

Using Hawai'i's Freedom of Information Law

A Step-by-Step Guide

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This guide is intended to familiarize students and residents with the importance of the Freedom of Information Law in Hawai'i and ways to request state and local government records here. Those seeking legal advice and interpretations should consult an attorney.

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Serving as a model for this booklet is *Using the Freedom of Information Act: A Step-by-Step Guide*, written by Allan Robert Adler, who describes the federal statute.

This Hawai'i guide was revised October 9, 2003, and was current as of then. Besides distribution in UH journalism classes, hard copy versions of this booklet are available for community or media organizations and in the Public Access Room, Room 401, State Capitol.

It is also available online on the website of the Public Access Room: www.state.hi.us/oip/lrb/par/pub/foi.pdf

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Table of Contents

Introduction	1
Office of Information Practices’ Website	4
Basic Questions and Answers About Hawai’i’s Freedom of Information Law..	7
Why is the Freedom of Information Law [FOI] important?	7
Who can make a request?	8
What part of government is covered by Hawai’i’s FOI Law?	8
Government Records that are ‘Unambiguously’ Disclosable .	9
What kinds of Information can be obtained?	10
How quickly will the agency respond?	10
On what grounds can an agency deny a request?	10
Exemptions to the open-records requirement	11
Exemption 1: Clearly unwarranted invasion of personal privacy	12
Examples of significant-privacy-interest information	14
Examples of frustration of legitimate government function ..	16
Exemption 2: Judicial or quasi-judicial action	17
Exemption 3: Frustration of legitimate government function	17
Exemption 4: Protected from disclosure by law or court order ..	17
Exemption 5: Relating to the legislature	18
Making the Request	19
Step 1: Identifying the proper agency	19
Step 2: Specifying the desired record	20
Step 3: Contacting the agency	20
Appealing Agency Denial of Access	22
Option 1: Appealing to a circuit court	22
Option 2: Appealing to Office of Information Practices	23
Eying the Records Report System	25
Appendixes	
A: A note on Part III — Disclosure of personal records	30
B: Form requesting access to a record	31
C: Sample letter requesting access to government records	33
D: Opinion letter summaries on OIP’s website	34

Using Hawai'i's Freedom of Information Law

Step 1. Identify the Proper Agency
(page 19)

Step 2. Specify the Desired Record
(page 20)

Step 3. Contact the Agency
(page 20; sample form and letter
are on pages 31-33)

Record(s) received

Record(s) denied

Appeal to OIP
(page 23-24)

Appeal to Circuit Court
(pages 22)

Appeal to Circuit Court
(page 24)

Using Hawai'i's Freedom of Information Law

A Step-by-Step Guide

Introduction

Hawai'i's Freedom of Information law generally established the right of the public to obtain information from most state and local government agencies.

Under this law, Hawai'i's Legislature set up specific procedures through which a member of the public — whether a citizen or not — can exercise his or her right to gain access to particular agency records. The Guide also provides extensive footnotes for researchers seeking the legislative history of this law or other authoritative documentation.

All state and local government records in Hawai'i are considered open to the public — unless the state or local agency can justify secrecy.

This *Step-by-Step Guide* is intended to serve as a general introduction for the public interested in knowing how to access state or city/county records.

This law contains four parts:

- Part I — general provisions and definitions;
- Part II — Freedom of Information — the release of any type of government record to the public;
- Part III — Disclosure of Personal Records — the release to the individual about whom the information was collected and is maintained;
- Part IV — the Office of Information Practices — the state agency created to administer the law.

Individuals interested in obtaining documents concerning the general activities of government should make their request under the Freedom of Information part of the law — Part II. Individuals seeking access to government records pertaining to themselves should make a request under the Disclosure of Personal Records part — Part III — as well as under Part II.

Hawai'i's law was enacted in 1988 and went into effect on July 1, 1989. When enacted, it was unique among state governments for:

- establishing the Office of Information Practices (OIP) as a centralized office to provide uniform legal interpretations for all state and city/county governments and thus to streamline their functions; a few other states have since followed Hawai'i's model;
- establishing a Records Report System (RRS) so as to enhance government efficiency and to prevent secret government record-keeping on individuals, groups and corporations — like that occurring to Japanese American citizens and residents in Hawai'i in World II; see pages 25-29.

In addition, Hawai'i is among the few states to have all state and county executive, legislative and judicial branches of government included under its FOI law. Its law also covers the records of any "corporation or other establishment owned, operated, or managed by or on behalf of this State or any county." This provision might be liberally constructed to cover the non-profit University of Hawai'i Foundation. In contrast, the federal FOI covers only executive-branch records.

Specific details about accessing government information are discussed in administrative rules. These rules:

1. establish procedures for processing requests for government records;
2. set forth fees that agencies may – but need not – charge. The permissible fees for searching for records are \$2.50 per 15 minutes or fraction thereof and for reviewing and segregating records are \$5 per 15 minutes or fraction thereof. But the first \$30 in fees is waived.
3. spells out the availability of a fee waiver that is in the public interest.

These rules implement only Part II — the Freedom of Information part — of Chapter 92F of the *Hawaii Revised Statutes*.

No special expertise is needed to request access to Hawai'i's government records. Using Hawai'i's law is as simple as making an informal request to the agency by

telephone or making a formal request to it in writing. A sample letter is included on page 33 of this guide. Or you may fill out and mail to the agency the model form that is included on pages 31-32. This form is also available online.

Before beginning your request, however, you may want to research the valuable materials on OIP's website: www.state.hi.us/oip; see next page. Because fees may be charged in some circumstances, money as well as time may be saved by doing some advance research. Or you may make an initial query by telephoning OIP at 586-1400 and asking for its designated "attorney of the day" during regular business hours.

As of July 1, 2003, OIP began to limit to five the number of opinions, investigations and requests for assistance open at any one time to each member of the public, but not to the news media.¹

The law imposes criminal misdemeanor sanctions against a person who intentionally uses "false pretense, bribery, or theft" to gain access to or obtain a copy of a government record or to confidential information.²

¹www.state.hi.us/oip/multiple_request_policy.pdf

²HAW. REV. STAT. § 92F-17 (Supp. 2002).

Office of Information Practices' Website: www.state.hi.us/oip

The screenshot shows the homepage of the Office of Information Practices. At the top left is the 'ehawaii.gov' logo. To its right are two navigation boxes: 'State Online Services' and 'Hawaii Information Link Index'. Below these are several small thumbnail images. The main header features the text 'Office of Information Practices' in a large, stylized font, with 'Last updated October 7, 2003' to its right. On the left side, there is a vertical menu with links: 'Laws / Rules / Opinions', 'Forms', 'Openline / Guidance', 'Reports', 'Related Links', 'Search', and '*What's New'. Below the menu is the official seal of the State of Hawaii. The central content area includes a map of Hawaii and a message: 'Aloha! Thank you for visiting the Office of Information Practices ("OIP"). The OIP administers Hawaii's open records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). The OIP also advises, and accepts complaints, regarding Part I of chapter 92, Hawaii Revised Statutes (open meetings or "Sunshine Law").' Below this message is a link that says 'Contact the OIP'. On the right side, there is a large graphic of the Hawaiian flag with the text 'Ensuring open government while protecting your privacy' overlaid. At the bottom right of the page, there is a footer with links: 'ehawaii.gov Home | ehawaii.gov Terms of Use | ehawaii.gov Privacy Policy' and 'Copyright © 2002 State of Hawaii/ehawaii.gov - All rights reserved.'

Searching some of the wide array of resources on OIP's website described below could help journalists and the public to frame more precisely their request for accessing government records in Hawaii and to learn about these kinds of issues elsewhere.

ehawaii.gov in the upper left-hand corner of this website links to the home page of Hawaii's state government.

State Online Services provides online links to a long list of topics. These include (1) business services such as business name services, e-filing for taxes, calendar meeting announcements, jury pool information, and (2) citizen services such as business & license complaints history search, Geographic Information Systems (GIS) maps, airport flight information, hunting licenses, vital records ordering.

Hawaii Information Link Index provides online links to an alphabetical, detailed listing of agencies and

services, ranging from accounting and adults services, through bid contracts, the state budget, birth/death/marriage certificates, to domestic abuses, education, environment, food stamps, health, professional licenses and programs, maps, motor vehicles, real estate, substance abuse, taxes, TV stations, voter information and workers' compensation.

Laws/Rules/Opinions, at the top of the left-hand panel, provides an unofficial text of Hawaii's statutes on public records and some of the statute on public meetings, or the "Sunshine Law." The official version of this online material plus valuable annotations to cases and attorney general opinions may be found in Chapters 92 and 92F in the bound volumes of the *Hawaii Revised Statutes* (H.R.S.) in campus and state libraries.

The website also provides the full text of OIP's administrative rules and an index to, summaries for, and text of the 262 opinion letters that OIP has issued to interpret Hawaii's FOI from 1989 to Sept. 11, 2003; brief summaries of many of these 262 are reproduced in Appendix D on pages 34-35. The index to the opinion letters may be accessed by year, by opinion letter number or via keyword searching.

Another valuable printed resource is the unofficial set titled *Michie's Hawaii Revised Statutes Annotated*, (HRSA) a Lexis-Publishing production available in some law libraries. It is also on the Internet but for a fee. This set lists each of OIP's opinion letters under the section of the statute to which it relates. For example, through 2002 HRSA lists more than 90 examples of records in which OIP has issued opinion letters relating to FOI's five exemptions and provides a sentence or two describing the decision. H.R.S. volumes omit annotations to OIP's opinion letters.

Forms provides forms for the public or agency staffers for requesting access to a government record, replying to that request and providing a public-meeting-notice checklist for the Sunshine Law.

Openline/Guidance provides links to OIP's monthly newsletter titled *Openline*, which announces the latest decisions in opinion letters, advisories to agencies or changes in policy. Its Guidance section gives full text of its advisories to agencies on such issues as handling personnel records or turning over their records to the Legislative Auditor.

Reports links to annual reports of OIP to the Legislature from 2000, 2001 and 2002, to its report to the Legislature on commercial use of personal information, to a report to the Legislature on the report of the Medical Privacy Task Force and to current information on the Records Report System (RRS); see pages 25-29.

Related Links is especially valuable for conducting comparative research. It provides links to public-access and/or privacy agencies in other U.S. states, Canada, some Canadian provinces, Australia, Hong Kong, Ireland, Mexico, New Zealand, United Kingdom. It also links to non-government groups like the Electronic Privacy Information Center, Privacy Rights Clearinghouse and Access Reports.

Clicking on the **Access Reports** link provides additional links to several U.S. Department of Justice websites, the Reporters Committee for Freedom of Press, University of Missouri FOI Center, Freedom of Information Resources, National Security Archive, Nader-inspired Public Citizen Litigation Group, American Society of Access Professionals, scientists-sponsored Secrecy and Government Project, the Transactional Records Access Clearinghouse, the James Madison Project and the FBI Electronic Public Reading Room, with files on famous individuals and historical events previously disclosed under FOIA. It also links to other state sites.

A useful, recent addition to **Access Reports** is its online notice and sales for *Litigation Under the Federal Open Government Laws* (\$40). **Access Reports** also describes and links to another volume titled *Getting and Protecting Competitive Business Information* (\$99).

Search is under construction as of Oct. 9, 2003.

What's New contains latest announcements.

Basic Questions and Answers about Hawai'i's Freedom of Information Law

Q: *Why is using the Freedom of Information law important?*

A: This new law replaced a gridlock of mismatched earlier statutes that was "being used to protect government from citizens."³ That gridlock served to deny citizens access to official records revealing such facts as the exact salaries of government officials, which police officers were recommended for disciplinary actions, who had obtained state-backed Hula Mae mortgages, the names of applicants for government jobs and the resume of a city department head in the face of criticism that he was unqualified for the position.⁴

Thus, the Freedom of Information law is needed to ensure that the public interest is being protected. The Legislature declared the 1989 law was based on three principles:

1. In a democracy, the people are vested with the ultimate decision-making power.
2. Government agencies exist to aid the people in the formation and conduct of public policy.
3. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest.

Building on these three principles, the Legislature then declared two policies that over-arched the 1989 law:

1. It is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.
2. The policy of conducting government business as openly as possible must be tempered by the recognition of the right of the people to privacy as contained in the two sections of Article I of the State Constitution.

Based on these principles and declared policies, the Legislature then mandated that the underlying purposes and policies of the Freedom of Information law included:

1. Promoting the public interest in disclosure;
2. Enhancing governmental accountability through a general policy of access to government records;

³Quoted by Allison Lynde in *Report of the Governor's Committee on Public Records and Privacy*, Vol. I at 47 (December 1987).

⁴*Id.*

3. Balancing the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.

The 1989 law also makes state and local agencies accountable to the public in other ways for information disclosure policies and practices. While the law does not grant an absolute right to examine government records, it provides a right to request records and to receive a response to the request. No reason needs to be given why the record is being sought. If a requested record cannot be released, requesters are entitled to a reason for the denial. And requesters have a right to appeal the denial and, if necessary, to challenge it in court. Thus, the maintenance and disclosure of state and local information cannot be controlled by arbitrary and unreviewable actions.

In addition, to prevent secret government recordkeeping on individuals and groups—such as occurred prior to the warrant-less seizure and round-up of Hawai'i's Japanese American citizens and resident aliens during World War II—lawmakers required that state and city/county records must be compiled in a report that is made public.⁵ This huge directory, called the Records Report System, is unique among state governments. It is discussed beginning on page 25 of this booklet.

⁵HAW. REV. STAT. § 92F-18(b), (c) (Supp. 1990).

Q: *Who can make a request?*

A: Hawai'i's law applies to any "natural person," whether a citizen or noncitizen, resident or nonresident, and to corporations.

Q: *What part of government is covered by Hawai'i's Freedom of Information law?*

A: The law applies to records held by a broad range of governmental units in Hawai'i. Those units are covered by a definition of "agency" which includes both the Legislature and the Judiciary. The definition reads:

"Agency" means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the court of this State.⁶

The law applies to records held by state and local government agencies in the executive branch, the city/county councils, the administrative functions of the state-

⁶HAW. REV. STAT. § 92F-3 (Supp. 1990).

wide courts and to all records of the state Legislature except those specifically exempted under the law.

The law also applies to any association of counties, to any "instrumentality of state or county government," to any "corporation or other establishment owned, operated, or managed by or on behalf of this State or any county."⁷

The law does not apply to the nonadministrative functions of the Judiciary. These are excluded so as "to preserve the current practice of granting broad access to the records of court proceedings. The records of the Judiciary which will be affected by this bill are the administrative records."⁸

⁷ *Id.*

⁸Conference Committee Report 112-88 on H.B. No. 2002, *House Journal*, at 817-819 (1988).

The law also does not apply to records held by the U.S. government or those held by private companies or individuals.

Government Records that Are 'Unambiguously' Disclosable

This list includes:

1. **Rules** of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
2. **Final opinions** and orders made in the adjudication of cases;
3. **Minutes** of all agency meetings required by law to be public, information contained in or compiled from a transcript, minutes, report or summary of a proceeding open to the public and information collected and maintained for the purpose of informing the general public;
4. **Land** ownership, transfer and lien records;
5. **Rosters** of persons holding licenses and permits granted by an agency
6. **Results of environmental tests;**
7. **Pardons** and commutations, as well as directory information concerning an individual's presence at any correctional facility;
8. **Much information concerning government purchasing** and bid results, certified payroll record on public works contracts, contract hires and consultants, name, address, and occupation of any person borrowing funds from a loan program, and the information on government employees, including the compensation of some—but not all—of them.

Q: *What kinds of information can be obtained?*

A: All the government records are to be open to public inspection, copying, duplicating during business hours—with certain exceptions.⁹

Government record means

... information maintained by an agency in written, auditory, visual, electronic, or other physical form.¹⁰

Thus, a requester may seek a printed or typed document, tape recording, map, computer printout, computer tape or a similar item. The form in which a record is maintained by an agency does not affect its availability.

The law generally provides that a requester may ask for *records* rather than information. This means that an agency is required to look only for an existing record or document in response to a request. An agency is not required to collect information it does not have. Nor must an agency do research or analyze data for a requester. And an agency is not obliged to create a new record that summarizes or compiles its holdings.

This definition covers much of the information collected by Hawai'i's state and local governments from individuals and businesses. For example, the Legislature declared some records as "unambiguously requiring disclosure," even if doing so involved an invasion of personal privacy or a frustration of legitimate government purpose.¹¹ (See box on page 9.)

⁹HAW. REV. STAT. § 92F-11 (Supp. 1990).

¹⁰HAW. REV. STAT. § 92F-3 (Supp. 1990).

¹¹Conference Committee Report 112-88 on H.B. No. 2002, *House Journal*, at 817-819 (1988); see listing in HAW. REV. STAT. § 92F (Supp. 1990).

Q: *How quickly will the agency respond?*

A: The law does not specify the time limit within which the agency must respond to the request. But a time limit of 10 days is included in administrative rules or of longer periods for exceptional cases.

Q: *On what grounds can an agency deny a request?*

A: Although Hawai'i's law encourages disclosure of government records, it also recognizes the legitimate need to restrict disclosure of some information.

A request to an agency for public access to a record may be denied if it falls within any of five exemptions (or exceptions) to the general rule requiring disclosure of all government records. (See box, opposite page.)

These exemptions, however, are not to be used to close records that were available to the public before mid-1988, the Legislature indicated.¹²

Before discussion of the five exemptions, five general points need to be made.

¹²Conference Committee Report 112-88 on H.B. 2002, *House Journal* at 817-819 (1988). This important passage on exceptions to public access reads: "The records which will not be required to be disclosed under Section -13 are records which are currently unavailable. It is not the intent of the Legislature that this section be used to close currently available records, even though these records might fit within one of the categories of this section."

1. The statute *does not prohibit* the releasing of records in the exempted categories. Instead, the statute simply *permits* the withholding of records falling under the five provisions.

Put another way, under these exemptions, an agency may withhold the exempted record. But it is not always required to do so.

Exemptions to the Open-Records Requirement

Agencies are not required to release records to the public:

1. If disclosure would constitute "a clearly unwarranted invasion of personal privacy"¹³ or
2. If disclosure would cause "the frustration of a legitimate government function"¹⁴ or
3. If disclosure is protected by "state or federal law, including an order of any state or federal court" or
4. If the records pertain to "the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable"¹⁵ or
5. If records are "inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature."¹⁶

But even these restrictions are permissive—that is, an agency *is not required* to disclose records falling under these provisions. Conversely, these provisions do not *prohibit* the agency from releasing the records.

¹³HAW. REV. STAT. § 92F-13(1) (Supp. 1990).

¹⁴HAW. REV. STAT. § 92F-13(3) (Supp. 1990).

¹⁵HAW. REV. STAT. § 92F-13(2) (Supp. 1990).

¹⁶HAW. REV. STAT. § 92F-13(5) (Supp. 1990).

For example, a budget worksheet — which is specifically listed as an exempted record — could be disclosed by the Legislature, perhaps because no harm would result from disclosure or because some good might result.

2. When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. The law specifically allows for the “segregating of disclosable records.”¹⁷

Thus, after deletion of the non-disclosable portions, the agency must still provide the record. This is a very important requirement because it prevents an agency from withholding an entire document simply because one line or one page is exempt.

3. The agency cannot deny records because of the identity of the requester — nor need the requester give his or her name.
4. The agency cannot deny most records it controls because of the requester’s purpose in seeking the information. But explaining the purpose voluntarily may benefit the requester.
5. The agency may not deny access to records it controls because the information is available elsewhere from a nonpublic source.

The five exemptions — or exceptions — to the general rule that all government records are accessible to the public are now discussed as they relate to the Freedom of Information section in Part II of Hawai‘i’s law.

¹⁷HAW. REV. STAT. § 92F-42(13) (Supp. 1990).

Exemption 1 Clearly Unwarranted Invasion of Personal Privacy

This first exemption permits the withholding of

... government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.¹⁸

This exemption requires agencies to strike a balance between an individual’s right of privacy and the public’s right to know. But, since only a clearly unwarranted invasion of privacy is a basis for withholding, there is in this exemption a perceptible tilt in favor of disclosure.

It is this exemption that has created much news in recent years when *Ka Leo O Hawai‘i* published the names of several professors who were found to have violated the

¹⁸HAW. REV. STAT. § 92F-13(1) (Supp. 1990).

University of Hawai'i policy on sexual harassment and then the faculty union sued to prevent publication of additional names.

Later, the unions representing police officers and other government employees went to court and to the state Legislature to block disclosure of the identities of their members who had been suspended or fired for employment-related misconduct.

In 1995 the Legislature decided that the identity of a county police officer who is terminated may be disclosed to the public, thus overriding the significant privacy interest of the individual.¹⁹ But for an officer who is suspended, his or her significant privacy interest overrides disclosure of his or her identity to the public, thus keeping that information secret. The measure also requires each county police chief to submit an annual report to the legislature that summarizes incidents of police officer misconduct, indicates the disciplinary action imposed, and the number of officers suspended or discharged for malicious use of force, mistreatment of prisoners, drug abuse, and cowardice.²⁰

In 1997, however, citing a Hawaii Supreme Court decision, OIP held that the identities of police officers suspended for misconduct were disclosable.²¹ Identities of other government employees suspended or discharged because of work-related misconduct and information about their misconduct had already been disclosable under the statute.²²

One purpose in passing the law, the Legislature declared, is that

... the policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawai'i.²³

Section 7 of Article I of the Constitution reads:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.²⁴

Section 6 of Article I reads:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest.

¹⁹S. B. 171, S. D. 1, H. D. 1, C. D. 1, Conference Committee Report 81.

²⁰*Id.*

²¹OIP Opinion Letter No. 97-1.

²²HAW. REV. STAT. § 92F-14 (Supp. 1992).

²³HAW. REV. STAT. § 92F-2 (Supp. 1990).

²⁴HAW. CONST., Art. 1, §7.

The legislature shall take affirmative steps to implement this right.”²⁵.

This section’s privacy-related aspects, as proposed by the 1978 Constitutional Convention, focused on government authority in criminal cases that involved wiretapping and electronic surveillance.

The Legislature, in passing the law in 1988, included considerable detail on this exemption in the statute and in committee reports.

These details provide a four-point sliding scale for measuring the competing interests, although the official language employs the more standard “balancing test” metaphor. The sliding scale, as specified in the Legislature’s language, is:

1. If the individual’s privacy interest is not “significant,” a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy.²⁶

²⁵HAW. CONST., Art. 1, §6.

²⁶Conference Committee Report 112-88 on H.B. No. 2002, 14th Legislature, Regular Session, *House Journal* at 817-819 (1988).

Examples of Significant-Privacy-Interest Information

1. Medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
2. An investigation into a possible violation of criminal law;
3. Eligibility for social services or welfare benefits;
4. An agency’s personnel file, or applications, nominations, recommendations or proposals for public employment or appointment to a government position;
5. An individual’s nongovernmental employment history “except as necessary to demonstrate compliance with requirements for a particular government position;
6. “An individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
7. An inquiry into fitness for granting or retaining a license, except “the record of any proceeding resulting in the discipline of a licensee and the grounds for discipline” and “the record of complaints including all dispositions;”
8. A personal recommendation or evaluation.

2. Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.²⁷
3. Should any dispute arise, the Legislature also included the following as “a clear legislative expression of intent”²⁸:

Once a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure.²⁹

4. More specifically, the Legislature included in the statute a list of “examples of information in which the individual has a significant privacy interest.”³⁰ (See box on previous page.)

Supplementing the Legislature’s examples is a growing number of OIP opinions that are regularly applying this exemption to such categories of information as home telephone numbers of individuals regardless of status or occupation.

Moreover, if an agency is unable to determine whether a telephone number applies to an individual’s business or residence, then the agency is to withhold that information from public inspection.³¹

Examples of records that OIP decided were closed because of the significant-privacy-interest exemption include applications to a university graduate program; identities of the subjects and requesters in Ethics Commission opinions; a county’s mailing list of senior citizens; the addresses and telephone numbers in a computerized database.³²

In the past, the right of privacy generally attached only to living human beings and it disappeared with the death of the individual, according to court decisions.³³ And OIP has decided that the photograph of a deceased former government employee must be disclosed because “an individual’s privacy interests expire upon the individual’s death.”³⁴

But this notion may be changing. Federal rules in 2001 began to recognize “a privacy interest in protected health information following an individual’s death.”³⁵

Part III of the law — on Disclosing Personal Records — also regulates the release of records only to individuals

²⁷HAW. REV. STAT. § 92F-14 (Supp. 1990).

²⁸Conference Committee Report 112-88 on H.B. No. 2002, *House Journal* at 817-819 (1988).

²⁹*Id.*

³⁰HAW. REV. STAT. § 92F-14(b) (Supp. 1990).

³¹OIP Opinion Letter No. 90-35 (December 17, 1990).

³²OIP Opinion Letters Nos. 95-10, 96-2, 99-6, 93-16 respectively.

³³Harold L. Nelson and Dwight L. Teeter, Jr. *The Law of Mass Communications* at 167 (1978).

³⁴OIP Opinion Letter No. 97-2 (May 18, 1990).

³⁵www.state.hi.us/oip/guidanceauditor.pdf, accessed Oct. 9, 2003.

about whom the records pertain. These two Parts of the law overlap to some extent, but there is no inconsistency. Individuals seeking records about themselves should cite both laws when making a request. Citing both laws ensures that the maximum amount of disclosable information will be released. Records that can be denied to an individual under Part III may not necessarily be exempt under the Freedom of Information segment in Part II. (See page 30.)

Examples of Frustration of Legitimate Government Function

The Legislature gave the following examples of records that need not be disclosed if disclosure would frustrate a legitimate government function:

1. Those compiled for law enforcement purposes;
2. Those used to administer an examination which might compromise the validity, fairness or objectivity of the examination;
3. Those which would raise the cost of government procurements or give a manifestly unfair advantage to any persons proposing to enter into a contract or agreement with an agency, including information pertaining to collective bargaining;
4. Those pertaining to real property under consideration for future public acquisition;
5. Those containing administrative or technical information, including software, operating protocols and employee manuals, which, if disclosed, would jeopardize the security of a record-keeping system;
6. Those containing proprietary information, such as research methods, records and data, computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by an agency or entrusted to it;
7. Those containing trade secrets or confidential commercial and financial information;
8. Some library, archival or museum material contributed by private persons; and
9. Those expressly made nondisclosable or confidential under state or federal law or protected by judicial rule.³⁶

³⁶Senate Standing Committee Report No. 2580 on H. B. No. 2002, *Senate Journal* at 1093-1095; this section of this report is referenced in Conference Committee Report 112-88 on H.B. No. 2002 (1988).

Exemption 2 Judicial or Quasi-Judicial Action Involving the State or a County

The second exception to the general rule that all records are open indicates that the law shall not require disclosure of:

Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable.³⁷

The Legislature described this exemption as self-explanatory.³⁸

³⁷HAW. REV. STAT. § 92F-13(2) (Supp. 1990).

³⁸Conference Committee Report 112-88 on H.B. No. 2002, *House Journal* at 817-819 (1988).

Exemption 3 Frustration of Legitimate Government Function

The third exception to the general rule that all records are presumed to be open specifies that the law shall not require disclosure of:

Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.³⁹

(See box at left.)

Examples of records that OIP decided were closed because of the frustration-of-government-function exemption include the Department of Education's release of information contained in FBI identification reports; the identity of a person complaining to the Department of Health about alleged violations of state law; and the videotaped confession of Grace Imura-Kotani in a police cellblock and her final statement made before her suicide.⁴⁰

³⁹HAW. REV. STAT. § 92F-13(3) (Supp. 1990).

⁴⁰OIP Opinion Letters No. 92-23, 99-7, 90-18 respectively.

Exemption 4 Protected from Disclosure by Law or Court Order

The fourth exemption to the general rule that all records are presumed to be open specifies that the law shall not require disclosure of:

Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure.⁴¹

The Legislature described this exemption as self-explanatory.⁴²

In 1992, this related provision was added:

Funding, services, and other federal assistance. Where compliance with any provision of this chapter would cause an agency to lose or be denied funding, services, or other

⁴¹HAW. REV. STAT. § 92F-13(4) (Supp. 1990).

⁴²Conference Committee Report 112-88 on H.B. 2002, *House Journal* at 817-819 (1988).

assistance from the federal government, compliance with that provision shall be waived but only to the extent necessary to protect eligibility for federal funding, services, or other assistance.⁴³

⁴³HAW. REV. STAT. § 92F-4 (Supp. 2002).

Exemption 5 Relating to the Legislature

The fifth exemption to the general rule that all records are presumed to be open specifically excludes some papers relating to the Legislature. That exemption indicates that the law shall not require disclosure of:

Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.⁴⁴

Section 21-4 refers to procedures used by investigating committees to adopt rules.

⁴⁴HAW. REV. STAT. § 92F-13(5) (Supp. 1990).

Making the Request

Individuals requesting information under Part II, or the Freedom of Information part, do so by asking to obtain a government record.

For an overview of many government records on which OIP has already issued opinions, see pages 34-35 for the summary of opinion letters since 1989.

Step 1 Identifying the Proper Agency

The first step in making a request for public records is to identify the agency that has the records.

There is no central government records office that services requests. Within each agency, queries may best be directed to the lowest level that holds, compiles and maintains the record, such as a branch within a state department. A copy of any written correspondence may also be sent to the head of that department and to the Office of Information Practices (OIP), discussed below.

Often, a requester knows beforehand which agency has the desired records. If so, requests may be made by contacting that agency by consulting either the state listing or city/county listing in the local telephone directory or in the *Directory of State, County and Federal Officials*,⁴⁵ which is online at: www.state.hi.us/lrb/capitoli/dirguide. Those unable to locate the right telephone number may telephone the state switchboard at (808) 586-2211.

Those needing help in finding the right state agency may telephone the state Office of Information at (808) 586-0221.

Those needing help in finding the right city agency in Honolulu may telephone (808) 523-2489.

Or a requester unfamiliar with which agency has the desired record may also consult a government directory such as the *Guide to Government in Hawai'i*.⁴⁶ This guide discusses Hawai'i's state and county departments, their organization and functions. It also contains helpful organizational charts of the city/counties and of state departments; it is available online.

⁴⁵This directory is published periodically by the Legislative Reference Bureau and sold for about \$4 at its library in the State Capitol (tel. 587-0666).

⁴⁶This Guide is published periodically by the Legislative Reference Bureau and is sold for about \$5 at its library.

Step 2 Specifying the Desired Record

As much specific information as possible should be included in asking for a record. If known, include the specific form number, issuing agency and dates or time period when the record might have been created.

Lacking specifics, one might want to make an informal telephone call to the agency. Consulting the annual report of the agency may also reveal the kinds of records created and maintained by that agency. Annual reports are available at the agency or in the Hawai'ian/Pacific Collections of Hamilton Library at the University of Hawai'i at Mānoa.

Step 3 Contacting the Agency

The law does not require that requests be in writing. Yet, individuals or businesses may be better off making their first formal request in writing.

If persons make oral requests, they are advised to keep a log of the names of government employees contacted. Recording the date of making the initial request and the gist of the conversation is also important.

Letters requesting records can be short and simple. No one needs a lawyer to make a request. The Appendixes B and C contain a sample letter requesting access to records under Part II and a request form.

There are three basic elements to a request letter:

1. A statement that the request is being made under Part II;
2. Identification of the records that are being sought, as specifically as possible;
3. The name and address of the requester.⁴⁷

Several optional items may also be included:

1. The telephone number of the requester. This permits an agency employee processing a request to telephone if necessary.
2. A question about fees that the requester might have to pay. It is common for requesters to ask to be contacted if the charges will exceed a fixed amount. This option allows a requester to modify or withdraw a request if the cost is too high. Fees for searching for or segregating data from records are discussed in administrative rules discussed earlier.

⁴⁷This is the procedure that is also useful for using the federal Freedom of Information Act.

Requesters should keep a copy of their initial letter and related correspondence until the request has been finally resolved.

Envelopes should contain in the lower left-hand corner: Freedom of Information Request. A letter sent to the office or branch within an agency might also be copied and sent to the agency head and to OIP.

Appealing Agency Denial of Access

Whenever an agency has denied an initial request for a government record, the requester may choose one of two ways to begin a direct appeal. These two ways are discussed below.

One way to appeal an agency denial to a government record is to proceed directly to the state courts. At any time within two years after the denial, the requesting individual, corporation or other legal entity may sue the agency to compel disclosure.⁴⁸ “The intent of the Legislature is that exhaustion of administrative remedies shall not be required in any appeal of a refusal to disclose records.”⁴⁹

⁴⁸HAW. REV. STAT. § 92F-15(a), (b) (Supp. 1990).

⁴⁹Conference Committee Report 112-88 on H.B. No. 2002, *House Journal* at 817-819 (1988).

Option 1 Appealing to a Circuit Court

The agency has the burden of proof to establish justification for nondisclosure.⁵⁰

The law permits a liberal range of state courts in which the agency may be sued.⁵¹ The suit may be brought in the circuit court in which the request for the record is made, where the requested record is maintained, or where the agency’s headquarters are situated.⁵²

This court action — and any appeal from it — may take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument “at the earliest practicable date and expedited in every way.”⁵³

The court shall hear the matter de novo⁵⁴ — that is, anew or from the beginning. And it may examine the requested government record behind closed doors — that is, in camera — to assist in determining whether it, or any part of it, may be withheld.⁵⁵

If the party suing the agency wins in circuit court, the court “shall assess against the agency reasonable attorney’s fees and all other expenses reasonably incurred in the litigation.”⁵⁶ Those filing FOI-related civil suits must notify OIP in writing at the time of the filing so that the office may intervene.⁵⁷

⁵⁰HAW. REV. STAT. § 92F-15(c) (Supp. 1990).

⁵¹Conference Committee Report 112-88 on H.B. No. 2002, *House Journal* at 817-819 (1988).

⁵²HAW. REV. STAT. § 92F-15(e) (Supp. 1990).

⁵³HAW. REV. STAT. § 92F-15(f) (Supp. 1990).

⁵⁴HAW. REV. STAT. § 92F-15(b) (Supp. 1990).

⁵⁵*Id.*

⁵⁶HAW. REV. STAT. § 92F-15(d) (Supp. 1990).

⁵⁷HAW. REV. STAT. § 92F-15.3 (Supp. 2002).

Option 2 Appealing to Office of Information Practices

The second way an individual, corporation or other legal entity may appeal an agency denial to a government record is to proceed directly to the Office of Information Practices (OIP).⁵⁸

To aid the transition to Hawai'i's new information-policy framework, the Legislature created the Office of Information Practices (OIP).

This office is to assist the public, government officials and the news media in gaining access to official records and in determining what specific kinds of official information should be kept confidential.

This Office of Information Practices is situated in Room 107, No. 1 Capitol District Building, 250 South King Street, Honolulu, Hawai'i 96813. Telephone: 586-1400. Fax: 586-1412. Email: oip@state.hi.us. OIP warns that email is not a secure medium. Website: <http://www.state.hi.us/oip>. The Director of OIP, appointed by the Governor, is Leslie Kondo.

OIP is "intended to serve initially as the agency which will coordinate and ensure implementation of the new records law. In the long run, however, the Office is intended to provide a place where the public can get assistance on records questions at no cost and within a reasonable amount of time."⁵⁹

OIP periodically sends batches of its formal opinions to interested persons and agencies. It also frequently updates and distributes lists and indexes to these opinions and to tables of cases and of statutes cited. These materials are compiled in red three-ring notebooks labeled "UIPA Reference Manual." OIP's big red books are indispensable for persons serious about following the evolution of Hawai'i's 1989 law, but they duplicate OIP's website.

OIP's review of an agency denial of access to a government record uses the procedures of informal dispute resolution, rather than the more formal rules governing contested cases.⁶⁰

If OIP decides the record should be disclosed, that Office notifies the requester and the agency is required to release the record. An agency dissatisfied with OIP's decision "does not have the right to bring an action in Circuit Court to contest the OIP ruling. The legislative intent for expediency and uniformity in providing access to

⁵⁸HAW. REV. STAT. § 92F-15.5 (Supp. 1990).

⁵⁹Conference Committee Report 112-88 on H.B. No. 2002, *House Journal* at 817-819 (1988).

⁶⁰Conference Committee Report 167 on S.B. No. 1799, *House Journal* at 843 (1989).

government records would be frustrated by agencies suing each other.”⁶¹

In contrast, if OIP agrees — either completely or in part — with the agency’s withholding of the record, the requester is to be notified in writing of the decision, the reasons for the decision and the party’s right to bring suit in Circuit Court.⁶²

OIP’s rulings and opinions are admissible in court.⁶³

The 1998 Legislature amended Chapter 92F in several significant ways. First, a person who files a civil lawsuit that affects this Chapter is required to notify OIP at the time of the filing; OIP may intervene in the action.⁶⁴ Second, for administrative purposes, OIP was moved from the Department of Attorney General and was established as a temporary unit for a special purpose within the Office of the Lieutenant Governor.⁶⁵ Third, OIP’s powers and duties were expanded so that it takes action to oversee that state and county boards comply with Hawai‘i’s open-meeting law — the so-called Sunshine Law. OIP is to receive and resolve complaints, advise all government boards and the public about compliance with the Sunshine Law and report annually to the Legislature on all complaints received.⁶⁶ These changes were signed into law. The FOI portion of Chapter 92F was unamended in later years.

⁶¹Conference Committee Report 167 on S.B. No. 1799, *House Journal* at 843 (1989).

⁶²HAW. REV. STAT. § 92F-15.5(b) (Supp. 1990).

⁶³HAW. REV. STAT. § 92F-15(b) (Supp. 1990).

⁶⁴H.B. 2774, S.D. 1; SSCR 2855.

⁶⁵§ 92F-41 was amended by Section 4 of S.B. 2983, S.D. 2, H.D. 2, C.D. 1, CCR 121.

⁶⁶This expansion of powers and duties is detailed in Sections 2 and 5 of S.B. 2983, S.D. 2, H.D. 2, C.D. 1, CCR 121. The specific portion of the Sunshine Law that OIP is to administer is Part I of H.R.S. Chapter 92.

Eying the Records Report System

Hawai'i's 1988 Freedom of Information law carries one other important provision — one urged by citizens to eliminate secret recordkeeping on individuals and groups by state and local governments.⁶⁷ This provision requires state and city/county agencies to disclose to the public and to the Office of Information Practices the existence of their types of records — and to cite their legal authority for maintaining each record type. When enacted, this provision in Hawai'i's law was the most sweeping in the country among state governments⁶⁸ and went well beyond the disclosure practices of the federal government.

⁶⁷See testimony offered by American Association of University Women, Hawai'i State Division, in *Report of the Governor's Committee on Public Records and Privacy*, Vol. II, at 147 and by Beverly Ann Deepe Keever at 335-371 (December 1987).

⁶⁸Before Hawai'i's law was enacted, the federal government and the state of Utah had instituted a similar scheme for disclosing records maintained on individuals — but not for records maintained on groups, businesses, corporations and on official transactions; neither maintained a centralized office for disclosure of records.

Excerpts from an annual report describing Utah's noncomputerized classification of its records on individuals is contained in Report of the Governor's Committee on Public Records and Privacy, Vol. III at 341-361 (December 1987).

Hawai'i is also among the few states to have all state and county executive, legislative, and judicial branches of government included under in its Freedom of Information law, according to Governor John Waihee, *Openline*, Office of Information Practices' newsletter, Vol. 5, No. 9 at 2 (October 1993).

⁶⁹For a discussion on federal recordkeeping on resident aliens and Japanese American citizens, see *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians* at 51-60 (December 1982); for the federal interface with a specially formed espionage unit of the Honolulu Police Department, see Michael John Gordon, *Suspects in Paradise: Looking for Japanese "Subversives" in the Territory of Hawai'i, 1939-1945*, and *Honolulu Weekly*, March 15, 1995, at 3.

⁷⁰Michael V. Little, Office of Information Practices, at a demonstration of the Records Report System, Honolulu, April 27, 1995.

⁷¹*OIP Openline*, (Office of Information Practices' newsletter), Vol. 5, No. 9 at 2 (October 1993).

At the outbreak of World War II secret dossiers on individuals enabled government agents in Hawai'i to seize selectively and then incarcerate without warrants or probable cause hundreds of citizens and alien residents of Japanese descent. They were relocated behind barbed wire in isolated inland camps for the duration of the war because they were feared for acts of espionage or sabotage.⁶⁹

As of April 25, 1995, more than 20,000 state and local government record types⁷⁰ — or about one-eighth of the estimated total — had been amassed by the Office of Information Practices and entered into a fully automated, online statewide computer system that was expected to become the largest in Hawai'i. The computer printout listing the names of these 20,000 records is nearly an inch thick. This computerized, centralized directory of all state and local governmental records will be the first of its kind in the nation⁷¹ and unique in the United States.

As of July 1, 2002, 33,649 record types have been reported by agencies to the RRS. These cover 24,169 by state executive agencies; 816 by the legislature; 1,645 by the Judiciary; 4,433 by City and County of Honolulu; 976 Hawai'i County; 861 by Kaua'i County; 749 by Maui County. Of these, 59 percent are completely accessible to the public, 7 percent are accessible only to specific persons or under certain conditions, 14 percent are accessible after segregation of confidential information, 16 percent are unconditionally confidential and four percent are undetermined. OIP explains: "The record reports themselves, which only describe government records,

contain no confidential information and are completely public.”⁷²

Severe budget cuts since 1995 have slowed progress of the agency’s inputting records to the RRS. But the cumbersome computerized database is now being transformed for dissemination on the Internet, which is expected to become available to the public in 2004 in a far easier-to-use medium and format.⁷³

Citizens, journalists, government employees and businesses can gather much useful information from this online directory. They will be able to view a report of each record type entered into the database, including the name and location of the record, whether the record is public or confidential, the office to contact to request access to the record and the sources and uses of the information in the record.

In addition, officials can generate computerized reports that sort the agency’s records by name, by form number, by public/confidential access classification, by retention period and by media type such as paper, microfiche or computer disk. Much of this kind of information is required by law and is to be updated annually.⁷⁴

Individuals can search electronically through the 20,000 records to locate keywords — such as records related to elephants, milk or ethnicity. For example, four record names containing the term **ethnic?** were located among the 20,000 in the database on May 3, 1995. The computer printout of one of these four records is shown on page 27.

The printout illustrates the 29 fields of information entered in the database about each government record. Fields are identified by the number in the left-hand column. Field **3** in the left-hand column gives the number of the form that gave rise to the government record in the Department of Labor and Industrial Relations. This form, as shown on page 28, is accessible from DLIR but when filled out it is confidential until the name is redacted. Fields 6-9 show the name of the government official responsible for maintaining that record type and his address and telephone number; this is key information for those who want to know the contents of that type of record. Fields 10-13 explain that public access to those records that have been filled out would be permitted once the government employee’s name has been erased and the rationale for that access decision.

⁷²OIP, 2002 Annual Report, 46-47.

⁷³Michael V. Little interview at OIP, Oct. 8, 2003.

⁷⁴HAW. REV. STAT. § 92F-18 (Supp. 1990).

Field 27 listing "media type" indicates one of the 15 different ways in which that record may be stored, including on paper, computer disk, computer reel tape, CD ROM, film, microfilm, audio tape, videotape or photograph.

Although some agencies have been slow to catalog their records for OIP, they will benefit by saving their labor

and time in assisting the public and also by streamlining government operations.⁷⁵

The first agency that had entered all of its records was the Honolulu Zoo. Scanning its 1995 list of 362 record types provides a kind of x-ray of its various government operations, much like a budget depicts its flow of funds. The Zoo's list provides

a quick education in the many activities and tasks that the Zoo employees perform: everything from A to Z, from "Animal Keeper Daily Report" to "Zoo Goals and Objectives."

Some of the more intriguing record names are "Bird Correspondence" (these are literate birds!), Mouse Colony Protocol (mind your manners), "Change of Diet Request (more zoo animals that can write), and "Animal Escape Plans" (the animals never should have written them down!).⁷⁶

Of the 362 Zoo records, 96 percent are classified as public, indicating public access is required, and 4 percent are confidential/

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DATE 05/03/1995 - 16:22:28 - MVL
NBC0803C STATE OF HAWAI'I - OFFICE OF INFORMATION PRACTICES
RECORDS REPORT SYSTEM
FULL RECORD REPORT

**WARNING** THE OIP HAS NOT YET REVIEWED THIS RECORD.
1. RECORD NAME: STATE OF HAWAI'I, DLIR ETHNIC CATEGORY
2. COMMON NAME: ETHNIC CATEGORY
3. FORM NO: lir pers form #6
4. AGENCY: A STATE OF HAWAI'I EXECUTIVE AGENCIES 5. ABBREV: DLIR-PO
          42 LABOR & INDUSTRIAL RELATIONS
          02 PERSONNEL OFFICE RSN: 0020055

6. OFFICER INFORMATION 9. BUS. ADDRESS: 001
PERSONNEL OFFICER 830 Punchbowl Street
7. GOTO, EDWIN Keelikolani Building
PHONE: 586-9040 Honolulu HI 96813

10-12. ACCESS CLASS: CONFIDENTIAL/CONDITIONAL ACCESS - Access permitted to
C A 02 public after segregation of information protected from
disclosure by an applicable UIPA exception.
13. RATIONALE: Public disclosure of this information would clearly constitute an invasion of the employee's personal privacy.

14. LEGAL AUTHORITY FOR ACCESS CLASSIFICATION
CODE A: AUTHORITY: Hawaii Revised Statutes SECT: 92f-11

15. LEGAL AUTHORITY FOR MAINTAINING RECORD
CODE G: AUTHORITY: Hawaii Revised Statutes SECT: 26-20

16. RECORD RETENTION
CODE: B06 2 years
17. RECORD RETENTION REASON
CODE G: General Records Schedule-State of Hawai'i
6.22

18. INFORMATION KEPT IN THE RECORD
CODE: L1 Labor/Employment
P2 Personnel
19. INDIVIDUALS ABOUT WHOM RECORDS ARE MAINTAINED
CODE: G Employees
H Former Employees

20. NON-GOVERNMENT SOURCES
CODE: 08 Individual To Whom Record Pertains
21. GOVERNMENT AGENCY SOURCES

22. AUTHORITY WHICH STATES PROCEDURE TO REQUEST ACCESS
CODE: A UIPA (Chapter 92F, HRS) SECT: 92f-11
23. POLICIES AND PROCEDURES ABOUT STORAGE, RETRIEVAL & ACCESS CONTROLS
File security, such as locked file cabinets/drawers or
other means of storage, which require agency assistance for
record retrieval.

24. RECORD USES
CODE: 19 Personnel
25. ROUTINE NON-GOVERNMENT USERS OF THE RECORD
CODE: 08 Employees
26. GOVERNMENT AGENCY USERS
27. RECORD LOCATION
MEDIA TYPE: P Paper CODE: 900 All Subdivisions of the Dept.
HI
P Paper 001 830 Punchbowl Street
Keelikolani Building
Honolulu HI 96813

28. COMMENT:
29. PERSONAL RECORD: Y
*****

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⁷⁵Waihee, *OIP Openline*, Vol. 5, no. 9 at 3 (October 1993).

⁷⁶*OIP Openline*, Vol. 7, no. 3 at 1 (March 1995).

conditional, indicating access is permitted to the public after segregation of information that is protected from disclosure by an exception to Hawai'i's Freedom of Information presumption that all government records are open.⁷⁷

In addition, 98 percent of the Zoo's records are on paper and 2 percent are computer records.⁷⁸ These statistics about the Zoo remained unchanged, as of October 2003.

ETHNIC CATEGORY

The Equal Employment Opportunity Act of 1972 requires that the state maintain certain records of its employees including their ethnic categorization. In order that we may comply with the requirement, please circle one of the following letters to indicate your ethnic background.

CIRCLE ONE LETTER ONLY:

B. Black	W. White - also includes persons of Indo-European descent, e.g. Pakistani and East Indian; and persons of Portugese, Spanish or Latin descent (excluding Filipino and Puerto Rican).
C. Chinese	
F. Filipino	
H. Hawai'ian	
J. Japanese	M. Mixed - includes all mixtures other than part-Hawai'ian (Part-Hawai'ians circle "Part Hawai'ian" letter).
K. Korean	
P. Part-Hawai'ian	O. Other or unknown - (Specify if other).
R. Puerto Rican	
S. Samoan	

Date Signature

L&IR Per. Form #6 (5/80)

The Zoo now has an alphabetical list of its records sorted by types of information kept in the records, such as administrative records, financial records, budget, citizen inquiries/ correspondence, complaints, contracts, health-medical investigative records, license/permit, personnel, property management, and rules and regulations.⁸⁰

A sample of University of Hawai'i Records by unit in OIP's RRS is shown at right. UH had entered 689 record types into the RRS as of October 8, 2003. But most of these records were

for the late 1980s through mid-1990s and were entered by only five units (Director of Planning and Policy, Institutional Research Office, Personnel Management Office, Planning Office, Vice President of University Relations Office). More recent and extensive information contained in the reports themselves from numerous UH units are available on the UH website: www.hawaii.edu.

Besides streamlining government operations, Governor John Waihee, shortly before leaving office, said that Hawai'i's Freedom of Information law had also aided investigative journalism. "It was this administration that opened up all the files upon which reporters are now basing their investigative stories. It was not simply that in the 1990s the local newspapers suddenly discovered investigative journalism."⁸⁰

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Waihee, *OIP Openline*, Vol. 5, no. 9 at 1.

DATE 01/07/1998 -- 10:34:50 -- MVL
NBC0802 STATE OF HAWAI'I - OFFICE OF INFORMATION PRACTICES
RECORDS REPORT SYSTEM
RECORD NAMES BY AGENCY ORGANIZATION REPORT

UNIVERSITY OF HAWAI'I A 22 00 00 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
BOARD OF REGENTS A 22 01 00 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
OFFICE OF BOR SECRETARY A 22 01 00 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
STATE POST SEC EDUCATION COMM A 22 01 00 01 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
STATE OFFICE OF VOCATIONAL ED A 22 01 00 02 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
STATE DIRECTORS OFFICE A 22 01 00 02 01 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
OFFICE OF THE PRESIDENT A 22 02 00 00 01 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
EXEC OFFICE OF THE PRESIDENT A 22 02 00 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
EMPLOYMENT TRAINING OFFICE A 22 02 13 00 05 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
CHANCELLOR OF COMMUNITY COLLEGES A 22 02 13 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
HAWAI'I COMMUNITY COLLEGE A 22 02 13 07 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***

DIRECTOR OF PLANNING & POLICY A 22 02 08 00 00 00
1988 SAT REPORT
1988 UH FALL ENROLLMENT REPORT
1988 UHM ENROLLMENT STUDY
1988 UHM ENROLLMENT STUDY
1988 UHM ENROLLMENT STUDY
1988 UHM GRADUATING SENIOR SURVEY REPORT

EQU EMPL OPP/AFFIR ACT - MANOA A 22 02 11 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
INTERCOLLEGIATE ATHLETICS A 22 02 04 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
TECH TRANS & ECON DEV - MANOA A 22 02 10 07 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
UNIVERSITY BUDGET OFFICE A 22 02 09 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***

COLLECTIVE BARGAINING A 22 02 07 01 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
LEGAL AFFAIRS A 22 02 07 02 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
PERSONNEL MANAGEMENT OFFICE A 22 02 07 03 00 00
ANNUAL SUMMARY OF INVENTORIES REPORT
APPLICANT DATA SURVEY
APPLICATION FOR CIVIL SERVICE POSITION
DPS SPONSORED COURSES CC/UH REGISTRATION FORM
EMPLOYEE PERFORMANCE APPRAISAL SUMMARY

V.P. UNIVERSITY RELATIONS A 22 02 05 00 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
ALUMNI AFFAIRS A 22 02 05 03 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
MEDIA RELEASES & PUBLICATION A 22 02 05 02 00 00
*** NO RECORDS ON FILE FOR THIS AGENCY ***
VP UNIV RELATIONS OFFICE A 22 02 05 01 00 00
APPLICATION FOR LEAVE OF ABSENCE
APPLICATION FOR TRANSFER OF VACATION AND SICK LEAVE CREDIT
ATTORNEY GENERAL OPINION LETTER
AUTHORIZATION FOR OVERTIME WORK

Appendix A

A Note on Part III— Disclosure of Personal Records

Besides gaining access to government records generally, citizens may also want to review their own records held by a government agency.

Obtaining personal records is important to ensure that the records about oneself are accurate, up-to-date, complete — or should even be compiled and on file in the first place.

Inaccurate, incomplete or untimely records could damage a person's ability to get a desired job or promotion, a loan from the government for a variety of purposes or a license to engage in an industry, such as some construction work that is regulated by the State.

Relevant indicates that an agency must disclose that records are being compiled and maintained on an individual. Unlike the federal Privacy Act, state and local government units are not permitted under this part of the law to deny the existence of categories of records, even those they need not disclose.

Unlike Hawai'i's Freedom of Information part, which permits access only, the disclosure of personal records in Part III establishes the right to correct, amend or expunge records in which information about the requester is not accurate, relevant, timely or complete.

Part III of the law applies to "any accessible personal record" that is maintained by a state or local government agency in Hawai'i.⁸¹

The term "personal record" is broadly defined. The law reads:

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.⁸²

There are five exemptions to access to personal records. These exemptions cover certain types of records relating to law enforcement or to proceedings against the individual or to identifying a confidential source, compromising testing or the examination process, or those that are nondisclosable by judicial decision or by other authorities.

Those uncertain as to which part of the law to use or the part that will give the better results are advised to make requests under both parts — the Freedom of Information part and the Disclosure of Personal Records part.

The steps for obtaining one's own personal record generally are the same as those for obtaining records under the Freedom of Information part of Hawai'i's law. The requester may appeal to the Circuit Court if an agency refuses to disclose or correct one's own personal record.

⁸¹HAW. REV. STAT. § 92F-21 (Supp. 1990). This section reads: "Individual's access to own personal record. Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use."

⁸²HAW. REV. STAT. § 92F-3 (Supp. 1990).

Appendix B

Form Requesting Access to a Record

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: _____

TO: _____

FROM: _____
Name or Alias _____
Contact Information _____

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

I WOULD LIKE: (please check one or more of the options below)

- To inspect the government record.
- A copy of the government record: (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
- Pick up at agency (date and time): _____
- Mail
- Fax (toll free and only if available)
- Other, if available (please specify): _____
- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
- Electronic Audio Other (please specify): _____
- Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

SEE BACK FOR IMPORTANT INFORMATION

OIP 1 (rev. 9/12/01)

Form Requesting Access to a Record

FEES FOR PROCESSING RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your record request, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

WAIVER OF FEES IN THE PUBLIC INTEREST

Up to \$60 of fees for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are:

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances* the agency must respond within 20 business days from the date of your request. If you have questions about the response time, you may contact the agency's UIPA contact person. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 808-586-1400.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under §2-71-16, Hawaii Administrative Rules. You may obtain a copy of these rules from the Lieutenant Governor's Office or from the Office of Information Practices. These responsibilities include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees, if assessed.

Appendix C

Sample Letter Requesting Government Record Access Under FOI (Part II)

Agency or Branch Head
Title
Name of Agency
Address of Agency
City, State ZIP

Re: Freedom of Information request under Part II, UIPA

Dear _____:

Under the provisions of the Uniform Information Practices Act (Modified), Part II — Freedom of Information, I am requesting access to [identify the records as clearly and specifically as possible].

If there are any fees beyond \$30 for processing the record I have requested, please inform me before you fill the request. [Or: Please supply the records without informing me if the fees do not exceed \$_____.]

[Optional: I am requesting this information [state the reason for your request if you think it will assist you in obtaining the information.]

[If appropriate, choose one or more options: I request a waiver of up to \$60 in fees in the public interest and am attaching a statement of facts that 1. the requested record pertains to the operations of activities of an agency, 2. the record is not readily available in the public domain, 3. I have the primary intention and the actual ability to widely disseminate information from the government record to the public at large.]

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information.

I should appreciate your handling this request as quickly as possible, and I look forward to hearing from you within 10 days.

Sincerely,

Signature
Name
Street Address
City, State, ZIP

[Optional] Business telephone
[Optional] Home telephone
[Optional] E-mail

Note: Be sure to write in the lower left-hand corner of the envelope used for mailing:
Uniform Information Practices Act (Modified), Part II — Freedom of Information Request

Appendix D

Opinion Letter Summaries on OIP's Website

Op Ltr No	Date	Subject
1989		
89-01	September 11, 1989	Notices of Workers' Compensation Insurance
89-02	October 27, 1989	Executive Search Committee Report
89-03	November 3, 1989	Delinquent Taxes; Offers-in-Compromise
89-04	November 9, 1989	Waiting List for Hawaiian Homelands
89-05	November 20, 1989	Names and Occupations of Government Loan Recipients
89-06	November 20, 1989	Delinquent Loan Reports
89-07	November 20, 1989	Gubernatorial Pardons
89-08	November 20, 1989	Certified Payroll Records on Public Works Contracts
89-09	November 20, 1989	Law School Admissions Committee Membership
89-10	December 12, 1989	Settlement Agreements; Aloha Stadium Litigation
89-11	December 12, 1989	Compensation Paid to Ushers at Blaisdel Arena
89-12	December 12, 1989	Identity of Complainant
89-13	December 12, 1989	Special Treatment Facility Information
89-14	December 15, 1989	Directory Information About Inmates
89-15	December 20, 1989	Aloha Tower Development Proposals
89-16	December 27, 1989	Home Addresses and Home Telephone Numbers
89-17	December 27, 1989	Adult Residential Care Home Violations
1990		
90-01	January 8, 1990	Public Employees' Retirement Allowances
90-02	January 18, 1990	Confidentiality Agreements; Vendor's Proposals
90-03	January 18, 1990	Airport Lessee Revenue Audits
90-04	January 29, 1990	Certified Drivers' Abstracts
90-05	January 31, 1990	Child Abuse Reports
90-06	January 31, 1990	Training Course Materials
90-07	February 9, 1990	Social Security Numbers and Birthdates
90-08	February 12, 1990	Intra-agency Memoranda and Staff Notes
90-09	February 26, 1990	Water Service Customer Home Telephone Numbers; Inter-Agency Disclosure
90-10	February 26, 1990	Disclosure of Confidential Data to Legislators
90-11	February 26, 1990	University Program Review Reports
90-12	February 26, 1990	Agency Employee Misconduct; Disciplinary Records
90-13	March 30, 1990	Unclaimed Property Valuations
90-14	March 30, 1990	Certified List of Eligibles
90-15	April 9, 1990	Government Purchasing Information
90-16	April 24, 1990	Names of Persons Serving on University Search Committee
90-17	April 24, 1990	Vacation and Sick Leave Records of Agency Employees
90-18	May 18, 1990	Video-Taped Confession in Homicide Investigation
90-19	May 23, 1990	Unified Senate Committee Reports
90-20	June 12, 1990	Building Permit Applications
90-21	June 20, 1990	Financial and Compliance Audit of Advocacy Agency

90-23	June 28, 1990	Vital Statistic Records
90-24	July 9, 1990	Inter-Agency Disclosure of Retiree's Data
90-25	July 12, 1990	Firearm Permit Applications
90-26	July 19, 1990	Welfare Records of Deceased Individuals
90-27	July 19, 1990	Research Corporation of UH; Status Under the UIPA
90-28	August 23, 1990	Contractors License Revocation Information
90-29	October 5, 1990	Water Service Consumption Data
90-30	October 23, 1990	Circulation Records of Library Patrons
90-31	October 23, 1990	Use of Public Records; Applicability of UIPA
01-06	December 31, 2001	The Public's Right to Testify on Agenda Items, and Agenda Requirements, Under the Sunshine Law
01-07	December 31, 2001	Maui County Charter
2002		
02-01	February 1, 2002	Request for Disclosure of Settlement Agreement Between an Agency and a Private Party
02-02	May 28, 2002	Limits on Oral Testimony at County Council Meetings
02-03	May 28, 2002	Records Protected from Disclosure by Court Order
02-04	June 26, 2002	Reports Under Section 8-14.2, Revised Ordinances of Honolulu
02-05	July 30, 2002	Agency Maintenance of Records Submitted by Private Entity
02-06	August 23, 2002	Withholding of Minutes of a Public Meeting
02-07	August 27, 2002	Schedule of Maximum Allowable Medical Fees
02-08	September 6, 2002	'Olelo: The Corporation For Community Television and Ho'i'ke: Kauai Community Television, Inc.
02-09	September 24, 2002	Actions on Bills and Resolutions Without Notice
02-10	October 23, 2002	Adjudicative Records of the Judiciary, Administrative Driver's License Revocation Office
02-11	November 14, 2002	Meetings of Councilmembers Who Have Not Yet Officially Taken Office to Discuss Selection of Officers
02-12	November 22, 2002	FAMIS Access
02-13	December 31, 2002	Attorney Client Privilege
2003		
03-01	February 5, 2003	Charter School Boards and the Sunshine Law
03-02	February 7, 2003	Disclosure of Records of the Crime Victim Compensation Commission
03-03	April 1, 2003	Judicial Selection Commission List of Nominees
03-04	April 8, 2003	'Olelo Board Member's Resume
03-05	April 11, 2003	HIPAA and Part II of the Uniform Information Practices Act
03-06	May 2, 2003	Electronic Transmission of Testimony
03-07	May 28, 2003	Voting in Executive Meetings
03-08	June 18, 2003	Kauai Planning Commission and Subdivision Committee Meetings
03-09	June 26, 2003	Police Department Mug Shots
03-10	June 30, 2003	Charter Schools and the UIPA
03-11	July 8, 2003	Evidence from Pending Police Investigation File
03-12	July 14, 2003	Attendance at Executive Meetings by Parties Other Than Council or Board Members
03-13	July 14, 2003	Views of Non-Board Members Included in Minutes
03-14	July 17, 2003	Disclosure of Grievance File to the Office of the Legislative Auditor
03-15	August 7, 2003	UH Animal Care Advisory Committee
03-16	August 14, 2003	Disclosure of University's Contract with Head Football Coach
03-17	September 11, 2003	Attorneys' Presence - Required to Accomplish the Essential Purposes of an Executive Meeting