

JAN 23 2025

A BILL FOR AN ACT

RELATING TO GOVERNMENT RECORDS.

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

1 SECTION 1. The legislature finds that transparency and
2 accountability in government operations are fundamental to
3 public trust. The legislature also finds that public agencies
4 in the State increasingly rely on private contractors to perform
5 government functions, including creating, maintaining, or using
6 records critical to public oversight. The legislature believes
7 it is critical to prevent the circumvention of public agencies'
8 transparency obligations through the outsourcing of their
9 government functions by ensuring that these records remain
10 accessible under Hawaii's public records law, the Uniform
11 Information Practices Act (UIPA).

12 The purpose of this Act is to clarify that records created,
13 received, maintained, or used by private contractors performing
14 governmental functions on behalf of public agencies are subject
15 to the UIPA.



1 SECTION 2. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding two new sections to part II to be
3 appropriately designated and to read as follows:

4 **"§92F-A Government Function Outsourcing Contracts;**
5 **requirements.** (a) All government function outsourcing

6 contracts shall include provisions that require:

7 (1) The contractor to:

8 (A) Comply with the government record disclosure
9 requirements of this chapter;

10 (B) Maintain government records in accordance with
11 retention schedules established under state law;
12 and

13 (C) Designate a custodian of government records
14 responsible for responding to requests for access
15 to government records; and

16 (2) The contract to be terminated upon the determination
17 of the office of information practices that the
18 contractor violated the recordkeeping and disclosure
19 requirements under this chapter.

20 (b) Any agency that enters into a government function
21 outsourcing contract shall:



1 (1) Be responsible for ensuring compliance with this
2 chapter by the agency and contractor, which shall
3 include but not be limited to providing oversight of
4 the contractor's recordkeeping and responses to
5 requests for access to government records; and

6 (2) Make available on the agency's website a list of all
7 government function outsourcing contracts entered into
8 by the agency with an outline of the nature of
9 services contracted and the government records subject
10 to disclosure pursuant to this part.

11 (c) No contractor shall deny a request for access to
12 government records on the basis of trade secret or other
13 proprietary information except where specifically protected by
14 law, as determined by the office of information practices.

15 (d) Each public agency that enters into a government
16 function outsourcing contract shall submit an annual report of
17 its findings and recommendations, including any proposed
18 legislation, to the legislature no later than twenty days prior
19 to the convening of each regular session, beginning with the
20 regular session of 2026. The reports shall include:



1 (1) All government function outsourcing contracts entered
2 into by the agency during the preceding year;

3 (2) The type and volume of each of the government records
4 created, received, maintained, or used by contractors;
5 and

6 (3) A list of requests for access to government records
7 received by the agency and contractor for contractor-
8 held government records and their resolutions.

9 (e) For the purposes of this section:

10 "Contractor" means a private person that enters into a
11 government function outsourcing contract with an agency.

12 "Government function" means a service, program, or activity
13 that an agency is authorized or required by law to perform.

14 "Government function outsourcing contract" means a contract
15 or other agreement under which an agency delegates performance
16 of a government function to a private person.

17 "Trade secret" has the same meaning as defined in section
18 482B-2."

19 **§92F-B Civil penalties.** (a) Any contractor who violates
20 the recordkeeping and disclosure requirements of this chapter as
21 determined by the office of information practices, shall be



1 subject to a civil penalty not to exceed \$10,000 for each
2 violation, and the government function outsourcing contract
3 shall be terminated.

4 (b) For the purposes of this section:

5 "Contractor" has the same meaning as defined in section
6 92F-A.

7 "Government function outsourcing contract" has the same
8 meaning as defined in section 92F-A."

9 SECTION 3. Section 92F-3, Hawaii Revised Statutes, is
10 amended by amending the definition of "government record" to
11 read as follows:

12 "Government record" means information maintained by an
13 agency in written, auditory, visual, electronic, or other
14 physical form. "Government record" includes any information in
15 written, auditory, visual, electronic, or other physical form
16 that is created, received, maintained, or used by a private
17 person in performance of a contract or other agreement with an
18 agency, under which the agency delegates performance of a
19 government function to the private person."

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



1 "§92F-42 Powers and duties of the office of information
2 **practices.** The director of the office of information practices:
3 (1) Shall, upon request, review and rule on an agency
4 denial of access to information or records, or an
5 agency's granting of access; provided that any review
6 by the office of information practices shall not be a
7 contested case under chapter 91 and shall be optional
8 and without prejudice to rights of judicial
9 enforcement available under this chapter;
10 (2) Upon request by an agency, shall provide and make
11 public advisory guidelines, opinions, or other
12 information concerning that agency's functions and
13 responsibilities;
14 (3) Upon request by any person, may provide advisory
15 opinions or other information regarding that person's
16 rights and the functions and responsibilities of
17 agencies under this chapter;
18 (4) May conduct inquiries regarding compliance by an
19 agency and investigate possible violations by any
20 agency;



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



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



- 1 provide for a waiver of fees when the public interest
2 would be served;
- 3 (14) Shall adopt rules which set forth uniform standards
4 for the records collection practices of agencies;
- 5 (15) Shall adopt rules that set forth uniform standards for
6 disclosure of records for research purposes;
- 7 (16) Shall have standing to appear in cases where the
8 provisions of this chapter or part I of chapter 92 are
9 called into question;
- 10 (17) Shall adopt, amend, or repeal rules pursuant to
11 chapter 91 necessary for the purposes of this chapter;
12 [~~and~~]
- 13 (18) Shall take action to oversee compliance with part I of
14 chapter 92 by all state and county boards including:
15 (A) Receiving and resolving complaints;
16 (B) Advising all government boards and the public
17 about compliance with chapter 92; and
18 (C) Reporting each year to the legislature on all
19 complaints received pursuant to section 92-
20 1.5[~~7~~];



1 (19) May conduct inquiries regarding compliance by a
2 contractor and investigate possible violations of this
3 chapter; and

4 (20) Shall, upon request, review and rule on whether a
5 contractor violated any recordkeeping or disclosure
6 requirements of this chapter.

7 For the purposes of this section, "contractor" has the same
8 meaning as defined in section 92F-A."

9 SECTION 5. In codifying the new sections added by
10 section 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 6. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 7. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect July 1, 2025.

4 INTRODUCED BY: *James Mercede King*



S.B. NO. 1255

Report Title:

OIP; UIPA; Transparency; Government Records; Government Function Outsourcing Contracts; Contractors; Disclosure; Recordkeeping; Civil Penalty; Reports

Description:

Clarifies that government records subject to disclosure requirements under the Uniform Information Practices Act include information that is created, received, maintained, or used by private contractors in performance of a government function outsourcing contract. Establishes requirements for parties to government function outsourcing contracts. Establishes civil penalties. Requires reports to the Legislature. Allows the Office of Information Practices to conduct inquiries regarding compliance by a private contractor and investigate possible violations.

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

