



Nov. 15, 2012

Cheryl Kakazu Park  
Office of Information Practices

Re: Proposed rules on OIP appeals

My name is Stirling Morita, president of the Hawaii Chapter of the Society of Professional Journalists and former member of the Governor's Committee on Public Records and Privacy 1987, whose report helped lead to the creation of OIP.

**§2-73-1 Purpose, scope, and construction.**

We do not believe the language "just, equitable, speedy and inexpensive" should be substituted for the Legislature's language of "expeditious, informal and at no cost to the public." They are not the same.

If the intent is to keep from repeating statutory language, an interpretation should not be substituted.

Under the definition of appeal, we believe denial should include the agency's failure to respond within the prescribed time limits already established in the 1999 rules (2-71-13). Delaying can be a backhanded way of denying access. Also time can be of the essence in many requests; delays can be access denied.

**§2-73-3 Computation of time.**

We do not believe that unspecified extensions should be allowed. There should be specific time limits set for a period of 10 days. And there should be a limit on the number of extensions permitted. There should also be specified conditions under which extensions would be allowed.

**§2-73-11 What may be appealed.**

Will persons asking about their own personal records be allowed to appeal denials?

**§ 2-73-12 Timing and content of appeal to OIP.**

Include that an appeal can also be filed for violating the time limits in **2-71-13 (time limits taken from the 1999 rules for agency response)**

**§ 2-73-13 OIP's response to appeal; OIP's notice of appeal.**

(b) OIP's notice of appeal shall include a description of the general appeal procedures

The procedures should include statement that the agency has the burden of proof to show that its denial is justified because public records and meetings laws specify that it is the policy of the state to conduct business openly.

(c) The director should send the copy of the appeal to the person filing it and these items should be made available to the public.

**§ 2-73-14 Agency's response to appeal.**

We wonder what the penalty would be if the agency does not respond within 10 days. Will it result in a default on the part of the agency? What guarantees are there that an agency won't unfairly delay the proceedings?

**§2-73-17 Decision.**

We suggest that there be time limits on when the director should issue a decision in subsection A. We suggest that the time limit should be five business days after receiving information from all sides. That decision should be disclosed to the public.

**§ 2-73-19 Reconsideration**

We do not believe that OIP director should be allowed to take up so-called precedents on his or her own. We ask that subsection C be removed from the proposed rules.

The proposed language is too open-ended

If this is allowed, it must be drawn tightly in specific conditions. The director should be allowed this power on a case-by-case basis in specific instances such as a change in the law, not "other compelling circumstances."

**§2-73-20**

A record of appeal for transmittal to circuit court should be available to the public.