

ROBERT BRIAN BLACK 7659
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813
brian@civilbeatlawcenter.org
Telephone: (808) 531-4000
Facsimile: (808) 380-3580

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Attorney for Plaintiff
Civil Beat Law Center for the Public Interest

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CIVIL BEAT LAW CENTER FOR THE
PUBLIC INTEREST, INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-22-735
(Other Civil Action)

ORDER GRANTING PLAINTIFF'S
CROSS-MOTION FOR SUMMARY
JUDGMENT, DATED DECEMBER 21,
2022

HEARING MOTION

JUDGE: Honorable John M. Tonaki

TRIAL DATE: NONE

HEARING DATE: January 19, 2023

HEARING TIME: 10:00 a.m.

**ORDER GRANTING PLAINTIFF'S CROSS-MOTION FOR
SUMMARY JUDGMENT, DATED DECEMBER 21, 2022**

Plaintiff Civil Beat Law Center for the Public Interest (Law Center) filed its Cross-Motion for Summary Judgment on December 21, 2022, pursuant to Hawai'i Rules of Civil Procedure 56 and 57, and a reply memorandum in support of that motion on January 13, 2023. Defendant Department of Public Safety (Department) filed a memorandum in opposition to the motion on January 11, 2023. The parties were heard on Thursday, January 19, 2023, at 10:00 a.m. in the Circuit Court of the First Circuit

before the Honorable John M. Tonaki. Plaintiff was represented by R. Brian Black. Defendant was represented by deputy attorney general Lisa M. Itomura. The Court has carefully reviewed the motion, the memoranda in support and opposition, and the exhibits and declarations, and has heard and considered oral arguments on the motion presented by counsel. Based on the record, the Law Center's motion is hereby GRANTED.

The Court finds that there is no genuine issue of material fact in dispute.

The Law Center requested a series of reports regarding the Department's response to the COVID-19 pandemic that were prepared by an independent monitoring panel as a requirement of the Department's settlement of a federal class action. In general, under the Uniform Information Practices Act (Modified), Hawai'i Revised Statutes (HRS) chapter 92F (UIPA), "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a). To withhold public access, an agency must show that the records fall within one of the exceptions. HRS § 92F-13. The Department cites the exceptions at HRS § 92F-13(2) and (3).

For HRS § 92F-13(2), the reports do not fall within the attorney-client privilege or the attorney work product doctrine. The reports were prepared by an independent group that was not producing the documents for the Department's attorneys or as legal work product. The monitoring panel were independent corrections experts. They were not preparing the reports in anticipation of litigation and were not acting on behalf of the Department.

For HRS § 92F-13(3), there is no evidence that disclosure would frustrate a legitimate government function. The monitoring panel makes recommendations, and the Department has the discretion to implement those recommendations. The Department has not shown that disclosure of the monitoring panel's reports will frustrate its legitimate government functions.

IT IS ORDERED that, pursuant to the UIPA, the Motion is GRANTED and the Department must disclose the requested records.

DATED: Honolulu, Hawai'i, January 25, 2023.

/s/ John M. Tonaki



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ Lisa M. Itomura
CRAIG Y. IHA
LISA M. ITOMURA
Deputy Attorneys General for Defendant
Department of Public Safety