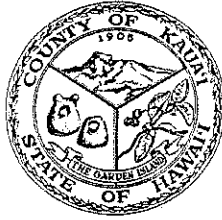


Bernard P. Carvalho, Jr.
Mayor




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MEMORANDUM

TO: Gary L. Hooser, Councilmember

VIA: Jay Furfaro, Council Chair

FROM: Bernard P. Carvalho, Jr., Mayor 

DATE: November 15, 2013

SUBJECT: Bill No. 2491, Draft 2, Relating to Pesticides and Genetically Modified Organisms (GMO's) – Memo dated November 1, 2013

Below please find responses to your questions regarding text messaging during the Council meeting held on October 15-16:

1. During the October 15, 2013 Special Council Meeting in which Bill 2491, Draft 1 was being discussed, were members of the Administration who were present in the Council Chambers engaged in texting or E-mailing Councilmembers while the meeting was in progress? *Yes, some text messages were exchanged. Councilmember Yukimura sent a text to Beth Tokioka to understand the Mayor's position on whether he would veto the bill should a deferral be granted. She ended up asking the mayor that question for the record in open session at that meeting. She also sent a text to clarify her own position on the deferral, which was consistent with the op-ed piece that had appeared in The Garden Island on October 15. This was a carry-over conversation from a face-to-face conversation held earlier that week. Beth responded in an attempt to clarify the Mayor's position. Former Vice Chair Nakamura sent a text to Beth Tokioka regarding her position on the deferral, but Beth did not respond to that text.*

2. If the answer to #1 is “yes,” was the nature of their communications such that they were intended to influence the direction of Councilmembers actions or the outcome of deliberations? *No. The nature of the communication was for Councilmembers to clarify and re-affirm positions on the deferral and statements that had been made on the floor by members of the Administration and/or myself during the October 8 and October 15 Special Council Meetings, and information that had been shared with Councilmembers in face-to-face meetings prior to the October 15 meeting.*
3. Did members of the Administrative (sic) text then Council Vice Chair Nakamura, during the Council Meeting and discuss or encourage her to encourage other Councilmembers to support a deferral of Bill No. 2491, Draft 1? *No. Again, the Administration had made its case for deferral with Vice Chair Nakamura prior to the October 15 meeting and via my remarks during the October 15 meeting. She was well-aware of my reasons for asking for the deferral – to allow time for us to work with the Department of Agriculture on interim voluntary disclosures and buffer zones. This position was reiterated on the floor of the Council during the October 15 meeting. There was no text message from my administration encouraging her to make a motion to defer. She made the motion to defer on her own accord, after listening to all testimony she received that day.*

One final comment: text messaging by Council Members with third parties during meetings is not prohibited under current Council rules. We know this to be a routine practice for many Councilmembers. Following receipt of this memo, the County Attorney’s Office contacted the Office of Information Practices to ask two questions:

1. *Is it a violation of the sunshine law if a member of the administration texts a member of the council during a council meeting (and vice versa)?*
2. *Must personal texts sent during a council meeting be disclosed as a public record under the UIPA?*

Regarding the first question the answer is no. The Sunshine law applies only to members of the body and governs what permissible actions are allowed between them. Because a member of the administration is not part of the council there is no violation of the sunshine law if a council member texts a member of the administration during a meeting or vice versa.

Regarding the second question, personal texts are not considered government records under the UIPA as long as there is no nexus between the technology used and the County. Meaning that as long as the County is not paying for the phone, does not reimburse for usage of the phone and the method of communication is not part of the County’s electronic database, i.e. emails etc., then personal texts are not considered public records.

Mahalo for the opportunity to respond.