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# Lawsuit Targets Secrecy In Hawaii Tax Change Proposals

Why did the Ige administration try to change rules on tax refunds and general excise tax licenses? It doesn't want you to know.

DECEMBER 1, 2016 · By Rui Kaneya   

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A Honolulu attorney has sued the [Hawaii Department of Taxation](#) in a case that could establish how transparent state agencies must be about their communication with the Legislature.

The lawsuit was filed by Peter Fritz, a tax attorney who is represented by [The Civil Beat Law Center for the Public Interest](#), to obtain copies of any correspondence between the department and the Legislature about Senate Bills [2925](#) and [2927](#).

The measures — which proposed to change rules on tax refunds and general excise tax licenses, respectively — were introduced in January as part of Gov. David Ige's legislative package.

On Feb. 11, as the Senate Ways and Means Committee began holding hearings on the measures, Fritz submitted a public records request under the [Uniform Information Practices Act](#), seeking to gain insights into why the Ige administration was pushing for the changes.



*In his lawsuit, Peter Fritz argues that the executive branch's lobbying efforts at the Legislature should be made public.*

“My philosophy is that, in order to hold the government accountable for its actions, the citizens must know what those actions are,” Fritz, a former rules specialist for the Department of Taxation, told Civil Beat.

The department denied Fritz’s request in March, citing concerns over “the frustration of a legitimate government function.”

In August, after the legislative session ended, Fritz tried again, filing a request for reconsideration — even though both bills had failed.

“It’s still important to know what the tax department’s purpose and motivation were,” Fritz said. The bills “didn’t pass, but who knows if they are going to resurface next year?”

Fritz’s request was rejected again. This time, the department explained that what he was seeking was exempt from disclosure for another reason: the “deliberative process privilege.”

The exemption shields from disclosure “recommendations, draft documents, proposals, suggestions and other subjective documents” used as part of the government’s decision-making process.

As it happened, the department had made the same argument in 2009 in response to another request made by Fritz — only to be overruled by the [Hawaii Office of Information Practices](#).



*Brian Black, executive director of The Civil Beat Law Center for the Public Interest, says the Hawaii Office of Information Practices has made it clear that the “deliberative process privilege” doesn’t apply to the executive branch’s lobbying efforts.*

In an [informal opinion](#), the office ruled that the “deliberative process privilege” — which only allows legislative committees and individual legislators to withhold their records — doesn’t apply to the department unless it had been “asked to serve as an internal part of any legislative committee’s decision-making process.”

“General policy guidance provided as part of a government agency’s administrative duties, which would state the agency’s position on an issue, would not fall under the deliberative process,” the office wrote.

Citing the office's ruling, Fritz filed his lawsuit Nov. 18 to appeal the department's latest denial of his request.

Department spokeswoman Mallory Fujitani declined Civil Beat's request for comment.

Brian Black, executive director of the law center, said at heart of the lawsuit is whether the public is entitled to know about the executive branch's lobbying efforts.

"The principle here is an idea that the public should have access to communications where the executive branch is advocating for something before the Legislature," Black said. "If the executive branch is trying to get a law changed, we should know why that is and what's going on."

"This is not the first time that I've seen an executive branch agency try to hide lobbying communications, and frankly it needs to stop," Black added.

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