

JAN 20 2023

A BILL FOR AN ACT

RELATING TO THE OFFICE OF INFORMATION PRACTICES.

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

1 SECTION 1. The legislature finds that the office of
2 information practices has been given more responsibilities over
3 the years and needs additional personnel to meet its increasing
4 workload. The legislature further finds that the office of
5 information practices would be able to more efficiently and
6 effectively resolve disputes concerning the Uniform Information
7 Practices Act (UIPA), chapter 92F, Hawaii Revised Statutes, and
8 the sunshine law, part I of chapter 92, Hawaii Revised Statutes,
9 if it had the discretion to provide written guidance in lieu of
10 opinions in appropriate cases. While a formal opinion is
11 sometimes necessary to obtain an agency's or board's compliance,
12 or to hold it to the "palpably erroneous" standard of review
13 upon appeal to a court, there are other times when the office
14 need not undergo the time-consuming process for an opinion and
15 can instead provide more timely written guidance to explain its
16 reasons why it is inclined to conclude that an agency's or a
17 board's actions did not violate the UIPA or sunshine law.



1 The purpose of this Act is to provide the office of
2 information practices with the statutory discretion to decide
3 whether to provide an opinion or written guidance to resolve a
4 dispute under the UIPA or sunshine law, and funding for two new
5 permanent positions.

6 SECTION 2. Section 92F-3, Hawaii Revised Statutes, is
7 amended by adding three new definitions to be appropriately
8 inserted and to read as follows:

9 "Guidance" means a written discussion of the major legal
10 and factual issues raised by an inquiry, including the most
11 likely resolution of a complaint made in the inquiry, if
12 applicable, but does not rise to the level of an opinion.

13 "Opinion" means a written discussion of legal and factual
14 issues raised by an inquiry, including the findings and
15 conclusions reached by the director of the office of information
16 practices regarding those issues, regardless of whether the
17 inquiry alleges violations of this chapter or part I of chapter
18 92, or otherwise raises disputed issues of law or fact, or the
19 inquiry seeks an advisory legal interpretation of this chapter
20 or part I of chapter 92.



1 "Ruling" means a written opinion providing firm and final
2 legal determination of all disputed issues raised by an inquiry
3 alleging violations of this chapter or part I of chapter 92."

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

6 **"§92F-42 Powers and duties of the office of information**
7 **practices.** The director of the office of information practices:

- 8 (1) Shall, upon request, review and ~~[rule]~~ issue a ruling
9 on an agency denial of access to information or
10 records, or an agency's granting of access; provided
11 that any review by the office of information practices
12 shall not be a contested case under chapter 91 and
13 shall be optional and without prejudice to rights of
14 judicial enforcement available under this chapter;
15 provided further that if the office of information
16 practices issues written guidance to a complainant
17 concluding that an agency denial of access most likely
18 will be upheld, including reasons for that decision,
19 and informing the complainant of the right to bring a
20 judicial action under section 92F-15(a), then no



1 further action is required by the office of
2 information practices;

3 (2) Upon request by an agency, shall provide and make
4 public advisory guidelines, opinions, or other
5 information concerning that agency's functions and
6 responsibilities;

7 (3) Upon request by any person, may provide advisory
8 opinions or other information regarding that person's
9 rights and the functions and responsibilities of
10 agencies under this chapter;

11 (4) May conduct inquiries regarding compliance by an
12 agency and investigate possible violations by any
13 agency;

14 (5) May examine the records of any agency for the purpose
15 of paragraphs (4) and (18) and seek to enforce that
16 power in the courts of this State;

17 (6) May recommend disciplinary action to appropriate
18 officers of an agency;

19 (7) Shall report annually to the governor and the state
20 legislature on the activities and findings of the



- 1 office of information practices, including
2 recommendations for legislative changes;
- 3 (8) Shall receive complaints from and actively solicit the
4 comments of the public regarding the implementation of
5 this chapter;
- 6 (9) Shall review the official acts, records, policies, and
7 procedures of each agency;
- 8 (10) Shall assist agencies in complying with the provisions
9 of this chapter;
- 10 (11) Shall inform the public of the following rights of an
11 individual and the procedures for exercising them:
- 12 (A) The right of access to records pertaining to the
13 individual;
- 14 (B) The right to obtain a copy of records pertaining
15 to the individual;
- 16 (C) The right to know the purposes for which records
17 pertaining to the individual are kept;
- 18 (D) The right to be informed of the uses and
19 disclosures of records pertaining to the
20 individual;



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



- 1 (16) Shall have standing to appear in cases where the
2 provisions of this chapter or part I of chapter 92 are
3 called into question;
- 4 (17) Shall adopt, amend, or repeal rules pursuant to
5 chapter 91 necessary for the purposes of this chapter;
6 and
- 7 (18) Shall take action to oversee compliance with part I of
8 chapter 92 by all state and county boards including:
- 9 (A) Receiving and resolving complaints[+] by issuing
10 a ruling on whether a violation occurred;
11 provided that if the office of information
12 practices issues written guidance to a
13 complainant concluding that a board most likely
14 did not violate part I of chapter 92, and
15 including reasons for that decision, and
16 informing the complainant of the right to bring a
17 judicial action under section 92-12(c), then no
18 further action is required by the office of
19 information practices;
- 20 (B) Advising all government boards and the public
21 about compliance with chapter 92; and



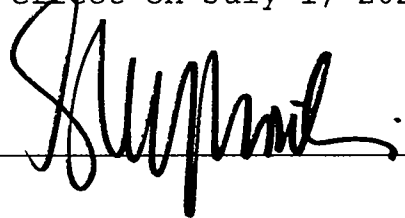
1 (C) Reporting each year to the legislature on all
2 complaints received pursuant to section 92-1.5."

3 SECTION 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$185,000 or so much
5 thereof as may be necessary for fiscal year 2023-2024 and the
6 same sum or so much thereof as may be necessary for fiscal year
7 2024-2025 for two full-time equivalent (2.0 FTE) permanent
8 positions, including one attorney and one legal assistant, to be
9 placed within the office of information practices.

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

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2023.

15 INTRODUCED BY: 



S.B. NO. 719

Report Title:

Office of Information Practices; Guidance; Opinion; Ruling;
Appropriation

Description:

Gives the Office of Information Practices the discretion to resolve disputes about open records or open meetings either through an opinion or, when the opinion would likely be in favor of the agency, through informal written guidance. Appropriates funding for the Office of Information Practices to hire two new full-time positions for a Legal Assistant and Attorney.

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

