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Supreme Court
SCPW-24-0000464
17-SEP-2024
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Dkt. 38 MES

No. SCPW-24-0000464

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

PUBLIC FIRST LAW CENTER, Petitioner, vs. THE HONORABLE MATTHEW J. VIOLA, Senior Judge of the Family Court of the First Circuit, State of Hawai`i, Respondent Judge,  and  THE DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI`I; et al., Respondents.	ORIGINAL PROCEEDINGS 1FFM-24-0000018 1FFM-24-0000019 PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I  The Honorable Matthew J. Viola, Family Court of the First Circuit, State of Hawai`i

REPLY MEMORANDUM IN SUPPORT OF PETITION

CERTIFICATE OF SERVICE

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I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai`i.
Dated at: Honolulu, Hawai`i 17-SEP-2024, /s/ Elizabeth Zack, Clerk of the Supreme Court, State of Hawai`i

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Pursuant to this Court's July 16 order, Petitioner Public First Law Center (Public First) submits this combined reply to the responses filed by Respondents Isaac Kalua (Kalua), Dkt. 26; the Department of Human Services (DHS), Dkt. 28; Senior Family Court Judge Matthew J. Viola (Respondent Judge), Dkt. 30; and the Court Appointed Special Advocates program (CASA), Dkt. 28 (collectively, Respondents). Isabella's estate, her siblings, and her biological parents have not opposed the request to partially unseal the subject records.

Confidentiality is standard for child protective act (CPA) and adoption records. But in extreme cases, rare outliers, the law authorizes exceptions. This case—where a state-sponsored foster and adoption placement resulted in the death of an adopted child allegedly at the hands of the adoptive parents—is one of those outliers. Respondent Judge agreed (up to a point).

He held that the exceptions to confidentiality, Hawai`i Revised Statutes (HRS) §§ 587A-40 and 578-15, were met. But he denied access completely, applying the wrong standard of law. He reasoned that information about Isabella's siblings—which Public First requested be redacted—was "inextricably intertwined" with information about Isabella and if redacted would leave a "distorted and misleading picture" of the "factual and legal record on which agency and court decisions placing the Children with the Kaluas were made." 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47.

Once a family court finds that there is a legitimate purpose and "good cause" for disclosure and redacts records to protect the best interests of the children involved, however, *completeness* of the records is not a basis to withhold all access. 1FFM-24-18 Dkt. 65 ¶ 57 ("Redaction of this information, however, would render the disclosed information significantly incomplete[.]"); 1FFM-24-19 Dkt. 59 ¶ 47 (same).[1]

[1] Contrary to arguments by some Respondents, Respondent Judge *did not find* disclosure of *redacted* court records would be contrary to the best interests of Isabella's siblings; he found that the records of Isabella and her siblings were inextricably intertwined, requiring extensive redactions. 1FFM-24-19 Dkt. 59 ¶¶ 44, 46; 1FFM-24-18 Dkt. 65 ¶¶ 54, 56. As discussed below, records redacted as proposed by Respondent Judge would inevitably provide information to help the public start to understand what went wrong, even if the information is incomplete. Dkt. 1 at 15-17.

Public First has never disputed the need for redactions to protect Isabella's siblings nor sought full or "complete" access to the judicial record. Redacted records are by definition incomplete. If completeness is the touchstone for access, then access under sections 587A-40 and 578-15 is a mirage. In the context of a public records request, for example, this Court has set a high bar to withhold an *entire* document on account of redactions; if a redacted record "conveys information," it must be disclosed. *Honolulu Civil Beat Inc. v. Dep't of the AG*, 151 Hawai`i 74, 88, 508 P.3d 1160, 1174 (2022). The "record may be entirely withheld only if the permissible redactions are so extensive that what's left is an incomprehensible mishmash of blacked-out paragraphs, scattered words, and punctuation." *Id.*

None of the Respondents address this standard. The family court simply refused to disclose incomplete, partial records. 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47 ("[I]n order to help the public understand the basis for the DHS and family court determinations that the Kaluas were an appropriate placement for the Children, the entire file would have to be disclosed, not just selected portions of the file.").

Public First has not and does not question Respondent Judge's diligence in addressing the motions to unseal. Instead, Public First respectfully argues he applied the wrong legal standard given the limited case law interpreting the relevant statutes. Ultimately, both Respondent Judge and Public First ask this Court for guidance in these rare, but persistently recurring cases. Dkt. 1 at 22; Dkt. 30 at 12-13.[2] Parties to these types of proceedings read *Kema* to provide broadly absolute confidentiality in cases involving siblings, even if one dies. *Kema* does not and cannot stand for that.

Accordingly, Public First respectfully requests that the Court grant its petition and issue a writ of prohibition prohibiting the family court from enforcing any order to maintain the *entirety* of (1) Case No. FC-S 18-00280 (Isabella's child protective act case) and (2) Case No. FC-A No. 21-1-6010 (Isabella's adoption case) under seal; and a writ of mandamus ordering the family court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of Isabella's siblings.

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2 Pinpoint citations to the Docket refer to the page of the PDF.

1. **Mandamus review is the *only* method proscribed by rule to review a grant or denial of access to court records and is proper here.**

Respondents argue that Public First should have appealed to the Intermediate Court of Appeals. Dkt. 26 at 14-15; Dkt. 28 at 9-10; Dkt. 30 at 6-12; Dkt. 32 at 13 n.4.

Hawai`i Court Records Rules (HCRR) Rule 10.15 provides, very plainly, that a "person or entity may seek review of a denial or grant of access to a record by petitioning the supreme court, in accordance with Rule 21 of the Hawai`i Rules of Appellate Procedure." *See also* HCRR Rule 1 (HCRR governs court records); Hawai`i Family Court Rules (HFCR) Rule 1(c) (HFCR shall be read and construed with reference to the HCRR). Public First moved to unseal portions of the judicial record of Isabella's confidential CPA and adoption cases. That is a request for access to court records. It is subject to HCRR Rule 10.15.

Respondents make no serious effort to address the HCRR procedure for review of orders about access to court records. Dkt. 26 (no citation to HCRR); Dkt. 28 at 8; Dkt. 30 at 7 n.1; Dkt. 32 (no citation to HCRR).[3] To the extent they appear to claim a conflict between the HCRR and any other source of law regarding appeals generally, the HCRR is more specific as to how disputes regarding access to court records shall proceed. *E.g.*, *Richardson v. City & County of Honolulu*, 76 Hawai`i 46, 55, 868 P.2d 1193, 1202 (1994) ("where there is a 'plainly irreconcilable' conflict between a general and a specific statute concerning the same subject matter, the specific will be favored."). Respondents offer no basis to adopt an unwritten exception to the HCRR process.

Public First followed the process clearly set forth in the HCRR.

[3] DHS and Respondent Judge emphasize the "may" in HCRR 10.15 without further argument as to why it is relevant. Obviously, if the rule provided that a person "shall" seek a writ, it would unnecessarily require the filing of a petition even if the person agreed with the lower court's order regarding sealing. Also, notwithstanding the rule's procedure to petition "the supreme court," Respondent Judge states without any cited authority that "the petitioner is still required to exhaust its appellate remedies."

2. **Mandamus relief is appropriate because the family court misapplied relevant legal standards by denying access on the basis of completeness.**

This mandamus petition seeks to correct the family court's use of the wrong legal standard.[4] When the standards for access to judicial records under HRS §§ 587A-40 and 578-15 are met, may access be denied based on a concern that redacted records present a "distorted and misleading picture" of the decisions made by government officials? Dkt. 1 at 5-6, 11. No Respondent identified any authority to support withholding on such a subjective and misuse-prone basis. *See id.* at 17-18.

Instead, Respondents focus on *Kema*. Dkt. 26 at 11-15; Dkt. 28 at 10-14; Dkt. 32 at 15-21. But *Kema* does not hold that redacted court records must be withheld if they provide anything short of a full understanding of the record. *Kema* concerned the specific circumstances of that case. *See* Dkt. 1 at 13 n.8 (noting material differences between this case and *Kema*); 1FFM-24-19 Dkt. 49 at 2-4 (same). Although *Kema* blocked public access, the nondisclosure embraced by the *Kema* court for those particular CPA records in the context of finding a missing child is not justified here.

The outcome in *Kema*—prohibiting disclosure—drives confusion about its holding. Peter Boy's siblings "already had their names printed in the paper and have been filmed by television news." 91 Hawai\`i at 203-04, 982 P.2d at 337-38. The family court, Judge Gaddis presiding, concluded it "seem[ed] likely that additional publicity about these children would be potentially harmful and would not be in their best

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[4] DHS and CASA claim that the family court's denial of access is an exercise of discretion unreviewable on a petition for writ of mandamus. Dkt. 28 at 17; Dkt. 32 at 13-15. Applying the wrong legal standard is an abuse of discretion. *E.g.*, *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Haw. 85, 114, 839 P.2d 10, 26 (1992) ("Generally, to constitute an abuse of discretion a court must have clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant."). And a judge's exercise of discretion is reviewable on a petition for writ of mandamus in the same manner as in *Kema*. *Kema v. Gaddis*, 91 Hawai\`i 200, 204-05, 982 P.2d 334, 338-39 (1999) ("Where a trial court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act.").

interest." *Id*. Based on the finding of potential harm, the family court attempted to redact information about Peter Boy's siblings and ordered a redacted version of the entire case file be made available to the public. *Id*. On reviewing the proposed redactions, however, this Court held that, contrary to Judge Gaddis's intent, the redacted file "would ultimately result in the release of a large number of documents related to the other children." *Id.* at 206, 982 P.2d at 340. "Inasmuch as *the redactions do not delete all information related to the other children*, we conclude that Judge Gaddis's ruling violated the applicable legal standard in allowing access to even a redacted version of the old file." *Id.* (emphasis added). The heart of Judge Gaddis's error was failing to redact all information related to Peter Boy's siblings—whom he had found would be harmed by further disclosure because their identities had been publicized.

Here, like *Kema*, Respondent Judge found that information about Isabella was inextricably intertwined with information about her siblings and would need to be redacted. *E.g.*, 1FFM-24-19 Dkt. 59 ¶ 46 (proposing to redact entire statement where information about Isabella is inextricably intertwined with information about her siblings); 1FFM-24-18 Dkt. 65 ¶ 56 (same). And Public First had requested redaction of information about the siblings. 1FFM-24-19 Dkt. 1 at 2, 13; 1FFM-24-18 Dkt. 1 at 1, 4 n.1, 9. The issue, then, is what should be disclosed *after* these redactions. *Kema* did not address this issue. In answering this question, the relevant legal standard should be whether the redacted record still "conveys information"—not whether the redacted record affords a complete account of its contents. *Honolulu Civil Beat Inc.*, 151 Hawai`i at 88, 508 P.3d at 1174.

The family court, however, applied a novel "distorted and misleading" standard, asking whether the redacted records depicted a complete recitation of the decisions of government officials that placed Isabella with the Kaluas. 1FFM-24-19 Dkt. 59 ¶ 44-49; 1FFM-24-18 Dkt. 65 ¶ 54-59. At no point did Respondent Judge find, or argue subsequently, that the redacted records would be meaningless or convey no information. But the family court apparently reasoned that redacted records are inherently misleading and of no value to those interested in understanding how Isabella's state-sponsored adoption played out. *E.g.*, 1FFM-24-19 Dkt. 59 ¶ 41; *accord*

1FFM-24-18 Dkt. 65 ¶ 51.[5] (Kalua similarly argues "disclosure of *inaccurate* information serves no public interest whatsoever." Dkt. 26 at 10 (emphasis added).)

To the contrary, redacted records are incomplete, not inaccurate. Redacted records have value because they convey information. Although Public First has no information about what records actually exist in these court records, the following represent potential examples of information that could be publicly disclosed after redacting the siblings' information.

- The case docket, *i.e.*, an index of pleadings, typically identifies documents, filing dates, and sometimes a court's minute orders. Even redacted to remove references to the siblings, the docket would still show what documents were submitted to the court and when, *e.g.*, answering questions about whether DHS and others timely filed necessary reports. It might also show the result or duration of certain hearings.
- Reports of social workers, guardians, or CASA volunteers—redacted to remove the identity of the siblings, volunteers, and mandatory reporters and statements by and about the siblings—would at least reveal when and what information about Isabella was made available by DHS to the family court and shed light on the frequency and duration of government officials' contacts with the Kaluas and Isabella.
- Redacted reports about the Kaluas concerning their experience as foster parents, their finances, and their ability to provide a safe space for children would provide significant information about how this foster placement occurred—in light of questions subsequently raised—even if redacted to remove references to the siblings.
- Sensitive documents, such as the required medical certificate for Isabella—which is not likely to have details concerning the siblings and would provide information readily comparable to publicly disclosed descriptions of Isabella's medical condition—even if entirely redacted except its title, would still convey information that the required medical examination in fact occurred.

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[5] From the outset, Public First disclaimed any legitimate purpose to unsealing the entirety of the CPA and adoption case files; it focused instead on the case docket and "[r]ecords sufficient to understand" the record on which Isabella was placed with the Kaluas through the CPA and adoption cases. 1FFM-24-19 Dkt. 1 at 2, 14; 1FFM-24-18 Dkt. 1 at 2, 10. Public First did not, however, limit its request to records that would provide a *complete* or *full* understanding of the record presented by DHS and approved by the family court. *See* 1FFM-24-19 Dkt. 59 ¶ 41 ("[G]ranting access to an *incomplete* CPA case file with information regarding the Siblings redacted would not serve the legitimate purpose of helping the public *fully* understand the basis for the DHS and family court determinations that the Kaluas were an appropriate placement for the Children.") (emphasis added); *accord* 1FFM-24-18 Dkt. 65 ¶ 51 (analogous finding).

If, as here, there is a legitimate purpose and the best interests of the surviving children are protected by redaction, the Legislature did not task courts with any further inquiry to subjectively assess whether the remaining information conveyed is worth sharing with the public.

Kalua and DHS contend—without citation—that *redacted* disclosure is contrary to the best interests of the children. Dkt. 26 at 13; Dkt. 28 at 12-13. CASA claims "Judge Viola denied Public First access to [Isabella's] adoption proceeding records because public disclosure of these records 'would be harmful to [the Siblings] and contrary to their best interests.'" Dkt. 32 at 28 (citing 1FFM-24-18 Dkt. 65 at ¶52, ¶59). But the family court did not make that finding. He found that disclosing information *about Isabella's siblings* would be contrary to their best interests: "Public disclosure of information related to the Siblings, especially information that is not yet public, would be harmful to them and contrary to their best interests." 1FFM-24-18 Dkt. 65 ¶ 52; 1FFM-24-19 Dkt. 59 ¶ 42. That is why he turned to redaction. 1FFM-24-19 Dkt. 59 ¶ 46; 1FFM-24-18 Dkt. 65 ¶ 56. Respondents have never explained how disclosing *redacted records* is contrary to the best interests of Isabella's siblings. What harm, for example, would be caused by disclosure of a redacted case docket?

Kalua and DHS also argue the family court's denial of access is about accuracy and truth—although it is unlikely that they agree on what that truth is. Dkt. 26 at 12-13; Dkt. 28 at 13. This case concerns information relevant to a persistent *societal* concern that the foster care system and state-sponsored adoptions may not adequately protect Hawaii's children, resulting here in the death of the child. *E.g.*, Dkt. 1 at 15 (referencing the public and Legislature's efforts to confront this issue after Isabella's death).[6] The public does not need access to everything to begin the process of identifying flaws in the system that might be remedied, but absolute secrecy surrounding government

[6] CASA argues that the Legislature is the forum for changing the statutory confidentiality provisions. But changes are not necessary. This Court has addressed those provisions once in the specific factual circumstances of *Kema* and did not purport to adopt any semblance of the absolute confidentiality—contrary to the plain language of the statutes—that Respondents generally now read into that case.

action that preceded a death is not about truth, accuracy, or completeness. *See* Dkt. 1 at 13-16 (describing the policies that support disclosure generally in instances of foster care deaths and specific concerns with Isabella's placement). Redacted records will never provide a *complete* account of their contents. It is difficult to imagine a situation in which records disclosed under sections 587A-40 and 578-15 would be released with no redaction. If subjective standards of truth, accuracy, or completeness are the standard for access to records under sections 587A-40 and 578-15, the disclosure provisions would be illusory.

Concluding the standard for access under HRS §§ 587A-40 and 578-15 is satisfied, but denying all access because redacted records would provide an incomplete ("distorted" and "misleading") account of the court record, is the wrong legal standard. Thus, mandamus relief is warranted because the family court clearly and undisputedly violated the applicable standard in denying access. *E.g.*, *Kema*, 91 Hawai`i at 206, 982 P.2d at 340 (granting mandamus relief where family court "violated the applicable standard" in ruling on access to CPA case records).

Even if the mandamus standard is not met, the facts of this case—where a state-sponsored adoption resulted in the child's death—presents sufficiently compelling circumstances to warrant this Court's exercise of supervisory power. Dkt. 1 at 12.

3. The plain text and legislative history of the adoption statute support Public First's position that "any person" may access adoption records for a legally sufficient reason.

The family court concluded that Public First had standing to move for access under section 578-15(b)(1) and that the "tragic and unusual" circumstances of Isabella's death satisfied the "good cause" standard for access under section 578-15(b)(1). 1FFM-24-18 Dkt. 65 ¶ 34 ("Movant is a person/entity who, pursuant to HRS § 578-15(b)(1), may inspect the adoption records, if good cause is shown."), ¶ 43 ("Under the particularly tragic and unusual circumstances concerning Ariel's death, allowing Movant access to the court's adoption case records. . . would serve a legitimate purpose insofar as it would 'contribute to public understanding and awareness' of the response of agencies and the family court to problems of child abuse and neglect. . . and,

specifically, as to how and why the Kaluas were deemed appropriate adoptive parents."); ¶ 44 ("the court finds that there is good cause to allow Movant to inspect the adoption records insofar as it would serve a legitimate purpose").[7] Arguments by DHS and CASA to the contrary that Public First cannot move to unseal adoption records are unavailing.[8] *See* Dkt. 28 at 9-12; Dkt. 32 at 17-19.

First, the relevant statute is plain and unambiguous. *Bishop Tr. Co. v. Burns*, 46 Haw. 375, 399-400, 381 P.2d 687, 701 (1963) (Where "the statute is clear and perfectly understandable when read in the light of the ordinary rules of grammar," there is "no necessity to transpose any portion of the statute or to give like phrases double meanings to glean the intent of the legislature, otherwise clearly expressed."); *Allstate Ins. Co. v. Schmidt*, 104 Hawai`i 261, 265, 88 P.3d 196, 200 (2004) ("Where the language of the statute is plain and unambiguous, the court's only duty is to give effect to its plain and obvious meaning."); *see also* 1FFM-24-18 Dkt. 29 at 4-6, Dkt. 55 at 2-9, Dkt. 63 at 2-3. HRS § 578-15(b)(1) provides that, after an adoption decree is entered, the court clerk must seal all records in the adoption case—unless that is waived by the petitioner—and those records must remain under seal and unavailable for inspection by "any person, including the parties" unless the court, for "good cause" shown, orders otherwise. "Any person" is expressly (and obviously) *not* limited to the parties to the adoption. There is no limitation in paragraph (b)(1) as to who may make a showing of good cause.

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[7] DHS and CASA misstate the family court's conclusions. The family court did not hold "that 'good cause' in this case did not allow the release of [Isabella's] adoption proceeding records." *See* Dkt. 32 at 20. And the family court did not "recognize[] that it has to be the Legislature that redefines 'good cause' to include members of the public for a public information purpose." *See* Dkt. 28 at 12.

[8] CASA also argues, for the first time, that Isabella's "statutory right" to confidentiality "survives the probate court's suggestion of death." Dkt. 32 at 21; *but see* 1FFM-24-18 Dkt. 65 ¶ 48 ("given the judicial determination. . . that [Isabella] is deceased. . . what is in her bests interests presently is, sadly, no longer relevant for purposes of this proceeding."). Isabella's estate *did not object* to the requested access. 1FFM-24-18 Dkt. 37; *see, e.g.*, *In re AS*, 130 Hawai`i 486, 513, 312 P.3d 1193, 1220 (2013) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."). Further, the cited authority (*Swindler*) concerns the attorney-client privilege, not privacy interests.

Moreover, DHS and CASA's focus on the parties to the case as the only "persons" with standing to unseal is undercut by the rest of the statutory text. The remainder of subsection 578-15(b)[9] evinces a clear legislative awareness of how to address access specifically for members of the adoption triad—and thus a purposeful decision *not* to place any constraints on court-ordered access. *See Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 67-68, 376 P.3d 1, 15-16 (2016), *superseded by statute on other grounds*, 2020 Haw. Sess. Laws Act 47 (when Legislature uses different terminology in different statutory provisions, courts "must presume this was intentional, and that the legislature means two different things."); 1FFM-24-18 Dkt. 55 at 1-5. That conclusion is further supported by the use of a standard for court-ordered access that is as broad and flexible as "good cause." *E.g.*, *Chen v. Mah*, 146 Hawai`i 157, 178, 457 P.3d 796, 817 (2020) ("good cause" standard is broad, flexible standard).

Second, even if this Court looks to legislative history to interpret "any person," that history is consistent with the plain language. The 1990 amendments added options for members of the adoption triad to access records under specific circumstances by "request"—*i.e.*, without a court order. 1FFM-24-18 Dkt. 29 at 4-6; Dkt. 55 at 5-8; Dkt. 63 at 2-3. Nothing in the relevant legislative history suggests access to adoption records by court order is limited to the parties to the adoption. *Id.*

DHS and CASA broadly argue in favor of expansive, unreviewable secrecy, but fail entirely to explain how total secrecy serves the Legislature's intended purpose. It is not disputed that the purpose of general adoption secrecy is to conceal the *fact* of adoption. 1FFM-24-18 Dkt. 1 at 1, 5-8; Dkt. 63 at 2-3. But that fact—and the identities of the members of the adoption triad and much more—are already widely-known. *Id.*

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[9] Subparagraphs (b)(2) thru -(5) provide access for members of the adoption triad as follows: "(2) After the *adopted individual* attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or adoptive parents; (3) After the *adopted individual* attains the age of eighteen and upon submission to the family court of a written request for inspection by the natural parents; (4) Upon request by the *adopted individual* or *adoptive parents* for information contained in the records concerning ethnic background and necessary medical information; or (5) Upon request by a *natural parent* for a copy of the original birth certificate." (formatting altered; emphasis added).

CASA claims that public concern about the death of an adopted child must yield to the interests of the adoption triad, Dkt. 32 at 27-28, but ignores the fact that the only member of the adoption triad who has objected to disclosure here is the one implicated in the child's murder. The Legislature provided for broad judicial discretion to address any number of unanticipated circumstances with the "any person" "good cause" standard. DHS and CASA offer no principled basis for countermanding the Legislature's intent.

4. Isabella's estate, her siblings, and her biological parents do not oppose the requested partial unsealing.

DHS argues "the story told in the records of the Child Protective Act case is a story that belongs to the surviving siblings." Dkt. 28 at 14. In part, it certainly is. That is why significant weight should be given to the *non-oppositions* of Isabella's estate, her siblings, and her biological parents. But *redacted* records would tell a story that is procedural—about how our government carries out one of its most important duties—and focused by redactions on Isabella. Protecting vulnerable children entrusted to the care of the State is not the responsibility of only one government agency or court. It is a shared responsibility that we all must continually seek to advance and improve.

Kalua argues Public First "does not even make the argument that release of this information would benefit the other Kalua children."[10] Dkt. 26 at 13. As argued below, "Disclosure of court records is needed to examine how Isabella's case was handled—toward improving the services provided to all children in foster care, including continuing protection for Isabella's siblings." 1FFM-24-19 Dkt. 1 at 13, *see also* Dkt. 49 at 4 ("With the Kaluas incarcerated, Isabella's siblings presumably remain under State care. Thus, they too will benefit—as will all children in DHS's care—from public scrutiny of potential flaws in the foster system.").

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[10] He also argues that the public has no legitimate interest in these proceedings because there are other civil, criminal, and family court cases related to Isabella's death. Dkt. 26 at 8-9. None of those cases will provide timely public insight into the judicial process by which Isabella was placed with the Kaluas.

That there was even sufficient probable cause for county prosecutors to charge adoptive parents with murdering their adopted child is *reason enough* for public scrutiny of the publicly-funded system that placed the child with her alleged would-be murders. And it is not an isolated incident. *E.g.*, John Hill, *From Hawaii to Texas and Back: How Geanna Bradley Ended Up with the Couple Accused of Killing Her*, Honolulu Civil Beat (Mar. 21, 2024); Dkt. 1 at 15.

Current legislative efforts to address systemic issues in the child welfare system, like the working group established by Act 86 (2023), Dkt. 32 at 21 n.9, highlight the urgent need for *more* information. In many respects, that group and policy makers are operating in the dark. DHS has disclosed nothing about this case, despite being authorized to do so by rule, Dkt. 1 at 14-15, and continues to hide behind a general cloak of confidentiality. As a society, we cannot "do better" if we lack information to examine what may have gone wrong in the first place. Reasonable access to court records here will help inform the efforts of the working group and others.

5. CASA's concern about naming volunteers is moot.

CASA argues that children in CPA and adoption cases will be harmed by "downstream" effects of "Public First's proposal for increased accessibility of adoption proceeding and CPA proceeding records" because CASA volunteers will consider leaving the program if they are publicly identified. Dkt. 32 at 23. This is the first time that CASA has raised this concern. If it had raised the issue below, Public First would have voluntarily agreed to redact the identities of CASA volunteers.[11] As there is no dispute, the Court need not address this new wrinkle.

In any event, concerns about deterring CASA volunteers based on the remote possibility that the death of a child will result in identification are exaggerated. If a CASA volunteer is identified, that would occur only in the rarest of cases. Moreover,

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[11] Public First does not concede that there is *never* a "legitimate purpose" to identify CASA volunteers. There may be circumstances that warrant such relief, given their substantial authority to report on the purported best interests of the child and influence judicial determinations. Dkt. 32 at 33 ¶¶ 5-7, 36 ¶¶ 4-6, 39 ¶¶ 4-6.

the identity of CASA volunteers is not confidential by any law and would readily be disclosed in the context of civil and criminal cases concerning the death of a foster child.

6. A potential path forward.

So far as Public First is aware, unlike in *Kema*, the record here does not include a copy of the redacted case files that Respondent Judge reviewed for purposes of potential disclosure. If this Court were to agree that withholding the entire case file is unwarranted, Public First would be amenable to a process that minimizes the burden on the family court.[12] For example, because Public First does not know what documents have been filed in these cases—and in any event has never sought disclosure of the entirety of the case files—a release of the redacted dockets could start the process and permit identification of specific records for potential unsealing. The family court could then follow the same process as with the Special Master's report, releasing a redacted version to the parties with an opportunity for the parties to raise objections to the specific disclosures.[13] In that way, although Isabella's estate and her siblings have not objected in principle to redacted disclosure, they would have the opportunity to raise "best interest" concerns to specific information being disclosed.

* * *

[12] Public First does not presume that the Court will require some disclosure, but is mindful that there are logistical concerns given the current procedural posture. This suggestion is offered solely in the spirit of addressing some of those concerns.

[13] Although any objections should be publicly filed, so that Public First may respond, the redacted version of any document should be kept sealed (and not accessible to Public First) until the family court has an opportunity to address the objections. *See Grube v. Trader*, 142 Hawai`i 412, 423 & n.13, 420 P.3d 343, 354 & n.13 (2018); *accord In re Copley Press, Inc.*, 518 F.3d 1022, 1027-28 (9th Cir. 2008). Public First has never requested—and does not want—special, non-public access to sealed records.

CONCLUSION

Based on the foregoing, Public First respectfully asks this Court to grant its petition and issue a writ of prohibition prohibiting the family court from enforcing any order to maintain the *entirety* of (1) Case No. FC-S 18-00280 (Isabella's child protective act case) and (2) Case No. FC-A No. 21-1-6010 (Isabella's adoption case) under seal; and a writ of mandamus ordering the family court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of Isabella's siblings.

Dated: Honolulu, Hawai`i, September 17, 2024

/s/ Benjamin M. Creps
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