
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. In 1988, the legislature passed the Uniform
2 Information Practices Act (Modified), chapter 92F, Hawaii
3 Revised Statutes. Part II of the Uniform Information Practices
4 Act requires state and county government agencies, including the
5 legislature and the judiciary's administrative offices, to allow
6 public access to government records upon request, unless the
7 records qualify for one of five exceptions codified in
8 section 92F-13, Hawaii Revised Statutes.

9 The legislature finds that beginning in 1989, the office of
10 information practices recognized that public disclosure of pre-
11 decisional and deliberative memoranda and correspondence
12 transmitted within or between government agencies, such as staff
13 recommendations, notes, drafts, and internal memoranda
14 exchanging ideas, opinions, and editorial judgments before a
15 decision or policy is finalized and made public, could impede
16 the candid and free exchange of ideas and opinions within an
17 agency for fear of being subject to public ridicule or criticism



1 and could thus frustrate agencies' decision-making function.
2 The legislature further finds that the protection of internal
3 decision-making materials allows agencies to freely and candidly
4 share views internally and thus reach sound and fair decisions,
5 which is consistent with the legislature's original intent in
6 passing the Uniform Information Practices Act. Moreover, the
7 disclosure of proposed policies or tentative decisions before
8 they have been finally formulated or adopted could lead to
9 public confusion and unnecessary divisiveness based on reasons,
10 rationales, or proposals that were not ultimately adopted or
11 expressly incorporated by reference into the final document.

12 However, on December 21, 2018, a majority of three justices
13 of the Hawaii supreme court held in *Peer News LLC v. City and*
14 *County of Honolulu*, 143 Hawaii 472 (2018), that the legislature
15 never intended for these pre-decisional and deliberative records
16 to be withheld from public access under the Uniform Information
17 Practices Act exception in section 92F-13(3), Hawaii Revised
18 Statutes.

19 The legislature also finds that the dissenting opinion by
20 two justices of the Hawaii supreme court in *Peer News LLC* more
21 accurately assessed the legislature's intent when it established



1 the Uniform Information Practices Act. The dissent concluded
2 that the plain language and legislative history underlying
3 chapter 92F, Hawaii Revised Statutes, and the legislature's
4 actions prior and subsequent to the enactment of the Uniform
5 Information Practices Act did not indicate the legislature's
6 intent to omit the deliberative process privilege.

7 The legislature further intends for government records to
8 be disclosed when the public interest in disclosure outweighs
9 the potential impairment to an agency's ability to reach sound
10 and fair decisions. Consequently, in applying the deliberative
11 process privilege, the courts and the office of information
12 practices must balance the interests of the public and
13 government agencies.

14 The purpose of this Act is to clarify the legislature's
15 intent regarding internal deliberative and pre-decisional
16 materials of government agencies.

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

19 **"§92F-13 Government records; exceptions to general rule.**

20 This part shall not require disclosure of:



- 1 (1) Government records [~~which,~~] that, if disclosed, would
2 constitute a clearly unwarranted invasion of personal
3 privacy;
- 4 (2) Government records pertaining to the prosecution or
5 defense of any judicial or quasi-judicial action to
6 which the State or any county is or may be a party, to
7 the extent that such records would not be
8 discoverable;
- 9 (3) Government records that, by their nature, must be
10 confidential in order for the government to avoid the
11 frustration of a legitimate government function;
- 12 (4) Government records [~~which,~~] that, pursuant to state or
13 federal law, including an order of any state or
14 federal court, are protected from disclosure; [~~and~~]
- 15 (5) Drafts, internal memoranda and correspondence, and
16 other deliberative and pre-decisional materials that
17 are a direct part of an agency's internal decision-
18 making process, disclosure of which would impair the
19 agency's ability to make sound and fair decisions, but
20 only to the extent that such impairment outweighs the
21 public interest in disclosure; and



Report Title:

Uniform Information Practices Act; Exceptions to Disclosure;
Deliberative and Pre-decisional Materials

Description:

Clarifies the legislature's intent regarding internal deliberative and pre-decisional materials of government agencies. Specifies that certain deliberative and pre-decisional materials that are a direct part of a government agency's internal decision-making process are not subject to disclosure if the disclosure of such materials would impair the agency's ability to make sound and fair decisions, but only to the extent that the impairment outweighs public interest in disclosure. Effective 7/1/2112. (HD1)

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