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F. STAKE
CLERK

Attorney for Plaintiff
KOKUA COUNCIL FOR SENIORS CITIZENS

IN THE CIRCUIT COURT OF FIRST CIRCUIT

STATE OF HAWAII

KOKUA COUNCIL FOR SENIOR
CITIZENS, an unincorporated association,

Plaintiff

vs.

DIRECTOR OF THE DEPARTMENT OF
HEALTH, STATE OF HAWAII,

Defendants.

) Civil No. 16 - 1 - 1421 - 07 K T N

) (Other Civil Action)

) COMPLAINT; SUMMONS

COMPLAINT

Plaintiff Kokua Council for Senior Citizens, an unincorporated association, seeks to obtain judicial orders compelling disclosure of certain government records, compelling disclosure of certain information unlawfully redacted from otherwise disclosed government records, and mandating the posting to the internet of certain government records required by law to be posted. Plaintiff Kokua Council complains of the Defendants Director of the Department of Health and State of Hawai'i as follows:

I. Introduction

1. Defendant Director of the Department of Health, through her department, conducts regular state licensing or certification inspections of health care facilities throughout the state to ensure their compliance with the State's licensure or certification requirements.

2. On June 27, 2013, Act 213 of the Session Laws of Hawai'i of 2013 became law requiring all inspections of health care facilities occurring on or after January 1, 2015 to be posted

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

within five business days of the inspection to the website of Defendant Director.

3. Many families, including Kokua Council members, have been faced with or will be faced with making a critical health care decision for a loved one – transferring a loved one from a critical care facility to a long term care facility with sometimes only hours to make a decision.

4. The posting of inspection reports is the only access to impartial information regarding the quality of a long term care facility most families will have access to.

5. Similarly, the posted inspection reports for other types of health care facilities and the information contained therein are also sometimes the only impartial information regarding the quality of such facilities.

II. Jurisdiction and Venue

6. This lawsuit is based upon violations of Chapter 92F, HRS and HRS § 321-1.8. This Court has jurisdiction over this matter pursuant to HRS §§ 92F-15, 603-21.5, 603-21.7(b), 632-2, and Rule 81.1 of the Hawai'i Rules of Civil Procedure. Venue is proper because the First Circuit is the judicial circuit in which the request for the records was made, where the requested record are maintained, and where Defendant is principally located.

III. Parties

7. Plaintiff Kokua Council for Senior Citizens, an unincorporated association, (hereafter “Kokua Council”) is one of Hawaii's oldest advocacy groups for seniors and was established in 1977. Kokua Council seeks to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves.

8. Defendant Director is the executive of the Department of Health of the State of Hawai'i which has general charge, oversight, and care of the health and lives of the people of the State, and shall pursue as a goal, the achievement of health equity and is empowered to license adult residential care homes to ensure the health, safety, and welfare of the individuals placed therein

IV. General Facts

9. On or about December 13, 2015, Kokua Council accessed the website of the

Defendant and saw 469 healthcare facilities inspection reports posted. However, of those inspection reports, none were for the inspection of an “adult residential care home” (hereafter “ARCH”) and only three were for “expanded ARCH” (hereafter “e-ARCH”).

10. On or about December 13, 2015, there were approximately 500 ARCHs and e-ARCHs licensed in the State of Hawai'i.

11. On or about December 14, 2015, Kokua Council made a request to access the inspection reports for all ARCH and E-ARCHs and an inventory of all licensed facilities – required to be maintained pursuant to HRS § 321-15.62(e).

12. On or about January 2, 2016, Kokua Council contacted Defendant and her assistant Keith Ridley indicating that no response or acknowledgment of the request for access that was e-mailed and sent by first-class US mail had been given and requested the Defendant advise Kokua Council on its request.

13. On or about January 3, 2016, Keith Ridley, on behalf of Defendant Director, responded that “[t]he available inspection reports are in the process of being posted.”

14. On or about January 4, 2016, Kokua Council requested the assistance of the Office of Information Practices.

15. On or about January 26, 2016, the Office of Information Practice stated: “Because it appears the DOH has granted [Kokua Council's] request, within ten business days from the date of this letter, please provide an electronic copy of the requested records[...] If the DOH changes its position and now decides to deny access to all or part of [Kokua Council's] request, please provide the required response .. within that same timeframe.”

16. On or about January 29, 2016, Kokua Council and Defendant exchanged correspondence regarding the request.

17. The Department denied access to inspect, without specifying which inspection reports were to be denied, because “ARCHs or eARCHs were not inspected or the inspection reports are not finalized” and did not otherwise provide which specific provision of HRS § 92F-13 was being invoked to deny access.

18. The Department also denied access stating granting access constituted “an unfunded mandate, and we are unable (not unwilling) to do the work.”

19. On or about January 29, 2016, 271 inspection reports for ARCHs and e-ARCHs had

been posted.

20. On or about February 2, 2016, Kokua Council responded to the Department's last correspondence indicating that its response failed to grant access or specify the basis for denial of access.

21. On or about February 4, 2016, Defendant asserted the remaining inspection reports would not be posted because "it does not exist and there is nothing to release. In other instances, the reports are not finalized. Inspection reports go through a review process before they are finalized."

22. In many inspection reports, Defendant has redacted significant portions of the inspection reports including the names of caregivers, compliance managers, licensees and findings of violations.

COUNT ONE – OPEN RECORDS LAW VIOLATION I

23. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

24. All government records are open to public inspection unless access is restricted or closed by law. HRS 92F-11.

25. Defendant Director is required to make available for public inspection and duplication during regular business hours information collected and maintained for the purpose of making information available to the general public. HRS 92F-12(a)(15)

26. Defendant Director is required to post on her website electronic copies of reports for all inspections it performs at adult day health centers, adult day care centers, community care foster family, developmental disabilities domiciliary homes, intermediate care facilities for individual with intellectual disabilities, long term care facilities and special treatment facilities.

27. All such inspection reports are government records open to public inspection.

28. Defendant Director has denied access and public inspection to some of the inspection reports.

29. Plaintiffs seek an order to compel disclosure of unlawfully withheld government records and for a declaratory order declaring that such redaction violates the Defendant's obligation

to disclosure government records.

COUNT TWO – OPEN RECORDS LAW VIOLATION II

30. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

31. All government records are open to public inspection unless access is restricted or closed by law. HRS 92F-11(a)

32. Defendant Director is required to make available for public inspection and duplication during regular business hours information collected and maintained for the purpose of making information available to the general public. HRS 92F-12(a)(15)

33. Defendant Director is required to post on her website electronic copies of reports for all inspections it performs at adult day health centers, adult day care centers, community care foster family, developmental disabilities domiciliary homes, intermediate care facilities for individual with intellectual disabilities, long term care facilities and special treatment facilities.

34. All such inspection reports are government records open to public inspection.

35. Information contained within government records that includes “individually identifiable health information” may be segregated and excluded from disclosure.

36. Defendant Director has redacted information from certain inspection reports claiming the information is “individually identifiable health information”.

37. The redactions far exceed “individually identifiable health information” and have segregated and excluded information within the inspection reports that are subject to disclosure.

38. Plaintiffs seek an order to compel disclosure of unlawfully redacted information in otherwise disclosed government records and for a declaratory order declaring that such redaction violates the Defendant's obligation to disclosed government records.

COUNT THREE – ACTION IN THE NATURE OF MANDAMUS

39. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

40. Defendant Director owes a duty to Plaintiff, its members and the public to post inspection reports on the website of Defendant Director within five business days after the

inspection.

41. Plaintiff's claim is clear and certain.

42. Defendant Director's duty is ministerial and so plainly described as to be free from doubt.

43. Defendant Director's inspection reports "shall be posted on the department of health's website within five working days of the conclusion of each inspection" but has not done so.

44. Plaintiff lacks alternative legal means to redress adequately the wrong or obtain the requested action.

COUNT FOUR – MANDATORY INJUNCTION

45. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint.

46. Defendant Director owes a duty to Plaintiff, its members and the public to post inspection reports on the website of Defendant Director within five business days.

47. Defendant Director's duty is ministerial and so plainly described as to be free from doubt. Defendant Director's inspection reports "shall be posted on the department of health's website within five working days of the conclusion of each inspection" but has not done so.

48. Plaintiff will prevail on the merits of the case and there is no legal means to adequate redress the wrong or obtain the requested action.

49. Plaintiff and others are threatened with immediate, irreparable harm.

50. Defendant Director will suffer no harm.

51. The public interest, as expressed in the statutory command to post inspection reports on the website of Defendant Director within five business days, would be protected and supported by granting of a temporary, preliminary and/or permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief that the Court:

1. Issue an order compelling Defendant to disclose all inspection reports maintained by Defendant that it has not made available for public inspection.

2. Issue an order compelling Defendant to disclose all information on all inspection

reports that are not otherwise required to be protected from disclosure by law.

3. Issue an order in the nature of mandamus ordering Defendant to post all inspection reports within five business days.

4. Issue a temporary, preliminary and/or permanent injunction mandating the Defendant to post all inspection reports within five business days.

5. Declare Defendant's duty to make available to the public inspection reports within five days of an inspection and declare the limits to Defendant's power to redact information from such reports.

6. Grant such additional judicial determinations and orders as may be necessary to effect the foregoing.

7. Award the costs of suit and reasonable attorneys' fees.

8. Grant such other and further relief as the Court may deem just and proper to effect a complete resolution of the legal dispute between plaintiff and defendant.

DATED: Honolulu, Hawai'i

July 25, 2016



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiff

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER 1E - 1 - 1421 - 07 KTN
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PLAINTIFF, KOKUA COUNCIL FOR SENIOR CITIZENS, an unincorporated association,	VS.	DEFENDANT. DIRECTOR OF THE DEPARTMENT OF HEALTH, STATE OF HAWAII,
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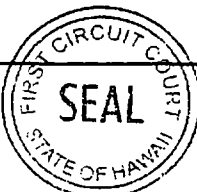
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) Law Office of Lance D. Collins Lance D. Collins 8246 Post Office Box 179336 Honolulu HI 96817 (808) 243-9292	
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TO THE ABOVE-NAMED DEFENDANT(S)


You are hereby summoned and required to file with the court and serve upon
 Lance D. Collins, Law Office of Lance D. Collins, Post Office Box 179336, Honolulu, Hawaii 96817
 plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith
 served upon you, within 20 days after service of this summons upon you, exclusive of the date of
 service. If you fail to do so, judgment by default will be taken against you for the relief demanded
 in the complaint.

**THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN
 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL
 PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS,
 IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING
 THOSE HOURS.**

**A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY
 OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING
 PERSON OR PARTY.**

DATE ISSUED JUL 25 2016	CLERK F. OTAKE 
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I do hereby certify that this is full, true, and correct copy of the original on file in this office	Circuit Court Clerk
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 In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.