
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 public records can range from serious to routine but,
6 in all cases, result in a less informed citizenry. Fee waivers
7 offer a simple and flexible solution. Former Governor Ige
8 stated, "Effective citizen participation in state government
9 requires timely access to information and appropriate
10 opportunities for the public to provide its government with
11 feedback and ideas".

12 The legislature notes the intent indicated by the
13 legislative history of section 92F-42, Hawaii Revised Statutes,
14 and the section's provision on waiver of fees, first introduced
15 in House Bill No. 2002, regular session of 1988. The original
16 language of House Bill No. 2002 (1988) allowed fees only for
17 copies of records, but the house of representatives' judiciary



1 committee's House Draft 1 amended the bill to also allow charges
2 for searching, reviewing, and segregating records, while also
3 allowing waivers for public interest. The house judiciary
4 committee's report, House Standing Committee Report No. 342-88,
5 states:

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

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

17 The purpose of this Act is to:

18 (1) Impose a cap on costs charged to reproduce certain
19 government records;



- 1 (2) Waive reproduction costs charged for the first one
2 hundred pages if a record's disclosure serves the
3 public interest;
- 4 (3) Waive costs charged to duplicate government records in
5 an electronic format;
- 6 (4) Impose a cap on costs charged to search for, review,
7 and segregate records;
- 8 (5) Provide for a waiver of fees when a record's
9 disclosure serves the public interest; and
- 10 (6) Appropriate funds to establish two full-time
11 equivalent permanent (2.0 FTE) positions within the
12 office of information practices.

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

15 **"§92-21 Copies of records; other costs and fees.** Except
16 as otherwise provided by law, a copy of any government record,
17 including any map, plan, diagram, photograph, photostat, or
18 geographic information system digital data file, which is open
19 to the inspection of the public, shall be furnished to any
20 person applying for the same by the public officer having charge
21 or control thereof upon the payment of the reasonable cost of



1 reproducing ~~[such]~~ the copy. Except as provided in section 91-
2 2.5, the cost of reproducing any government record, except
3 geographic information system digital data, photographs, maps,
4 audio recordings, digital or electronic records, and other types
5 of physical records, shall not ~~[be less than 5]~~ exceed 25 cents
6 per page, sheet, or fraction thereof. The first one hundred
7 pages shall be reproduced at no charge to the requester if the
8 record's disclosure serves the public interest, will likely
9 contribute significantly to the public understanding of the
10 government's operations or activities, and is not primarily in
11 the commercial interest. Reproduction costs shall not be
12 charged for producing documents provided to requesters in an
13 electronic format; provided that the agency maintains the
14 documents in an electronic format; provided further that
15 requesters shall be charged for the agency's provision of
16 documents requested in an electronic format that are not
17 maintained by the agency in an electronic format. The cost of
18 reproducing geographic information system digital data,
19 photographs, maps, audio recordings, digital or electronic
20 records, and other types of physical records shall be in
21 accordance with rules adopted by the agency having charge or



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

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

18 "**§92F-42 Powers and duties of the office of information**
19 **practices.** The director of the office of information practices:

20 (1) Shall, upon request, review and rule on an agency
21 denial of access to information or records, or an



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



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

10 (A) Agency procedures for processing records
11 requests;

12 (B) A direct appeal from the division maintaining the
13 record; and

14 (C) Time limits for action by agencies;

15 (13) Shall adopt rules that set forth the fees and other
16 charges that may be imposed for searching, reviewing,
17 or segregating disclosable records [~~, as well as to~~
18 ~~provide for a waiver of fees when the public interest~~
19 ~~would be served,]~~ . The rules shall:



- 1 (A) Set forth fees not exceeding \$5 per fifteen
2 minutes or fraction thereof for the search for
3 the record;
- 4 (B) Set forth fees not exceeding \$7.50 per fifteen
5 minutes or fraction thereof for the review and
6 segregation of the record; and
- 7 (C) Provide for a waiver of fees when the record's
8 disclosure would serve the public interest;
9 provided that the waiver shall require that the
10 search for or review or segregation of records be
11 provided at no charge to the requester if the
12 record's disclosure serves the public interest,
13 will likely contribute significantly to public
14 understanding of the government's operations or
15 activities, and is not primarily in the
16 commercial interest;
- 17 (14) Shall adopt rules [~~which~~] that set forth uniform
18 standards for the records collection practices of
19 agencies;
- 20 (15) Shall adopt rules that set forth uniform standards for
21 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;

10 (B) Advising all government boards and the public
11 about compliance with chapter 92; and

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

14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$185,000 or so much
16 thereof as may be necessary for fiscal year 2023-2024 and the
17 same sum or so much thereof as may be necessary for fiscal year
18 2024-2025 for the establishment of two full-time equivalent (2.0
19 FTE) permanent positions to be placed within the office of
20 information practices.



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

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2112.



Report Title:

Public Records; Duplications; Costs; Disclosures; Public Interest; Waivers; Appropriation

Description:

Imposes a cap on costs charged to reproduce certain government records. Waives reproduction costs charged for the first one hundred pages if disclosure serves the public interest. Waives costs charged to duplicate certain government records in an electronic format. Imposes a cap on costs charged to search for, review, and segregate records. Provides for a waiver of fees when a record's disclosure serves the public interest. Appropriates funds for positions within the Office of Information Practices. Effective 7/1/2112. (SD1)

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