



February 12, 2024

VIA ELECTRONIC MAIL

Anne E. Lopez
Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813

RE: AG Subpoena Nos. 2023-084, 2023-085, and 2023-086 (collectively, Subpoenas)

Dear Attorney General Lopez,

As you know, this law firm (“*Firm*”) represents the County of Maui in matters related to the Maui fires that began on August 8, 2024. The fires significantly impacted all parts of the Maui community, including personnel and resources in nearly every County department. While grieving, re-orienting, and struggling to recover physically, emotionally, mentally, and spiritually, County personnel are also relied upon to continue maintaining the operation of the County infrastructure and systems so that the community may resume daily life. The task has been monumental, and, as County personnel each handle this tragedy in their own personal way, the County continues to balance the urgency of community recovery with an ultimate and superseding respect for each person’s unique journey back to a semblance of normalcy.

As you describe, in the days following the Maui fires, the Department of the Attorney General (the “*Department*”) chose to use its broad investigative powers *not* to investigate the utility that caused the fires, its corporate governance, its compliance with infrastructure and utility regulations, its failure to sufficiently invest in hardening and upgrading its system over the span of decades, or its response to known and upcoming weather conditions, *but rather* to investigate, question, and critique the County personnel who risked their lives on behalf of the community and who shouldered the responsibility of making difficult and instantaneous decisions during a highly volatile, stressful, and pressure-packed emergency. To levy this criticism, the Department retained Fire Safety Research Institute (“*FSRI*”) of Underwriters Laboratory, a group of researchers from across the continental United States that had never before conducted an investigation on behalf of a municipality.

To date, FSRI has propounded over 150 requests for documents, compelled over 150 technical interviews of County personnel, and sought numerous site visits and other informal meetings. In response, the County has given FSRI unrivaled access to County personnel, documents, and sites and has prioritized FSRI’s requests and scheduling demands despite the Department’s refusal to offer the County or any of its personnel any kind of immunity from prosecution—even immunity for *criminal* prosecution—in exchange for their cooperation. Instead, the Department has demanded personnel availability and document production on unreasonably short timelines even while understanding that its investigation is only one among a

number of other investigations and other legal obligations to which the County is accountable. These investigations include but are not limited to investigations by the federal Bureau of Alcohol, Tobacco and Firearms, the United States House of Representatives' Committee on Energy and Commerce, the Hawai'i State Legislature's Wildfire Prevention Working Group, and the Hawai'i House of Representatives' Lahaina Wildfire Interim Working Groups; after-action reports by the County of Maui Fire Department and the County of Maui Police Department; and numerous litigation-based investigations by the plaintiffs, the State, the County, the utility, and the landowners. The Department should also be aware of the County's statutory responsibility to respond to all public requests for information pursuant to the Uniform Information Practices Act, Chapter 92F of the Hawaii Revised Statutes ("*UIPA*"), under which the County has received more than one hundred requests—as we expect the State has also received.

Understanding FSRI's demands on the County to date and the context within which they have been made, the County has shown great respect for the Department's authority and has made substantial efforts in good faith to timely search for, collect, review, and deliver responsive information and personnel. To date, in the span of a little more than four months, the County has provided FSRI:

- approximately thirty (30) different productions of documents, containing 18,742 distinct files (including 7,746 video and audio files), totaling 46,105 pages, and over 118 gigabytes (GB) of data;
- over 150 technical interviews with County personnel, directors, deputies, chiefs, and assistant chiefs, as well as former County employees, all coordinated and scheduled within their respective work shifts, while they also managed the functions of the County (e.g., fire response, police shifts, etc.), and while also scheduling and coordinating the presence of deputy corporation counsel and/or defense attorneys and union representatives, which were necessary based on the Department's refusal to afford any of these individuals any assurance that they would not be prosecuted or criminally charged based on their statements in the interview; and
- numerous site visits, which required personnel coverage and transportation resources, to the burn zone, the initiation point, fire stations, emergency management sites, and water resources.

Additionally, the County's personnel have assisted FSRI above and beyond its legal obligations by permitting free-flowing and informal modifications to written document requests, organizing data and information for FSRI, and converting information into different data formats to best suit FSRI's needs. Many of these requests by FSRI asked the County to produce and provide work product, and, in some cases, County personnel obliged in the spirit of good faith cooperation.

Despite all of the above, in its letter dated February 7, 2024, the Department accuses the County's Corporation Counsel and this Firm of obstructing FSRI's investigation and of employing "tactics that appear designed to delay, mislead, and frustrate the goals" of the

investigation. Such claims are unfounded, irresponsible, and devoid of factual bases, are disrespectful of the County's substantial efforts in good faith, and are detrimental to the significant progress that has been made between federal, state, and county authorities to mutually resolve disputes and deliver meaningful relief to victims. When paired with the Department's threats of legal action, the claims are especially incredulous, as the Department has *yet to meet and confer once* with respect to any of these alleged deficiencies.

Nevertheless, the County remains respectful of the Department's investigative authority and supportive of the Department's stated goals of improving governmental response to emergencies. The County is certain that the State shares its humility in constantly seeking ways to better serve the community, whether it be in fire response or the management, maintenance, and repair of emergency alert systems. As evidence of this support, this Firm, acting as the County's special counsel, reached out to the Department several times over the last month to coordinate and resolve any issues or perceived deficiencies. We were first directed to Special Assistant to the Attorney General David Day and then directed to Deputy Attorney General ("**DAG**") Amanda J. Weston and then directed to the State's special counsel Michael Lam and Steven Tom of Case Lombardi, A Law Corporation. We were eventually directed to DAG Ciara Kahahane and have been communicating with her over the last several days to address the Department's requests. During this last week, we have received email correspondence dated February 7, 8, 9, and 11, 2024, which begins to describe and specify FSRI's issues for the County's attention. We are grateful for DAG Kahahane's engagement in this manner, as we believe this to be the appropriate and most productive method of communication for resolving discovery issues. We look forward to continued engagement and, if necessary, a productive meet and confer prior to any legal action.

As evidence of the effectiveness of our recent communication with DAG Kahahane and of the County's continued good faith cooperation, the following responds to the Department's questions:

The County has not been unreasonable in the timeliness of its responses. The Department accuses the County of delay for failing "to provide many of the subpoenaed documents" sought by the Department's seven (7) different subpoenas served on four different County departments on December 29, 2023. The subpoenas contained thirty-five (35) distinct, and in many cases overly broad, requests for documents and commanded compliance by January 12, 2024—fourteen (14) days after service. In the same manner, the Department served three (3) different subpoenas on November 27, 2023 to three different County departments, containing thirty-three (33) separate categories of documents and demanded full compliance fourteen (14) days later on December 11, 2023. The turnaround time for this number and breadth of requests is unreasonable. Nevertheless, the County has committed resources to responding as quickly and comprehensively as possible. It has assigned a number of investigators and deputies within its office and now has added special counsel from this Firm and additional electronic discovery resources. As a result, it has delivered on nearly all of the Department's demands, including the 150 additional personnel interviews and subpoenaed testimony that the Department has required.

The County is responsible only to provide records in the format in which they are kept in the normal course of business. The Department accuses the County of further delaying the investigation because it has “repeatedly failed to produce records in a usable format.” This is incorrect. The County is producing documents in the manner in which they are kept by the respective County departments in the normal course of business, which is consistent with a producing party’s obligation under the law. To the extent information is not in a file format that FSRI would like, the County is not aware of any obligation to create such a file; this would constitute work product.

The Department cites an example of Automated Vehicle Location (AVL) data that it requested from the Maui Fire Department, which was provided on January 14, 2024 in PDF form (the manner in which it is kept by this department). After FSRI flagged this issue, the County provided the information in CSV format *within a matter of four days*. This is *not* an example of obstruction or disruption; rather, it is a simple explanation that could be resolved quickly with better communication between the Department and counsel for the County. The Maui Fire Department, on whom the subpoena was served, produced the AVL data in PDF format, as it was held. The Maui Police Department is the custodian of the AVL data in its native CSV format. Upon inquiry, the County followed-up with the various departments, located, and promptly delivered the requested information even though FSRI’s request was not directed to the appropriate party.

The Department is incorrect in stating that requests “to allow FSRI to interface directly with County personnel have been denied.” To the contrary, the County permitted this communication—and there are written records of such communication—in the first few months of this investigation. Because these informal (and sometimes improper) requests became too numerous and burdensome to track and organize among the various deputies, departments, and County personnel, the County asked FSRI repeatedly to consolidate communication through this Firm. Communications have repeatedly gone through individual deputies or County personnel, resulting in this Firm’s efforts to reach out to the Department to better organize communications.

The County will continue to be over-inclusive in its production of potentially responsive material. The Department accuses the County of producing documents that are not responsive to the Department’s requests and provides an example of the County providing records related to trainings that could reasonably be within the scope of Request No. 2 to AG Subpoena No. 2023-104. This criticism of the County’s production appears ill-advised and misplaced. In good faith, the County will continue to interpret the Department’s requests expansively, especially the numerous requests with overly broad descriptions (“any and all records”) devoid of time parameters or specific document descriptions. The County will provide records it believes could reasonably be interpreted as responsive to the Department’s request to avoid further claims that it is withholding relevant information, which is the Department’s next accusation.

The County is not withholding responsive records. At the same time the Department accuses the County of providing non-responsive material, it also accuses the County of withholding responsive ones. To be clear, the County is not purposefully withholding responsive

information from the Department. To the extent FSRI feels it is missing responsive information, the information either does not exist or the County has not yet identified the location of the responsive information to collect, review, and produce it to FSRI. Given the breadth and burden of FSRI's requests—coupled with the burden of 150 interviews, a number of ongoing investigations from other entities, litigation from over one hundred different claimants, and the normal operations of the County departments—this is not an unreasonable occurrence. The proper procedure in any discovery process would be to specifically describe the issue and to provide the producing party the opportunity to follow-up and respond to the specific issue. As that has occurred in the past week, the County has been able to provide the following:

- ***Notes prepared by former employee Paul Coe.*** After Mr. Coe's January 31, 2024 interview with FSRI, the County followed up on his references to handwritten notes during the incident, located the notes, and produced them to FSRI on February 9, 2024.
- ***Notes prepared by MFD Assistant Chief Jeffrey Giese.*** Following Assistant Chief Giese's interview with FSRI on January 24, 2024, the County followed up on his references to handwritten notes during the incident, located the notes, and produced them to FSRI on February 9, 2024.
- ***EOC situational awareness board.*** Following MEMA Secretary Gaye Gabuat's interview with FSRI on January 24, 2024, the County followed up on her references to situational awareness boards, further reviewed what she meant, located the relevant files, and produced them to FSRI on February 9, 2024.
- ***EagleView.*** The County provided extended permissions to FSRI and the Department to its EagleView site, which permits access to high-definition aerial imagery of the affected area.
- ***Additional responsive documents.*** The County also provided supplemental productions on February 9, 2024 that included personnel deployment assignments responsive to SDT 2023-104 (to Fire and Public Safety); information on improved properties destroyed or damaged by the fires responsive to SDT 2023-106 (to Finance); and hardcopy files from the MEMA Director's office.

On February 9, 2024, the County also reproduced—along with the aforementioned supplemental productions—the entirety of its productions to date, so that FSRI would have a complete set of documents before their access to the County's Google Drive is ended on February 12, 2024. Though DAG Kahahane thereafter instructed the County not to provide this reproduction, the County did so as a courtesy. The reproduction was provided in the order the files were previously produced and properly bates-stamped to ensure that all parties involved are referencing the same files. The County asks that the Department use only the bates-stamped production of documents moving forward and that FSRI properly reference only those bates-stamped files.

The County continues to investigate other issues the Department has raised:

- ***EOC sign-in sheets for August 8, 2023 regarding MEMA personnel.*** The County continues to investigate whether there are any hardcopy sign-in sheets showing which MEMA personnel, if any, signed in to the EOC on August 8, 2023. While the County has produced dozens of physical sign-in sheets, it understands that FSRI believes there are additional sheets showing MEMA personnel. As FSRI is aware through its interviews of all MEMA personnel, they do not recall whether they signed-in or out, what method they used, and on what dates. It is possible that this document simply does not exist, but the County continues its search.
- ***Form 214s prepared on August 8, 2023.*** Similarly, the Department believes the County is withholding Form 214s from August 8, 2023. The County has produced dozens of Form 214s completed in the days and weeks following August 8, 2023 but only three (3) Form 214s dated August 8, 2023. In follow-up interviews with MEMA personnel, they did not recall preparing Form 214s or using them on August 8, 2023 because of the pace of events. The County continues its search for responsive Form 214s.
- ***Digital maps reviewed in the EOC.*** The Department believes the County is withholding digital maps used in the EOC during the incident. The referenced digital maps were simply a Google Map of Lahaina, Maui from a web browser that was displayed on screens throughout the EOC. The County does not have such a map in its possession, custody, or control to produce to FSRI.
- ***WebEOC access.*** The Department seeks access to the County's WebEOC portal. In response to this request on January 28, 2024, the County is investigating how to properly and safely export data from the relevant WebEOC board so it can provide this information to FSRI. The County requires additional time to understand the technical requirements to do so.
- ***AVL data "gaps."*** The Department claims that the County has not provided complete AVL data to FSRI because data abruptly ends for certain MFD resources (e.g., E1, E11, E3, E6, and L3) during the afternoon of August 8, 2023. The Department then asks the County, if the information is complete, to give "a reason that the data ends at those times." First, the County can confirm that the data is a complete reflection of the data available to the County to date. Second, however, the County should not be asked to speculate as to the reason the data ends. One possibility is the failure of cellular service upon which the AVL data relies, but the County is not in a position to provide a reliable answer at this time.
- ***MFD's "recommended educational and training requirements."*** The Department rejected the County's production of personnel attendance at offered trainings and has attempted to clarify that what FSRI is requesting is "recommended educational and training requirements for each position within MFD's Fire and Rescue Operations

Division.” Putting aside the vague and ambiguous nature of “recommended . . . requirements,” the County followed up with FSRI’s request. There are no *required* trainings for each position within MFD’s Fire and Rescue Operations Division beyond the minimum qualifications of the position (e.g., Level III driver’s license and up-to-date certifications in CPR, EMR, and HAZMAT). Numerous additional trainings are offered, and MFD personnel take advantage of these opportunities to learn, but they are not required.

Finally, the County is providing to FSRI today all documents that have been produced by the County in response to UIPA requests from the public. Combined with the FSRI production to date, this supplemental production will provide FSRI with all files that the County has collected thus far related to the Maui fires. Again, in total, the County’s production to FSRI to date includes **18,742 files (including 7,746 video and audio files), 46,105 pages, and approximately 118 gigabytes (GB) of data.** The County has been ordered by the Circuit Court of the Second Circuit to promptly provide both the UIPA production and the FSRI production to all parties in the ongoing litigation—including hundreds of claimants and their attorneys and experts. The County has reached out to Special Assistant Day, DAG Weston, Special Counsel Lam and Tom, and DAG Kahahane for instruction in writing from the Department that the County should withhold its FSRI production from the parties in the litigation pending completion of the Department’s investigation. Despite numerous efforts, the Department has not yet provided the County with its position on whether the FSRI production must be withheld. Accordingly, the County will comply with the Court’s order on February 16, 2024, unless there is a protective order instructing the County to withhold any or all documents provided to FSRI.

The County will continue to diligently follow up on the listed items above. Should the State wish to conduct a meet and confer on those issues, please advise regarding a date and time and we will provide our availability along with the appropriate personnel from Corporation Counsel. We look forward to working with you to provide all materials in the County’s possession, custody, or control that could assist the Attorney General with her investigation.

Very Truly Yours,



David J. Minkin
Jordan K. Inafuku

CC: Mayor Richard T. Bissen, Jr.
Corporation Counsel Victoria Takayesu-Hamilton