
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 a new section to be appropriately designated
3 and to read as follows:

4 "§92F- Government function contracts; record retention
5 and access requirements. Each contract with an agency to
6 perform a government function shall expressly require the
7 contractor to retain records in accordance with the retention
8 schedule of the agency and provide the agency with access to all
9 records subject to this chapter."

10 SECTION 3. Section 92F-3, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By adding two new definitions to be appropriately
13 inserted and to read:

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

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

19 2. By amending the definition of "government record" to
20 read:



1 "Government record" means any information [maintained by
2 an agency] in written, auditory, visual, electronic, or other
3 physical form[-] that is maintained by an agency or used in the
4 performance of a government function. "Government record"
5 includes any information in written, auditory, visual,
6 electronic, or other physical form that is created, received,
7 maintained, or used by a private person in performance of a
8 contract or other agreement with an agency, under which the
9 agency delegates performance of a government function to the
10 private person."

11 SECTION 4. Section 92F-11, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§92F-11 Affirmative agency disclosure responsibilities.**

14 (a) All government records are open to public inspection unless
15 access is restricted or closed by law.

16 (b) Except as provided in section 92F-13, each agency upon
17 request by any person shall make government records available
18 for inspection and copying during regular business hours.

19 (c) Notwithstanding section 92F-13(3), an agency shall not
20 deny a request for access to records of a contractor used in the
21 performance of a government function on the basis of trade



1 secret or other proprietary information except where
2 specifically protected by law.

3 [~~(e)~~] (d) Unless the information is readily retrievable by
4 the agency in the form in which it is requested, an agency shall
5 not be required to prepare a compilation or summary of its
6 records.

7 [~~(d)~~] (e) Each agency shall assure reasonable access to
8 facilities for duplicating records and for making memoranda or
9 abstracts.

10 [~~(e)~~] (f) The office of information practices may adopt
11 rules, pursuant to chapter 91, to protect agency records from
12 theft, loss, defacement, alteration, or deterioration and to
13 prevent manifestly excessive interference with the discharge of
14 agencies' other lawful responsibilities and functions."

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 6. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on January 1, 2491.



Report Title:

UIPA; Transparency; Government Records; Government Function Contracts; Contractors; Record Retention and Access Requirements; Public Access

Description:

Amends the Uniform Information Practices Act to require each contract to perform a government function to expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to the Uniform Information Practices Act; define "government function" and "trade secret"; clarify that "government record" includes information that is created, received, maintained, or used by a private person in performance of a government function contract; and prohibit agencies from denying a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information. Effective 1/1/2491. (SD1)

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