

# The Uniform Information Practices Act (Modified)



Hawaii's Public Records Law  
Chapter 92F, HRS

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## Ethics and Government Openness

- HRPC 1.6(c): PUBLIC GOOD tempers a government attorney's duty of CONFIDENTIALITY

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## Public Good per UIPA

“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”

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## Duty to Public/ Purpose of UIPA

Government **attorney** owes duty to whom when giving UIPA advice?

- Government **client** has fiduciary duty to public
- Public purpose of UIPA

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## What is the Purpose of the UIPA?

- To protect the public's interest in disclosure;
- To open the governmental process to public scrutiny and public participation; and
- To make government accountable to individuals in the collection, use, and dissemination of information relating to them



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## Access to Justice: UIPA requests

- The more familiar agency personnel are with the UIPA, the fewer the disputes
- The better advised agency personnel are, the fewer the disputes
  - Advice from OIP
  - Advice from agency's counsel

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## UIPA Power Points (things to remember)



- Records presumed public
- 5 exceptions to disclosure
- Respond in 10 business days
- “Personal” records are different

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## General Rule

All government records are open to public inspection and copying unless restricted or closed by law



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## Access to Justice: ‘Any person’

- Request by “any person”
  - Identity doesn’t matter
  - Motive for request doesn’t matter
  - Residence doesn’t matter

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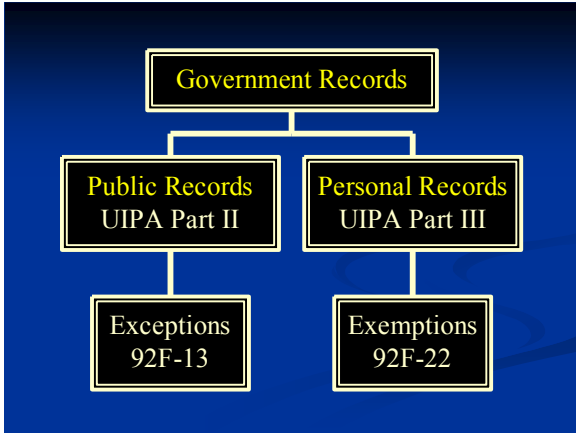
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# PUBLIC RECORDS

## Part II of the UIPA

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### Required Disclosure

Examples:

- Agency rules, policy and interpretations
- Final opinions and orders
- Government purchasing information
- Land ownership records and state leases
- Contract hires and consultants
- Minutes of agency meetings
- Certified payroll records
- Building permit information
- Rosters of licensees and permit holders
- Government personnel information
- Employee misconduct
- Written consent of individual to whom the record refers
- Federal or state law authorizes disclosure




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## 5 Exceptions to Disclosure

1. Privacy Exception
2. Litigation Privilege Exception
3. Frustration Exception
4. Law or Order Exception
5. Legislature Exception



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## Privacy Exception



- “clearly unwarranted invasion of personal privacy”
  - “Significant privacy interest” and
  - Not outweighed by public interest in disclosure

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## Significant Privacy Interests

- Health information
- Social Security Numbers
- Personal contact information
- Financial information
- Criminal law investigation
- Social services or welfare benefits
- Personnel file type information



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## Public Interest In Disclosure

- Sheds light on agency's performance and conduct of government officials
- Promotes government accountability



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## Frustration Exception

- Avoid frustrating a legitimate government function



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## Examples of "Frustration"

- Open Investigation
- Confidential Sources
- Proprietary Information
- Confidential Business Information
- Internal Agency Memoranda
- Examination Materials



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## Examples of “Frustration”

### ■ Proprietary Information

- Research methods, records and data, computer programs and software, copyrighted information



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## Examples of “Frustration”

### ■ Confidential Business Information

- Trade secrets
- Confidential commercial and financial information
- Substantial competitive harm



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## Internal Agency Memos

- “Deliberative Process Privilege”
- Recommendations or opinions that are:
  - Pre-decisional, and
  - Part of the decision-making process



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## Interagency Disclosure

Required for performance of duties,  
and

- Compatible with purpose, and
- Consistent with expected use

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## Interagency Disclosure

- To state archives
- For civil or criminal law enforcement activities
- To the legislature or county council
- Pursuant to court order
- To the auditor, LRB or Ombudsman
- To DHRD or personnel offices

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## Within 10 Business Days

Provide:

- Record,
- Notice, or
- Acknowledgement



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**Step 1**

Identify the requested record

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**Step 2**

Determine whether the agency  
has the record

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**Step 3**

Determine if an exception  
applies

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## Step 4

Within 10 days, provide:

- Record
- Notice
- or -
- Acknowledgement

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## Fees

- May charge for:
  - search, review and segregation; and
  - any other lawful fees (e.g., copying fees)
- Prepayment allowed
  - 50% of estimated search, review and segregation fee and
  - 100% of other estimated fees



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## Step 5

Search, review and segregate

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## Step 6

Provide the record

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## “Personal Record”

- “About” the requester
- Contains or makes reference to the requester’s name, social security number or other identifying particular



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## Personal Record Exemptions

1. Criminal Law Enforcement Records
2. Confidential Source Records
3. Government Examination Materials
4. Investigative Reports or Materials
5. Records Protected by Law



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## Agency's Response

- Access within 10 business days
- Additional 20 business days if unusual circumstances exist



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## Right to Correct

- Any misleading or incorrect fact
- Within 20 days of receipt of written request, acknowledge receipt and:
  - Make correction or amendment, or
  - Inform requester of refusal, reason and appeal procedures



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## Penalties

- Knowing or intentional violation:
  - actual damages (but not less than \$1,000) and attorney's fees and costs
- Complainant substantially prevails:
  - attorney's fees and costs



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## Access to Justice: OIP as ADR

- UIPA requester can appeal denial straight to court, **OR**
- UIPA requester can appeal denial to OIP instead
- OIP appeal required to be an informal process, not a contested case

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## Access to Justice: Precluding Disputes

- Agencies and public can obtain advisory opinions from OIP to preclude future disputes
- Agencies and public obtain same-day informal advice on pending requests and other matters through OIP's Attorney of the Day
- OIP's training for agencies is another preventative measure

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## Need Help?

- Call AOD 586-1400



- E-mail AOD: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)
- OIP Website: [www.hawaii.gov/oiip](http://www.hawaii.gov/oiip)

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