

JAN 24 2019

A BILL FOR AN ACT

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 92F-3, Hawaii Revised Statutes, is
2 amended by amending the definition of "agency" to read as
3 follows:

4 "Agency" means any unit of government in this State, any
5 county, or any combination of counties; department; institution;
6 board; commission; district; council; bureau; office; governing
7 authority; other instrumentality of state or county government;
8 or corporation or other establishment owned, operated, or
9 managed by or on behalf of this State or any county [~~but does~~
10 ~~not include the nonadministrative functions of the courts of~~
11 ~~this State~~]."

12 SECTION 2. Section 92F-15, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§92F-15 Judicial enforcement.** (a) A person aggrieved by
15 a denial of access to a government record may bring an action in
16 the supreme court against the agency at any time within two
17 years after the agency denial to compel disclosure.



1 (b) In an action to compel disclosure, the [~~eireuit~~]
2 supreme court shall hear the matter de novo; provided that if
3 the action to compel disclosure is brought because an agency has
4 not made a record available as required by section 92F-15.5(b)
5 after the office of information practices has made a decision to
6 disclose the record and the agency has not appealed that
7 decision within the time period provided by 92F-43, the decision
8 of the office of information practices shall not be subject to
9 challenge by the agency in the action to compel disclosure.

10 Opinions and rulings of the office of information practices
11 shall be admissible and shall be considered as precedent unless
12 found to be palpably erroneous, except that in an action to
13 compel disclosure brought by an aggrieved person after the
14 office of information practices upheld the agency's denial of
15 access to the person as provided in section 92F-15.5(b), the
16 opinion or ruling upholding the agency's denial of access shall
17 be reviewed de novo. The [~~eireuit~~] supreme court may examine
18 the government record at issue, in camera, to assist in
19 determining whether it, or any part of it, may be withheld.

20 (c) The agency has the burden of proof to establish
21 justification for nondisclosure.



1 (d) If the complainant prevails in an action brought under
2 this section, the court shall assess against the agency
3 reasonable attorney's fees and all other expenses reasonably
4 incurred in the litigation.

5 ~~[(e) The circuit court in the judicial circuit in which~~
6 ~~the request for the record is made, where the requested record~~
7 ~~is maintained, or where the agency's headquarters are located~~
8 ~~shall have jurisdiction over an action brought under this~~
9 ~~section.~~

10 ~~-(f)]~~ (e) Except as to cases the ~~[circuit]~~ supreme court
11 considers of greater importance, proceedings before the court,
12 as authorized by this section, ~~[and appeals therefrom,]~~ take
13 precedence on the docket over all cases and shall be assigned
14 for hearing and trial or for argument at the earliest
15 practicable date and expedited in every way."

16 SECTION 3. Section 92F-15.5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) When an agency denies a person access to a government
19 record, the person may appeal the denial to the office of
20 information practices in accordance with rules adopted pursuant
21 to section 92F-42(12). A decision to appeal to the office of



1 information practices for review of the agency denial shall not
2 prejudice the person's right to appeal to the [~~eireuit~~] supreme
3 court after a decision is made by the office of information
4 practices."

5 SECTION 4. Section 92F-27, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsections (a) and (b) to read:

8 "(a) An individual may bring a civil action against an
9 agency in [~~a-eireuit~~] the supreme court [~~of the State~~] whenever
10 an agency fails to comply with any provision of this part, and
11 after appropriate administrative remedies under sections 92F-23,
12 92F-24, and 92F-25 have been exhausted.

13 (b) Opinions and rulings of the office of information
14 practices shall be admissible and shall be considered as
15 precedent unless found to be palpably erroneous, except that the
16 opinion or ruling upholding the agency's denial of access to the
17 aggrieved person shall be reviewed de novo. The [~~eireuit~~]
18 supreme court may examine the record at issue, in camera, to
19 assist in determining whether it, or any part of it, may be
20 withheld."

21 2. By amending subsection (f) to read:



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1 "(f) ~~[An action may be brought in the circuit court where~~
2 ~~the complainant resides, the complainant's principal place of~~
3 ~~business is situated, or the complainant's relevant personal~~
4 ~~record is situated.]~~ No action shall be brought later than two
5 years after notification of the agency denial~~[7]~~ or, where
6 applicable, the date of receipt of the final determination of
7 the office of information practices."

8 SECTION 5. Section 92F-27.5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) When an agency denies an individual access to that
11 individual's personal record, the individual may appeal the
12 denial to the office of information practices in accordance with
13 rules adopted pursuant to section 92F-42(12). A decision to
14 appeal to the office of information practices for review of the
15 agency denial shall not prejudice the individual's right to
16 appeal to the ~~[circuit]~~ supreme court after a decision is made
17 by the office of information practices."

18 SECTION 6. Section 92F-43, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:



1 "(a) An agency may not appeal a decision by the office of
2 information practices made under this chapter or part I of
3 chapter 92, except as provided in this section. Within thirty
4 days of the date of the decision, an agency may seek judicial
5 review of a final decision rendered by the office of information
6 practices under this chapter or part I of chapter 92[7] by
7 filing a complaint to initiate a special proceeding in the
8 ~~[circuit court of the judicial circuit in the State where:~~

9 ~~(1) The request for access to a record was made;~~

10 ~~(2) The act the office determined was prohibited under~~
11 ~~part I of chapter 92 occurred; or~~

12 ~~(3) The agency's principal place of business is located.]~~
13 supreme court."

14 2. By amending subsection (c) to read:

15 "(c) Within thirty days of service of the complaint, the
16 office of information practices shall file a certified copy of
17 the record that it compiled to make its decision in the
18 ~~[circuit]~~ supreme court and mail a copy of the index to that
19 record to the appealing agency. The ~~[circuit]~~ court's review
20 shall be limited to the record that was before the office of
21 information practices when it rendered the decision, unless the



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1 [eircuit] court finds that extraordinary circumstances justify
2 discovery and admission of additional evidence. The [eircuit]
3 court shall uphold a decision of the office of information
4 practices, unless the [eircuit] court concludes that the
5 decision was palpably erroneous."

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect upon its approval.

9

INTRODUCED BY:

 DC Fitch



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Report Title:

Uniform Information Practices Act; Judiciary; Exemption; Direct Appeal to Supreme Court

Description:

Includes the nonadministrative functions of the Judiciary in the definition of "agency" for purposes of the Uniform Information Practices Act. Allows persons to bring actions or make appeals under the Uniform Information Practices Act directly in the Supreme Court. Allows agencies to appeal decisions of the Office of Information Practices to the Supreme Court.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

