OIP OpenLine

October-November 2006
Vol. 18, No. 4

A Publication of the Office of Information Practices • State of Hawaii

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

Sunshine Law and UIPA Presentations

Since 2004, OIP has invited members of state boards and staff who provide support for those boards to a training presentation at the State Capitol auditorium. Last year, in addition to the session on the Sunshine Law, OIP offered a similar presentation on the UIPA. This year, as part of OIP's continuing effort to educate boards and agency personnel about their responsibilities, OIP offered Sunshine Law training and two different sessions on the UIPA: an introductory level session that provided a general understanding of the UIPA and an agency's responsibilities upon receipt of a record request; and an intermediate level session intended for those with a working understanding of the statute. The intermediate level session focused primarily on the five exceptions to disclosure under part II of the UIPA and requests for personal records under part III of the UIPA. Over 270 people attended the Sunshine Law and two UIPA sessions. OIP hopes to offer similar presentations at least once a year in Honolulu as well as on the Neighbor Islands. OIP also provides training workshops on both the Sunshine Law and the UIPA for boards and agencies upon request.

Records Report System Training

The Records Report System ("RRS") was created to help county and state agencies comply with the UIPA's requirement that agencies compile public reports describing the types of records that each agency uses and maintains. Originally maintained on a WANG computer system, the RRS was moved to the Internet in 2004 and is accessible by the public through OIP's website. Government agencies are able to input and amend their respective reports via any computer connected to the state's Intranet, the Next Generation Network ("NGN").

County agencies recently gained access to the NGN, and as a result, now have the capability to update their respective record reports via the secure Intranet connection. To educate and assist those agencies, OIP has begun training county agencies' RRS coordinators on Kauai, Maui and the Big Island as well as in Honolulu. OIP conducted RRS training for state agencies in 2004 and continues to lead annual workshops for agencies' RRS coordinators. OIP anticipates that the county agencies will complete reviewing and updating their respective reports no later than March 31, 2007.

OpenPoint

UIPA and Sunshine Law Pointers and Guidelines

Asking For A Requester's Identity

Frequently, agencies ask record requesters to identify themselves. Asking for a person's identity is valid (and sometime even required) under the UIPA and OIP's administrative rules. For example, for fee waivers in the public interest, the requester's identity is part of the information that a requester must provide.

But agencies should also respect the right of requesters who may wish to be anonymous.

For formal requests, OIP's rules require the requester to provide contact information, which generally includes the requester's name, but a requester can choose to be anonymous. In such instances, the requester may use an alias or arrange for communication, access to records or delivery of copies in a reasonable manner that will allow the requester to protect that anonymity. Where a requester wishes to be anonymous, OIP suggests that the agency explain that the requester may use an alias if desired or may check back with the agency on a certain date regarding the status of his request or to arrange delivery of the records.

Recent OIP Opinions

UIPA Disclosure of Executive Meeting Minutes

Two members of the public appealed the Board of Education's ("BOE") denial of their requests for access to the minutes of the executive meeting relating to BOE's evaluation of Dr. James Shon, then Executive Director of the Charter Schools Administrative Office. BOE voted to terminate Dr. Shon's appointment as part of its evaluation during the executive meeting.

The UIPA allows a board to withhold minutes of an executive meeting for as long as disclosure of those minutes would defeat the board's lawful purpose of closing the meeting to the public, but no longer. In the situation involving Dr. Shon's evaluation, BOE's purpose of closing the meeting to the public was to protect Dr. Shon's privacy.

OIP determined that disclosure of those portions of the minutes that reflect the motions voted on regarding Dr. Shon's retention as well as the votes cast by the individual BOE members on those motions would not defeat the executive meeting's purpose of protecting Dr. Shon's privacy interest. OIP's determination was based upon the fact that BOE had publicly announced its decision not to continue Dr. Shon's appointment immediately after the meeting and the strong public interest in knowing how the elected BOE members are performing their duties. Accordingly, OIP directed that BOE must disclose those portions of the minutes and those reflecting its discussion of certain procedural issues and other matters unrelated to Dr. Shon. [OIP Op. Ltr. No. 06-07]

Cases From Other Jurisdictions

Federal Court Rejects Constitutional Challenge To Open Meetings Law

Two councilmembers challenged the constitutionality of the Texas Open Meetings Act (the "Act"), arguing that certain provisions violated their freedom of speech rights under the First Amendment. A federal Texas district court rejected the challenge.

The court found that the Act does not regulate purely private discussions by public officials, which would be protected by the First Amendment, but rather regulates the conduct of public business.

Because an official has no constitutional right to conduct governmental affairs in private, the court stated that when that official is speaking about public business governed by the Act, i.e., while wearing his "official" hat, that speech is not protected by the First Amendment from restrictions imposed by the Act.

The court explained that the Act does not impede the officials' freedom of speech; rather, it simply requires their speech "to be made openly, and in the presence of [the] interested public, as opposed to 'behind closed doors.' " Rangra v. Brown, No. P-05-CV-075 (W.D. Tex. filed November 7, 2006).

The court therefore concluded that the councilmembers' speech in question, uttered entirely in their capacities as members of the council and required as part of their official duties, was not protected by the First Amendment.

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