REQUEST TO ACCESS A GOVERNMENT RECORD

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TO: FROM	۸ſ۰	Ricky Watanabe_	R	ECE		/EC	Ì	
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		joanconrow@gmail.com						
		Contact Information		9FFIC	E ()F		
allow unable	the agen	are not required to provide any personal information, you stroy to contact you about this request. The processing of this react you. Therefore, please provide any information that will alone or fax number, mailing address, e-mail address, etc.).	ME YOU Gue	COUN ld/pro st may	Vid v be	CLER e/enou stopp	ed if th	e agency is
<u>I WO</u>	ULD LI	KE THE FOLLOWING GOVERNMENT RECORD:						
subjec could	t matter, help the	overnment record as specifically as possible so that it can be lo date, location, purpose, or names of persons to whom the recagency identify the record. A complete and accurate descrievent delays in locating the record. Attach a second page if need to the contract of t	core	d referon	s, c	or othe	r infor	nation that
		Council's investigative report into the Ron Rawls complain Toyofuku.	nt, o	condu	cte	d by I	Ionolu	lu
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	To ins	pect the government record.						
	for inf	A copy of the government record: (Please check one of the options below.) See the back of this page or information about fees that you may be required to pay for agency services to process your record equest. Note: Copying and transmission charges may also apply to certain options.						
	If the a	Pick up at agency (date and time): Mail Fax (toll free and only if available) Other, if available (please specify): _email gency maintains the records in a form other than paper, please you would prefer to have the record.	adv	vise in	wh	ich		
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\boxtimes		this box if you are attaching a request for waiver of fees in the aiver information on back).	pul	olic int	ere	st		
As a jo	(1) (2) (3) ournalis	SEE BACK FOR IMPORTANT INFORMA ag a waiver of fees because this information: pertains to the operations or activities of an agency; The record is not readily available in the public domain; The requester has the primary intention and the actual abinformation from the government record to the public at and author of the Kauai Eclectic blog, I have the intention formation from the government record to the public at lar	anoilit lar on a	d ty to v ge.		-		ate

OIP 1 (rev. 9/12/01)

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): 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 **APPLICABLE AGENCY** INFORMATION WITHHELD STATUTES JUSTIFICATION Toyofuku Report HRS §§ 92F-13(2) and (3) The unredacted version of this document is presently part of the discovery in an ongoing lawsuit with the County of Kauai. produced at the request of

Additionally, the report was 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.

Metho	d 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	g of Disclosure: All records, or first increment where applicable, will be made available or provided to you:
	OnJanuary 12, 2015. After prepayment of 50% of fees and 100% of costs, as estimated below.
For inc	remental 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:

Fees:	Search	Estimate of time to be spent: hours (\$2.50 for each 15-minute period)	\$				
	Review & segregation	Estimate of time to be spent: hours	\$				
	Fees waived	(\$5.00 for each 15-minute period) general (\$30), OR public interest (\$60)	<\$>				
	Other		\$				
		(Pursuant to HAR §§ 2-71-19 & 2-71-31)					
	Total Estimated Fees:		\$				
For all record requests:							
Costs:	Copying	Estimate of # of pages to be copied: @ \$ per page, pursuant to HRS § 92-21)	\$				
	Delivery	Postage	\$				
	Other		\$				
	Total Estimated Costs:	\$ 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.							



Labor and Employment Law

November 9, 2012

CONFIDENTIAL

Council Chair 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 and Members of the Council:

Following is my report on a fact-finding investigation of allegations of harassment/retaliation allegedly experienced by Staff Auditor after the 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 as a result of his reported concerns of poor management to Pasion in April, 2012. The concerns allegedly raised by to Pasion and the retaliation he allegedly experienced were reported to the County Council by way of a Memorandum dated June 25, 2012 from the see Exhibit 1, and are summarized as follows:

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

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- o Lack of independence in handling an anonymous complaint
- o Failure to follow government auditing standards
- experienced the following harassment/retaliatory conduct² after reporting the concerns to Pasion:³
 - o Deterioration of his working relationship with Audit Analyst
 - Verbally antagonistic conduct toward at a June 15, 2012 staff meeting

Section II of the OCA Audit Manuel 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.

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. ("HWPA"), 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 is exposed to liability under HWPA. See, Crosby v. State Dep't of Budget & Fin., 876 P.2d 1300, 1310 (1994). Protected activity however under the HWPA 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.

In the Memorandum, 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 the same and the other of audits are significantly different. And surface, whose primary job duties involve the management of audits handled by external contractors, she was assigned as many, if not more, audits, than

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

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

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

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

 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 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 and the alleged harassment/retaliation experienced by

- 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.

A. Witness Interviews⁴

Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
	In Person	September 6, 2012	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
	By Telephone	November 1, 2012 November 7, 2012	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
	In Person with HGEA representative	September 13, 2012	violations of government audit standards. answered questions directly, candidly, and thoughtfully. On specific issues, her memory is precise and is generally corroborated by other witnesses.

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.

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.

Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
	By Telephone with HGEA representative	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 Like between the claims to have experienced offensive contact by but her responses to questions were not conclusory but instead measured and precise. As such, this investigator found her credible.
	In Person	September 13, 2012	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 reported offensive
	By Telephone	November 2, 2012	conduct by (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.
Ernie Pasion	In Person, with his attorney,	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

Witness Name	Mode of Interview	Date(s) of Interview	Credibility Assessment
	By Telephone. with his attorney,	November 1, 2012 November 2, 2012	Prosecutor 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 the Inseveral 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 seemed and signed a disclosure statement⁷ 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. <u>Documents Reviewed</u>

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

refused to sign the disclosures and provided instead a written statement as to the terms under which she was participating in the interview(s).

Paison 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. Passion 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 FINDINGS⁸

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-

Based upon interviews conducted, although I make no findings as to whether concerns reported have any legitimacy or affect the productivity, efficiency, and staff morale, when questioned about some of the concerns conveyed by 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 was performing while she was in Honolulu for almost eight months (9/11-5/12) He claimed that she was working with consultant of Manthos Engineering on three audits (follow up audit of the County of Kauai Building Division, Department of Public Works (Kilauca 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 on 4/24/12 after having no expectation of of 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 complaint to him that was overpaid and underutilized. This investigator specifically found that Pasion's assignment of the audit to led to the confrontation between which resulted in saying he was going to slap 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 and Deputy Prosecuting Attorney 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 when he personally observed conduct to be oppositional and unprofessional towards , 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 that he was no longer assigned to an audit by way of being copied on an email to and providing no explanation as to why the audit is being reassigned, and admittedly assigning no work to 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 country auditor shall be a certified public accountant.⁹

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 . 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 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.

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

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 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 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 indepth 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-

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, and Co

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.

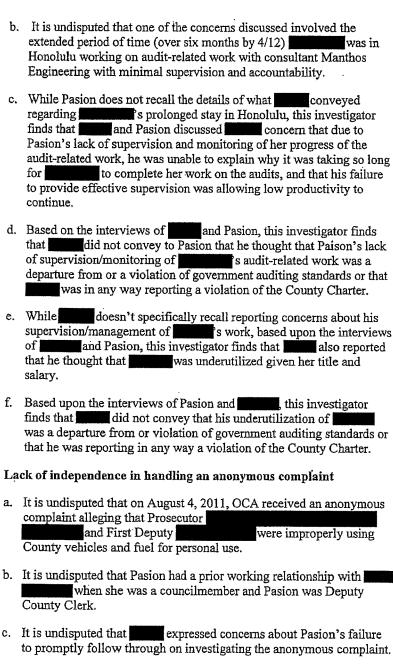
On June 28, 2010, Pasion submitted OCA's first plan of proposed audits for FY2010-11 proposing five audits and stating that OCA anticipates being able to complete three-five audits each fiscal year. Two of the audits were postponed, and based upon this investigator's understanding, out of the remaining three audits, 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. 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. was assigned the Audit of the County's Cash Management Practices, which he completed within the fiscal year. According to 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 was handing 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 was not completed by June 30, 2012.

Council Chair Members of the Council November 9, 2012 Page 11 also worked on a pre-audit assessment regarding Hazardous Work at the Kekaha Landfill. According to and and assisted 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. Committed to complete the Furlough audit during the fiscal was also assigned to the Audit of the County Programs to Manage Employee Costs: Partial Hiring Freeze. was assigned to perform the Economy and Efficiency Audit of the Department of Parks and Recreation. Completed the scoping plan for the audit but it has not been approved by Pasion because he wants to terminate 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 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 lover 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, 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 no work because of his decision to on June 14, 2012 for unprofessional conduct that created a hostile environment for his co-workers. Pasion was told he could not terminate because complaint against Pasion. Although he acknowledges he has no evidence to support his belief, Pasion believes that 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, meet with Pasion to discuss concerns regarding his poor management of OCA. This investigator finds that informed Pasion that OCA was the poorest managed

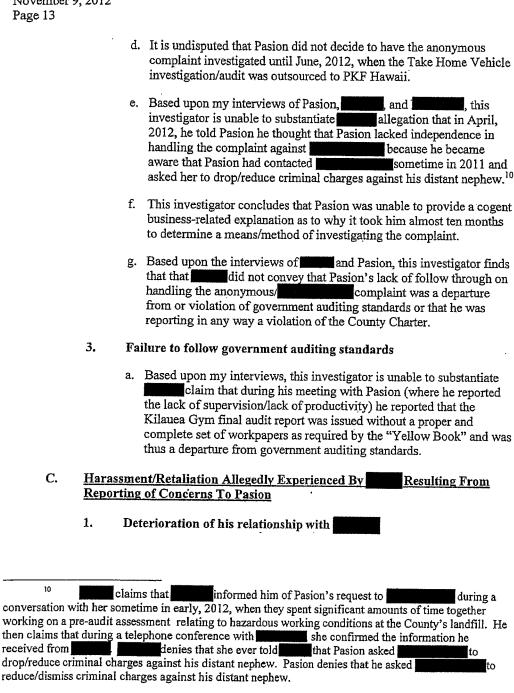
audit department that he had every worked in.

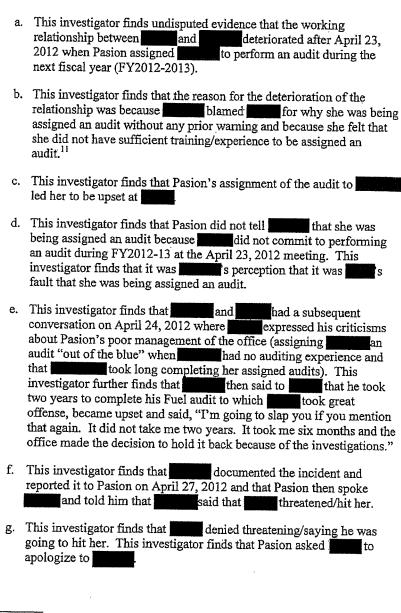
2.



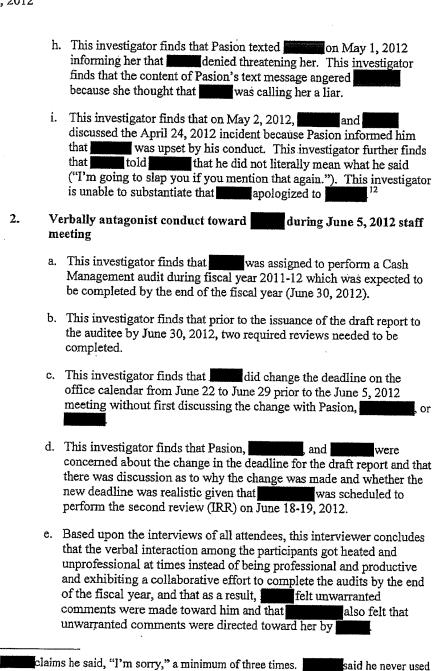
C.

received from





Pasion stated that on 4/23/12 he felt that 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 reported concern on 4/23/12 that made too much money for someone who had not yet done an audit.

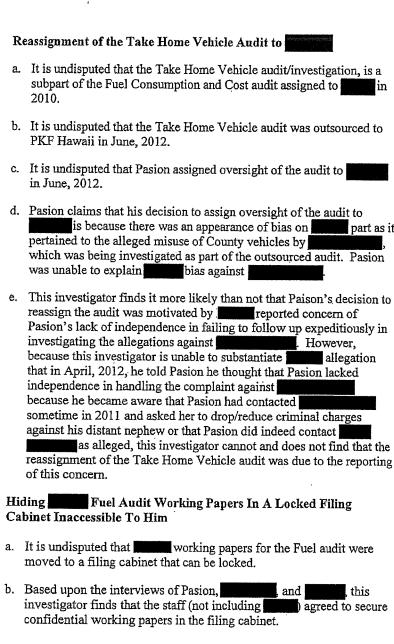


claims he said, "I'm sorry," a minimum of three times. said he never used the words "apologize" or "I'm sorry."

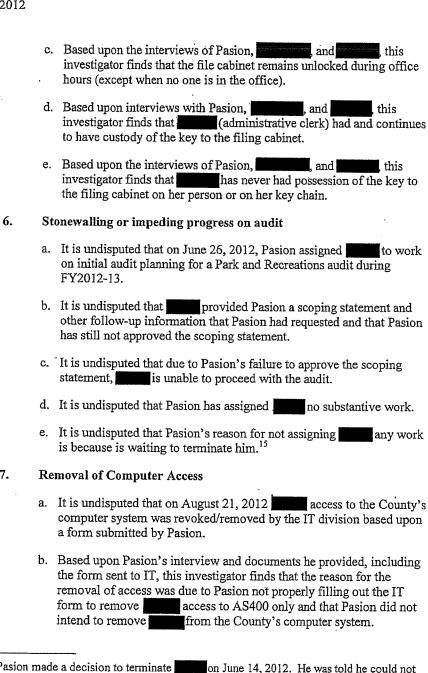
Members of the Council November 9, 2012 Page 16	
f.	This investigator finds that both and Passion acted unprofessionally, disrespectfully, and childishly towards each other during the staff meeting.
g.	This investigator finds that Pasion's conduct demonstrated poor/ineffective leadership at the meeting, by allowing the meeting to deteriorate to an unprofessional level and especially when he engaged in an unproductive dialogue with about whether or not Pasion was assigning work to and and others which culminating in Pasion saying to Are you calling me a liar?"
h.	This investigator finds that any conduct toward 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. Bei	ing "shunned" or "iced out by staff, including the holding of secret etings excluding him
a.	This investigator is unable to substantiate that there were "secret" meetings held for which was purposely excluded.
b.	This investigator finds that there were meetings that were held between and and in the state of the state of the purpose of training on conducting an IRR on the Road Maintenance audit in mid-June.
c.	This investigator finds that Pasion, and the property only interact with whenever necessary for work-related reasons.
	This investigator finds that the deterioration of the relationships between and among the staff is because of the poor leadership exhibited by Pasion ¹⁴ and not due to report of concerns to Pasion.
steps to complete the Road M not inform him that his condu- l ¹⁴ Pasion stated conduct towards	2012, filed a written complaint with Pasion complaining about tional behavior towards her on May 15, 2012 while they were discussing the faintenance audit during FY2012-13. Pasion witnessed the conduct but did uct was unacceptable and that it had to stop. It that he had observed engaging in oppositional and unprofessional prior to May 15, 2012 but did not counsel/discipline him to stop the behavior.
Further, in Pasion's performa regarding s conduct tow	ince review of for 2011, Pasion did not mention any concerns

4.

5.



7.



V. OTHER CONERNS RAISED BY DURING THE COURSE OF THE INVESTIGATION THAT WERE NOT REPORTED TO PASION

During the course of this investigation, raised, by way of several memoranda, other concerns/questionable activities regarding Pasion. Admittedly, does not have concrete evidence to support all his concerns/questionable activities but wanted to bring them to my attention for possible further handling. If I specifically excluded them from the investigation because he had not raised these concerns with Pasion and thus 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 advise for clients during the first two weeks of April, 2012. See Memorandum re Productivity and Audit Project Management Concerns dated September 17, 2012, under heading "Productivity Concerns: Mr. Pasion and Ms. In April 2012; 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, 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 provide the provided provided
- 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.

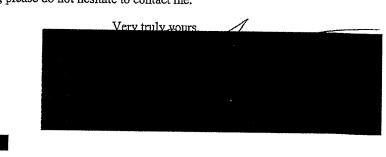
In his October 30 Memo, he claims that the types of questionable activities listed above were often discussed privately between and and during 2011 and 2012.

- Directing 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.



Enclosures

Cc:

Council Services