

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR

STATE OF HAWAII  
OFFICE OF THE LIEUTENANT GOVERNOR  
**OFFICE OF INFORMATION PRACTICES**

LESLIE H. KONDO  
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: oip@hawaii.gov  
www.hawaii.gov/oip

February 28, 2007

VIA FACSIMILE - 586-3433

Ms. Karen Knudson, Chairperson  
Board of Education  
P.O. Box 2360  
Honolulu, Hawaii 96804

Re: Appeal from Denial of Access to Executive Session Minutes  
(APPEAL 07-9 and 07-13)

Dear Chairperson Knudson:

Mr. Larry Geller has requested that the Office of Information Practices ("OIP") review the fees that the Board of Education ("BOE") estimates will be charged to him to redact the audiotape recording of the executive meeting at which BOE decided not to renew the contract of Dr. James Shon. From your letter to Mr. Geller dated January 9, 2007, OIP understands that BOE estimates the cost to redact the audiotape to be \$880 and that BOE has requested prepayment in that amount from Mr. Geller.

OIP discussed the specifics of BOE's cost estimate with Ms. Allison Kim of your office. According to Ms. Kim, the \$880 estimate includes an estimated cost of \$733.04 to create a written transcript of the audiotape<sup>1</sup> and an estimated cost of \$146.61 to have a private company redact the audiotape. Ms. Kim explained that BOE intends for the written transcript to be reviewed by a deputy attorney general, who will identify the portions of the transcript that should be redacted. An audio company would then use the redactions made in the written transcript to prepare a redacted copy of the audiotape for Mr. Geller.

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<sup>1</sup> Ms. Kim represents that the estimate BOE received reflects the cost to prepare 50 pages of transcript at \$14.00 per page, plus tax.

It is OIP's opinion that the estimated costs are unreasonable and cannot be charged to Mr. Geller. First, BOE cannot charge Mr. Geller for the cost of the written transcript that BOE intends to have prepared for its use in identifying the portions of the audiotape recording that should be redacted. Chapter 2-71, Hawaii Administrative Rules, does not allow an agency to charge a requester the cost to reproduce the requested record for the agency's purpose in redacting the record. See Haw. Admin. R. § 2-71-19 (1999). Moreover, in the present situation, the cost of the transcript appears unnecessary to BOE's review of the audiotape recording. BOE has provided no explanation as to why its staff or the deputy attorney general cannot listen to the audiotape to identify the portions of the recording that should be redacted consistent with OIP's opinion.

Second, with respect to the estimated cost to redact the audio tape, OIP understands BOE to be concerned that, in certain instances, several people may be talking simultaneously and one person's remarks may be withheld while another person's remarks must be disclosed. Ms. Kim represents that BOE does not have the capability to redact or prepare a copy of the audiotape with those types of redactions. The level of redaction that OIP understands BOE to be intending, however, is not required under the UIPA or the administrative rules. BOE is only required to provide those portions of the audiotape that are "reasonably segregable." See Haw. Admin. R. § 2-71-17 (1999). That means, where more than one person is talking at the same time and one person's remarks fall within an exception to disclosure, BOE can redact that portion of the audiotape containing the remarks that may be withheld, notwithstanding that the redaction will also include the simultaneous statements of others that would otherwise be public.

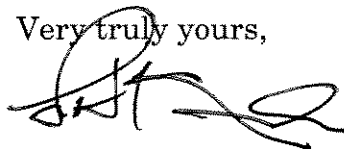
BOE, however, can charge Mr. Geller fees to review and segregate the audiotape at the rates set forth in section 2-71-31, Hawaii Administrative Rules. Those fees relate to the **actual time** that BOE or its agents, including a private business, incur in reviewing and segregating the requested record. More specifically, BOE may charge Mr. Geller to review and segregate the audiotape at the rate of \$5 per fifteen minutes or fraction thereof. Haw. Admin. R. § 2-71-31 (1999). BOE may also charge Mr. Geller the cost of the audiotape that is provided to him. If BOE intends to charge Mr. Geller for the **time** its staff or agents spend reviewing and segregating the audiotape, BOE must provide Mr. Geller with an estimate of the fees and may require Mr. Geller to prepay one-half of the estimated fees before commencing its review and segregation of the audiotape. Haw. Admin. R. § 2-71-19(b).

By copy of this letter to Mr. Geller, OIP advises him of OIP's opinion concerning the fees relating to the audiotape. OIP further advises Mr. Geller that this letter closes the file that OIP had opened in response to his initial appeal of BOE's denial of his request for the minutes of the executive meeting.

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Please contact OIP if you have any questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be a cursive combination of the names Leslie H. Kondo and Leah L. Takeuchi.

Leslie H. Kondo  
Leah L. Takeuchi

cc: Mr. Larry Geller (via email)