

JAN 17 2025

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# A BILL FOR AN ACT

RELATING TO FEES FOR PUBLIC RECORDS UNDER CHAPTER 92F.

**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 further finds that this Act adopts the  
8 Freedom of Information Act standard to define waivers of fees  
9 for searching, reviewing, or segregating disclosable records  
10 when in the public interest. The federal standard provides a  
11 waiver in limited circumstances based on careful examination of  
12 various 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 searching for, reviewing,  
2 and segregating government records; and

3 (2) Provide for a waiver of fees in certain circumstances  
4 when the public interest is served by a government  
5 record's disclosure.

6 SECTION 2. Section 92F-42, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§92F-42 Powers and duties of the office of information**  
9 **practices.** The director of the office of information practices:

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

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



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



- 1           (10) Shall assist agencies in complying with the provisions  
2                   of this chapter;
- 3           (11) Shall inform the public of the following rights of an  
4                   individual and the procedures for exercising them:
- 5                   (A) The right of access to records pertaining to the  
6                           individual;
- 7                   (B) The right to obtain a copy of records pertaining  
8                           to the individual;
- 9                   (C) The right to know the purposes for which records  
10                           pertaining to the individual are kept;
- 11                   (D) The right to be informed of the uses and  
12                           disclosures of records pertaining to the  
13                           individual;
- 14                   (E) The right to correct or amend records pertaining  
15                           to the individual; and
- 16                   (F) The individual's right to place a statement in a  
17                           record pertaining to that individual;
- 18           (12) Shall adopt rules that set forth an administrative  
19                   appeals structure [~~which~~] that provides for:
- 20                   (A) Agency procedures for processing records  
21                           requests;



- 1 (B) A direct appeal from the division maintaining the  
2 record; and
- 3 (C) Time limits for action by agencies;
- 4 (13) Shall adopt rules that set forth the fees and other  
5 charges that may be imposed for searching, reviewing,  
6 or segregating disclosable records [~~as well as to~~  
7 ~~provide for a waiver of fees when the public interest~~  
8 ~~would be served~~]. The rules shall:
- 9 (A) Set forth fees not exceeding \$5 per fifteen  
10 minutes or fraction thereof for the search for  
11 the record;
- 12 (B) Set forth fees not exceeding \$7.50 per fifteen  
13 minutes or fraction thereof for the review and  
14 segregation of the record; and
- 15 (C) Provide for a waiver of fees when the public  
16 interest would be served by the record's  
17 disclosure; provided that the waiver shall  
18 require that the search for or review or  
19 segregation of records be provided at no charge  
20 to the requester if disclosure of the record is  
21 in the public interest because the disclosure is



1           likely to contribute significantly to public  
2           understanding of the operations or activities of  
3           the government, is not primarily in the  
4           commercial interest of the requester, and is not  
5           unreasonably burdensome. Factors to be  
6           considered when determining if the disclosure  
7           would serve the public interest include, but are  
8           not limited to:

- 9           (i) The subject of the request;  
10          (ii) The informative value of the information to  
11           be disclosed;  
12          (iii) The contribution to an understanding of the  
13           subject by the general public likely to  
14           result from disclosure;  
15          (iv) The significance of the contribution to  
16           public understanding;  
17          (v) The existence and magnitude of a commercial  
18           interest; and  
19          (vi) The primary interest in disclosure;



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

19       SECTION 3. This Act does not affect rights and duties that  
20       matured, penalties that were incurred, and proceedings that were  
21       begun before its effective date.



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Karl Rhoads



# S.B. NO. 863

**Report Title:**

Office of Information Practices; Public Records; Costs; Waiver

**Description:**

Imposes a cap on charges for searching for, reviewing, and segregating government records under the Uniform Information Practices Act. Provides for a waiver of fees in certain circumstances when the public interest is served by a government record's disclosure.

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

