

JAN 17 2020

A BILL FOR AN ACT

RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION
PRACTICES ACT.

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

1 SECTION 1. Section 92F-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§92F-15 Judicial enforcement.** (a) A person aggrieved by
4 a denial of access to a government record may bring an action
5 against the agency at any time within two years after the agency
6 denial to compel disclosure.

7 (b) In an action to compel disclosure, the circuit court
8 shall hear the matter de novo; provided that if the action to
9 compel disclosure is brought because an agency has not made a
10 record available as required by section 92F-15.5(b) after the
11 office of information practices has made a decision to disclose
12 the record and the agency has not appealed that decision within
13 the time period provided by 92F-43, the decision of the office
14 of information practices shall not be subject to challenge by
15 the agency in the action to compel disclosure. Opinions and
16 rulings of the office of information practices shall be



1 admissible and shall be considered as precedent unless found to
2 be palpably erroneous, except that in an action to compel
3 disclosure brought by an aggrieved person after the office of
4 information practices upheld the agency's denial of access to
5 the person as provided in section 92F-15.5(b), the opinion or
6 ruling upholding the agency's denial of access shall be reviewed
7 de novo. The circuit court may examine the government record at
8 issue, in camera, to assist in determining whether it, or any
9 part of it, may be withheld.

10 (c) The agency has the burden of proof to establish
11 justification for nondisclosure. No later than 30 days after
12 service of process, the agency shall file a motion for summary
13 judgment in support of its denial of access to the government
14 record that is presently before the court. If the agency does
15 not timely file a motion for summary judgment, the circuit court
16 shall order immediate disclosure of the government record,
17 except to the extent prohibited by law.

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



1 (e) The circuit court in the judicial circuit in which the
2 request for the record is made, where the requested record is
3 maintained, or where the agency's headquarters are located shall
4 have jurisdiction over an action brought under this section.

5 (f) Except as to cases the circuit court considers of
6 greater importance, proceedings before the court, as authorized
7 by this section, and appeals therefrom, take precedence on the
8 docket over all cases and shall be assigned for hearing and
9 trial or for argument at the earliest practicable date and
10 expedited in every way.

11 (g) Either party may appeal the decision of the circuit
12 court. An appellate court shall uphold the circuit court
13 decision to compel disclosure unless that decision was palpably
14 erroneous; provided that any decision or portion of a decision
15 affirming the agency's denial of access shall be reviewed de
16 novo. Enforcement of a circuit court decision to compel
17 disclosure is stayed automatically for 14 days after its entry,
18 during which time the agency may petition the supreme court for
19 a determination that the circuit court's decision to compel
20 disclosure is palpably erroneous. If the agency timely files a
21 petition, the complainant may file a response within 7 days



S.B. NO. 2090

1 after service. After a timely petition, enforcement of the
2 circuit court's decision is stayed pending the supreme court's
3 determination, but no more than 30 days after the petition is
4 filed."

5 SECTION 2. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Paul Rhoad



S.B. NO. 2090

Report Title:

Judicial Enforcement and Review; Request for Government Records;
Time for Agency to Appeal; Appeals and Stays

Description:

Provides procedural requirements for judicial review of an agency's denial of access to a government record. Provides procedural requirements and standards of review upon appeal.

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

