

Great Committee

From: County Clerk
Sent: Tuesday, February 27, 2024 7:32 AM
To: Great Committee
Subject: FW: TESTIMONY To GREAT Committee for Tuesday Feb 27th 1:30 p.m. (Three Attachments)
Attachments: C. Fishkin Testimony to GREAT Committee Feb 27th 1 30 p.m. Reso 24 13.pdf; Letter to Scott Tereso Procurement Violations.pdf; OIP Ltr to CORP CNSL M Feb 23.pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: fryrchr@aol.com <fryrchr@aol.com>
Sent: Monday, February 26, 2024 8:43 PM
To: Nohe M. Uu-Hodgins <Nohe.Uu-Hodgins@mauicounty.us>; County Clerk <County.Clerk@mauicounty.us>
Cc: Gabe Johnson <Gabe.Johnson@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Thomas M. Cook <Thomas.Cook@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>
Subject: re: TESTIMONY To GREAT Committee for Tuesday Feb 27th 1:30 p.m. (Three Attachments)

Council Chair Uu-Hodgins and County Clerk,

All three attachments constitute my written Testimony for 2/27 GREAT Committee Hearing at 1:30 p.m. regarding Resolution 24-13 Additional Funding Authorization Request for Special Counsel re: Salem v. County of Maui et al.

They include:

1. My personal testimony,
2. Email communications from Administrator Bonnie Kahakui of the State Procurement Office;
3. Official letter to Chief Procurement Officer Steve Tereso, Acting Finance Director, of discovered violations; and,
4. Official Letter from OIP to Corp Counsel cc'd to C. Fishkin

Mahalo,

Christopher P. Fishkin
Maui Public Advocacy
Kihei, HI
808-213-4140

WRITTEN TESTIMONY FOR GREAT COMMITTEE 1/27 1:30 P.M. RESO 24-13

Official Letters from OIP, and to Steve Tereso, Chief of Procurement Acting Finance Director are attached.

Good afternoon, Council Members. This is Christopher Fishkin of Maui Public Advocacy and was the paralegal for one of Mr. Salem's Attorneys in the subject matter case before you requesting additional funding for Special Counsel. Being that it is Lent, it must be penance having to listen to me, so I will try to be helpful.

As many of you are already aware, I conducted an investigation pertaining to violations of the Administration's Procurement of KSG as Special Counsel in this case. The Chief Procurement Officer for the Administration is on Administrative Leave. I discussed my violations discovery with the Administrator of the State Dept. of Procurement Bonnie Kahakui who affirmed in writing that "**Special Council's invoices are open to public inspection...**" I subsequently communicated alleged violations by official letter to Steve Tereso, Acting Finance Director and Chief Procurement Officer, which letter is submitted in testimony.

I also requested access to government records from Corporation Counsel who handled the procurement for the Finance Director. They denied me access to what I requested, that is, the billing invoices of Special Counsel to date, and the names of the Selection Committee members (which are Corp Counsel Attorneys) responsible for qualifying KSG Attorneys to be Special Counsel. Upon Corp Counsel's unlawful denial of these records, I contacted the OIP which determined that Corp Counsel's response to me was indeed "incomplete" and "defective". The OIP letter to Corp Counsel informing them about this is also submitted as written testimony today.

I, along with Mr. Salem, Sam Small and others have alleged that the County Administration through Corp Counsel has been concealing records for decades, and they continue to do it out in the open. YOUR LEGAL representative Government attorneys were just caught violating the law, and my and YOUR due process rights. And you have to rely on them and those whom they choose to advise you. No wonder you expose the County to so much unnecessary liability while claiming to be trying to mitigate it. ie. Olowalu, Palama Drive, Injection Wells, and now Chris Salem, And it's not your fault and yet you're still responsible. Well, that's not a happy meal is it.

So, two important things to note:

First, one of the attorneys who is a partner at the KSG law firm, was NOT one of the attorneys who was in the Procurement letter requesting to be qualified for Procurement, and this Attorney has been actively representing the County as Special Counsel, and quite poorly I might add. KSG Attorney Max Ching, also on a recent filing, was not validly Procured as Special Counsel either. So, they were not lawfully Procured to represent the County as of about a week ago, when I received that qualification letter

from Corp Counsel. Moreover, those attorneys have misrepresented the claims in this case to the Court which is exposing the County to additional liability.

Second, you are deciding upon Authorizing new funding for a Resolution brought to you by The Corporation Council on Special Counsel's behalf. They only made that resolution after I called out Special Counsel for clearly exceeding your previous funding authorization, as their work product was far in excess of that amount. So where are the invoices between then and this additional funding request, for all the previous work done? Has some other funding source, like a Corp Counsel's slush fund, paid any of those invoices? In violation of your funding authorization. Because essentially, Special Counsel is trying to cover their okole and other Admn. Directors in this case.

Councilmembers, included in my written testimony is a summary of Mr. Salem's case so you can better understand why the Administration has been concealing records for decades pertaining to it. How the Deferral Agreements and the SMA permits work together to defraud the County and in this case, Mr. Salem was just caught in the middle of that, and has been trying to undo the harm to him and to the County, ever since.

Again, this is not really your fault.

You believe innocently enough that you're trying to mitigate liability to the County. But sadly, the opposite is true in this instance. The problem is that you don't have time to learn about the case, and so you rely on your legal advisors. Unfortunately, Corporation Counsel is one of the alleged perpetrators, and picked this particular Special Counsel to protect them and the County Directors who have prevented the assessment and collection of massive numbers of developer agreements to present-time, and who as we speak continue to cover-up an unlawful subdivision which resulted in unlawful liens which caused the foreclosure of Mr. Salem 4.5 million, now 6 million dollar property by systemically violating County Rules, Ordinances. County residents, who all have standing in the matter of subdivision enforcement, are now prepared to sue that subdivision as well; and then your problems with Mr. Salem will grow exponentially.

Your Special Counsel wrote in a letter to Mr. Salem that it would be unlawful for them to settle on his claims by enforcing County laws, rules or ordinances as part of a settlement. Did you actually approve that? I doubt it. Because that has to be approved by the Client, which is both you and the Administration. Of course you didn't see that letter which is also a violation, of the Hawaii Rules of Professional Conduct which should result in Disciplinary Action against Mr. Shikuma. This is the tip of an iceberg and they are the Captain of your County Titanic. You have more problems come down the line with this case than you can shake a stick at.

If you care at all about the Administration manipulating your authorizations, you need to review the invoices, and my written testimony, carefully and thoughtfully. I am available to answer any questions you may have.

Christopher Fishkin
Maui Public Advocacy
Kihei, HI. 96753

----- Forwarded Message -----

From: fryrchr@aol.com <fryrchr@aol.com>
To: Gabe Johnson <gabe.johnson@mauicounty.us>
Sent: Sunday, February 11, 2024 at 12:04:47 PM EST
Subject: re: For Helpful Understanding

Dear Councilmember Johnson and OCS,

As I have been testifying about the SMA and Deferral Agreements ad nauseam before the Council for over a decade, I wish to summarize so you can better understand.

This is critically important since your own Attorneys do not explain to you, even in executive session.

The Developer Deferral Agreements and the SMA violations are linked. Historically, County Officials/ Directors and Deputy Directors of Public works, Planning and Dept. Corporation Council have allowed Developers to put a critical infrastructure and, or environmental mitigations as required conditions of minor SMA permits. These are not inspected, (enforcement citizen driven) as opposed to being developer infrastructure obligations with required inspections under Title 18.

In this way, Developers have gotten away with not fulfilling their required obligations under the law, and because of the misuse of the deferrals, the cost of this infrastructure has been passed onto the citizen taxpayer.

This has also created cover for Developers and their Engineering Consultants to falsify Order of Magnitude Estimates in order to qualify for Minor instead of Major SMA Permits. Major permits require public hearings and environmental assessments, and so are inspected and reviewed. The process obviously costs the developer much more money, and their development project could even fail. Meanwhile, Minor Permits are only inspected upon request, and compliance enforcement is citizen driven.

So critical developer obligations are hidden in SMA permits, as in Salem v County of Maui at al.

In that instance, the required infrastructure, specified in both the Order of Magnitude Estimate and terms for Subdivision Approval in the permit wasn't put into the engineering plans by the Developer. The developer was also given two extensions by the county to complete those obligations and failed to do so. Additionally, the Order of Magnitude Estimate itself was falsified i.e. giving a lower valuation, in order to qualify for an SMA minor permit.

So,

- the Order of Magnitude Estimate is false defrauding the County
- the infrastructure wasn't put in the plans to be reviewed by Dept. Planning which is unlawful
- Lance Nakamura DSA refuses to incorporate them upon notice which is unlawful
- Those required conditions weren't completed which is unlawful
- The Dept Planning, Public Works, Corp Counsel refuse to record a field inspection obstructing review of its decision by the Planning Commission, which is unlawful.
- Public Works Director Arakawa sent out unlawful notices of an intent to collect from private landowners on the developer deferral agreement, which was the developers obligations, which was unlawful
- Director Arakawa created a False Ledger regarding this development which was discovered by Christopher Salem while he was working for the mayor.
- all the above resulted in unlawful liens put on Mr Salem's properties then valued at over 4.5 million dollars which he couldn't remove due to the counties failure to acknowledge and enforce the above violations.
- Mr. Salem's inability to remove those liens led to the foreclosure of his properties.

The Department of Public Works has refused to fix the plans and incorporate that infrastructure into the plans regardless of how many times we tell them they have to under the law.

Furthermore, the Department of Planning has refused, for years, to record a field inspection for the Developers infrastructure completion obligations.

As the inspection/enforcement of SMA Permits are citizen driven, without a recorded field inspection and determination/decision by the Dept of Planning, the citizen has no recourse to appeal that decision to the Planning Commission which is their administrative remedy.

In this case, the three Administration Departments mentioned above have obstructed the recorded field inspection and determination from taking place in order to prevent all the above-mentioned violations from being exposed.

Those violations resulted from egregious violations of law by former Public Works Deputy Director and Director Milton Arakawa, the Developer Lot 48A LLC, (Tim/Hugh

Farrington), and Unemori Engineering. If you watched the video, I provided all of you some time ago, you would see that Unemori falsified the Order of Magnitude estimate, using it's official engineering stamp to do so.

Unemori has numerous valuable contracts with the County of Maui, as one of the County's oldest engineering firms on Island.

In Conclusion,

The Audit of the Deferral Agreements, which I personally effectuated with Kathy Kohu and then Councilmember Don Guzman, has been interfered with and tainted by Corporation Counsel and Public Works, so the Audit has never been completed properly. The County Auditor has used Mr Salem as an excuse to not finish an Audit which would implicate the above name County Departments.

Realistically, the monies could still be collected from those agreements with the expert Consultants proposal Mr Salem made available to this Council while working for the Mayor. However, Corporation Counsel has not allowed any Council Member to pursue the collection based on the pretext that there is an ongoing Audit; an Audit which is tainted by the very Department bring audited for recording many of those unlawful agreements, and so has never been completed. That's the problem.

Fundamentally, you owe Mr Salem the value of his lost properties, reputational harm, and wrongful termination for blowing the whistle on all of the above and more; and,

You owe it to the County and the taxpaying residents to use the Consultants recommendations to collect on the Deferral Agreements and fix the loopholes that allowed developers to get away with required infrastructure obligations that are not inspected for completion.

Finally, you should be aware that in addition to his Whistleblower claims, there is Count III of his Amended Complaint which was never dismissed and which your attorneys have failed to tell you about.

Sincerely,

Christopher Fishkin
Maui Public Advocacy
tel. 808-213-4140

re: ATTN: Steve Tesoro Fw: [EXTERNAL] Attachments: re: Procurement Violations
/County of Maui

Aol/Sent

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fryrchr@aol.com

From:fryrchr@aol.com

To:finance@mauicounty.gov

Feb 22 at 8:32 PM

Aloha Steve,

Please see attached letter regarding alleged violations of the Hawaii State Procurement Code in your procurement of Special Counsel, Kobayashi Sugita & Goda, LLP in their legal Representation of the County of Maui in Salem v. County of Maui et al.

Sincerely,

Christopher P. Fishkin
Maui Public Advocacy
Kihei, Hawaii

----- Forwarded Message -----

From: Kahakui, Bonnie A <bonnie.a.kahakui@hawaii.gov>

To: fryrchr@aol.com <fryrchr@aol.com>

Sent: Thursday, February 22, 2024 at 06:05:54 PM EST

Subject: RE: [EXTERNAL] Attachments: re: Procurement Violations /County of Maui

Normally, complaints regarding irregularities in the procurement would be addressed to the jurisdiction's chief procurement officer CPO. In this Maui case, it appears that 2 jurisdictions may be involved, the County of Maui, Executive Branch, the CPO is the finance director. At the Maui County, Legislative Branch, the CPO is the Chairperson of the Council. I couldn't tell which the procuring agency.

Mahalo,

Bonnie Kahakui

Acting Administrator & Chief Procurement Officer

Phone: (808) 587-4702

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Hi Chris,

Invoices are also subject to public inspection, with the exception of confidential/proprietary information (i.e. SS# or any personal information).

Mahalo,

Bonnie Kahakui

Acting Administrator & Chief Procurement Officer

Phone: (808) 587-4702

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MAUI PUBLIC ADVOCACY

February 22, 2024

Chief Procurement Officer
Acting Finance Director
Maui County

Aloha Mr. Tereso,

As Acting Director of the Dept of Finance, you are also the Chief Procurement Officer for the Administration.

I wish to bring to your attention Procurement Violations of the State Procurement Code regarding the Procurement of Special Counsel Kobayashi Sugita & Goda (KSG) for a Whistleblower case against the County of Maui in Salem v. County et al.

First, I requested the Contract File of Procurement [including the billing invoices of Special Counsel KSG i.e. the Vendor, and the names of the Selection Committee members for Procurement made up of Corporation Counsel attorneys] from the Department of the Corporation Council. The Dept. was delegated by then Chief Procurement Officer Scott Teruya, for the Procurement of Special Counsel in Salem v. County of Maui et al.

Public access to those records was denied to me by your delegate(s) in violation of both the Hawaii State Procurement Code and HRS 92f.

The State Procurement Dept Administrator Ms. Kahakui has confirmed in writing (see below) that the government records and the Procurement Contract file I have referenced above, are publicly accessible. There is no proprietary information in those documents, and if there is, it could be easily redacted.

The Office of Information Practices is addressing that issue presently, as I have appealed against their denial of access to those records.

Second, the one record Corporation Counsel did provide me with from the Contract File, was the Letter from KSG requesting Qualification of five (5) attorneys for Procurement as Special Counsel. However, an attorney and Partner in the firm, Craig Shikuma and attorney Max Ching, are actively representing the County in this case, and were never Qualified for that Procurement. Their names were not listed nor mentioned as one of those (5) five attorneys in the letter of Qualification for Procurement.

Both Corporation Counsel and Mr. Shikuma understand the rules of the road. So, it begs the question as to whether these names were intentionally left out of the letter, with the intention

by his Firm, and even by the Dept. of the Corporation Counsel, for them to participate. If this were the case, it could warrant criminal and, or civil penalties under the Code.

Furthermore, it should be noted that not one of the qualifying questions asked of KSG Attorneys by the Selection Committee (made up of Corporation Counsel Attorneys), requested disclosures of potential conflicts-of-interest of the qualifying candidates. The ethical rules of the Procurement Code are crystal clear on this point.

Mr. Shikuma, for example, represented Mr. Salem's bank previously in Mr. Salem's bankruptcy case, a bankruptcy which is alleged to have been caused by the very allegations involved in his present Complaint. Mr. Shikuma could be easily called to testify as a witness in the case in which he's representing the County. For government attorneys to vet a Hawaii Legal Firm's Attorneys for Procurement, for the role as a Special Counsel, without requesting disclosures of possible conflicts of interest, seems more than a glaring oversight. That would seem to constitute gross negligence.

This is all being done by licensed Attorney County Officials and Private Law Firm Attorneys who know better, and who seem to willfully disregard the Ethics provisions the Procurement Code and the OIP.

Third, in addition to attorneys who haven't been properly qualified and procured, there is also a question about the invoices. Who has been paying the bills of Special Counsel. What are they? Their invoices would likely presently exceed even the additional monies being presently requested before the Council, and certainly the work already performed above the only authorized funding by the Council of \$50,000.

Only since the above allegations have been raised, has the Dept. of the Corporation Counsel sought additional funding, (which hasn't yet been authorized), but access to the invoices of the Special Counsel (Vendor), and the Selection Committee names, are, again, being denied.

Pursuant to Administrator Kahakui, these alleged Procurement Code violations are under your jurisdiction, and to be addressed by you as Chief Procurement Officer. Furthermore, I believe you will need to procure Special Counsel yourself to advise you accordingly. It would be a clear conflict of interest to do otherwise, as my allegations suggest improper conduct by the Dept. of the Corporation Counsel. I will be forwarding all of this to the Office of Disciplinary Counsel, so that the investigation into these alleged violations will be under their scrutiny as well.

Thank you for your immediate attention to this matter.

Sincerely,



Christopher P. Fishkin

Kihei, HI



JOSH GREEN, M.D.
GOVERNOR

STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

February 23, 2024

VIA EMAIL

Ms. Victoria J. Takayesu
Corporation Counsel
Department of the Corporation Counsel
County of Maui

Re: Request for Assistance to Access Records (U RFA-P 24-60)

Dear Ms. Takayesu:

The Office of Information Practices (OIP) received a request for assistance from Mr. Christopher Fishkin with respect to his request made under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA), for access to:

- 1) "The complete Contract File for Procurement¹," also known as Procurement Report, for "retaining Special Counsel KSG in the matter of Christopher Salem v. County of Maui et. al. pending litigation" including but not limited to:
 - a) "[T]he three names of the selection committee members of Dept. Corp Counsel who vetted Special Counsel for Procurement. . .[;]"
 - b) "[A]ny disclosures of conflicts of interest . . .[;]" and
 - c) "[T]he billing information, i.e. Special Counsel's billing invoices² etc."

¹ Mr. Fishkin asserts this procurement file is a public record pursuant to section 3-122-63, Hawaii Administrative Rules (HAR), which states in pertinent part:

(a) Professional services shall be in accordance with section 103D-304, HRS.

(b) After the contract is awarded, the following information shall be open to public inspection, including but not limited to the contract, the list of qualified persons, the screening committee's criteria for selection established under section 103D-304(d), HRS, and the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made subject to section 3-122-58.

HAR §3-122-63 (emphasis added).

² Mr. Fishkin further asserts billing invoices are subject to public inspection, with the exception of confidential or proprietary information (e.g. social security numbers and personal information).

Mr. Fishkin indicated the County of Maui, Department of the Corporation Counsel's (CORP CNSL-M) provided him an incomplete record and response³ to his written request, dated December 7, 2023 (Reference No. R000204-122923).

Specifically, on January 24, 2024, CORP CNSL-M uploaded four documents to the County of Maui Public Records portal, which included a redacted copy of the responsive record, in part, a Redaction Reasons by Page log, and an incomplete⁴ Redaction Reasons by Exemption log. CORP CNSL-M's response is deficient because it failed to inform Mr. Fishkin that CORP CNSL-M (1) intends to deny access to parts of the requested record; (2) specify the record or part of the record that will not be disclosed; (3) specify legal authorities for denying access; and/or (4) specify reasons CORP CNSL-M is unable to disclose parts of the requested record, if any, (*e.g.*, record not maintained by agency or further clarifications are needed). Enclosed are copies of Mr. Fishkin's requests to OIP and CORP CNSL-M, and CORP CNSL-M's responses to Mr. Fishkin.

If CORP CNSL-M maintains the requested records and no exemption to disclosure applies, please provide Mr. Fishkin with access to the records within ten business days from the date of this letter. If CORP CNSL-M is denying access to all or part of a records under an exception, please provide Mr. Fishkin with notice of the basis for the agency's denial of access within that same timeframe. HAR § 2-71-14; HRS § 92F-15. In so doing, CORP CNSL-M should: (1) specify the record, or parts, that will not be disclosed; and (2) the agency's specific legal authorities under which access is denied under section 92F-13, HRS,⁵ and other laws. HAR § 2-71-14.

Please also provide OIP with notice of the action taken by CORP CNSL-M so that this issue can be resolved promptly.

By copy of this letter, Mr. Fishkin is also informed that a record requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). If the requester decides to file a lawsuit, the requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012). An action for access to records is heard on an expedited basis, and, if the requester is the prevailing party, the requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F 15(d), (f).

Alternatively, if the agency denies access to the requested records, the requester may file an appeal to OIP in accordance with chapter 2-73, HAR. HRS § 92F-15.5 (2012).

³ After his initial request, CORP-CNSL-M sent Mr. Fishkin (1) an Acknowledgment to Requester, dated December 22, 2023; (2) an email, dated January 8, 2024, requesting for clarification; and (3) an email, dated February 8, 2024, responding to Mr. Fishkin's voicemail and notifying him that responsive records and a Notice to Requester were available on the record portal website.

⁴ The "Reason" and "Description" columns of the redaction log entitled, Redaction Reasons by Exemption, are blank.

⁵ The UIPA also provides generally that when compliance with any provision of the UIPA would cause an agency to lose or be denied funding or other assistance from the federal government, compliance with that provisions shall be waived but only to the extent necessary to protect eligibility for such federal assistance. HRS § 92F-4 (2012).

Ms. Victoria J. Takayesu

February 23, 2024

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This letter also serves as notice that OIP is not representing anyone in this request for assistance. OIP's role herein is as a neutral third party.

Thank you in advance for your cooperation and assistance in this matter. Please do not hesitate to contact OIP if you have any questions or require assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Tiara Maumau".

Tiara Maumau
Staff Attorney

TSM:rt

Enclosures

cc: Mr. Christopher Fishkin (without enclosures)