

The Office of Information Practices (“OIP”) is charged with the administration of Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, chapter 92, HRS (the “Sunshine Law”).

Recent Happenings

Panel Discussion on Good Government

OIP Director Leslie Kondo recently participated in a panel discussion sponsored by the William S. Richardson School of Law Alumni Association entitled, “Law, Ethics and Lobbying in Hawaii.”

Municipal Attorneys Conference

OIP participated in the Statewide Municipal Attorneys Training Conference presented by the Hawaii County Corporation Counsel’s office. OIP’s presentation, “Hot Topics in Sunshine Law,” included discussion of drafting of agendas, public access to written testimony, and requirements for emergency meetings. The conference provided county attorneys, county board members, and OIP the welcome opportunity and a positive environment in which to discuss concerns and to share ideas to improve training and resolve access issues.

Upcoming Events

Sunshine Law & UIPA Training

OIP will be conducting the following training sessions for State employees and State board and commission members:

October 25 (Wednesday)

Sunshine Law 9:30-11:00am

October 27 (Friday)

UIPA “Basics” 9:30-11:00 a.m.
UIPA “Intermediate” 1:30-3:00 p.m.

UIPA “Basics” will provide a general overview of the UIPA’s basic requirements. UIPA “Intermediate” will focus on the UIPA’s exceptions and agencies’ response requirements.

Training will be held at the State Capitol Auditorium (415 South Beretania Street). Space is limited. If you would like to attend, please RSVP by phone at 586-1400 or by email at oop@hawaii.gov.

OpenPoint

UIPA and Sunshine Law Pointers and Guidelines

UIPA Requests - Fees and Costs

For **general** records requests, OIP’s administrative rules allow agencies to charge certain fees and costs. OIP’s rules are available on OIP’s website.

Fees. Agencies may charge fees for the services it provides in responding to a general records request (**after** waiver of the amounts set forth below). OIP’s rules allow fees to be charged at the following rates:

Search: \$2.50 for each 15 min.
Review &
Segregation: \$5.00 for each 15 min.

“*Search*” means to look for the requested record.

“*Review*” means to examine the record to determine whether portions may be exempt from disclosure. It does not include time spent to understand or resolve general legal issues, such as how to interpret the UIPA’s provisions.

“*Segregation*” means to prepare the record for disclosure where a portion of the record will not be disclosed.

Waiver. The **first \$30 of fees must be waived** for ordinary requests and the first \$60 for requests that qualify as public interest requests under OIP’s rules. See Haw. Admin. R. § 2-71-31 and -32 (1999).

Costs. Agencies may charge “other lawful fees.” These fees include copying charges, mailing or faxing costs, and the costs of any media used, such as a CD or videotape. The amount that may be charged for copying is governed by section 92-21, HRS, and any applicable agency rules. OIP does not advise agencies on copying charges except where OIP believes that the amount charged creates a barrier to access.

Prepayment. An agency may require prepayment of 50% of the total **estimated** fees and 100% of the total estimated costs prior to processing a request.

Recent OIP Opinions

Written Testimony Implicating

UIPA Privacy Interests of a Third Party

The Office of the City Clerk, City and County of Honolulu, sought an opinion on whether the UIPA requires the disclosure of personal information contained in written public testimony submitted to the Honolulu City Council where that information concerns an individual who did not submit the testimony.

OIP opined that the City Clerk may consider the personal privacy interests of a third party implicated by the submitted testimony and may exercise its discretion to redact personal information if disclosure of that information would be a clearly unwarranted invasion of the third party’s privacy interests. [OIP Opinion Letter No. 06-04]



Amendment of Agenda

OIP opined that the Sunshine Law did not allow amendment of the Hawaii County Council’s meeting agenda to consult with its Corporation Counsel in executive session regarding issues related to settlement of a pending case brought against the County and other parties, commonly referred to as the “Hokulia lawsuit.”

An agenda may not be amended to add an item if it is of reasonably major importance and action on the item will affect a significant number of persons. Haw. Rev. Stat. § 92-7(d) (Supp. 2005).



OIP noted that the Council could, in isolation, reasonably view the **specific** items and action taken to be minor. In light of the purpose of the Sunshine Law, however, OIP construed the Sunshine Law’s amendment provision to require that an item’s importance and the potential consequence of any action taken on it be viewed in the larger context in which it occurs.

Given the potentially widespread legal effect of and substantial County liability that could arise from the Hokulia

lawsuit, OIP found that viewed in this larger context, consideration of matters relating to the lawsuit that could realistically affect settlement of the litigation was of reasonably major importance and that action on those matters would affect a significant number of persons.

OIP also opined that the Sunshine Law does not allow the use of generic “executive session” entries on an agenda to allow a board to consider an undisclosed matter in an executive meeting. [OIP Opinion Letter No. 06-05]

Meeting Notice Filing Requirement

An advisory opinion was issued as to whether the Sunshine Law allows the filing of a meeting notice with the office of the lieutenant governor (for state boards) or the appropriate county clerk’s office (for county boards) after normal business hours on the sixth day prior to the meeting for which the notice is being filed.

Finding that a calendar day under the Sunshine Law should be construed to extend until midnight consistent with Hawaii case law, OIP opined that the statute allows a board to file its meeting notice until midnight on the sixth calendar day prior to the meeting for which the notice is being filed.

However, OIP noted that whether the appropriate government office will accept a notice for filing until midnight is a policy question for each office responsible for accepting such filings.

Each office has the discretion to adopt its own procedures for filing, which may or may not include procedures to allow boards to file their notices after the office’s normal business hours. [OIP Opinion Letter No. 06-06]



Office of Information Practices
Leslie H. Kondo
Director

Address: No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813

Phone: (808) 586-1400 Fax: (808) 586-1412
Internet: www.hawaii.gov/oip E-mail: oip@hawaii.gov