

ACT 226

H.B. NO. 501

A Bill for an Act Relating to Personal Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to implement in part the 1978 amendment to the Hawaii State Constitution (Article I, Section 6) relating to the right to privacy.

This Act permits individuals to gain access to personal records relating to themselves maintained by State or county executive branch agencies and to correct or amend those records under certain circumstances.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER
FAIR INFORMATION PRACTICE
(Confidentiality of Personal Record)

Sec. -1 Definitions. As used in this chapter:

- (1) “Agency” means every office, officer, employee, department, division, bureau, authority, board, commission, or other entity of the executive branch of the State or of each county, but excludes:
 - (A) The legislature and the council of each county, including their respective committees, offices, bureaus, officers, and employees; and
 - (B) The judiciary, including the courts, and its offices, bureaus, officers, and employees.
- (2) “Individual” means a natural person.
- (3) “Personal record” means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual’s educational, financial, medical, or employment history, or items that contain or make reference to the individual’s name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. “Personal record” includes a “public record,” as defined under section 92-50.

Sec. -2 Individual’s access to own personal record. Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use.

Sec. -3 Exemptions and limitations on individual access. An agency is not required by this part to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the enforcement of criminal laws or any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
 - (A) Information which fits or falls within the definition of “criminal history record information” in section 846-1; or
 - (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or
 - (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.

- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege.

Sec. -4 Limitation on public access to personal record. No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

- (1) To a duly authorized agent of the individual to whom it pertains;
- (2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;
- (3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;
- (4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual.

Sec. -5 Limitations on disclosure of personal record to other agencies. No agency may disclose or authorize disclosure of personal record to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;
- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal monies.

Sec. -6 Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted

under section -3. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay.

Sec. -7 Copies. The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form and duplication and shall not include any costs of searching for the record.

Sec. -8 Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record, an agency shall acknowledge the request in writing, and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal.

Sec. -9 Access and correction; review procedures. (a) Not later than thirty business days after receipt of request for review of an agency refusal to allow access to, or correction or amendment of, a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow access to, or correction or amendment of, a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for his disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy.

Sec. -10 Rules and regulations. Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this chapter.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county.

Sec. -11 Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this chapter, and after appropriate administrative remedy under sections -6, -8, and -9 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that

the agency acted in a manner which was intentional or wilful, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$100; and
- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance.

Sec. -12 Violations; disciplinary action against employees. A knowing or intentional violation of any provision of this chapter, or of any rule adopted to implement or administer this chapter, by any employee or officer of an agency shall be cause for disciplinary action, including suspension or discharge, by the head of the agency. Any person may file a complaint, with the head of the applicable agency, alleging such a violation.

Sec. -13 Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this chapter, including section -3, shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access."

SECTION 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 7, 1980.)