

Commission to Improve Standards of Conduct

Open Government Discussion

July 27, 2022 Public Meeting

Topics of Discussion

- **Hawaii's Open Meetings ("Sunshine") Law**
- **Hawaii's Uniform Information Practices Law**
- **An Advocate's Perspective on Government Transparency**
- **Boards, Commissions and Departments Report Problems**
- **Transparency and Accountability Build and Maintain Public Trust in Government**
- **Other Topics?**

Overview of OIP and Hawaii's Open Meetings and Open Records Law

Presenter:

Cheryl Kakazu Park, Director of Hawaii's Office of Information Practices



Office of Information Practices (OIP)

Overview of OIP and Hawaii's Open Meetings and Open Records Law

**Presented on July 27, 2022 to the
Commission to Improve Standards of Conduct**

OIP administers:

- Uniform Information Practices Act (“UIPA”), HRS Chapter 92F – **open records**



- Sunshine Law, Part I of HRS Chap. 92 – **open meetings**



State of Hawaii
Office of Information Practices

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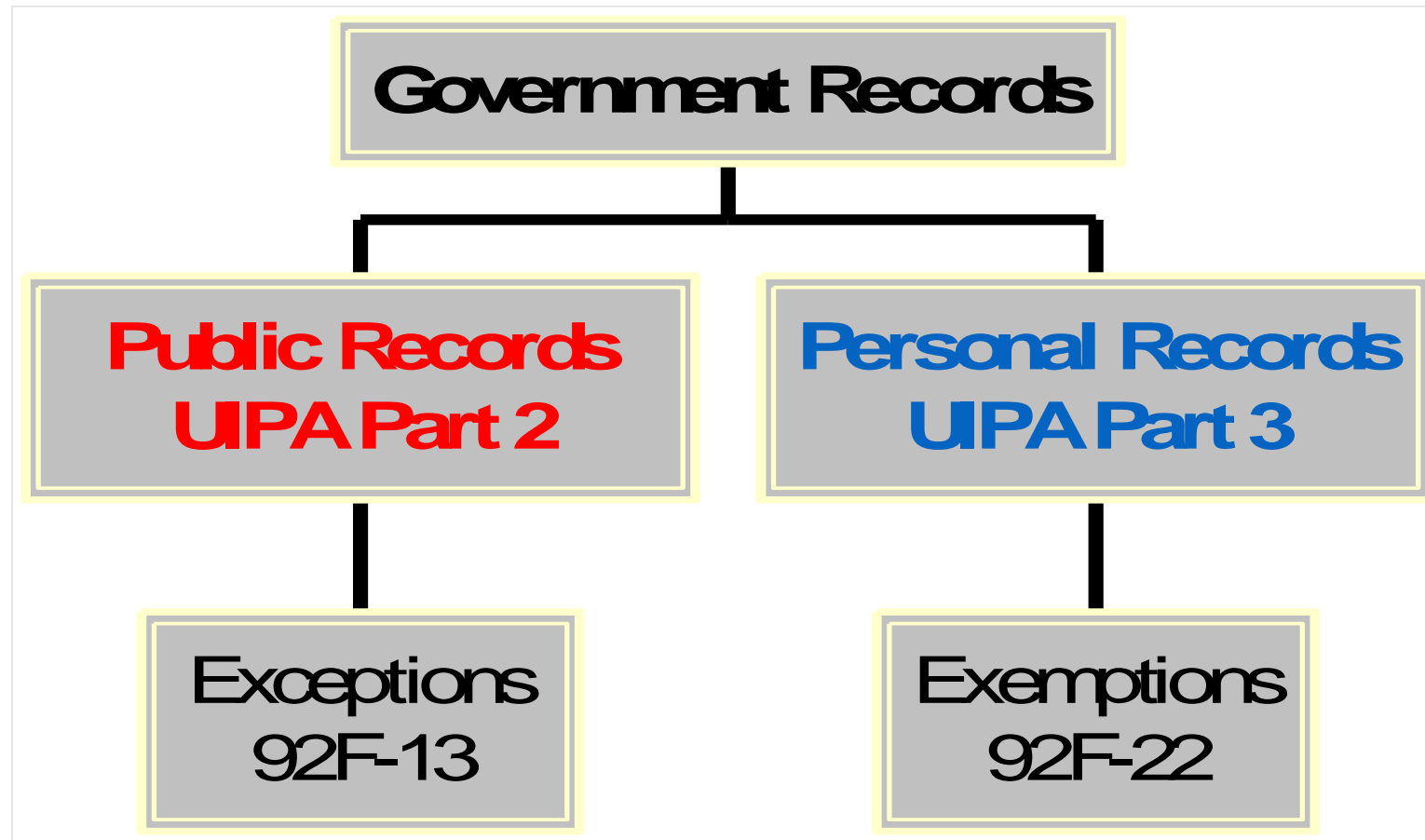
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Common policy of UIPA and Sunshine Law:



“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”

Uniform Information Practices Act HRS Chapter 92F



UIPA

HRS Sec. 92F-13, Part 2 Exceptions to Disclosure



Agency could keep withhold records if:

1. Disclosure would constitute a **clearly unwarranted invasion of personal privacy** – this is applicable individuals, not businesses;
2. The records would **not be discoverable** in litigation in which the State or county is or may be a party;
3. The records must be confidential in order for the government to avoid the **frustration of a legitimate government function**;
4. The records are protected from disclosure by state or federal **law or court order**; or
5. The records fall into a limited exception for **legislative records**.

Sunshine Law

Part 1 of HRS Chapter 92



- Discussions, deliberations and decisions regarding board business must be conducted at a meeting
- Every meeting must be open unless law allows a closed meeting
- Boards must provide 6-day advance notice
- Boards must accept testimony
- Boards must keep minutes

3 meeting options:



- **In-person** with everyone at a physical location
- **Multi-site:** all board members and public attend in-person meetings at multiple sites connected by “interactive conference technology” like Zoom;
May have “**additional locations**” for public’s convenience without any board members and meeting won’t be stopped if connection to an additional location is interrupted or lost.
- **Remote:** all board members and public can participate online, but still need one in-person site

Need Help?

Website: **oip.hawaii.gov**

Attorney of the Day:

- E-mail **oip@hawaii.gov**
- Call **586-1400**
- Fax **586-1412**
- Write **250 S. Hotel Street, #107
Honolulu, Hawaii 96813**



Prescriptive Discussion Issues

- Should the County Councils have certain exemptions from the Sunshine Law?

Q&A

An Advocate's Perspective on Government Transparency

Presenter:

R. Brian Black, President and Executive Director, Civil Beat Law Center
for the Public Interest

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

Proposals

Status quo does not work

Restoring public trust in
government requires
real change

Corruption happens when it is easy

- Lack of access to information
- Consolidated power

Change the corruption-friendly environment

- SB 3252: Empower those dedicated to ferreting out corruption
- Public deliberations at legislative committees: Let the public see what is happening
- More egalitarian distribution of power among legislators: Empower committee members as to agendas and votes
- Constitutional amendments

Thank you

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

Prescriptive Discussion Issues

- Should the cost of public requests for information be reduced?
(SB3252)

Q&A

Reported Concerns in Executing Open Government Laws

Presenter:

Nikos Leverenz, Advisory Board Member, Common Cause Hawaii and
Grants and Advancement Manager, Hawaii Health & Harm
Reduction Center

Executive Department Concerns with Lowering
Costs of Public Interest Requests under the
Uniform Information Practices Act
(Testimony on S.B. 3252, S.D. 2, H.D. 1)

Nikos Leverenz

Common Cause of Hawai'i

Commission to Improve Standards of Conduct

Department of Human Services

DHS strives to respond to all government record requests per the time frame while balancing operational demands to ensure that individuals and families are also timely served by the Department.

The unfortunate reality is that the Department and its programs do not have dedicated staff or resources to respond to records requests; time spent on responses interrupts the completion of regular duties.

Complex record requests often require significant coordination of program resources and staff time. Importantly, we do not assume that electronic records are easier to sort out to duplicate than paper records.

Department of the Attorney General

UIPA requests to our Department are assigned to deputy attorneys general for response.... The majority of the Department's records contain information that is protected from disclosure as attorney work product and/or also protected [under] attorney-client privilege. Accordingly, responding to UIPA requests requires deputy attorneys general to review the records to determine whether the records are privileged or otherwise protected.

If all UIPA requesters qualify for the complete fee waiver, they might be motivated to draft overly broad requests since there is no cost impact to request more documents than is necessary.... Notwithstanding the disruption to government operations, agencies would not be able to recoup any of the associated costs of responding to UIPA requests...

Employees Retirement System

The capping or waiving of fees typically results in an expense recovery level that is set substantially below actual expense incurred in gathering, copying and disseminating the materials. From a historical perspective, the cap has a tendency to become outdated over time, thereby invisibly increasing the level of the cost subsidy by the agency.

The ERS has experienced an increasing number of public requests for records, a number that is likely to increase even more if records become available at no cost to the requestors. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests in gathering and distributing such information...

Department of Land and Natural Resources

The Department would prefer no cap on maximum fees for reproduction so we can continue to recoup our costs to copy the documents, including the copying of electronic files, and instead use the waiver to allow easier access for public interest requests. This will also decrease the administrative overhead required when money is exchanged.

Most request for Department documents that require searching, reviewing or segregating are in the public interest.... Additionally, certain members of the public will have interest in eminent domain issues and public versus private property rights. Because the Department only issues permits where there is a public interest in land use issues, most, if not all Uniform Information Practices requests are in the public interest.

Department of Health

Access to public records is essential for a healthy democracy but this measure purports to be a solution for a problem that does not impact most of the public.

Per testimony from the Office of Information Practices [most] of the requestors for whom a fee was charged were for-profit entities such as law firms. Establishing a cap on fees that does not reflect the expense of labor is a publicly funded subsidy to for-profit entities. (emphasis in original)

Complex requests are time-consuming and resource-intensive, and divert state employees from their daily tasks. Redaction of confidential information further intensifies the burden. In lieu of deferral of this measure, DOH respectfully recommends rule-making authority to establish and amend fees based, in part, on clear standards such as the average fee in other jurisdictions, the consumer price index, and the average hourly wage of public employees.

Department of Agriculture

The Pesticides Branch routinely gets 30-60 UIPA requests per year. The Pesticides Branch must go through each requested document thoroughly to ensure each document provided to any requester is accurately provided while protecting the confidentiality of all parties. Although many of these requests are simple and completed under the current cost waiver, every year the branch receives dozens of requests that are initially expected to take hundreds or possibly thousands of hours due to an overly broad request that lacks a clear or defined purpose.

The single greatest incentive for streamlining or focusing a request for information is the potential elimination or reduction of fees for excessive time and resources for the search, segregation, and redaction of unnecessary information.

The Department is concerned that requiring a waiver if the disclosure is “in the public interest” will increase the volume and frequency of these requests to overly burdensome levels that will further strain the Departments resources and staffing.

Q&A

Transparency and Accountability Help Build and Maintain Public Trust in Government

Presenter:

Professor Emeritus ***Randall Roth***, William S. Richardson School of Law,
University of Hawaii

Q&A

Other Matters

- Other Matters?
- Next Meeting on Legislative Process – August 17, 2022