

From: [OE.Elections](#)
To: [OE.Elections.Commission](#)
Subject: FW: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)
Date: Wednesday, September 18, 2024 2:54:00 PM
Attachments: [091824 Ltr to Commission.pdf](#)
[Appeal Procedures and Responsibilities of the Parties.pdf](#)
[090924 Email fr Crossland.pdf](#)
[OIP Appeal re EC Sunshine Law Violation of 6 Sep 2024.pdf](#)

From: OIP <oiip@hawaii.gov>
Sent: Wednesday, September 18, 2024 2:49 PM
To: OE.Elections <elections@hawaii.gov>
Subject: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Chair Curtis,

Attached is a letter dated September 18, 2024 from the Office of Information Practices regarding an appeal we received from Mr. Doug Pasnik and Mr. Andy Crossland. Also attached is:

- The appeal procedures and responsibilities of the parties;
- A letter from Mr. Doug Pasnik to OIP dated September 6, 2024; and
- An email from Mr. Andy Crossland to OIP dated September 9, 2024.

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street #107
Honolulu, HI 96813
Ph: (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>



JOSH GREEN, M.D.
GOVERNOR

STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES

CARLOTTA AMERINO
ACTING DIRECTOR

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

September 18, 2024

VIA EMAIL

Chair Michael Curtis
Chairperson
The Elections Commission

Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Dear Chair Curtis:

The Office of Information Practices (OIP) has received an appeal from Mr. Doug Pasnik and Mr. Andy Crossland, concerning the Elections Commission's (Commission) meeting on August 27, 2024. Specifically, they ask whether the Commission violated the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), by changing the Zoom link for the meeting on the day of the meeting.¹ Additionally, Mr. Pasnik asked whether the Commission violated the Sunshine Law by disabling the chat function during the meeting.² The appeals also appear to argue that the testimony provisions of the Sunshine Law at sections 92-3 and 92-3.7, HRS, were violated due to the issues with the meeting link. Copies of their appeals are enclosed for your information. OIP requests that the Commission provide a copy of this letter, with enclosures, to all its members.

The Commission's response to this appeal is the Commission's opportunity to provide justification for the Commission's actions or any additional information that the Commission would like OIP to consider for this appeal. Within ten business days of receipt of this notice, please provide OIP with a written statement that includes the information listed in the attached summary of appeal procedures. Please remember that OIP is required to interpret the Sunshine Law to favor openness and to disfavor closed meeting provisions. HRS § 92-1. For this reason, when a member of the public complains to OIP that a board's action was not in compliance with the Sunshine Law, the board has the burden to justify any departure from the law's general requirement of openness to OIP.

Please provide OIP with unaltered copies of the notice, minutes and meeting recording if a recording was made, for the Commission's August 27, 2024 meeting for our use in reviewing this

¹ Every meeting notice must include the location of the meeting, and for remote meetings, this would be a link. The Sunshine Law's provisions on notice for remote meetings are found at sections 92-3.7 and 92-7, HRS.

² Please note that the remote meetings statute, section 92-3.7, HRS, does not contain a requirement that the chat feature be enabled for remote meetings.

appeal. We would appreciate receiving the copies of these documents no later than ten business days from receipt of this notice.³

The Commission, Mr. Pasnik, and Mr. Crossland, by copy of this notice, are informed that OIP appeals are informal proceedings. Parties are not required to provide each other with copies of their submissions to OIP unless so ordered by OIP. With the exception of records provided for OIP's *in camera* review, OIP will, upon request, provide copies of a submission by a party to other parties without notice to the submitting party. Submissions to OIP are generally considered public records subject to the exceptions to disclosure at section 92F-13, HRS. If a party's submission to OIP contains what the party believes to be nonpublic information, it should indicate on the submission what the nonpublic information is.

Please be advised that any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law. HRS § 92-12(c).

Please be aware that OIP is currently operating with a backlog of cases, so it will take time to resolve this appeal. Moreover, OIP's decision for this appeal will be limited to a finding as to whether the Commission violated the Sunshine Law. Even if OIP determines that the Sunshine Law had been violated, OIP does not have the power to enforce its decisions by voiding the Commission's final action(s).

Only the court may void a final action of a board that was taken in violation of the open meeting or notice requirements of the Sunshine Law. HRS § 92-11. While any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law, a suit to void any final action must be commenced within ninety days of the action. HRS §§ 92-11, -12. After determining whether the Sunshine Law was or will be violated, the court may also order payment of reasonable attorney's fees and costs to the prevailing party. HRS § 92-12(c).

Note that the ninety-day deadline to file a lawsuit is not tolled while an appeal is pending with OIP. This appeal refers to a violation that allegedly occurred at a meeting on August 27, 2024. Please be aware that if the complainants want to have any final action taken by the Commission voided, there appears to be only a limited time left in which to file a timely court action.⁴

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

³ OIP understands that boards have 40 days to prepare meeting minutes under section 92-9, HRS, and if minutes for the meetings at issue are not yet available, the Commission may submit them 40 days after the date of the meeting.

⁴ The appeals also suggested that the Commission Chair willfully violated the Sunshine Law and "shall be penalized for his malfeasance according to §92-13 Penalties." Section 92-13, HRS, states "[a]ny person who willfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law." OIP's authority is limited to a finding as to whether the Commission's actions violated the Sunshine Law. Enforcing penalties under section 92-13, HRS, is outside of OIP's jurisdiction and OIP will not address this issue.

Chair Michael Curtis
September 18, 2024
Page 3

Thank you for your attention to this matter. If you have any questions or would like to discuss this, please do not hesitate to contact the undersigned attorney.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Shimizu". The signature is written in a cursive style with a large, stylized "S" at the end.

Robert Shimizu
Staff Attorney

RHS:za
Enclosures

cc: Mr. Doug Pasnik (w/o enclosures)
Mr. Andy Crossland (w/o enclosures)



JOSH GREEN, M.D.
GOVERNOR

STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES

CARLOTTA AMERINO
ACTING DIRECTOR

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Appeal Procedures and Responsibilities of the Parties

This statement of appeal procedures provides an informational summary of the applicable procedures and the parties' responsibilities in an appeal before OIP pursuant to chapter 2-73, Hawaii's Administrative Rules (HAR). The procedures described here are more fully set out in chapter 2-73 itself, which controls in the event of any inconsistency between its language and the language of this informational summary.

A party may contact OIP to request an extension of a deadline.

1. Agency response (HAR §§ 2-73-14 and -15)

The agency's written response is due ten business days after it receives the notice of appeal from OIP. Its written response must include:

- (1) A concise statement of the factual background;
- (2) An explanation of the agency's position, including its justification for the actions complained of, with citations to the specific statutory sections and other law supporting the agency's position;
- (3) Any evidence necessary to support the agency's argument; and
- (4) Contact information for the agency officer or employee who is authorized to respond and make representations on behalf of the agency concerning the appeal.

If checked, the agency's response must include, for OIP's *in camera* review, if applicable, an unredacted copy of

	the records to which access was denied
X	the minutes and recording of the remote meeting, and the notice of the meeting
	other records:

Where the agency claims that a record is protected by the attorney-client privilege, the agency may request to submit to OIP the record in redacted form in order to preserve this privilege. OIP will generally allow such a request where the application of the claimed privilege can be determined by review of the redacted record.

2. Other submissions to OIP (HAR § 2-73-15)

In addition to the information and materials submitted as part of the appeal, OIP may ask the person who filed the appeal, or any other parties participating in the appeal, to submit a written statement or statements. If OIP does so, OIP will also let all the parties know when the statement is due, whether there are any requirements as to the form it takes or what it includes, and when any response by the agency or other parties is due.

OIP can consider information or materials submitted by any person, not just parties to the appeal. However, if someone other than the person who filed the appeal and the responding agency wants to participate in the appeal as a party or in some other way, that person must submit a written request and must explain the reason for the request, and OIP will then determine whether to allow such participation.

Because an appeal before OIP is an informal proceeding, a party's or third person's communication with OIP can be *ex parte*, *i.e.*, outside the presence of the other party or parties. However, OIP does have the option to require the parties to copy each other on submissions.

3. OIP's Decision (HAR §§ 2-73-15, -17, -18, and -19)

OIP's written decision on the appeal will be sent to all parties when it is issued. There is no specific deadline set for OIP's decision on an appeal. If the parties have not received either a decision on the appeal or a notice of dismissal from OIP as discussed below, then this appeal is still pending.

A party can request that OIP reconsider its decision. The deadline to request reconsideration is ten business days after the date the decision was issued. If a party misses the deadline for reconsideration or if OIP declines to reconsider the opinion, the party still has the option of appealing the decision to court. Section 92F-43, Hawai'i Revised Statutes (HRS), sets out the standard for an agency's appeal of an OIP decision. For a record requester or Sunshine Law complainant, appeal to court is provided by section 92F-15, HRS (denial of general record request), section 92F-27, HRS (denial of a personal record request), or sections 92-11 and -12, HRS (Sunshine Law complaint).

In some instances, OIP may issue a notice to all parties dismissing all or part of an appeal, instead of issuing a written decision. The circumstances in which OIP can dismiss an appeal are listed in section 2-73-18. OIP may also ask (but will not require) the parties to mediate the appeal, or an issue within the appeal, as an alternative means to resolve the appeal.

From: [Andy](#)
To: [OIP](#)
Subject: [EXTERNAL] OIP Appeal re: Hawaii Elections Commission Meeting on 8/27
Date: Monday, September 9, 2024 11:23:07 AM
Attachments: [image.png](#)

Aloha Office of Information Practices,

I would like to file an appeal and request that the OIP issue an opinion on whether the Hawaii Elections Commission, and specifically, the Chair of the Commission, Mike Curtis, violated the Sunshine Law for their most recent meeting on August 27, 2024 at 10:00 AM.

Summary:

The Zoom link (i.e., the Zoom meeting ID) originally provided for the meeting on the Office of Elections website, the meeting agenda, and the State calendar was not valid. Shortly before the scheduled meeting on the morning of August 27, the Zoom link was changed on the Office of Elections website. No other notification about the change to the Zoom link was given. There were many people who wanted to attend the meeting virtually and provide oral testimony during the meeting, but they were unable to do so because the original Zoom link was invalid and they were unaware that the Zoom link had been changed.

Statement of Facts:

On August 21, the meeting information was posted to the EC website, the State calendar, and the meeting agenda. Also, the meeting notification that was sent via email on this date to anyone who signed up for the EC email list (attached for reference) included a link to the EC website, the State calendar, and included an attached copy of the meeting agenda with the zoom link (81110521349).

Here's a screenshot of the EC website on August 26 (the day before the meeting) which still had the same Zoom link (81110521349) as the agenda and the State calendar:

Meeting Notices

Date	Time	Location	A
August 27, 2024	10:00 a.m.	Department of Land and Natural Resources Kalanimoku Building at 1151 Punchbowl St, Honolulu, HI 96813	A
Video:			
https://us02web.zoom.us/j/81110521349			

Then, on August 27 (the day of the meeting) the Zoom link was changed (84489202559), as you

can see in this archived version of the website taken on August 27:

<https://web.archive.org/web/20240827214340/https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/>

Only the website was updated with a new Zoom link. The [meeting agenda](#) and the [State calendar](#) still remain incorrect, to this day.

For reference, you can view a recording of the Hawaii Elections Commission meeting on their YouTube channel at the link below:

<https://www.youtube.com/watch?v=i3ZrT095rpQ>

Remarks:

This improper meeting notification appears to be a violation of the Sunshine Law [§92-7 Notice](#) and its multiple subsections regarding how and when meeting notices are to be made. Therefore, this meeting was not a *duly noticed* meeting and it technically should have been terminated according to [§92-3.7 Remote meeting by interactive conference technology; notice; quorum](#).

Multiple testifiers brought up this issue during public testimony, but it was flippantly ignored by the Chair. The Chair also arrogantly and incorrectly ruled commissioner Ralph Cushnie's motions out of order a total of 4 times to find out if there was an issue with the link. When the issue was finally addressed by the Chair after repeated inquiries, he seemed to have already been aware before the meeting even started that this change to the Zoom link on the website had occurred. The Chair made no acknowledgement of or apology for the inconvenience - he only stated bluntly and dismissively that the link was correct on the website, and that was it. Subsequently, however, the Chair confusingly also stated that he didn't know if the issue with the link was resolved. Therefore, it is my opinion that the Chair willfully violated the Sunshine Law and shall be penalized for his malfeasance according to [§92-13 Penalties](#).

Conclusion:

Changing the Zoom link resulted in limiting public participation in the meeting which is not in accordance with the intent of the Sunshine Law that requires State boards such as the Hawaii Elections Commission to conduct their business as openly as possible. Furthermore, there was no justification given by the Chair or anyone else during the meeting as to why this change was made.

Please let me know if you have any questions or would like any additional clarification that I may be able to provide about this issue.

Sincerely,

Andy Crossland

(808) 462-8484 | across86@gmail.com

REQUEST FOR ADMINISTRATIVE APPEAL

6 September, 2024

Director, Office of Information Practices
C/O Carlotta Amerino, Acting Director
No. 1 Capitol District Building
250 South Hotel Street, Suite 107
Honolulu, Hawai'i 96813

Reference:

- A) [Elections Commission Meeting Agenda published 21 August 2024](#)
- B) [Office of Information Practices State Calendar for 27 August 2024](#)
- C) [Elections Commission Meeting of 27 August 2024 Video Link](#)

Request for Administrative Appeal

This request for administrative appeal is being submitted in accordance with HRS 92.

On 21 August 2024, the Office of Elections, on behalf of Chair Curtis, published an agenda and public notice for a regularly scheduled Election Commission Meeting to be held on 27 August 2024. (See Reference A)

This meeting was intended to be held in-person, but the agenda also contained a zoom link for testifier participation in the meeting using remote technology. The agenda was posted with the original zoom link on the Office of Information Practices State Calendar for 27 August 2024. (See Reference B)

On 21 August, the meeting information was posted to the Elections Commission (EC) website, the State calendar, and within the meeting agenda. Also, the meeting notification was purportedly sent via email to anyone who signed up for the EC email list and included a link to the EC website, the State calendar, and an attached copy of the meeting agenda with the zoom link.

The following picture is of the Elections Commission website on 26 August 2024 (the day before the meeting) which had the original zoom link posted (81110521349) as did the agenda and the State calendar:

Meeting Notices			
Date	Time	Location	A
August 27, 2024	10:00 a.m.	Department of Land and Natural Resources Kalanimoku Building at 1151 Punchbowl St, Honolulu, HI 96813	A
		Video: https://us02web.zoom.us/j/81110521349	

REQUEST FOR ADMINISTRATIVE APPEAL

Then, on 27 August 2024 (the day of the commission meeting) the zoom link was changed to a different link (original 81110521349 changed to 84489202559 on the day of the meeting).

The following link is to an archived version of the EC website taken on 27 August 2024:

<https://web.archive.org/web/20240827214340/https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/>

Only the EC website was updated with the changed zoom link.

The meeting agenda and the State calendar remain incorrect, to this day. (See Reference A & B)

Shortly after the meeting began, Chair Curtis asked whether the zoom was working by stating “let me see if that works on zoom” while the secretary was establishing communication with the remoted commissioners. (See Reference C time 0:05-0:06)

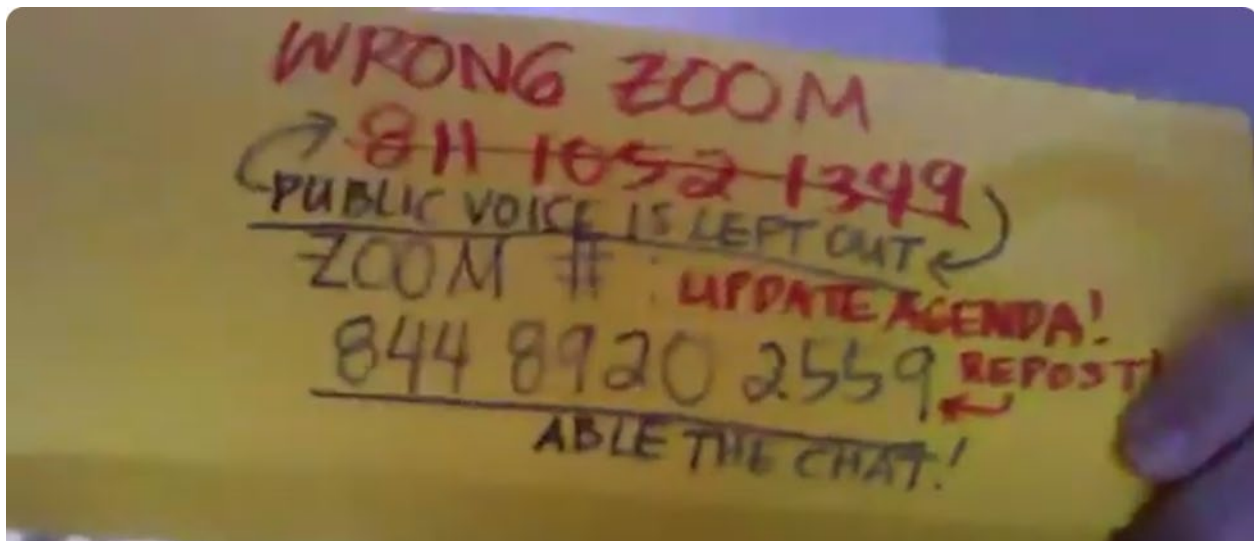
There was no discussion by Chair Curtis at the start of the meeting regarding why the zoom link was changed nor if an updated email notification was sent out to the list of registered testers.

Then, during the public testimony that occurred - more than an hour into the meeting – it appeared as though the commission then first became aware of the change to the zoom link.

This testifier began their testimony by stating that the zoom link in the commission meeting agenda was incorrect, and that a different zoom link had been posted on the Office of Elections website for the Elections Commission on the day of the meeting.

The testifier further explained that the “public voice is left out” of the meeting and that there were many people trying to figure out how to get in to the meeting, and that “the chat function had been disabled” so that none of the public could communicate with each other during the meeting.

The testifier held up this sign to inform the commission that the zoom link was incorrect, and requested that the meeting be paused to transmit this information to the public. (See Reference C time 1:08-1:11)



Following this testimony, Commissioner Cushnie made a motion to check if there was a problem with the zoom link, which was seconded by Commissioner Papalimu.

REQUEST FOR ADMINISTRATIVE APPEAL

Chair Curtis responded by stating that Commissioner Cushnie was “out of order” for making a motion to check if the zoom link was working and Chair Curtis continued on with the meeting. (See Reference C time 1:11-1:12)

Several minutes following additional testimony, Commissioner Cushnie again, for the second time, requested to be recognized to address the problem with the zoom link for the commission meeting.

Chair Curtis again responded that Commissioner Cushnie was “out of order” and continued on with the meeting. (See Reference C time 1:15-1:16)

From the audience, one of the people then added “excuse me, this isn’t right, this is not right, don’t you guys - aren’t you interested in hearing from everyone that wants to speak, how long will it take to get the right link up, can they do it while we are talking?”

Chair Curtis responded that “the correct link is up on the website” and moved on to the next speaker. (See Reference C time 1:15-1:16)

Commissioner Cushnie again made a third point of order and asked “is the link fixed, can you clarify that for everybody?”

Chair Curtis stated that “I don’t know” and then stated that Commissioner Cushnie was “out of order” for making this point of order, and Chair Curtis continued on with the meeting. (See Reference C time 1:19-1:20)

Later, during additional testimony, one more testifier cited Roberts Rules of Order 9:34 regarding the chat being disabled and stated that “it is important to understand that regardless of the technology used, the opportunity for simultaneous oral communication is essential to the to the deliberate character of the meeting” and that the zoom participants should be enabled with the same ability to communicate as is possible using the chat, and “for those in electronic meetings, enabling the chat is essential for participants to communicate with each other.” (See Reference C time 2:42-2:43)

Further during testimony, yet again another testifier identified that the Sunshine Law 92-3.7 requires that the notice for a meeting be posted no less than six days prior to the meeting, and on the state calendar, and that no board shall change the agenda less than six calendar days prior to the meeting.

For this meeting, the zoom link was changed on the day of the meeting and only on the website, and the link used for the meeting was not as was originally published on the agenda. (See Reference C time 2:48-2:51)

As well, no email notification was ever sent to the registered list of testifiers notifying them that the link had been changed on the day of the meeting.

Then, later in the meeting Commissioner Adrion made a “point of privilege” to request that the chat be enabled, and that the “public should be able to share in the chat their feedback during the testimony.”

This point of privilege was deemed “out of order” by Chair Curtis. (See Reference C time 2:56-2:57)

Commissioner Andrion then made a “motion to enable the chat” - that was seconded by Commissioner Papalimu, and further by Commissioner Cushnie.

REQUEST FOR ADMINISTRATIVE APPEAL

This motion was again deemed to be “out of order” by Chair Curtis, who disregarded the motion and continued on with the meeting. (See Reference C time 2:57-2:58)

The meeting concluded with no action by Chair Curtis to explain the change to the zoom meeting link, nor halt the meeting to correct

Conclusion:

The published agenda for the 27 August 2024 Elections Commission meeting contained a zoom link that was changed on the day of the commission meeting. This change was made on the day of the meeting on the Office of Elections website, and not on the agenda nor through any known notification.

This change, on the day of the meeting, frustrated and severely limited the participation of testifiers, and as was explained by multiple testifiers on the day of the meeting. (See Reference C, time 0:08-3:26)

No email notification of the changed zoom link was ever received as a registered testifier.

This change to the zoom link on the day of the meeting violated HRS 92-7, and subsequently the interactive technology sections of 92-3.5 and 92-3.7.

HRS 92-3.7(c) specifically requires that “A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board’s notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board’s notice pursuant to subsection (a)(2)(A).”

During this commission meeting, the “public location identified in the board’s notice” was changed on the day of the meeting – and there was not effort to pause the meeting to ensure that communication was enabled with the public location that was published, nor with those that were intending to participate or testify.

Additionally, disabling the chat did not “allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting” as is required per HRS 92-3.7(b)(1).

Per 92-7(d) “No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons.”

Per 92-7(e) “The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b)

During this commission meeting, the change to the zoom link information on the day of the agenda, and without an updated notification, will have affected a “significant number of person’s” and potential testifiers to which the gravity will never be known.

REQUEST FOR ADMINISTRATIVE APPEAL

Chair Curtis disregard for the commissioners and publics concerns, three attempts to ensure that the zoom link was checked and corrected, failure to halt the meeting, and lack of effort to explain why the zoom link was changed on the day of the meeting was gross maladministration of the Sunshine Law.

Chair Curtis also disregarded multiple commissioners' efforts to enable the chat and as is required when conducting meetings using interactive technology.

Per HRS 92-1 "Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest."

In the situation that evolved with this meeting, it was impossible to determine which testifiers and members of the public were denied participation in the exchange of information that was intended to occur during this public meeting.

Further, Per HRS 92-1 "Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible."

Was the zoom link changed on the day of this commission meeting to limit public participation?

Per a recent Civil Beat article "Jennifer Brooks, a staff attorney with the Office of Information Practices that administers the Sunshine Law, said there may have been a violation: "Remote meetings require a remote link that works, and if there is a link provided that doesn't work and people have to call the board to get the correct link, that would be a violation.""

The following link is to the Civil Beat article and quote from the staff attorney:

<https://www.civilbeat.org/2024/09/the-sunshine-blog-a-hawaii-state-budget-for-dummies/>

Sadly, the pattern of conduct exhibited by Chair Curtis, to control meeting narratives, suppress the minority voice, limit public participation, and his disrespect and disregard to multiple commissioners who were concerned that the meeting agenda zoom link be correctly identified and corrected, and that the chat function be enabled, runs counter to the spirit and intent of the Sunshine Law.

Appellant respectfully requests the Office of Information Practices investigate this commission meeting in accordance with the provisions for an administrative appeal and for compliance with Chapter 92.

Respectfully submitted,

Doug Pasnik
Colonel, USMC Retired

Reference hyperlinks:

A) <https://elections.hawaii.gov/wp-content/uploads/2024-08-27-EC-Agenda-FINAL.pdf>

B) <https://calendar.ehawaii.gov/calendar/meeting/73600/details.html>

C) <https://www.youtube.com/watch?v=i3ZrT095rpQ>

PUBLIC TESTIMONY

From: [Ralph Cushnie \(EC\)](#)
To: [Leong, Christopher JJ](#)
Cc: [Mike Curtis](#); [OE.Elections.Commission](#); [REDACTED]
Subject: RE: FW: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Mr. Leong,

It has come to my attention that you may be preparing a response on behalf of the Elections Commission to an OIP complaint that was filed relevant to the conduct of the 27 August Elections Commission meeting.

I found out about this complaint from the public, and recently emailed Chair Curtis this reminder - that the OIP complaint requests "the Commission's response" and OIP is requesting that "the Commission" provide a response within ten days of the 18 September 2024 notice.

As you are aware, the Commission acts by "majority vote of its membership" per HRS 11-7.5(5)(d).

During the August EC, Chair Curtis acknowledged that "The AG wants requests coming from the commission – not just the chair." See <https://www.youtube.com/watch?v=i3ZrT095rpQ> at time 3:05:35-3:05:45

During that meeting DAG Yee stated that "I want to be clear, that the role of the Attorney General's office is to represent the commission as a whole - not individual members." "We [do] not answer questions from individual members because we don't want to have one member to play us off another, but we would be willing to answer questions from the commission as a whole." "We also then want to be clear that the answers are given to the commission as a whole, not to an individual member." DAG Yee went on to say that "We will receive only questions from the commission and give the response to the commission." See <https://www.youtube.com/watch?v=i3ZrT095rpQ> at time 3:42:20 – 3:43:24

Consequently, how is it possible that the Attorney General's office is now preparing a response to an OIP complaint (without knowledge of the Elections Commission, and per a direct request from Chair Curtis?

DAG Yee stated that he didn't want to play one member off another, so why now is this appropriate?

The request from OIP was very clear that this was "the Commission's opportunity" to provide justification for "the Commissions actions" regarding this complaint – not the Attorney Generals.

You may recall that several commissioners were surprised by the fact that the Attorney General's Office has also assisted Chair Curtis in answering two previous OIP complaints and has also represented the Elections Commission in the 1st Circuit Court – without knowledge of the commission.

Later in the meeting, there was a lengthy discussion regarding the Attorney General's Office representation of the Elections Commission without the knowledge of the commission. DAG Yee acknowledged that "The commission should have been served with the complaint...this might have been an oversight on our part."

Mr Leong, this is your opportunity to correct that oversight.

Is the Attorney General's Office, in collusion with the Chair, again going to circumvent the Elections Commission and without knowledge of the Commission?

Sincerely,

Ralph Cushnie

From: Michael C Curtis, REALTOR <[REDACTED]> com>
Sent: Wednesday, September 25, 2024 6:45 AM
To: Ralph Cushnie (EC) <[REDACTED]>
Cc: Mike Curtis <[REDACTED]>; OE.Elections.Commission <elections.commission@hawaii.gov>; [REDACTED]
Subject: Re: FW: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Aloha Ralph,

Yes, the Attorney General is preparing a response to these OIP complaints, that will be shared with the Commission, as appropriate.

Aloha,
mike

Michael Curtis

[REDACTED]
[REDACTED]

from Poipu Beach, the Leading Edge of the Known Universe®

On Wed, Sep 25, 2024 at 5:14 AM Ralph Cushnie (EC)

<[REDACTED]> wrote:

Chair Curtis,

I was recently made aware of an OIP complaint regarding the conduct of the 27 August 2024 Elections Commission meeting.

As per this notice, OIP is requesting that “the Commission” provide a response within ten days of the 18 September 2024 notice, and that the Commission has 40 days to submit the meeting minutes per HRS 92-9.

As you may recall, the Commissioners were made aware during the June Elections Commission that as Chair, you had responded independently of the Commission to two previous OIP complaints in April and May 2024 - and without the Commissioners knowledge. There was a lengthy discussion during the June commission meeting and the Commission passed a motion (7/0) that "The Chair share all correspondence regarding Election Commission business with the Election Commission."

As there was no September Elections Commission meeting, and no reason was given as to why this meeting was not held - I would think it is imperative that the Commissioners be provided the OIP notice immediately and for discussion and action by "the Commission" during the planned 15 October meeting.

I believe that if the Commission meets as scheduled, the Commission will be outside of the 40-day requirement for meeting minutes and having a commission meeting earlier may be prudent, and to remain in good standing with OIP.

During the June Elections Commission meeting, you stated regarding the motion to share all correspondence with the commission that "If this passes, even if it doesn't pass - I'll do it."

If this pledge by you was true, why hasn't this letter from OIP been shared amongst the commission?

Are you consulting with the Attorney Generals Office to formulate another response without informing the Commission?

Please acknowledge receipt of this email and please forward this email to all the Commissioners.

I look forward to your timely response. See notification below.

Sincerely,

Ralph Cushnie

Aloha Ralph,

The first paragraph of this letter from OIP states the following:

"OIP requests that the Commission provide a copy of this letter, with enclosures, to all its members."

Have you received a copy of this letter and its enclosures from Mike Curtis, as requested by OIP? If not, you may want to follow up with him about this matter.

Mahalo,
Andy

----- Forwarded message -----

From: **OIP** <oip@hawaii.gov>

Date: Wed, Sep 18, 2024 at 2:51 PM

Subject: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Mr. Crossland,

Attached is a letter dated September 18, 2024 from the Office of Information Practices regarding your request for assistance. Also attached are the Appeal Procedures and Responsibilities of the Parties.

Please contact our office if you have difficulty opening the attachments.

Thank you,

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street #107
Honolulu, HI 96813
Ph: (808) 586-1400
Facsimile: (808) 586-1412
Email: oip@hawaii.gov
Website: <http://oip.hawaii.gov>

From: [Ralph Cushnie \(EC\)](#)
To: [Mike Curtis](#); [OE.Elections.Commission](#); [Leong, Christopher JI](#)
Subject: FW: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)
Attachments: [091824 Ltr to Commission.pdf](#)
[Appeal Procedures and Responsibilities of the Parties.pdf](#)

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Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel Street #107
Honolulu, HI 96813
Ph: (808) 586-1400
Facsimile: (808) 586-1412
Email: oiip@hawaii.gov
Website: <http://oiip.hawaii.gov>



JOSH GREEN, M.D.
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

CARLOTTA AMERINO
ACTING DIRECTOR

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

September 18, 2024

VIA EMAIL

Chair Michael Curtis
Chairperson
The Elections Commission

Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 25-02)

Dear Chair Curtis:

The Office of Information Practices (OIP) has received an appeal from Mr. Doug Pasnik and Mr. Andy Crossland, concerning the Elections Commission's (Commission) meeting on August 27, 2024. Specifically, they ask whether the Commission violated the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), by changing the Zoom link for the meeting on the day of the meeting.¹ Additionally, Mr. Pasnik asked whether the Commission violated the Sunshine Law by disabling the chat function during the meeting.² The appeals also appear to argue that the testimony provisions of the Sunshine Law at sections 92-3 and 92-3.7, HRS, were violated due to the issues with the meeting link. Copies of their appeals are enclosed for your information. OIP requests that the Commission provide a copy of this letter, with enclosures, to all its members.

The Commission's response to this appeal is the Commission's opportunity to provide justification for the Commission's actions or any additional information that the Commission would like OIP to consider for this appeal. Within ten business days of receipt of this notice, please provide OIP with a written statement that includes the information listed in the attached summary of appeal procedures. Please remember that OIP is required to interpret the Sunshine Law to favor openness and to disfavor closed meeting provisions. HRS § 92-1. For this reason, when a member of the public complains to OIP that a board's action was not in compliance with the Sunshine Law, the board has the burden to justify any departure from the law's general requirement of openness to OIP.

Please provide OIP with unaltered copies of the notice, minutes and meeting recording if a recording was made, for the Commission's August 27, 2024 meeting for our use in reviewing this

¹ Every meeting notice must include the location of the meeting, and for remote meetings, this would be a link. The Sunshine Law's provisions on notice for remote meetings are found at sections 92-3.7 and 92-7, HRS.

² Please note that the remote meetings statute, section 92-3.7, HRS, does not contain a requirement that the chat feature be enabled for remote meetings.

appeal. We would appreciate receiving the copies of these documents no later than ten business days from receipt of this notice.³

The Commission, Mr. Pasnik, and Mr. Crossland, by copy of this notice, are informed that OIP appeals are informal proceedings. Parties are not required to provide each other with copies of their submissions to OIP unless so ordered by OIP. With the exception of records provided for OIP's *in camera* review, OIP will, upon request, provide copies of a submission by a party to other parties without notice to the submitting party. Submissions to OIP are generally considered public records subject to the exceptions to disclosure at section 92F-13, HRS. If a party's submission to OIP contains what the party believes to be nonpublic information, it should indicate on the submission what the nonpublic information is.

Please be advised that any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law. HRS § 92-12(c).

Please be aware that OIP is currently operating with a backlog of cases, so it will take time to resolve this appeal. Moreover, OIP's decision for this appeal will be limited to a finding as to whether the Commission violated the Sunshine Law. Even if OIP determines that the Sunshine Law had been violated, OIP does not have the power to enforce its decisions by voiding the Commission's final action(s).

Only the court may void a final action of a board that was taken in violation of the open meeting or notice requirements of the Sunshine Law. HRS § 92-11. While any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law, a suit to void any final action must be commenced within ninety days of the action. HRS §§ 92-11, -12. After determining whether the Sunshine Law was or will be violated, the court may also order payment of reasonable attorney's fees and costs to the prevailing party. HRS § 92-12(c).

Note that the ninety-day deadline to file a lawsuit is not tolled while an appeal is pending with OIP. This appeal refers to a violation that allegedly occurred at a meeting on August 27, 2024. Please be aware that if the complainants want to have any final action taken by the Commission voided, there appears to be only a limited time left in which to file a timely court action.⁴

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


³ OIP understands that boards have 40 days to prepare meeting minutes under section 92-9, HRS, and if minutes for the meetings at issue are not yet available, the Commission may submit them 40 days after the date of the meeting.

⁴ The appeals also suggested that the Commission Chair willfully violated the Sunshine Law and "shall be penalized for his malfeasance according to §92-13 Penalties." Section 92-13, HRS, states "[a]ny person who willfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law." OIP's authority is limited to a finding as to whether the Commission's actions violated the Sunshine Law. Enforcing penalties under section 92-13, HRS, is outside of OIP's jurisdiction and OIP will not address this issue.

Chair Michael Curtis
September 18, 2024
Page 3

Thank you for your attention to this matter. If you have any questions or would like to discuss this, please do not hesitate to contact the undersigned attorney.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Shimizu".

Robert Shimizu
Staff Attorney

RHS:za
Enclosures

cc: Mr. Doug Pasnik (w/o enclosures)
Mr. Andy Crossland (w/o enclosures)



JOSH GREEN, M.D.
GOVERNOR

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Appeal Procedures and Responsibilities of the Parties

This statement of appeal procedures provides an informational summary of the applicable procedures and the parties' responsibilities in an appeal before OIP pursuant to chapter 2-73, Hawaii's Administrative Rules (HAR). The procedures described here are more fully set out in chapter 2-73 itself, which controls in the event of any inconsistency between its language and the language of this informational summary.

A party may contact OIP to request an extension of a deadline.

1. Agency response (HAR §§ 2-73-14 and -15)

The agency's written response is due ten business days after it receives the notice of appeal from OIP. Its written response must include:

- (1) A concise statement of the factual background;
- (2) An explanation of the agency's position, including its justification for the actions complained of, with citations to the specific statutory sections and other law supporting the agency's position;
- (3) Any evidence necessary to support the agency's argument; and
- (4) Contact information for the agency officer or employee who is authorized to respond and make representations on behalf of the agency concerning the appeal.

If checked, the agency's response must include, for OIP's *in camera* review, if applicable, an unredacted copy of

	the records to which access was denied
X	the minutes and recording of the remote meeting, and the notice of the meeting
	other records:

Where the agency claims that a record is protected by the attorney-client privilege, the agency may request to submit to OIP the record in redacted form in order to preserve this privilege. OIP will generally allow such a request where the application of the claimed privilege can be determined by review of the redacted record.

2. Other submissions to OIP (HAR § 2-73-15)

In addition to the information and materials submitted as part of the appeal, OIP may ask the person who filed the appeal, or any other parties participating in the appeal, to submit a written statement or statements. If OIP does so, OIP will also let all the parties know when the statement is due, whether there are any requirements as to the form it takes or what it includes, and when any response by the agency or other parties is due.

OIP can consider information or materials submitted by any person, not just parties to the appeal. However, if someone other than the person who filed the appeal and the responding agency wants to participate in the appeal as a party or in some other way, that person must submit a written request and must explain the reason for the request, and OIP will then determine whether to allow such participation.

Because an appeal before OIP is an informal proceeding, a party's or third person's communication with OIP can be *ex parte*, *i.e.*, outside the presence of the other party or parties. However, OIP does have the option to require the parties to copy each other on submissions.

3. OIP's Decision (HAR §§ 2-73-15, -17, -18, and -19)

OIP's written decision on the appeal will be sent to all parties when it is issued. There is no specific deadline set for OIP's decision on an appeal. If the parties have not received either a decision on the appeal or a notice of dismissal from OIP as discussed below, then this appeal is still pending.

A party can request that OIP reconsider its decision. The deadline to request reconsideration is ten business days after the date the decision was issued. If a party misses the deadline for reconsideration or if OIP declines to reconsider the opinion, the party still has the option of appealing the decision to court. Section 92F-43, Hawai'i Revised Statutes (HRS), sets out the standard for an agency's appeal of an OIP decision. For a record requester or Sunshine Law complainant, appeal to court is provided by section 92F-15, HRS (denial of general record request), section 92F-27, HRS (denial of a personal record request), or sections 92-11 and -12, HRS (Sunshine Law complaint).

In some instances, OIP may issue a notice to all parties dismissing all or part of an appeal, instead of issuing a written decision. The circumstances in which OIP can dismiss an appeal are listed in section 2-73-18. OIP may also ask (but will not require) the parties to mediate the appeal, or an issue within the appeal, as an alternative means to resolve the appeal.

From: [Kathleen Stanley](#)
To: [OE.Elections.Commission](#)
Subject: Re: [EXTERNAL] Mahalo for a well run primary election
Date: Thursday, October 3, 2024 10:34:03 AM

Chair of the Elections Commission

Upon reviewing the minutes of the august 27 meeting I do not see that my written testimony is listed.

I wish to resubmit the below again as my written testimony for the October 8, 2024 commission meeting.

Thank you.

Kate Stanley

> On Aug 26, 2024, at 9:06 AM, OE.Elections.Commission <elections.commission@hawaii.gov> wrote:
>
> Aloha,
>
> This is to confirm that we have received your written testimony for the 8/27 EC Meeting.
>
> Thank you,
>
> Office of Elections
> elections.commission@hawaii.gov
> (808) 453-VOTE (8683)
>
> -----Original Message-----
> From: Kate Stanley <katestanley1234@gmail.com>
> Sent: Saturday, August 24, 2024 2:56 PM
> To: OE.Elections.Commission <elections.commission@hawaii.gov>
> Subject: [EXTERNAL] Mahalo for a well run primary election
>
> Chair of the Elections Commission
>
> Please extend my appreciation to Scott Nago and his elections team for a well run primary election.
>
> I have worked with the elections staff as a candidate, as part of other campaigns, and in the past as Interim Chair of the Democratic Party. I have been on both the winning and loosing side of many election contests.
>
> In all these roles I have appreciated the responsiveness and patience of the elections staff and that of Scott Nago.
>
> It is my hope that the Commission members while holding the staff accountable will be mindful of the advice and opinions of the Attorney General. If there are disputes, these should be based on facts and sound legal advice and if necessary resolved in a court of law.
>
> It is my hope that the commission will use its time and efforts to improve the administration of elections, and ask the Legislature to fund efforts to do that.
>
> Sincerely
>
> Kathleen (Kate) G. Stanley
> Retired
>
>

From: [X](#)
To: [OE.Elections.Commission](#)
Subject: [EXTERNAL] Elections Commission Testimony
Date: Friday, October 4, 2024 12:32:25 AM
Attachments: [1st Circuit Court Notice to Chair Curtis.pdf](#)

Elections Commission,

Please include the attached in support of testimony for the 8 Oct commission meeting.

Thank you, Doug Pasnik

August Elections Commission

Meeting:

During discussion regarding the Agency Appeal in 1st Circuit Court

DAG Yee stated "I am a little surprised that the commission was not aware, the commission should have been served with the complaint itself so it did not occur to us at the time that we got this, to say oh we need to tell you that you got served with a complaint, so that may have been an oversight on our part."

Commissioner Papalimu asked "I'll ask Chair Curtis this – were you aware, were you notified and then it stopped with you?" 4:12:37

Chair Curtis responded "NO - its news to me too, thank you." 4:12:48

IN THE CIRCUIT COURT OF THE CIRCUIT
STATE OF HAWAII

Karl O. Dicks, sui juris)
) Civil No. 1CCV NO. 240000541
)
 Appellant,) Agency Docket/Case No. _____
)
 v.)
) CERTIFICATE OF SERVICE
)
 OFFICE OF ELECTIONS)
 SCOTT NAGO)
)
 ELECTION COMMISSION)
 MICHAEL CURTIS)
 Appellee(s).)

OFFICE OF ELECTIONS
24 APR 29 PM 12:01

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the document within was served by depositing a copy of the same in the U.S. mail, postage prepaid to the following:

In Person

I, Holly-Ann Kiaaina on behalf of Scott T. Nago and Michael Curtis in their official capacities only, and the Office of Elections and the Elections Commission.

Holly Ann Kiaaina Date: 4/29/2024
Holly-Ann Kiaaina

DATED: APRIL 29, 2024, PEARL CITY H.I.

