
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 public records laws
2 are a critical mechanism to maintain government accountability
3 and transparency and support citizen involvement in government
4 decision-making. The real-world consequences of restricting
5 access to government information can range from serious to
6 routine but, in all cases, result in a less-informed citizenry.

7 The legislature finds that this Act adopts the Freedom of
8 Information Act standard to define waivers of fees for the
9 search, review, or segregation of disclosable records when in
10 the public interest. The federal standard provides a waiver in
11 limited circumstances based on careful examination of various
12 factors, including the subject matter of the request and
13 identity of the requester. Case law under the Freedom of
14 Information Act will provide guidance for interpreting the
15 standard.

16 Accordingly, the purpose of this Act is to:



- 1 (1) Impose a cap on charges for the reproduction of
- 2 certain government records; .
- 3 (2) Waive the cost of duplication of government records
- 4 provided to requestors in an electronic format;
- 5 (3) Allow agencies to withhold certain deliberative
- 6 documents before a decision is made;
- 7 (4) Impose a cap on charges for searching for, reviewing,
- 8 and segregating records;
- 9 (5) Provide for a waiver of fees in certain circumstances
- 10 when the public interest is served by a record's
- 11 disclosure; and
- 12 (6) Appropriate funds for two permanent positions within
- 13 the office of information practices.

14 SECTION 2. Section 92F-3, Hawaii Revised Statutes, is
 15 amended by amending the definition of "government record" to
 16 read as follows:

17 ""Government record" means information maintained by an
 18 agency in written, auditory, visual, electronic, or other
 19 physical form. The term does not include truly preliminary
 20 records, such as personal notes and rough drafts of memoranda,
 21 that have not been circulated."



1 SECTION 3. Section 92-21, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§92-21 Copies of records; other costs and fees.** Except
4 as otherwise provided by law, a copy of any government record,
5 including any map, plan, diagram, photograph, photostat, or
6 geographic information system digital data file, [~~which~~] that is
7 open to the inspection of the public, shall be furnished to any
8 person applying for the same by the public officer having charge
9 or control thereof upon the payment of the reasonable cost of
10 reproducing [~~such~~] the copy. Except as provided in section
11 91-2.5, the cost of reproducing any government record, except
12 maps, photographs, geographic information system digital data,
13 audio recordings, digital or electronic records, and other types
14 of physical records, shall not [~~be less than 5~~] exceed 25 cents
15 per page, sheet, or fraction thereof[. The]; provided that the
16 cost of reproducing maps, photographs, geographic information
17 system digital data, audio recordings, digital or electronic
18 records, and other types of physical records shall be in
19 accordance with rules adopted by the agency having charge or
20 control of that data. Reproduction costs shall not be charged
21 for producing documents provided to requesters in an electronic



1 format; provided that the agency maintains those documents in an
2 electronic format; provided further that requesters shall be
3 charged for the agency's provision of documents requested in an
4 electronic format that are not maintained by the agency in an
5 electronic format and must be manually faxed or converted into
6 an electronic format. [~~Such~~] The reproduction cost shall
7 [~~include but shall not be limited to labor cost for search and~~
8 ~~actual time for reproducing, material cost, including~~
9 ~~electricity cost, equipment cost, including rental cost, cost~~
10 ~~for certification, and other related costs.] represent the~~
11 reasonable direct cost of making the copies and be limited to
12 the salary of the operator of the reproduction machinery as well
13 as the cost of the machinery. All fees [~~shall be paid~~
14 ~~in~~] received or collected by the public officer [~~receiving or~~
15 ~~collecting the same to~~] shall be deposited with the state
16 director of finance, the county director of finance, or [~~to~~] the
17 agency or department by which the officer is employed, as
18 government realizations; provided that fees collected by the
19 public utilities commission pursuant to this section shall be
20 deposited in the public utilities commission special fund
21 established under section 269-33."



1 SECTION 4. Section 92F-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§92F-13 Government records; exceptions to general rule.**

4 This part shall not require disclosure of:

5 (1) Government records which, if disclosed, would
6 constitute a clearly unwarranted invasion of personal
7 privacy;

8 (2) Government records pertaining to the prosecution or
9 defense of any judicial or quasi-judicial action to
10 which the State or any county is or may be a party, to
11 the extent that such records would not be
12 discoverable;

13 (3) Government records that, by their nature, must be
14 confidential in order for the government to avoid the
15 frustration of a legitimate government function;

16 (4) Government records which, pursuant to state or federal
17 law including an order of any state or federal court,
18 are protected from disclosure; [~~and~~]

19 (5) Inchoate and draft working papers of legislative
20 committees including budget worksheets and unfiled
21 committee reports; work product; records or



1 transcripts of an investigating committee of the
2 legislature which are closed by rules adopted pursuant
3 to section 21-4 and the personal files of members of
4 the legislature[-]; and

5 (6) Inter-agency or intra-agency deliberative and
6 pre-decisional government records, other than purely
7 factual information that is readily segregable,
8 concerning an agency decision about a government
9 action up until the final decision to which the
10 government records relate has been made or until
11 deliberation of the matter has been abandoned;
12 provided that there shall be a rebuttable presumption
13 that a matter has been abandoned if three years have
14 elapsed after a request for records; provided further
15 that once disclosure is required, the name, title, and
16 other information that would directly identify a
17 public official or employee may be withheld if that
18 person lacks discretionary authority, did not make the
19 decision, and is not under investigation for or
20 engaged in wrongdoing or criminal conduct related to



1 the decision. This paragraph shall not apply to board
2 packets as defined by section 92-7.5."

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

5 "**§92F-42 Powers and duties of the office of information**
6 **practices.** The director of the office of information practices:

7 (1) Shall, upon request, review and rule on an agency
8 denial of access to information or records, or an
9 agency's granting of access; provided that any review
10 by the office of information practices shall not be a
11 contested case under chapter 91 and shall be optional
12 and without prejudice to rights of judicial
13 enforcement available under this chapter;

14 (2) Upon request by an agency, shall provide and make
15 public advisory guidelines, opinions, or other
16 information concerning that agency's functions and
17 responsibilities;

18 (3) Upon request by any person, may provide advisory
19 opinions or other information regarding that person's
20 rights and the functions and responsibilities of
21 agencies under this chapter;



- 1 (4) May conduct inquiries regarding compliance by an
2 agency and investigate possible violations by any
3 agency;
- 4 (5) May examine the records of any agency for the purpose
5 of paragraphs (4) and [~~18~~] (15) and seek to enforce
6 that power in the courts of this State;
- 7 (6) May recommend disciplinary action to appropriate
8 officers of an agency;
- 9 (7) Shall report annually to the governor and [~~the state~~]
10 legislature on the activities and findings of the
11 office of information practices, including
12 recommendations for legislative changes;
- 13 (8) Shall receive complaints from and actively solicit the
14 comments of the public regarding the implementation of
15 this chapter;
- 16 (9) Shall review the official acts, records, policies, and
17 procedures of each agency;
- 18 (10) Shall assist agencies in complying with the provisions
19 of this chapter;
- 20 (11) Shall inform the public of the following rights of an
21 individual and the procedures for exercising them:



- 1 (A) The right of access to records pertaining to the
- 2 individual;
- 3 (B) The right to obtain a copy of records pertaining
- 4 to the individual;
- 5 (C) The right to know the purposes for which records
- 6 pertaining to the individual are kept;
- 7 (D) The right to be informed of the uses and
- 8 disclosures of records pertaining to the
- 9 individual;
- 10 (E) The right to correct or amend records pertaining
- 11 to the individual; and
- 12 (F) The individual's right to place a statement in a
- 13 record pertaining to that individual;
- 14 (12) Shall adopt rules that set forth ~~[an]~~:
- 15 (A) An administrative appeals structure ~~[which]~~ that
- 16 provides for:
- 17 ~~[(A)]~~ (i) Agency procedures for processing
- 18 records requests;
- 19 ~~[(B)]~~ (ii) A direct appeal from the division
- 20 maintaining the record; and
- 21 ~~[(C)]~~ (iii) Time limits for action by agencies;



1 ~~[(13) Shall adopt rules that set forth the]~~

2 (B) The fees and other charges that may be imposed
3 for searching, reviewing, or segregating
4 disclosable records~~[, as well as to provide for a~~
5 ~~waiver of fees when the public interest would be~~
6 ~~served;].~~ The rules shall:

7 (i) Set forth fees not exceeding \$5 per fifteen
8 minutes or fraction thereof for the search
9 for the record;

10 (ii) Set forth fees not exceeding \$7.50 per
11 fifteen minutes or fraction thereof for the
12 review and segregation of the record; and

13 (iii) Provide for a waiver of fees when the public
14 interest would be served by the record's
15 disclosure; provided that the waiver shall
16 require that the search for or review or
17 segregation of records be provided at no
18 charge to the requester if disclosure of the
19 record is in the public interest because the
20 disclosure is likely to contribute
21 significantly to public understanding of the



1 operations or activities of the government
2 and is not primarily in the commercial
3 interest of the requester. Factors to be
4 considered when determining if the
5 disclosure would serve the public interest
6 include, but are not limited to: (a) the
7 subject of the request; (b) the informative
8 value of the information to be disclosed;
9 (c) the contribution to an understanding of
10 the subject by the general public likely to
11 result from disclosure; (d) the significance
12 of the contribution to public understanding;
13 (e) the existence and magnitude of a
14 commercial interest; and (f) the primary
15 interest in disclosure; and

16 ~~[-(14) Shall adopt rules which set forth uniform]~~

17 (C) Uniform standards for [the]:

18 (i) The records collection practices of
19 agencies; and

20 ~~[-(15) Shall adopt rules that set forth uniform standards for~~
21 ~~disclosure]~~



1 (ii) Disclosure of records for research purposes;
2 [~~(16)~~] (13) Shall have standing to appear in cases where the
3 provisions of this chapter or part I of chapter 92 are
4 called into question;

5 [~~(17)~~] (14) Shall adopt, amend, or repeal rules pursuant to
6 chapter 91 necessary for the purposes of this chapter;
7 and

8 [~~(18)~~] (15) Shall take action to oversee compliance with
9 part I of chapter 92 by all state and county boards
10 including:

- 11 (A) Receiving and resolving complaints;
- 12 (B) Advising all government boards and the public
- 13 about compliance with chapter 92; and
- 14 (C) Reporting each year to the legislature on all
- 15 complaints received pursuant to section 92-1.5."

16 SECTION 6. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$ or so
18 much thereof as may be necessary for fiscal year 2023-2024 and
19 the same sum or so much thereof as may be necessary for fiscal
20 year 2024-2025 for two full-time equivalent (2.0 FTE) permanent



1 positions to be placed within the office of information
2 practices.

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

5 SECTION 7. Section 4 does not affect rights and duties
6 that matured, penalties that were incurred, and proceedings that
7 were begun before its effective date.

8 SECTION 8. The sections and provisions of this Act are not
9 severable from any other section or provision. To the extent
10 that any part of this Act shall be deemed invalid for any
11 reason, the entirety of the Act, and every section and provision
12 therein, shall be deemed invalid.

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect on July 1, 2050;
16 provided that section 4 shall be repealed on June 30, 2028, and
17 section 92F-13, Hawaii Revised Statutes, shall be reenacted in
18 the form in which it read on the day before the effective date
19 of this Act.



Report Title:

Commission to Improve Standards of Conduct; Public Records;
Costs; Disclosure; Public Interest; Waiver; Office of
Information Practices; Positions; Appropriation

Description:

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. Allows agencies to withhold certain deliberative documents before a decision is made. Imposes a cap on charges for searching for, reviewing, and segregating records. 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 7/1/2050. (SD2)

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