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Recent OIP Opinions

UIPA Inmate Records and Regulations on Inmate Access Rights

In response to questions posed by the Department of Public Safety ("PSD"), OIP rendered the following opinions on the withholding of inmate records and regulations on inmate access rights:

(1) Section 92F-22(1)(B) does not permit PSD to make a blanket denial of access to inmates for all records in their institutional files. By its express language, that section only allows PSD to withhold records that constitute "reports" prepared or compiled during the criminal law enforcement process.

(2) PSD may require that inmates deliver any UIPA requests for records to PSD by regular U.S. mail. Such regulation is valid under the UIPA because this requirement does not deny or restrict the inmates' ability to make such requests, but only regulates the manner in which the requests are made.

(3) PSD may impose restrictions on inmates' rights under the UIPA under the same standard applicable to the imposition of restrictions on inmates' constitutional rights, i.e., where those restrictions are reasonably related to legitimate penological interests. *[OIP Op. Ltr. No. 05-14]*

UIPA Samples of Live Organisms

The State Laboratories Division ("SLD") of the Department of Health asked OIP for an opinion regarding whether SLD must provide samples of live organisms, specifically bacteria isolated from submitted food or patient specimens, in response to a request made under the UIPA.

OIP advised SLD that, because samples of live organisms do not constitute "government records" as defined under the UIPA, release of the samples is not governed by its provisions. It is only when information gleaned from these samples is recorded in a physical form maintained by a government agency that a "government record" would exist for purposes of triggering the disclosure requirements of the UIPA. *[OIP Op. Ltr. No. 05-12]*

UIPA Responses to Agency Survey

The Department of Business, Economic Development and Tourism ("DBEDT") asked OIP whether DBEDT can offer artists or art companies assurances that their responses to a DBEDT survey will be confidential and not subject to disclosure under the UIPA.

The survey seeks information from artists about various topics including ones that may be commercially sensitive.

DBEDT intends to use the survey responses to create a database. DBEDT believes that some artists may be unwilling to participate in the survey without assurances of confidentiality.

OIP opined that under the UIPA an agency may withhold commercial or financial information that is voluntarily submitted to it to the extent that the submitters themselves do not customarily release the information to the public. OIP found that the release of such information would impair the agency's ability

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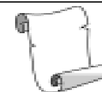
OIP Opinion Letters



OIP has issued 301 formal opinion letters since 1989. These letters may be found in full and in summary form on the OIP website at **www.hawaii.gov/oip**. A subject matter and chronological index is also available. Click on Laws/Rules/Opinions in the menu bar located on the left hand column of the homepage.

to get such information in the future thereby frustrating a legitimate function of the agency. *See* Haw. Rev. Stat. 92F-13(3) (1993).

Public Testimony When Non-Sunshine Law Requirements Apply

The Department of the Corporation Counsel, City and County of Honolulu, requested an opinion on several issues regarding the public's right to testify under the Sunshine Law.

OIP advised that with the exception of the Land Use Commission boards are not subject to the Sunshine Law during the exercise of their adjudicatory functions. Haw. Rev. Stat. § 92-6 (1993). Thus, boards conducting contested case hearings or other adjudicatory processes need not follow the Sunshine Law's public testimony requirements while doing so.

However, OIP advised that there is no Sunshine Law exception for boards holding public hearings on proposed rules under section 91-3, HRS. Boards must take care to follow the Sunshine Law's requirements as well as the requirements of 91-3 during the rulemaking process.

Finally, if a board finds that it has failed to give adequate notice of an item as required by another law or ordinance, even though the notice was adequate under the Sunshine Law, the board can avoid violating the notice requirements of the other law by canceling the meeting or canceling the individual agenda item without discussion. *[OIP Op. Ltr. No. 05-07]*

Closing Building to the Public; Unreasonable Delay to Start of Public Meeting

OIP addressed two issues raised by a member of the public regarding whether certain actions of the Kauai County Council (the "Council") were proper under the Sunshine Law, specifically: (1) whether the building in which certain public meetings were held (the "Meetings") could properly be closed to the public after the Council voted to convene in executive sessions; and (2) whether the Council could properly commence the Meetings more than seven hours after the times stated on the notices and agendas for the Meetings.

OIP concluded that that the practice of closing the building during an executive meeting does not violate the Sunshine Law. OIP strongly recommended, however, that boards hold executive meetings within the context of an open meeting and in a place where the public may remain so that the board may reconvene in the open meeting where necessary or desired.

OIP further concluded that the more than seven hour delay in commencing the Meetings substantially deprived the public of its rights to access granted by the Sunshine Law. Any deviation from the time stated in a notice for a public meeting must be reasonable or the notice given will be rendered insufficient under the Sunshine Law. *[OIP Op. Ltr. No. 05-11]*

Staff Update

OIP bids aloha to **Michael Little**, Records Report Management Specialist at OIP since 1993. Michael plans to spend more time in his retirement writing, traveling, and enjoying Oahu. He sends his best wishes and thanks to those he has worked with in government.

OIP welcomes its new Records Report Management Specialist, **James Maruyama.** James is originally from San Francisco. He is a graduate of the University of Hawaii at Manoa and has previously worked for the Hawaii State Bar Association. Welcome, James!

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