated by Pasion each fiscal year.

According to [REDACTED], over a period of time, he became increasingly concerned about the way OCA was being managed by Pasion. In April, 2012, he shared some of his concerns with Pasion. He believes that as a result of being "open" with Pasion, he experienced retaliation by Pasion, which led him to address a memorandum dated June 25, 2012 to the County Council outlining his concerns and retaliatory treatment. By mutual agreement, [REDACTED] moved out of the OCA's office and into a temporary workspace. Due to continued retaliatory conduct he experienced, he addressed a follow-up memorandum dated August 30, 2012 to the County Council, citing additional retaliatory treatment by Pasion.

Currently, Pasion has assigned [REDACTED] no work because of his decision to terminate [REDACTED] on June 14, 2012 for unprofessional conduct that created a hostile environment for his co-workers. Pasion was told he could not terminate [REDACTED] because [REDACTED] filed a formal complaint against Pasion. Although he acknowledges he has no evidence to support his belief, Pasion believes that [REDACTED] found out about Pasion's decision to terminate him and filed the complaint as a pre-emptive strike.

**B. Report of Concerns**

**1. Lack of meaning supervision/lack of productivity**

- a. Based upon the interviews conducted, this investigator finds that on April 23, 2012, after a staff meeting, [REDACTED] met with Pasion to discuss concerns regarding his poor management of OCA. This investigator finds that [REDACTED] informed Pasion that OCA was the poorest managed audit department that he had ever worked in.

- b. It is undisputed that one of the concerns discussed involved the extended period of time (over six months by 4/12) [REDACTED] was in Honolulu working on audit-related work with consultant Manthos Engineering with minimal supervision and accountability.
- c. While Pasion does not recall the details of what [REDACTED] conveyed regarding [REDACTED]'s prolonged stay in Honolulu, this investigator finds that [REDACTED] and Pasion discussed [REDACTED] concern that due to Pasion's lack of supervision and monitoring of her progress of the audit-related work, he was unable to explain why it was taking so long for [REDACTED] to complete her work on the audits, and that his failure to provide effective supervision was allowing low productivity to continue.
- d. Based on the interviews of [REDACTED] and Pasion, this investigator finds that [REDACTED] did not convey to Pasion that he thought that Pasion's lack of supervision/monitoring of [REDACTED]'s audit-related work was a departure from or a violation of government auditing standards or that [REDACTED] was in any way reporting a violation of the County Charter.
- e. While [REDACTED] doesn't specifically recall reporting concerns about his supervision/management of [REDACTED]'s work, based upon the interviews of [REDACTED] and Pasion, this investigator finds that [REDACTED] also reported that he thought that [REDACTED] was underutilized given her title and salary.
- f. Based upon the interviews of Pasion and [REDACTED], this investigator finds that [REDACTED] did not convey that his underutilization of [REDACTED] was a departure from or violation of government auditing standards or that he was reporting in any way a violation of the County Charter.

**2. Lack of independence in handling an anonymous complaint**

- a. It is undisputed that on August 4, 2011, OCA received an anonymous complaint alleging that Prosecutor [REDACTED] and First Deputy [REDACTED] were improperly using County vehicles and fuel for personal use.
- b. It is undisputed that Pasion had a prior working relationship with [REDACTED] when she was a councilmember and Pasion was Deputy County Clerk.
- c. It is undisputed that [REDACTED] expressed concerns about Pasion's failure to promptly follow through on investigating the anonymous complaint.



- d. It is undisputed that Pasion did not decide to have the anonymous complaint investigated until June, 2012, when the Take Home Vehicle investigation/audit was outsourced to PKF Hawaii.
- e. Based upon my interviews of Pasion, [REDACTED], and [REDACTED], this investigator is unable to substantiate [REDACTED] allegation that in April, 2012, he told Pasion he thought that Pasion lacked independence in handling the complaint against [REDACTED] because he became aware that Pasion had contacted [REDACTED] sometime in 2011 and asked her to drop/reduce criminal charges against his distant nephew.<sup>10</sup>
- f. This investigator concludes that Pasion was unable to provide a cogent business-related explanation as to why it took him almost ten months to determine a means/method of investigating the complaint.
- g. Based upon the interviews of [REDACTED] and Pasion, this investigator finds that that [REDACTED] did not convey that Pasion's lack of follow through on handling the anonymous/[REDACTED] complaint was a departure from or violation of government auditing standards or that he was reporting in any way a violation of the County Charter.

**3. Failure to follow government auditing standards**

- a. Based upon my interviews, this investigator is unable to substantiate [REDACTED] claim that during his meeting with Pasion (where he reported the lack of supervision/lack of productivity) he reported that the Kilauea Gym final audit report was issued without a proper and complete set of workpapers as required by the "Yellow Book" and was thus a departure from government auditing standards.

**C. Harassment/Retaliation Allegedly Experienced By [REDACTED] Resulting From Reporting of Concerns To Pasion**

**1. Deterioration of his relationship with [REDACTED]**

<sup>10</sup> [REDACTED] claims that [REDACTED] informed him of Pasion's request to [REDACTED] during a conversation with her sometime in early, 2012, when they spent significant amounts of time together working on a pre-audit assessment relating to hazardous working conditions at the County's landfill. He then claims that during a telephone conference with [REDACTED] she confirmed the information he received from [REDACTED]. [REDACTED] denies that she ever told [REDACTED] that Pasion asked [REDACTED] to drop/reduce criminal charges against his distant nephew. Pasion denies that he asked [REDACTED] to reduce/dismiss criminal charges against his distant nephew.

- a. This investigator finds undisputed evidence that the working relationship between [REDACTED] and [REDACTED] deteriorated after April 23, 2012 when Pasion assigned [REDACTED] to perform an audit during the next fiscal year (FY2012-2013).
- b. This investigator finds that the reason for the deterioration of the relationship was because [REDACTED] blamed [REDACTED] for why she was being assigned an audit without any prior warning and because she felt that she did not have sufficient training/experience to be assigned an audit.<sup>11</sup>
- c. This investigator finds that Pasion's assignment of the audit to [REDACTED] led her to be upset at [REDACTED].
- d. This investigator finds that Pasion did not tell [REDACTED] that she was being assigned an audit because [REDACTED] did not commit to performing an audit during FY2012-13 at the April 23, 2012 meeting. This investigator finds that it was [REDACTED]'s perception that it was [REDACTED]'s fault that she was being assigned an audit.
- e. This investigator finds that [REDACTED] and [REDACTED] had a subsequent conversation on April 24, 2012 where [REDACTED] expressed his criticisms about Pasion's poor management of the office (assigning [REDACTED] an audit "out of the blue" when [REDACTED] had no auditing experience and that [REDACTED] took long completing her assigned audits). This investigator further finds that [REDACTED] then said to [REDACTED] that he took two years to complete his Fuel audit to which [REDACTED] took great offense, became upset and said, "I'm going to slap you if you mention that again. It did not take me two years. It took me six months and the office made the decision to hold it back because of the investigations."
- f. This investigator finds that [REDACTED] documented the incident and reported it to Pasion on April 27, 2012 and that Pasion then spoke [REDACTED] and told him that [REDACTED] said that [REDACTED] threatened/hit her.
- g. This investigator finds that [REDACTED] denied threatening/saying he was going to hit her. This investigator finds that Pasion asked [REDACTED] to apologize to [REDACTED].

<sup>11</sup> Pasion stated that on 4/23/12 he felt that [REDACTED] was not sufficiently trained to perform an audit and that the only reason he assigned an audit to her on 4/24/12 was because of [REDACTED] reported concern on 4/23/12 that [REDACTED] made too much money for someone who had not yet done an audit.

- h. This investigator finds that Pasion texted [REDACTED] on May 1, 2012 informing her that [REDACTED] denied threatening her. This investigator finds that the content of Pasion's text message angered [REDACTED] because she thought that [REDACTED] was calling her a liar.
- i. This investigator finds that on May 2, 2012, [REDACTED] and [REDACTED] discussed the April 24, 2012 incident because Pasion informed him that [REDACTED] was upset by his conduct. This investigator further finds that [REDACTED] told [REDACTED] that he did not literally mean what he said ("I'm going to slap you if you mention that again."). This investigator is unable to substantiate that [REDACTED] apologized to [REDACTED]<sup>12</sup>

2. **Verbally antagonist conduct toward [REDACTED] during June 5, 2012 staff meeting**

- a. This investigator finds that [REDACTED] was assigned to perform a Cash Management audit during fiscal year 2011-12 which was expected to be completed by the end of the fiscal year (June 30, 2012).
- b. This investigator finds that prior to the issuance of the draft report to the auditee by June 30, 2012, two required reviews needed to be completed.
- c. This investigator finds that [REDACTED] did change the deadline on the office calendar from June 22 to June 29 prior to the June 5, 2012 meeting without first discussing the change with Pasion, [REDACTED], or [REDACTED].
- d. This investigator finds that Pasion, [REDACTED], and [REDACTED] were concerned about the change in the deadline for the draft report and that there was discussion as to why the change was made and whether the new deadline was realistic given that [REDACTED] was scheduled to perform the second review (IRR) on June 18-19, 2012.
- e. Based upon the interviews of all attendees, this interviewer concludes that the verbal interaction among the participants got heated and unprofessional at times instead of being professional and productive and exhibiting a collaborative effort to complete the audits by the end of the fiscal year, and that as a result, [REDACTED] felt unwarranted comments were made toward him and that [REDACTED] also felt that unwarranted comments were directed toward her by [REDACTED].

<sup>12</sup> [REDACTED] claims he said, "I'm sorry," a minimum of three times. [REDACTED] said he never used the words "apologize" or "I'm sorry."

- f. This investigator finds that both [REDACTED] and Pasion acted unprofessionally, disrespectfully, and childishly towards each other during the staff meeting.
- g. This investigator finds that Pasion's conduct demonstrated poor/ineffective leadership at the meeting, by allowing the meeting to deteriorate to an unprofessional level and especially when he engaged in an unproductive dialogue with [REDACTED] about whether or not Pasion was assigning work to [REDACTED] and others which culminating in Pasion saying to [REDACTED], "Are you calling me a liar?"
- h. This investigator finds that any conduct toward [REDACTED] that he felt was unwarranted and derogatory in tone and nature was the result of Pasion's ineffective leadership at the meeting and not because of concerns he reported to Pasion.

3. **Being "shunned" or "iced out by staff, including the holding of secret meetings excluding him**

- a. This investigator is unable to substantiate that there were "secret" meetings held for which [REDACTED] was purposely excluded.
- b. This investigator finds that there were meetings that were held between [REDACTED] and [REDACTED] in [REDACTED]'s office during May-June 2012 for the purpose of training [REDACTED] on conducting an IRR on the Road Maintenance audit in mid-June.
- c. This investigator finds that Pasion, [REDACTED],<sup>13</sup> and [REDACTED] only interact with [REDACTED] whenever necessary for work-related reasons.
- d. This investigator finds that the deterioration of the relationships between and among the staff is because of the poor leadership exhibited by Pasion<sup>14</sup> and not due to [REDACTED] report of concerns to Pasion.

<sup>13</sup> On May 18, 2012, [REDACTED] filed a written complaint with Pasion complaining about [REDACTED] harassing and oppositional behavior towards her on May 15, 2012 while they were discussing the steps to complete the Road Maintenance audit during FY2012-13. Pasion witnessed the conduct but did not inform him that his conduct was unacceptable and that it had to stop.

<sup>14</sup> Pasion stated that he had observed [REDACTED] engaging in oppositional and unprofessional conduct towards [REDACTED] prior to May 15, 2012 but did not counsel/discipline him to stop the behavior. Further, in Pasion's performance review of [REDACTED] for 2011, Pasion did not mention any concerns regarding [REDACTED]'s conduct toward [REDACTED].

**4. Reassignment of the Take Home Vehicle Audit to [REDACTED]**

- a. It is undisputed that the Take Home Vehicle audit/investigation, is a subpart of the Fuel Consumption and Cost audit assigned to [REDACTED] in 2010.
- b. It is undisputed that the Take Home Vehicle audit was outsourced to PKF Hawaii in June, 2012.
- c. It is undisputed that Pasion assigned oversight of the audit to [REDACTED] in June, 2012.
- d. Pasion claims that his decision to assign oversight of the audit to [REDACTED] is because there was an appearance of bias on [REDACTED] part as it pertained to the alleged misuse of County vehicles by [REDACTED], which was being investigated as part of the outsourced audit. Pasion was unable to explain [REDACTED] bias against [REDACTED].
- e. This investigator finds it more likely than not that Pasion's decision to reassign the audit was motivated by [REDACTED] reported concern of Pasion's lack of independence in failing to follow up expeditiously in investigating the allegations against [REDACTED]. However, because this investigator is unable to substantiate [REDACTED] allegation that in April, 2012, he told Pasion he thought that Pasion lacked independence in handling the complaint against [REDACTED] because he became aware that Pasion had contacted [REDACTED] sometime in 2011 and asked her to drop/reduce criminal charges against his distant nephew or that Pasion did indeed contact [REDACTED] as alleged, this investigator cannot and does not find that the reassignment of the Take Home Vehicle audit was due to the reporting of this concern.

**5. Hiding [REDACTED] Fuel Audit Working Papers In A Locked Filing Cabinet Inaccessible To Him**

- a. It is undisputed that [REDACTED] working papers for the Fuel audit were moved to a filing cabinet that can be locked.
- b. Based upon the interviews of Pasion, [REDACTED] and [REDACTED] this investigator finds that the staff (not including [REDACTED]) agreed to secure confidential working papers in the filing cabinet.

- c. Based upon the interviews of Pasion, [REDACTED], and [REDACTED], this investigator finds that the file cabinet remains unlocked during office hours (except when no one is in the office).
- d. Based upon interviews with Pasion, [REDACTED], and [REDACTED], this investigator finds that [REDACTED] (administrative clerk) had and continues to have custody of the key to the filing cabinet.
- e. Based upon the interviews of Pasion, [REDACTED], and [REDACTED], this investigator finds that [REDACTED] has never had possession of the key to the filing cabinet on her person or on her key chain.

**6. Stonewalling or impeding progress on audit**

- a. It is undisputed that on June 26, 2012, Pasion assigned [REDACTED] to work on initial audit planning for a Park and Recreations audit during FY2012-13.
- b. It is undisputed that [REDACTED] provided Pasion a scoping statement and other follow-up information that Pasion had requested and that Pasion has still not approved the scoping statement.
- c. It is undisputed that due to Pasion's failure to approve the scoping statement, [REDACTED] is unable to proceed with the audit.
- d. It is undisputed that Pasion has assigned [REDACTED] no substantive work.
- e. It is undisputed that Pasion's reason for not assigning [REDACTED] any work is because is waiting to terminate him.<sup>15</sup>

**7. Removal of Computer Access**

- a. It is undisputed that on August 21, 2012, [REDACTED] access to the County's computer system was revoked/removed by the IT division based upon a form submitted by Pasion.
- b. Based upon Pasion's interview and documents he provided, including the form sent to IT, this investigator finds that the reason for the removal of access was due to Pasion not properly filling out the IT form to remove [REDACTED] access to AS400 only and that Pasion did not intend to remove [REDACTED] from the County's computer system.

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<sup>15</sup> Pasion made a decision to terminate [REDACTED] on June 14, 2012. He was told he could not do so because [REDACTED] filed a formal complaint.

V. **OTHER CONCERNS RAISED BY [REDACTED] DURING THE COURSE OF THE  
INVESTIGATION THAT WERE NOT REPORTED TO PASION**

During the course of this investigation, [REDACTED] raised, by way of several memoranda, other concerns/questionable activities regarding Pasion. Admittedly, [REDACTED] does not have concrete evidence to support all his concerns/questionable activities but wanted to bring them to my attention for possible further handling.<sup>16</sup> I specifically excluded them from the investigation because he had not raised these concerns with Pasion and thus [REDACTED] could not have experienced retaliation therefrom.

- Possible use of Pasion's county office (during working hours) to prepare income tax returns or otherwise provide tax advice for clients during the first two weeks of April, 2012. See [REDACTED] Memorandum re Productivity and Audit Project Management Concerns dated September 17, 2012, under heading "Productivity Concerns: Mr. Pasion and Ms. [REDACTED] in April 2012; [REDACTED] Memorandum re Professional Ethics and Integrity Concerns dated October 30, 2012 ("October 30 Memo") under heading *Income Tax Practice and Conflict of Interest*, at p. 3-4. .
- Attempts to maneuver county print order business to "Ink Spot" print shop that is owned and operated by Pasion's friend, [REDACTED] the President of the Kauai Filipino Chamber of Commerce. October 30 Memo, at p. 2-3.
- Recommending visitors to Kauai on county business to use the taxi services of his friend who is a taxi driver. According to [REDACTED], Pasion sent an e-mail on July 22, 2011 to a group of external auditors who were traveling to Kauai for a meeting which recommended that they arrange taxi services through this taxi driver friend. [REDACTED] and [REDACTED] were cc'd. [REDACTED] alleges that [REDACTED] expressed to him that she thought Pasion's actions were unwise and might be viewed as a possible violation of the code of ethics. October 30 Memo, at p. 3
- Possible bias against "mainland firms" that responded to County requests for professional services. October 30 Memo, at p. 5.
- Assigning phony work projects to employees in an effort to create stress and divisiveness between employees. October 30 Memo, at p. 5.
- Expediting contracts prior to June 30 so that funds can be encumbered, even though the projects are clearly "future projects". October 30 Memo, at p. 5.

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<sup>16</sup> In his October 30 Memo, he claims that the types of questionable activities listed above were often discussed privately between [REDACTED] and [REDACTED] during 2011 and 2012.

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- Directing [REDACTED] to delay the release of information regarding contract bid amounts (relating to padding the Office Services budget). October 30 Memo, at p. 5.
- Knowingly misrepresenting office clerical staff needs to the Council in order to gain a full-time position. October 30 Memo, at p. 5.

**VI. CONCLUSION**

If you believe there is additional information I should consider with respect to the issues addressed in this Report, or additional issues that you would like me to address, please let me know and I will supplement my investigation and/or this Report as necessary or appropriate.

I look forward to appearing before you next Thursday. Meanwhile, if you have any questions about this report, please do not hesitate to contact me.

Very truly yours, 

[REDACTED]

[REDACTED]  
Enclosures

Cc: [REDACTED]  
Council Services

K000023