
A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1 SECTION 1. The legislature finds that the house of
2 representatives adopted House Resolution No. 9, Regular Session
3 of 2022, to establish the commission to improve standards of
4 conduct. The resolution requests that the commission ensure
5 state laws and rules relating to standards of conduct of public
6 officers and employees contain clear standards, enforcement, and
7 penalties and provide recommendations to increase awareness of,
8 compliance with, and deterrent effects of the code of ethics,
9 lobbying laws, campaign finance laws, and other relevant laws
10 and rules.

11 Pursuant to House Resolution No. 9, the commission to
12 improve standards of conduct convened regularly throughout 2022
13 to diligently review, discuss, and consider the issues
14 presented; submit an interim report to the house of
15 representatives outlining areas of immediate and long-term
16 focus; receive input from the public and invited individuals and



1 agencies; and issue a final report with various recommendations
2 and accompanying proposed legislation.

3 The legislature also finds that the strength and stability
4 of our democratic government rely upon the public's trust in
5 government institutions, including the expectation that officers
6 act ethically with prudence, integrity, and sound judgement.
7 Therefore, an essential goal of the commission was to provide
8 recommendations that would help restore public trust in state
9 government and increase the level of transparency in its
10 operations and accountability of individuals.

11 Additionally, the legislature finds that public records
12 laws are a critical mechanism to maintain government
13 accountability and transparency and support citizen involvement
14 in government decision-making. The real-world consequences of
15 restricting access to that information can range from serious to
16 routine but, in all cases, result in a less informed citizenry.
17 Fee waivers offer a simple and flexible solution.

18 The legislature also finds that further direction is
19 necessary to carry out the intent indicated by the legislative
20 history of section 92F-42, Hawaii Revised Statutes, and the
21 section's provision on waiver of fees, first introduced in House



1 Bill No. 2002, Regular Session of 1988. The original language
2 of House Bill No. 2002 only authorized fees for copies of
3 records, but the version passed out of the house of
4 representatives judiciary committee amended the bill to also
5 allow charges for searching, reviewing, and segregating records,
6 while also allowing waivers for public interest. The house
7 judiciary committee report, House Standing Committee Report No.
8 342-88, states:

9 It is the intent of your Committee that such charges
10 for search, compilation, and segregation shall not be
11 a vehicle to prohibit access to public records. It is
12 the further intent of your Committee that the Office
13 of Information Practices move aggressively against any
14 agency that uses such charges to chill the exercise of
15 first amendment rights. Your Committee also added new
16 language to allow waiver of these charges when such
17 action serves the public interest.

18 By providing public-interest fee waivers uniformly, the public
19 records request process can provide equitable access.

20 The legislature finds that this Act adopts the Freedom of
21 Information Act standard to define waivers in the public



1 interest. The federal standard provides a waiver in limited
2 circumstances based on careful examination of various factors,
3 including the subject matter of the request and identity of the
4 requestor. Case law under the Freedom of Information Act
5 provides additional guidance in this regard.

6 In addition, the legislature finds that clarification of
7 the standard for waivers in the public interest is not intended
8 to change the deadlines for agency response to a records
9 request. Under existing rules, which are unchanged by this Act,
10 agencies are permitted to provide reasonable and orderly monthly
11 disclosures in responding to voluminous record requests that
12 would require extensive effort by the agency or unreasonably
13 interfere with the agency's performance of other statutory
14 duties. These rules prevent undue burdens on the agency but can
15 delay the public's access to government records. The
16 legislature finds that timely disclosure of information is
17 especially critical when disclosure is in the public interest.
18 As such, for voluminous record requests, agencies and requestors
19 are strongly encouraged to discuss the records that are
20 available, how the records are being searched and reviewed, and



1 any methods to reduce the effort required of the agency and thus
2 delays to the requestor.

3 Accordingly, the purpose of this Act is to implement
4 recommendations of the commission to improve standards of
5 conduct relating to the open records law by providing more
6 equitable access to government records, including:

- 7 (1) Imposing a cap on charges for the reproduction of
8 certain government records;
- 9 (2) Waiving the cost of duplication of government records
10 provided to requestors in an electronic format;
- 11 (3) Imposing a cap on charges for searching for,
12 reviewing, and segregating records;
- 13 (4) Providing for a waiver of fees when the public
14 interest is served by a record's disclosure; and
- 15 (5) Appropriating funds for two permanent positions within
16 the office of information practices.

17 SECTION 2. Section 92-21, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§92-21 Copies of records; other costs and fees.** Except
20 as otherwise provided by law, a copy of any government record,
21 including any map, plan, diagram, photograph, photostat, or



1 geographic information system digital data file, ~~[which]~~ that is
2 open to the inspection of the public, shall be furnished to any
3 person applying for the same by the public officer having charge
4 or control thereof upon the payment of the reasonable cost of
5 reproducing ~~[such]~~ the copy. Except as provided in section
6 91-2.5, the cost of reproducing any government record, except
7 maps, photographs, geographic information system digital data,
8 audio recordings, digital or electronic records, and other types
9 of physical records, shall not ~~[be less than 5]~~ exceed 25 cents
10 per page, sheet, or fraction thereof. Reproduction costs shall
11 not be charged for producing documents provided to requesters in
12 an electronic format; provided that the agency maintains those
13 documents in an electronic format; provided further that
14 requesters shall be charged for the agency's provision of
15 documents requested in an electronic format that are not
16 maintained by the agency in an electronic format and must be
17 manually faxed or converted into an electronic format. The cost
18 of reproducing maps, photographs, geographic information system
19 digital data, audio recordings, digital or electronic records,
20 and other types of physical records shall be in accordance with
21 rules adopted by the office of information practices that are



1 applicable to every agency having charge or control of that
2 data. [~~Such~~] The reproduction cost shall [~~include but shall not~~
3 ~~be limited to labor cost for search and actual time for~~
4 ~~reproducing, material cost, including electricity cost,~~
5 ~~equipment cost, including rental cost, cost for certification,~~
6 ~~and other related costs.~~] represent the reasonable direct cost
7 of making the copies and be limited to the salary of the
8 operator of the reproduction machinery as well as the cost of
9 the machinery. All fees [~~shall be paid in~~] received or
10 collected by the public officer [~~receiving or collecting the~~
11 ~~same to~~] shall be deposited with the state director of finance,
12 the county director of finance, or [~~to~~] the agency or department
13 by which the officer is employed, as government realizations;
14 provided that fees collected by the public utilities commission
15 pursuant to this section shall be deposited in the public
16 utilities commission special fund established under section 269-
17 33."

18 SECTION 3. Section 92F-42, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§92F-42 Powers and duties of the office of information**
21 **practices.** The director of the office of information practices:



- 1 (1) Shall, upon request, review and rule on an agency
2 denial of access to information or records, or an
3 agency's granting of access; provided that any review
4 by the office of information practices shall not be a
5 contested case under chapter 91 and shall be optional
6 and without prejudice to rights of judicial
7 enforcement available under this chapter;
- 8 (2) Upon request by an agency, shall provide and make
9 public advisory guidelines, opinions, or other
10 information concerning that agency's functions and
11 responsibilities;
- 12 (3) Upon request by any person, may provide advisory
13 opinions or other information regarding that person's
14 rights and the functions and responsibilities of
15 agencies under this chapter;
- 16 (4) May conduct inquiries regarding compliance by an
17 agency and investigate possible violations by any
18 agency;
- 19 (5) May examine the records of any agency for the purpose
20 of paragraphs (4) and [~~18~~] (15) and seek to enforce
21 that power in the courts of this State;



- 1 (6) May recommend disciplinary action to appropriate
2 officers of an agency;
- 3 (7) Shall report annually to the governor and [~~the state~~]
4 legislature on the activities and findings of the
5 office of information practices, including
6 recommendations for legislative changes;
- 7 (8) Shall receive complaints from and actively solicit the
8 comments of the public regarding the implementation of
9 this chapter;
- 10 (9) Shall review the official acts, records, policies, and
11 procedures of each agency;
- 12 (10) Shall assist agencies in complying with the provisions
13 of this chapter;
- 14 (11) Shall inform the public of the following rights of an
15 individual and the procedures for exercising them:
 - 16 (A) The right of access to records pertaining to the
17 individual;
 - 18 (B) The right to obtain a copy of records pertaining
19 to the individual;
 - 20 (C) The right to know the purposes for which records
21 pertaining to the individual are kept;



- 1 (D) The right to be informed of the uses and
2 disclosures of records pertaining to the
3 individual;
- 4 (E) The right to correct or amend records pertaining
5 to the individual; and
- 6 (F) The individual's right to place a statement in a
7 record pertaining to that individual;
- 8 (12) Shall adopt rules that set forth ~~[an]~~ :
- 9 (A) An administrative appeals structure ~~[which]~~ that
10 provides for:
- 11 ~~[-(A)-]~~ (i) Agency procedures for processing
12 records requests;
- 13 ~~[-(B)-]~~ (ii) A direct appeal from the division
14 maintaining the record; and
- 15 ~~[-(C)-]~~ (iii) Time limits for action by agencies;
- 16 ~~[-(13)- Shall adopt rules that set forth the]~~
- 17 (B) The fees and other charges that may be imposed
18 for searching, reviewing, or segregating
19 disclosable records ~~[, as well as to provide for a~~
20 ~~waiver of fees when the public interest would be~~
21 ~~served;]~~. The rules shall:



- 1 (i) Set forth fees not exceeding \$5 per fifteen
- 2 minutes or fraction thereof for the search
- 3 for the record;
- 4 (ii) Set forth fees not exceeding \$7.50 per
- 5 fifteen minutes or fraction thereof for the
- 6 review and segregation of the record; and
- 7 (iii) Provide for a waiver of fees when the public
- 8 interest would be served by the record's
- 9 disclosure; provided that the waiver shall
- 10 require that the search for or review or
- 11 segregation of records be provided at no
- 12 charge to the requester if disclosure of the
- 13 record is in the public interest because the
- 14 disclosure is likely to contribute
- 15 significantly to public understanding of the
- 16 operations or activities of the government
- 17 and is not primarily in the commercial
- 18 interest; and
- 19 [~~(14) Shall adopt rules which set forth uniform]~~
- 20 (C) Uniform standards for [the]:



1 much thereof as may be necessary for fiscal year 2023-2024 and
2 the same sum or so much thereof as may be necessary for fiscal
3 year 2024-2025 for two full-time equivalent (2.0 FTE) permanent
4 positions to be placed within the office of information
5 practices.

6 The sums appropriated shall be expended by the office of
7 information practices for the purposes of this Act.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on June 30, 3000;
11 provided that sections 2 and 3 shall take effect on June 30,
12 3000.

13



Report Title:

Commission to Improve Standards of Conduct; Public Records;
Costs; Disclosure; Public Interest; Waiver; Appropriation

Description:

Beginning 7/1/2024, imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on charges for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices. Effective 6/30/3000. (HD1)

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

