OIP OpenLine
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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****, part I of chapter 92, HRS (the Sunshine Law).*

2010 Legislative Wrap-Up: Information Practices

During the 2010 Legislative session, OIP reviewed and monitored 95 bills affecting government information practices, and testified on 12 of these bills.

For information about the bills discussed below, including the text of bills, bill history, and committee reports, consult the Legislature's website at ***www.capitol.hawaii.gov.***

New Laws

✔ *UIPA*

Act 100 (S.B. No. 2937): Act 100 amends HRS § 92F-11 to allow an agency to *not* respond when a requester makes a duplicate request within 12 months, so long as the agency made a prior proper response under the UIPA and that response would remain unchanged.

Contrary to popular misconception, this Act is intended to address very limited situations and would have no effect on the great majority of UIPA requests because it only provides relief from abusive or unwarranted repetitive requests.

Specifically, the Act is intended to eliminate the need to respond to repeated requests for the same records by requesters who may lack the capacity to understand that a response to a request has already been properly given; or may be intentionally harassing an agency; or may simply be unwilling to accept an agency's response.

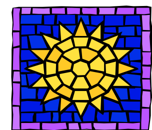
An agency must still respond to requests for the same or substantially similar records where new records have been created or have become publicly available since a requester's prior request, where the prior request was made more than a year before, or where the agency did not respond properly to the earlier request.

✔ *Sunshine Law*

Act 102 (S.B. No. 2187): This Act allows the Hawaii Tourism Authority, under HRS § 201B-4(a)(2), to meet in an executive (closed) meeting to receive "[i]nformation that is necessary to protect Hawaii's competitive advantage as a visitor destination[.]"

OIP had strongly recommended that if an exception was deemed appropriate, the wording more narrowly describe the type of information OIP understood HTA wanted to protect—such as detailed marketing plans, market intelligence and research studies, and specific marketing opportunities.

Act 63 (S.B. No. 2121): This Act became law without the Governor's signature. It allows one specific board, the Early Learning Council, to meet by telephone conference instead of following the Sunshine Law's videoconference provision, which is applicable to all other boards.



An administration bill that proposed a similar amendment to allow more flexibility in the use of interactive conference technology for all Sunshine Law boards did not advance.

There was no explanation in testimony or by the legislative committees as to why this board's needs were different from other boards.

Absent special circumstances surrounding this board, OIP testified that, if it is desirable to make changes to the Sunshine Law's current long distance meeting provision, such changes should apply to *all* Sunshine Law boards.

See **Legislative Wrap-Up**, *p. 2*

Legislative Wrap-Up *(cont. from p. 1)*

Bills that Failed

✔ *H.B. No. 1212 Vetoed: Complaint History*

The Governor vetoed H.B. No. 1212 on July 6, 2010, finding that the "overly-broad and inappropriate" proposed amendment of the UIPA would adversely affect consumers.

The bill would effectively have recognized a significant privacy interest for a licensee in his or her complaint history unless resolved against the licensee, which would make unavailable to the public most complaint information for pending complaints or for complaints not resolved against a licensee for any reason.

The Governor stated: "Consumers have been, and should be, encouraged to obtain licensing and complaint information prior to consulting and retaining licensed professionals. The disclosure of a licensee's complete complaint record results in increased consumer awareness and informed decision-making. This bill will decrease information available to consumers and thereby hinder this process."

Further, the Governor defused proponents' concerns that current practices allow frivolous complaints to become public, noting that RICO's procedures "screen out over half of all complaints because they are frivolous, cannot be substantiated, do not involve a licensing violation, or can be resolved between the parties. Only when sufficient grounds have been found to start an investigation, does a complaint get disclosed in the Complaint History Report available to the public."

The Governor continued: "Unfortunately, this bill would restrict the Department's ability to disclose a significant number of the complaints that are currently available to over 500,000 individual reviewers who access this site each year. If complaints cannot be disclosed without an outcome, even if an investigation is underway, the complaint history becomes less useful to consumers. The report will no longer provide up to date information about licensees, and leaves consumers to question whether businesses and professionals not on the complaints list are those who truly have not received any complaints or those who have complaints pending."

OIP had offered testimony raising this issue, and noted that the Legislature in enacting the UIPA had purposefully directly provided that a licensee does not have a significant privacy interest in "the record of complaints including all dispositions" thus making access to this complaint information public, without question, since the inception of the UIPA. OIP further testified that the disclosure of all complaint information is also important to the public interest in ensuring DCCA's accountability in its administration of professional vocational licensing.

✔ *Bills Proposed by OIP*

OIP had introduced three bills as part of the Governor's legislative package to promote greater government efficiency while safeguarding open government. Unfortunately, none of these bills passed out of the Legislature.

H.B. No. 1148 HD1, SD1 (and S.B. No. 966) proposed amendment to the Sunshine Law to require electronic filing of notices and agendas on the State calendar in lieu of filing with the Office of the Lt. Governor. Both houses had heard and amended the House bill, but did not meet to recommend a final conference draft.

H.B. No. 1146 and S.B. No. 964 proposed to amend the Sunshine Law to allow board members present to receive public testimony and presentations on noticed agenda items when a noticed meeting must be canceled for lack of quorum.

H.B. No. 1147 and S.B. No. 965 proposed to transfer concurrence responsibilities under the Sunshine Law's emergency meeting provision from the AG to OIP.

✔ *Other Sunshine Law Bills*

S.B. No. 906 was proposed by the Administration to expand board members' ability to participate in meetings without being physically present by use of interactive conference technology. This bill sought to remove the current Sunshine Law requirement that the public must be able to view the board members' participation via video *and* audio technology. Although approved by the Senate Judiciary Committee, the bill did not receive further consideration.

Office of Information Practices
Cathy L. Takase
Acting Director

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

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