

QUICK REVIEW: Responding to a Personal Record Request (April 2013)

Virtually all agencies maintain personal records, so OIP is providing this quick review of Part III of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA), which allows an individual to access or request corrections to his or her personal record.

The UIPA defines a “personal record” as “any item, collection, or grouping of information about an individual that is maintained by an agency.” HRS § 92F-3. An individual is a natural person, *i.e.*, a human being and not a business or other entity. *Id.*

A Part III Personal Record Request is “About” the Individual Requester:

The UIPA’s Part III gives an individual the right to access personal records “about” him or her and to have factual errors, misrepresentations, or misleading entries in the record amended by the agency, unless a Part III exemption applies. Part III includes a description of an agency’s responsibilities when responding to an individual’s request to access or correct his or her personal records, and the remedies available to the individual for an agency’s denial of his or her personal record request. A Part III requester’s rights and remedies are separate and different from the provisions in Part II, which governs the general public’s access to government records.

A request by an individual should be considered a Part III personal records request only if it seeks a record “about” the requester, such as the requester’s own personnel file. But if the request is not made by an individual, is an anonymous request, does not seek information about the requester, or asks for a government record as a member of the general public, then it should be treated as a general government record request subject to Part II of the UIPA. For example, if the requester is seeking personnel information about another person or about government employees in general, then the request should be considered a Part II government records request and not a Part III personal records request.

Analytical Framework to Review a Record When a Request to Access a Personal Record is Received:

When an individual makes a request to access a record and indicates that the requested record contains information “about” that individual, the agency should consider the record request as a “personal record” request and apply the provisions of Part III of the UIPA by answering the following four questions:

- 1) What is the “personal record” of the individual requesting access under Part III of the UIPA?

- 2) Does an applicable Part III exemption in section 92F-22, HRS, allow the withholding of access to the personal record?
- 3) What portion, if any, is a government record subject to the public disclosure requirements of Part II of the UIPA?
- 4) Does an applicable Part II exception in section 92F-13, HRS, allow the non-disclosure of a government record that is not a Part III personal record?

First, an agency must determine whether the requested record, or portions thereof, constitutes a personal record that the requesting individual is entitled to access under Part III of the UIPA. An agency should review the subject matter and contents of the requested record in order to ascertain what information, if any, in the record identifies and is specifically about the individual requesting access.

Second, when the agency has determined that the record, or portions thereof, is an individual's personal record, the agency may withhold the personal record from the individual only when there is an applicable Part III exemption. Only Part III exemptions, and not Part II exceptions (which allow withholding of government records from the general public), are considered in analyzing Part III personal records requests.

Third, there may be portions of the requested record that do not constitute a personal record because they are not about the requesting individual. Any portion that is not a personal record must be reviewed under Part II of the UIPA to determine whether the requester, as a member of the general public, would be entitled to access the government record. Thus, Part II, not Part III, applies to any portion of a record that is not the individual's personal record.

Fourth, when applying Part II of the UIPA to information in a government record that does not constitute a personal record, an agency may withhold from public access only information that falls within an exception to required public disclosure, as set forth in section 92F-13, HRS. If no Part II exception applies, the agency must publicly disclose that portion of the government record.

For an extensive discussion of how to analyze Part III versus Part II record requests, please see OIP Opinion Letter No. F13-01, which can be found on OIP's website under the formal opinion summaries for 2013 at hawaii.gov/oip.

Examples of What May or May Not be Personal Records:

Obvious examples of personal records would be the **requester's own birth or marriage certificate, school transcript, medical records, or government benefit records, such as welfare and subsidized housing benefits.**

Greater care must be taken to follow the analytical framework described above when dealing with **personnel or investigative files**. When a personnel or investigative file is specifically about the requester, then the records in the file will generally fall within the definition of personal records. But the file could also contain confidential information that is about someone other than the requester, which would not qualify as the requester's personal record.

Even within a single document, such as an **investigative report**, there may be different and sometimes overlapping portions that would be the joint personal record of the individual being investigated, the individual filing the complaint, and/or the witnesses who were interviewed as part of the investigation. See, e.g., OIP Op. Ltr. No. F13-01 (explaining joint personal records and distinguishing between the personal records of the requester, the complainant, and other witnesses); OIP Op. Ltr. No. 05-10 (concluding that the home addresses and home telephone numbers of witnesses and the alleged assailant in a report of a sexual assault were not the alleged victim's personal record subject to Part III and must instead be evaluated as a public records request under Part II); OIP Op. Ltr. No. 03-18 (determining that certain information in an investigative file concerning an individual's complaint against an agency employee was the employee's confidential personnel information, and was not part of complainant's personal record).

There are other records that are not primarily about an individual requester, but that person may still have a Part III right to access and correct limited portions of the record that specifically identify or quote him or her, and thus, are "about" the requester. For example, an agency's **annual report** may summarize an identified individual's case, or an **audit** or **consultant's report** may include an identified individual's comments. When these types of records are requested, their subject matters and contents are not primarily about the identified individuals and, thus, the annual report, audit or consultant's report would not constitute personal records in their entireties. Depending on the facts of the case, however, a limited portion of an annual report summarizing the identified individual's case, or the individual's specific comments in an audit or consultant's report, may constitute that individual's personal record for purposes of applying Part III of the UIPA, which gives that person the right to access and seek to have corrections made to that portion of the record.

As these examples demonstrate, it is necessary to carefully examine the record and to follow the analytical framework summarized above, in order to determine whether the requester is entitled to obtain the entire document, or only portions thereof, as his or her personal record.

Time Limits and Procedures for Agency's Response:

An agency has 10 working days from receiving a request to access a personal record to (1) respond, or (2) request in an extension for an additional 20 working days and provide a written explanation of unusual circumstances causing the delay.

If an agency denies access to the requester's personal record, then the requester may either appeal the denial to OIP or to the circuit court. An appeal to OIP shall not prejudice the individual's right to appeal to the circuit court after OIP makes its decision.

If an individual provides a written request and purported evidence to correct his or her personal record, the agency responsible for its maintenance has 20 business days to acknowledge receipt of the request and evidence and must promptly (1) make the requested correction or amendment, or (2) inform the individual in writing why the agency is refusing to make the correction or amendment and provide the agency's review procedures.

If an agency receives a request for review of its refusal to allow correction or amendment of a personal record, then the agency must make its final determination not later than 30 business days after receiving the request for review. If the agency refuses upon final determination to allow correction or amendment, then the agency must state this in writing, notify the person of the applicable procedures for obtaining judicial review, and when appropriate, permit the individual to file in the record a concise statement of his or her disagreement with the agency's refusal.

A personal record requester may bring a civil action against an agency in the circuit court. Among other remedies, the court shall award court costs and actual damages of \$1,000 or more against an agency that knowingly and intentionally violates Part III. The court may also award reasonable attorney fees and litigation costs against the agency if the complainant substantially prevails, or against the complainant if the charges brought against the agency were frivolous.

Fees and Costs:

OIP is in the process of drafting administrative rules relating to Part III personal records requests, which are likely to be similar to those already in effect for Part II government records requests. See Chapter 2-71, HAR. Until Part III rules are adopted, agencies are not able to charge for search, review, and segregation fees for

personal record requests. Agencies, however, may recover copying and delivery costs, as authorized by section 92-21, HRS.

Practice Tips:

- If an individual is referenced in a government record, the mere fact that the individual's name has been mentioned therein does not make the entire record a "personal record."
- Because a personal record must identify and be about the requester, anonymous personal record requests are not permitted and someone requesting access to a personal record under Part III of the UIPA must include sufficient evidence that he or she is the individual whose records are being requested. Likewise, where the requester is acting for the individual in question, such as an attorney requesting a client's records or a parent requesting a child's records, the requester must show that he or she is authorized to act for that individual.
- If an individual who is discussed in a record is not identified, either directly or from the context of the record, then a summary of that individual's case or comments would not be a personal record governed by Part III of the UIPA.
- Only an individual may request his or her personal record under Part III. Individuals, businesses, organizations, government agencies, and other entities and members of the public may make government record requests under Part II.
- If a personal record is also a government record that is required to be public, in its entirety, under Part II of the UIPA, the agency may disclose the entire record to the requester without having to perform the complete analysis as to whether the individual would have access to it as his or her personal record under Part III.
- If the agency responds to a personal record request under Part III by disclosing the entire record—*i.e.*, the personal record and all public parts of the remaining record—to the individual to whom the record pertains, then a Part II analysis would be unnecessary. A Part II analysis is required when the entire record is not disclosed as a personal record.
- When government records, or portions thereof, are about a requesting individual as well as one or more other individuals, those records or relevant portions would constitute "joint personal records" of all such

individuals. Each individual has the right to access and correct the portion of the joint record constituting his or her own personal records.

- Part III exemptions apply only to personal record requests, and Part II exceptions apply to all other government record requests.
- Agencies should use the UIPA Records Request Log to help them keep track of, timely resolve, and calculate allowable fees and costs for personal record requests.

How to Get Help:

For additional assistance, please check out OIP's training materials, including the UIPA Guide and Guidance on Disclosure of Personnel Records, on the [training page at hawaii.gov/oip](#). For general advice, you may contact OIP's attorney of the day by calling (808) 586-1400 or e-mailing oup@hawaii.gov.