

From: "Kawauchi, Diane T" <dkawauchi@honolulu.gov>
Date: Fri, May 27, 2011 10:18 pm
To: "Kitaoka, Don S" <dkitaoka@honolulu.gov>
Cc: <carroll@carrollcox.com>, "Okinaga, Carrie K S" <cokinaga@honolulu.gov>, "Arakaki, Ardis" <arakaki@honolulu.gov>, "Kelly, Kathleen A" <kkelly@honolulu.gov>

Kawauchi, Diane T would like to recall the message, "[SPAM] RE: Navy letter dated 11-8-2010".

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Subject: [SPAM] RE: [SPAM] RE: Navy letter dated 11-8-2010
From: "Kawauchi, Diane T" <dkawauchi@honolulu.gov>
Date: Fri, May 27, 2011 10:18 pm
To: "Kitaoka, Don S" <dkitaoka@honolulu.gov>
Cc: <carroll@carrollcox.com>, "Okinaga, Carrie K S" <cokinaga@honolulu.gov>, "Arakaki, Ardis" <arakaki@honolulu.gov>, "Kelly, Kathleen A" <kkelly@honolulu.gov>

Don,
I too think it wise to limit or cease conversation with Cox. What he seeks from COR may be sought through a 92F request. Thank you.

Diane Kawauchi
Deputy Corporation Counsel
Phone 768-5294

From: Kitaoka, Don S
Sent: Friday, May 27, 2011 6:22 PM
To: 'Carroll Cox'
Cc: carroll@carrollcox.com; Kawauchi, Diane T; Okinaga, Carrie K S; Arakaki, Ardis; Kelly, Kathleen A
Subject: RE: [SPAM] RE: Navy letter dated 11-8-2010

Carroll:

You have now accused me of "dirty dealings", ex parte communications, ignoring you and your request, spin, and back door dealing. You also state that I represented to you that Mr. Case asked me to provide any comments I may have had to his draft letter. All of the aforesaid accusations and allegations are false and some are outright slanderous. I also suggest that you look up the meaning of "ex parte communications". My communications with Mr. Case in this matter dealt with his response to the Notice of Violation, nothing more. I have never failed to respond to any of your requests. You never requested me to provide you with any legal opinion that I may have issued to DPP. I only recall speaking to you two times in my lifetime, both by telephone. I have promptly responded to you each time, with civility and respect. At your request, I responded to you by email about Ed Case's draft letter. That response stands. From your latest response, it has now become clear to me that you are incapable of communicating in a civil and rational manner with me, and your characterizations of our verbal communications cannot be trusted. Therefore, if you wish to communicate with me in the future, please do so in writing or by email.

You also wrongly assume that I provided a legal opinion to DPP pertaining to the Waikele Caves. Even if any such opinion existed, it would be subject to the attorney-client privilege.

The simple facts of this matter are that DPP issued an NOV, and in response the Navy asserted exclusive jurisdiction. I neither have the time nor the inclination to engage in any further communication with you regarding any of your false accusations.

Sincerely,
Don

From: Carroll Cox [<mailto:carrollcox@carrollcox.com>]
Sent: Friday, May 27, 2011 2:36 PM
To: Kitaoka, Don S
Cc: carroll@carrollcox.com
Subject: Re: [SPAM] RE: Navy letter dated 11-8-2010

Dear Don,

I want to clarify something.

Your most recent email attempts to sanitize the dirty dealings you have lent yourself to in this matter.

For more than two years I have attempted to get a legal opinion on the Waikele Caves matter directly from David Tanoue; he told me he had requested that you provide him with a legal opinion regarding land use issues at Waikele Caves. I had also asked that a Notice of Violation be issued immediately for the building and land use violations.

Your original email revealed that you had ex parte communications with the applicants legal counsel regarding this matter while ignoring me and my request for more than two years. As you know I requested a copy of the legal opinion that was rendered on this matter but my request was denied. I currently have an appeal of this denial before the Office of Information Practices.

Your spin on this is troubling. This communication you had with representatives of the applicant including Mr. Ed Case can best be described as back door dealing.

Had it not been for my inadvertent discovery of a letter from the applicants, the public would never have known that you had engaged or participated in ex parte communications on matters of importance to the citizenry of Honolulu. While it may be common practice for attorneys to communicate with each other regarding a case, your actions went beyond that. You represented that Mr. Case asked you to review his draft letter and provide any comments you may have had. Apparently matters were resolved to the applicants satisfaction because the NOV was withdrawn and an agreement was reached regarding the building and land use issues pertaining to the Waikele Caves. Yet you refuse to provide me with a copy of your legal opinion. How is it that the applicant has open access to your office and the Department of Planning and Permitting, but the public is shut out.

Once again, I hereby request copies of Mr. Case's draft letter and your legal opinion.

In case you, Mr. Case and others have lost sight of what is right and wrong I will seize this opportunity to remind all of you that five human beings lost their lives at the Waikele Caves. I believe that had the government acted in accordance with existing laws, in accordance with numerous letters from the DPP Director, that those five people would be alive. If any apology is due each of you should make it to the families of those five innocent victims.

In closing I would like to point out that Mr. Ress stated in his letter that you did in fact receive Mr. Case's the letter. However, you contend that you never received a letter. Who is telling the truth and who should the public believe? Did you purposely not accept Mr. Case's letter in order to keep it out of the public's view?

Sincerely,

Carroll Cox

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On May 27, 2011, at 11:48 AM, "Kitaoka, Don S" <dkitaoka@honolulu.gov> wrote:

Carroll:

I have not received any email from you. This is in response to your voicemail and our subsequent telephone conversation. You have suggested that Ed Case's sharing with me his draft letter to DPP was somehow suspicious and/or illogical. This is to clarify that Mr. Case was simply responding to the Notice of Violation issued by DPP, and was contesting its validity. Communications between lawyers relating to the merits of a Notice of Violation or other government enforcement activity is commonplace, legitimate and in fact encouraged. Any of your insinuations and implications of suspicious activity are void of any basis or substance. Your apologies expressed in our telephone conversation are accepted.

Thanks,

Don

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On May 26, 2011, at 12:16 PM, "Kitaoka, Don S" <dkitaoka@honolulu.gov> wrote:

Carroll:

I have reviewed the letter dated November 8, 2010 from R.G. Ress, Office of Counsel, Naval Facilities Engineering Command Pacific ("NAVFAC") to me, a copy of which you have. That letter made reference to "Attorney Ed Case's letter of October 29, 2010 to you..." You have requested a copy of that letter. As I told you on the telephone, I know of no letter from Ed Case to me dated October 29, 2010. However, as I now recall, Ed Case had drafted a letter that he was considering delivering to the director of the Department of Planning and Permitting ("DPP"). Ed Case's letter was in draft form when he shared it with me and Mr. Ress. However, that letter was never sent. Therefore, Ed Case's draft letter to DPP never

became a part of the City's records. You might consider asking Mr. Case if he is willing to share a copy of his draft letter with you. As I confirmed with you, the referenced Ed Case is the same Ed Case who was a congressman.

Thanks,
Don Kitaoka