



Office of Information Practices

State of Hawaii

Annual Report 2005

This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices in the administration of the public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes, and the open meetings law, Part I of chapter 92, Hawaii Revised Statutes, from July 1, 2004 to June 30, 2005.

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Director's Message

All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people.

Hawaii State Constitution, article I, section 1



The events of the last few years — from the Gore/Bush presidential election to 9/11 to the sending of citizen soldiers to Iraq — have focused the attention of this country, at least in general terms, on the ability of our democratic form of government to endure uncertainty as well as to accommodate widely conflicting points of view. Indeed, ours is a government that draws strength from the debate of opposing viewpoints and from the ability of those governed to participate in and to scrutinize that debate. Our open government laws exist to protect and ensure this open debate essential to our system of self-governance.

Though few would disagree with these democratic principles, many sometimes question the application of our open government laws where it impedes efficient government. Open government laws often do hinder efficiency. Amendment, in some instances, may be warranted. But in most instances, the inefficiencies and difficulties created by our open government laws must simply be accepted as necessary and worthwhile costs of maintaining and protecting a free and open government.

The past year fiscal year has been an eventful one for OIP. Some of the events have been positive ones: the receipt of funding for an additional half-time attorney position; the increased demand for and attendance at educational seminars; the publication of an Open Meetings guide; the sizeable reduction in the backlog of pending requests for opinions; and the substantial reduction in response

time for current requests for opinions and assistance, a reduction that has not gone unnoticed by those we serve.

Other events of this past fiscal year have been somewhat troubling in the threat they pose to open government and their cost to the public, both financially and in terms of access. Most significant is Kauai County Council's refusal to disclose a record in compliance with OIP's determination that the record should be publicly accessible and the Council's subsequent decision to file suit against OIP, asking the court to overrule the ruling made. In enacting the UIPA, the Legislature provided the public with the ability to seek relief from OIP for an agency's denial of access to a government record. This optional method of appeal was intended to provide the public with a less costly and more expedient means to appeal an agency denial of access than filing an action in court. To that end, the Legislature directed that once OIP determined that a record should be made public, the agency shall disclose the record.

Indeed, ours is a government that draws strength from the debate of opposing viewpoints and from the ability of those governed to participate in and to scrutinize that debate.

Despite the Legislature's stated intent that it did not want agencies suing each other, that is where we find ourselves. Government funds are being expended by two government agencies to sue and to defend a dispute over access to government records. To date, a circuit court has made an initial

ruling that OIP's determination that a government record is public is reviewable by the court. In the meantime, the record requester, denied the expedient and less costly relief envisioned by the Legislature, has also filed suit seeking disclosure of the record OIP determined to be public.

This year marks the thirtieth anniversary of the adoption of the Sunshine Law and the seventeenth anniversary of the adoption of the UIPA and the creation of OIP. Overall, we believe that most government agencies and boards exhibit a basic understanding of these laws and a desire to comply with them. OIP continues to provide education to the public regarding their rights and boards and agencies regarding their responsibilities; to assist the public in gaining access to records; and to guide boards and agencies in the statutes' application.

By their nature, open government laws must be broad enough in language to encompass the myriad of situations to which they must be applied. Where possible, OIP attempts to draw clear lines and to apply the statutes in ways that address the needs of the governed without diminishing the right to openness of the governed. In many instances, however, clear lines are difficult to draw absent legislative guidance. In others, OIP, legally constrained, must interpret the statutes in ways that may hinder good government without engendering openness. Interpretation and application of the statutes' provisions thus present a constant and continuing challenge for board members and agency personnel working under the statutes.

Accordingly, OIP is proposing legislative amendments to illuminate certain gray areas and to address those situations in which strict application of the statutes may needlessly hinder better and more efficient government. Information about the legislative proposals will be available through OIP's website.

We believe that these changes will strengthen our open government laws without infringing upon the public's right and ability to participate in and scrutinize the actions of its government.

Aloha,
Les Kondo
Director



Executive Summary

The Office of Information Practices was created by the Legislature of the State of Hawaii in 1988 to administer Hawaii's new public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA), which took effect on July 1, 1989. The UIPA applies to all government agencies except the non-administrative functions of the judiciary.

Under the UIPA, all government records are public and must be made available for inspection and copying unless an exception provided for in the UIPA authorizes an agency to withhold the records from disclosure. Recognizing that "[t]he policy of conducting governmental business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in . . . the Constitution of the State of Hawaii[,]” the Legislature created one exception to disclosure that balances an individual's right to privacy against the public's right to open government.

In 1998, OIP was given the additional responsibility of administering the open meetings law, Part I of chapter 92, HRS (the Sunshine Law). The Sunshine Law requires government boards to conduct their business as openly as possible in order to open up the governmental processes to public scrutiny and participation.

The law thus requires that, unless a specific statutory exception is provided, the discussions, deliberations, decisions and actions of governmental boards must be conducted in a meeting open to the public, with public notice and with the opportunity for the public to present testimony.

Due to budget cuts, OIP has decreased in size over the years from a high of 15 employees to its current staff of 6.5 employees. Despite this decrease, OIP has received positive indications that the office is successfully providing the public

and government entities with a continually growing awareness and knowledge of both the rights granted by, and the requirements imposed under, the open government laws of this state.



Enforcement

The UIPA authorizes OIP to conduct inquiries regarding compliance by government agencies and to investigate possible violations. In FY 2005, OIP opened 7 new investigations resulting from complaints by members of the public or based upon OIP's own initiative (see pages 8-10).

OIP also tracks litigation in the state courts that raises issues concerning provisions of the UIPA or the Sunshine Law (see pages 11-13). Under certain circumstances, OIP may seek to intervene in the lawsuit. In FY 2005, OIP tracked three new cases and continued to track three ongoing cases involving UIPA issues. OIP also continued to monitor one ongoing case involving Sunshine Law issues.

Implementation

OIP provides guidance and assistance to members of the public and government entities by a variety of means. In the past fiscal year, OIP received over 824 inquiries and requests for assistance or advisory opinions from members of the public and government agencies.

In FY 2005, OIP received 711 inquiries through its "Attorney of the Day" program. That program allows both the public and government employees to obtain general guidance on UIPA and Sunshine Law issues from an OIP staff attorney via telephone or email (see pages 14-22). Occasionally, where the advice sought requires a more thorough legal analysis, a person may be asked to submit a more complete and specific request in writing.

In FY 2005, OIP opened 151 case files: 75 files in response to requests for assistance; 76 files in response to requests for advisory opinions; and 452 files in response to limited requests for assistance. Of these case files, 23 resulted in the issuance of a formal OIP advisory opinion letter, 15 of which concerned UIPA issues and the remaining 8 of which concerned Sunshine Law issues (see summaries on pages 23-37).

OIP also recommends legislative changes to the statutes under its administration and reviews and monitors legislation introduced by others, including other agencies, that affect the government's information practices, public access to government records and meetings, and the privacy rights of individuals. In the 2005 legislative session, OIP introduced 5 bills and reviewed, monitored and/or testified on 164 other legislative initiatives (see pages 38-40).

OIP is directed by statute to receive and make publicly available reports of records that are to be maintained by all agencies. These reports are maintained on the Records Report System ("RRS"), which was converted from a Wang computer-based system to an Internet system in FY 2003. In FY 2005, OIP assisted state agencies in updating their records reports and made access to the RRS available to the public through its website.

OIP also developed new materials to facilitate data entry by the agencies and a guide to be used by both the public and the agencies to locate records, to retrieve information, and to generate reports from the RRS. All of these materials were posted on OIP's website for easy access by agencies and the public. To date, state and county agencies have reported over 23,880 records on the RRS (see pages 41-42).

Education

OIP conducts numerous presentations and provides training on the UIPA and the Sunshine Law as part of its mission to educate government agencies regarding the open government laws and to assist them with compliance with those laws (see pages 47-48).

In FY 2005, OIP continued to step up its educational efforts, responding to requests for training by providing 16 UIPA and 16 Sunshine Law workshops including a Sunshine Law workshop open to all state employees and board members. The workshops are intended to provide attendees with a general understanding of the law and the resources available to them including the Attorney of the Day program, OIP's website, and the various written materials published by OIP.

In FY 2005, OIP produced its traditional print publications, including editions of the *Openline* newsletter and the *Office of Information Practices Annual Report 2004*. OIP also produced an Open Meetings guide, designed for the non-lawyer. The guide provides information about the Sunshine Law in a question-and-answer format and includes summaries of numerous OIP Opinion Letters interpreting the Sunshine Law. OIP also continued to expand its website launched in April 1998 (see pages 45-46), which provides a major source of information and guidance in an easily accessible format. OIP has prepared, and made available on the website, model forms that agencies and members of the public may use to make and respond to record requests (see page 44). OIP's new Open Meetings guide may also be downloaded through the OIP website.



Budget



OIP's largest budget year was FY 1994, when its annual budget was \$827,537, funding a staff of 15 positions. In FY 1998, the Legislature sharply cut OIP's budget and eliminated three positions. Since FY 1999, OIP's annual budget has been approximately \$350,000 per year. During FY 2005, OIP had personnel costs of \$314,395 and operational costs of \$35,220 for a total allocation of \$350,215. See **Table 1** on page 6.

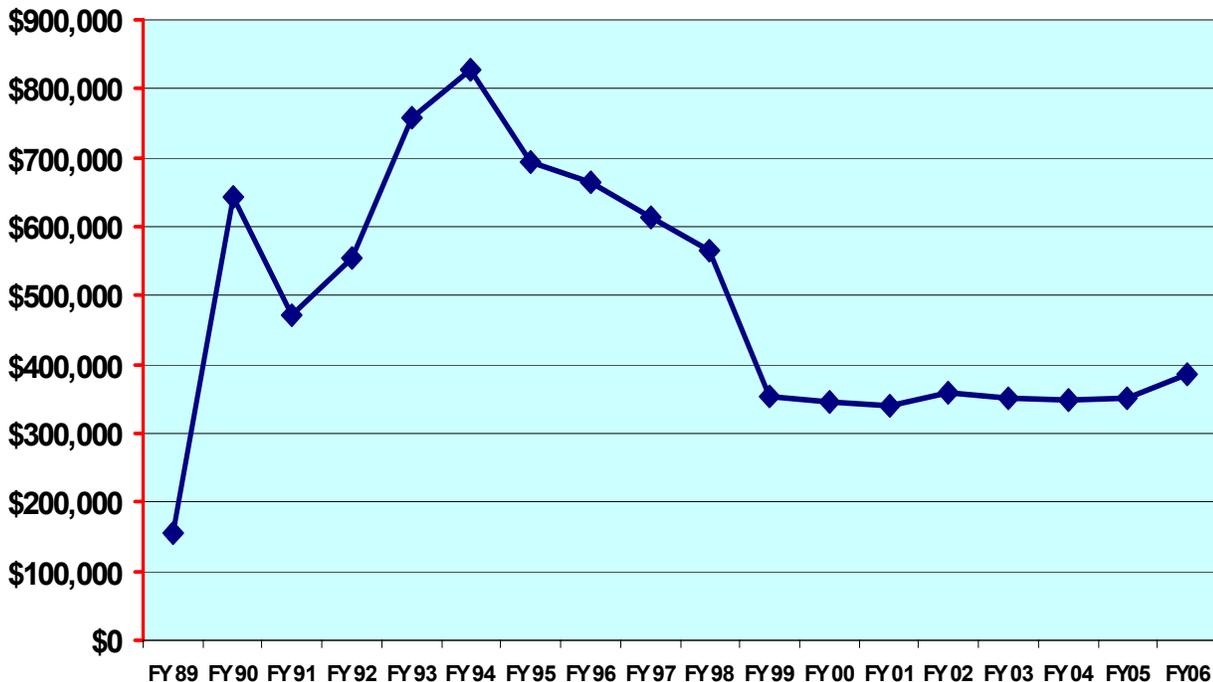
attorneys, and three staff members. Although there is an additional staff attorney position, OIP does not have the funds to fill this position.

Recognizing the budgetary constraints on the State, OIP will continue to look at ways to best utilize its limited resources to provide effective and timely assistance to the public and to government agencies and boards.

Although OIP has 8 approved positions, due to budget limitations, OIP in FY 2005 functioned with 6.5 filled positions. This included the director, one full-time staff attorney, three half-time staff



**Office of Information Practices
Budget Allocations
FY 89 - FY 06**





Office of Information Practices
Budget FY 1989 to FY 2006

Fiscal Year	Operational Costs	Personnel Costs	Allocations	Approved Positions
FY 06	35,220	350,367	385,587	8
FY 05	35,220	314,995	350,215	8
FY 04	35,220	312,483	347,703	8
FY 03	38,179	312,483	350,662	8
FY 02	38,179	320,278	358,457	8
FY 01	38,179	302,735	340,914	8
FY 00	37,991	308,736	346,727	8
FY 99	45,768	308,736	354,504	8
FY 98	119,214	446,856	566,070	8
FY 97	154,424	458,882	613,306	11
FY 96	171,524	492,882	664,406	12
FY 95	171,524	520,020	692,544	15
FY 94	249,024	578,513	827,537	15
FY 93	248,934	510,060	758,994	15
FY 92	167,964	385,338	553,302	10
FY 91	169,685	302,080	471,765	10
FY 90	417,057	226,575	643,632	10
FY 89	70,000	86,000	156,000	4

Table 1

Highlights of OIP in Fiscal Year 2005



Enforcement

Sunshine Investigations:

Investigations of Government Agencies

OIP opened 7 investigations into the actions of government boards and agencies in FY 2005 following complaints made by members of the public or on OIP's initiative. OIP



completed 13 investigations in FY 2005, some of which had been opened prior to FY 2005.

Where OIP determines that a violation has occurred, OIP may recommend either training or discipline of the employees involved. In certain circumstances, OIP also may suggest that the board or agency undertake certain action to address the harm to the public caused by the violation.

The following is a summary of some of the investigations opened in FY 2005.

Kauai County Council Executive Session

A member of the public questioned whether the Kauai County Council had violated the Sunshine Law by considering certain matters in an executive session. OIP opened an investigation concerning the executive session and solicited the Council's position concerning whether the statute allowed the Council to convene a closed meeting.

After receiving and considering the Council's position and a copy of the meeting minutes, OIP determined that the matters actually considered by the Council in the executive session were not "sensitive matters relating to public safety or security," one of the statutory bases for the meeting as stated on the Council's agenda. Moreover, to convene an executive session under the "attorney exception," the other statutory basis cited on the Council's agenda, the Council's discussion with its attorney must be about matters relating to the Council's "powers, duties, privileges, immunities, and liabilities." OIP informed the Council that the mere presence of its attorney during the executive meeting, as reflected in the minutes, was an insufficient basis to support closing the meeting under that exception. Therefore, OIP ruled that the Council's discussion of the majority of the matters should have been in an open meeting and, to address the Council's violation of the Sunshine Law, recommended that the minutes as to those portions of the meeting be disclosed upon request.

After receiving a request for public access, however, the Council refused to disclose the minutes and sued OIP in the Fifth Circuit Court, seeking a declaration that OIP's opinion is invalid. The lawsuit is pending.

Board of Education Meeting

A number of media sources reported that, during a recess, the Board of Education committee chair conferred with the committee vice-chair and two other committee members in the hallway. At least one media source speculated that the hallway conference was to discuss another committee member's attempt to compel the committee to consider her concerns about a certain issue. Based upon those reports, OIP opened an investigation into whether the hallway conference violated the Sunshine Law's requirement that, absent an exception or other permitted interaction, board members may discuss board business only during a properly noticed meeting.

After reviewing the committee's agenda, however, OIP determined that the issue about which the committee member had concerns was not on the agenda, and therefore, the committee should not have considered the issue absent an amendment to the agenda. Accordingly, the issue was not "committee business" and the committee members' hallway conference did not violate the Sunshine Law. OIP offered guidance that, if the issue had been "committee business," any discussion about the issue must occur in a properly noticed meeting, and the committee members should not have discussed the matter during a recess.

Liquor Commission's Executive Session

In response to an inquiry from a state senator, OIP opened an investigation relating to an executive session convened by the Liquor Commission of the City and County of Honolulu for the "[r]eview of Hotel Class license procedure and other requirements" in consultation with its attorney. The minutes of the executive session, however, lacked sufficient information for OIP to determine the substance of the Commission's discussion. The Commission's attorney represented that the Commission discussed with him certain legal issues



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SUNSHINE:

*Kauai County Council Executive Session
Board of Education Meeting*

*Liquor Commission's Executive Session
Executive Session of the Kauai Police
Commission*

*Agenda for Procurement Policy
Board Meeting*

relating to the agenda topic. Based upon those representations, OIP determined that there was no basis to conclude that the executive session was contrary to the Sunshine Law. OIP reminded the Commission that it could only discuss in an executive session those specific matters that fell within one of the statutory exceptions and could not allow non-Commission members whose presence was not necessary for the Commission's consideration of the agenda item to participate in an executive session.

Executive Session of the Kauai Police Commission

An anonymous complainant asked OIP whether a number of executive sessions held by the Kauai Police Commission as part of its May 27 meeting were consistent with the Sunshine Law. More specifically, OIP's investigation of the executive sessions was focused on whether the Commission may properly convene an executive session to approve the minutes of a prior executive session and whether the Commission's discussions were

limited to those matters for which the statute allows the Commission to consider in a closed meeting. The investigation was completed in FY 2006.

Agenda for Procurement Policy Board Meeting

A state senator asked OIP whether an agenda for the Procurement Policy Board adequately stated the Board's purpose for holding an executive session. According to its agenda, the Board was to consider in an executive session its "[r]esponse to Safety Systems, Inc." The agenda stated that the purpose for holding executive session was to "[c]onsult with Board's attorney on draft response to Safety Systems, Inc." OIP concluded that although the Board did not provide a citation to paragraph 92-5(a)(4), HRS, the language in the agenda clearly indicated which executive session purpose the Board relied on. OIP recommended that, for the sake of clarity, the Board's future agendas should cite to the specific paragraph stating the anticipated purpose for holding an executive session.



Litigation Report

Under the UIPA, where an agency denies access to records or fails to comply with the provisions of the UIPA governing personal records, a person may bring an action for relief in the circuit courts. OIP has standing to appear in any action in which the provisions of the UIPA have been called into question.

OIP monitors lawsuits that raise issues under the UIPA and the Sunshine Law. OIP reviews and assesses each case to determine whether to intervene or to take other action. The following summarizes the cases monitored in FY 2005.

❖ *New UIPA Cases:*

Access to Executive Session Minutes

In the case of **Anthony Sommer v. County of Kauai**, Civ. No. 04-0125 (5th Cir. Haw., filed November 8, 2004), the plaintiff is seeking access to certain minutes of an executive session of the Kauai County Council. The plaintiff had requested access to the minutes from the Council, which failed to respond to his request, and the plaintiff then sought OIP's assistance.

After the Council did not provide any justification for withholding the records, OIP concluded that the Council had failed to meet its statutory burden to justify denying access to the records and the records in question must therefore be disclosed.

The Council nevertheless refused to disclose the records, and the plaintiff subsequently filed suit against the County in the Fifth Circuit Court (Kauai). OIP declined to intervene in the litigation. Trial is scheduled to begin in January 2006.

Access to Council Minutes

In the case of **County of Kauai, et al. v. Office of Information Practices, State of Hawaii, et al.**, Civ. No. 05-1-0088 (5th Cir. Haw., filed June 17, 2005), the plaintiffs seek declaratory relief invalidating OIP's decision that the minutes of a Kauai County Council's executive meeting must be disclosed to a requester with certain limited exceptions.



The Plaintiffs claim *inter alia* that the entire minutes of the meeting are exempt from disclosure on the grounds that it is protected by the attorney-client privilege and that the executive meeting was proper under a number of the purposes stated in section 92-5(a), many of which were not identified in the Council's agenda for the meeting. The litigation is ongoing.

Access to Agricultural Records

In the case of **Center for Food Safety v. Department of Agriculture, State of Hawaii**, Civ. No. 03-1-1509-07 (1st Cir. Haw., filed July 23, 2003), the plaintiff seeks to compel the Department of Agriculture to provide access under the UIPA to records related to ongoing field tests



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Access to Executive Session Minutes

Access to Council Minutes

Access to Agricultural Records

UIPA Status of Cable Access Providers

Access to Human Services Records

Access to Personal Records

Access to Parole Records

Return of Documents in Clean Water Enforcement Action

Access to Boards

of genetically engineered pharmaceutical-producing plant varieties in Hawaii.

This case has been set for trial the week of July 31, 2006.

UIPA Status of Cable Access Providers

‘Olelo: The Corporation for Community Television, the public, educational, and government access provider for the island of ‘Oahu, sued OIP in August 2004 for a declaratory judgment that ‘Olelo was not an “agency” for the purposes of the UIPA as OIP had found in its Opinion Number 02-08. In an order filed June 30, 2005, the First Circuit Court, applying a *de novo* standard of review, decided upon a motion for summary judgment that ‘Olelo was not an “agency” for the purposes of the UIPA. After the close of the fiscal year, OIP filed a notice of appeal regarding the court’s decision, and the appeal is currently pending. Issues in the appeal are anticipated to include the standard of review used by the court, the test used by the court to determine when a corporation is “owned, operated, or managed by or on behalf of this State. . .” as described in the UIPA’s definition of an agency, and other specific findings made by the court. See Haw. Rev. Stat. § 92F-3 (1993) (definition of “agency”).

❖ Continuing Case:

Access to Human Services Records

In the case of **Carl Foytik v. Department of Human Services**, Civ. No. 00-1-2059 (1st Cir. Haw., filed June 20, 2000), Sup. Ct. No. 24052, the plaintiff challenged the Department of Human Services’s redaction of certain records provided in response to his UIPA request. The First Circuit Court dismissed the case, holding that the claim was moot on the grounds that the records had been given to him, without reaching the issue of whether the redaction was proper.

The Hawaii Supreme Court issued an unpublished summary disposition order holding that the First Circuit Court erred in ruling that the matter was moot and in failing to address all of the plaintiff’s claims for relief. Specifically, the Court held that the challenged redaction was a denial of access to a government record, which should have been addressed by the First Circuit Court. The lawsuit remains pending.

Access to Personal Records

In the case of **Crane v. State of Hawaii**, Civ. No. 03-1-1699-08 (1st Cir. Haw., filed August 21, 2003), the plaintiff alleged that the State knowingly and intentionally failed to provide him access to his time served credit sheet and to respond to his request to make corrections to that record as required by sections 92F-23 and 24, HRS.

The plaintiff seeks an order compelling release and change of records, monetary damages and costs.

Access to Parole Records

The plaintiff in **Miller v. State of Hawaii**, Civ. No. 03-1-0195-01 (1st Cir. Haw., filed Jan. 28, 2003), filed a complaint for damages, injunctive relief, and litigation expenses.

The plaintiff alleged that the Department of Public Safety, Hawaii Paroling Authority, failed to respond properly to his request for copies of his parole records by denying access and by responding later than 10 business days in violation of section 2-71, Hawaii Administrative Rules.

The plaintiff failed to serve the defendant with a copy of his complaint, and the court ultimately dismissed the lawsuit.

Return of Documents in Clean Water Enforcement Action

State of Hawaii v. Earthjustice, et al., Civ. No. 03-1-1203-06 (1st Cir. Haw., filed June 9, 2003), raises a novel issue. In this case, the Department of Health, Clean Water Branch (“DOH”) obtained six boxes of documents from James Pflueger and associated entities in connection with an enforcement action on Kauai for violations of clean water laws.

DOH asserted, *inter alia*, that it inadvertently allowed Earthjustice to inspect and copy certain confidential documents protected from disclosure by state and federal law. DOH seeks the return or destruction of the copies made by Earthjustice.

Earthjustice filed a motion seeking to retain and use the documents, including select tax returns and return information, in related proceedings involving the parties. Due to a pending settlement, the parties have agreed to stay the proceedings.

Access to Records

In **Alvarez v. Department of Public Safety**, Civ. No. 02-1-2765-11 (1st Cir. Haw., filed Nov. 26, 2002), an inmate sought access to records concerning material containing asbestos, the Department of Public Safety’s policy concerning the retention and maintenance of video recordings, the investigation concerning an incident in which he was involved, and information concerning his transfer to a high security unit.

On February 11, 2004, the court filed a motion to dismiss the case pursuant to Rule 12(q) of the Rules of the Circuit Courts of the State of Hawaii, which authorizes the dismissal of a case for want of prosecution after a ten day period to file objections showing good cause for not proceeding with the action. The case was dismissed on June 24, 2004, as the plaintiff did not file a response to the Rule 12(q) notice of proposed dismissal.



Implementation

requests for information and forms; requests to resolve complaints; and requests for advisory opinions regarding the rights of individuals or the functions and responsibilities of the agency and board under the UIPA and the Sunshine Law.

Legal Assistance



Each year, OIP receives numerous requests for legal assistance from members of the public, employees of government agencies, and government board members.

In FY 2005, OIP received over 1,200 requests for assistance. This included requests for general advice and guidance regarding application of, and

compliance with, the UIPA and Sunshine Law; requests for assistance in obtaining records from government agencies; requests for investigations into the actions of government agencies; requests for review agency and board actions and policies;

Attorney of the Day Program - General Legal Advice

OIP's "Attorney of the Day" (AOD) program continues to be a valuable and effective resource used by the public and by government agencies and boards.

The AOD service allows the public and the agencies and boards to receive general legal advice from an OIP staff attorney normally that same day or the following day. AOD requests are received by telephone, facsimile, e-mail, or in person.

Where the issues involved are factually or legally complex, where mediation by OIP between the public and the agency or board is required, or where more specific advice or a more formal response is desired, requesters are instructed to submit a written request and a case file is opened.

Agency employees often use the AOD program for assistance and guidance in responding to records request, in particular when addressing issues such as whether the agency has the discretion to redact information based upon privacy concerns. Agency employees and board members also frequently use the program to clarify Sunshine Law requirements.

Members of the public use the AOD program frequently to determine, among other things, whether agencies are properly responding to record requests or to determine if government boards are following the procedures set forth by the Sunshine Law.

Telephone Requests

Fiscal Year	Total	Public	Government Agencies
FY 05	711	269	442
FY 04	824	320	504
FY 03	808	371	437
FY 02	696	306	390
FY 01	830	469	361
FY 00	874	424	450
FY 99	733	336	397



Telephone Requests from the Public FY 2005

Types of Callers	Number of Calls
Private Individual	173
Private Attorney	33
Newspaper	31
Business	14
Public Interest Group	7
Television	6
Other	5
TOTAL	269

Over the past seven years, OIP has received a total of 5,476 requests through its AOD program. See **Table 2**. In FY 2005, OIP received 711 inquiries that were handled through the AOD program. Of the 711 AOD inquiries received, 269 inquiries, or 38%, came from members of the public. Of those, 64% came from private individuals, 14% from news media, 12% from private attorneys, 5% from businesses, and 3% from public interest groups. See **Table 3** and **Chart 2**.

Of the 711 AOD requests received, 62% came from government agencies and boards. See **Chart 3** and **Chart 4**. Approximately 20% of those requests came from county agencies and boards.

Table 3

Telephone Requests from the Public - FY 2005

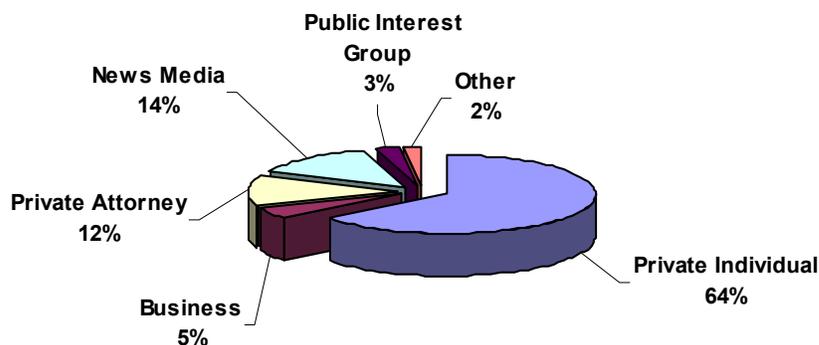


Chart 2

State Agencies

In FY 2005, OIP received a total of 452 AOD inquiries concerning state agencies, compared to 538 inquiries in FY 2004. Over half of these inquiries concerned six state agencies: the Department of Commerce and Consumer Affairs (59), the Department of Land and Natural Resources (51), the Department of Health (44), the Department of Public Safety (30), the Department of Business, Economic Development, and Tourism (29), and the Department of Human Services (29).

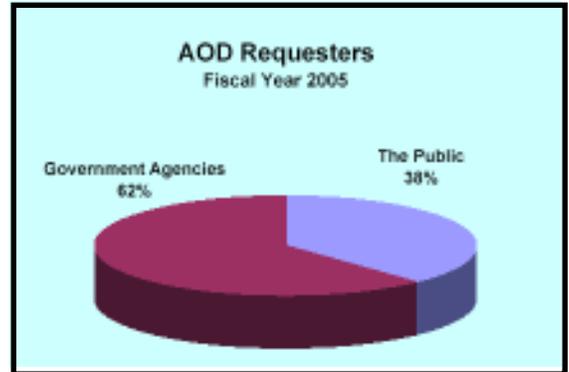


Chart 3

OIP received 15 inquiries concerning the legislative branch, 13 inquiries concerning the judicial branch, and three inquiries concerning the Office of Hawaiian Affairs. See **Table 4**.

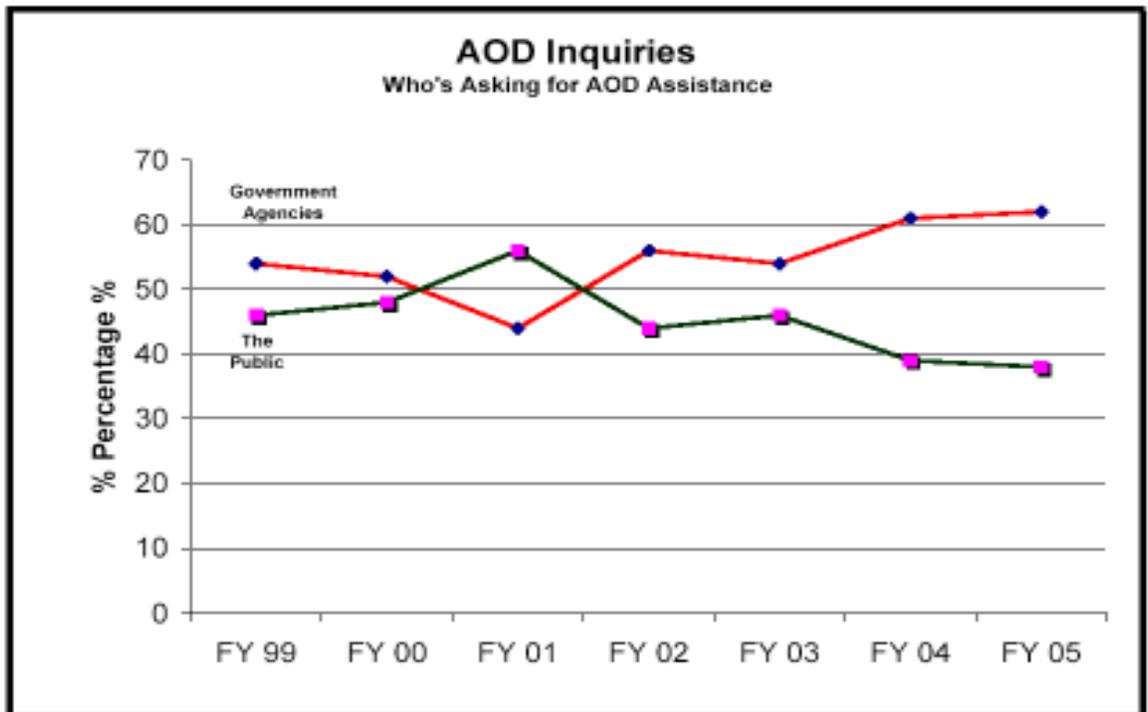


Chart 4

**Inquiries to OIP About
State Government Agencies
FY 2005**



Executive Branch Department	Requests
Commerce and Consumer Affairs	59
Land and Natural Resources	51
Health	42
Public Safety	30
Business, Economic Development, and Tourism	29
Human Services	29
University of Hawaii System	27
Education (including Public Libraries)	24
Transportation	21
Accounting and General Services	17
Labor and Industrial Relations	17
Attorney General	15
Office of Information Practices	13
Agriculture	12
Budget and Finance	12
Governor	6
Lieutenant Governor	6
Taxation	4
Hawaiian Home Lands	3
Human Resources Development	3
Defense	1
TOTAL EXECUTIVE	421
TOTAL LEGISLATURE	15
TOTAL JUDICIARY	13
Office of Hawaiian Affairs	3
TOTAL STATE AGENCIES	452

Table 4

County Agencies

OIP received 142 AOD inquiries regarding county government agencies, down from 173 inquiries in FY 2004. More than a third of these inquiries (50) concerned agencies in the City and County of Honolulu. Of these, the largest number of inquiries (15) concerned the Honolulu Police Department, while 8 concerned the City Council.

OIP received 92 inquiries regarding agencies and boards in the remaining counties: Kauai County agencies (35), Hawaii County (34), and Maui County (23). See **Tables 5-8** on pages 18-20.

Of the 142 inquiries regarding county agencies, 44, or almost one in three, concerned the county councils. Most of these inquiries concerned Sunshine Law issues.



Inquiries to OIP About City and County of Honolulu Government Agencies - FY 2005

Department	Requests
Police	15
City Council	8
Planning and Permitting	6
Board of Water Supply	4
Neighborhood Commission	4
Budget and Fiscal Services	3
Medical Examiner	2
Prosecuting Attorney	2
City Ethics Commission	1
Corporation Counsel	1
Design and Construction	1
Fire	1
Human Resources	1
Transportation Services	1
TOTAL	50

Table 5

**Inquiries to OIP About
Hawaii County
Government Agencies - FY 2005**

Department	Requests
County Council	19
Corporation Counsel	5
Police	5
Planning	4
Finance	1
Fire	1
TOTAL	34



Table 6

**Inquiries to OIP About
Kauai County
Government Agencies - FY 2005**

Department	Requests
Police	18
County Council	8
County Attorney	4
Water	3
Planning	1
Prosecuting Attorney	1
TOTAL	35



Table 7



**Inquiries to OIP About
Maui County
Government Agencies - FY 2005**

Department	Requests
County Council	9
Police	5
Corporation Counsel	3
Prosecuting Attorney	3
Public Works	3
TOTAL	23

Table 8

Requests for Assistance

In FY 2005, OIP received 75 formal requests for assistance, down from the 114 requests in FY 2004. In these instances, OIP is generally asked to provide assistance to the public in obtaining a response to a records request.

Generally, OIP’s staff attorneys will contact the parties to determine the status of the request, and will assist the requester in obtaining a response to his or her request. Where an agency denies a record request and the requester disputes the agency’s statutory basis for withholding the requested record, the requester may ask OIP for an advisory opinion.

Requests for Legal Opinions

Upon request, OIP provides written advisory opinions on issues under the UIPA and the Sunshine Law. In FY 2005, OIP received 76 requests for advisory opinions, up from 41 requests in FY 2003 and 61 requests in FY 2004.

OIP issues formal opinion letters, which are published and distributed, where the opinion has broad application and will therefore provide useful guidance on interpretation and application of the UIPA and the Sunshine Law.

Summaries of the formal opinion letters are published in OIP’s newsletter, *Openline*, as well as on OIP’s website at www.hawaii.gov/oip. The website also contains an index for the formal opinion letters. Summaries of the formal opinion letters issued in FY 2005 are found in this report beginning on page 28.

OIP issues informal opinion letters where an issue raised has already been addressed in a prior formal published opinion letter or the opinion letter has limited application. Summaries of some of the informal opinion letters issued in FY 2005 are found in this report beginning on page 23.



<i>Type of Request</i>	<i>Number of Requests</i>
Request for Assistance	75
Request for Legal Opinion	76
Total Written Requests	151

Table 9

Sunshine Law Report

OIP assumed jurisdiction over the Sunshine Law in 1998. Since then, OIP has seen a large increase in the number of requests and complaints to this office concerning this law. The annual number of inquiries and requests jumped from 92 to 226 in FY 2004 and 223 in FY 2005. See **Chart 5**.

Of the 711 inquiries handled through OIP's AOD program in FY 2005, 185 involved the Sunshine Law and its application. OIP also opened 38 case files in response to written requests for opinions regarding Sunshine Law issues. See **Table 10**.



<i>Fiscal Year</i>	<i>Telephone Inquiries</i>	<i>Written Inquiries</i>	<i>Total</i>
2005	185	38	223
2004	209	17	226
2003	149	28	177
2002	84	8	92
2001	61	15	76
2000	57	10	67
1999	51	5	56

Table 10

The rise in requests in recent years appears to be due in large part to a heightened awareness by both the public and government boards of the Sunshine Law's requirements as well as more diligent efforts by boards to comply with those requirements.

To help government understand the complexities of the Sunshine Law, OIP continues to provide numerous training workshops for state and county boards and their staff throughout the year. See pages 47-48 for a list of the training workshops.

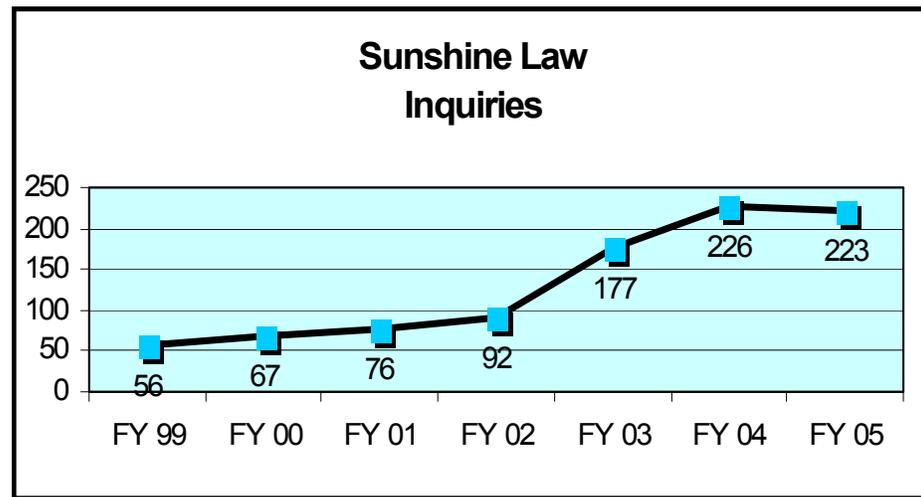


Chart 5

Case and Opinion Letter Summaries

The following summaries exemplify the type of legal assistance provided by OIP through the AOD program, informal opinion letters, and formal opinion letters. Summaries of the formal opinion letters begin on page 34.

Legal Assistance and Informal Opinion Letter Summaries

Excessive Fees for Search, Review, and Segregation

The editor of Environment Hawaii submitted a request to the Department of Agriculture (DOA) to inspect records relating to the establishment of an irradiation facility. DOA informed the requester that the total amount of fees that would be charged to search, review, and segregate records to fulfill this record request was estimated to be over \$4,000. The requester protested to OIP that the estimated fees were excessive and sought OIP's assistance.

OIP helped DOA to better understand the UIPA's disclosure requirements and exceptions so that DOA was able to process the request more efficiently than originally estimated. The DOA adjusted its estimate of fees for search, review, and segregation of the requested records to \$190.

Sunshine Law Requirements Fulfilled by a Subcommittee Apart from Parent Board

As permitted under the Sunshine Law, a subcommittee of the State Council on Developmental Disabilities was planning to hold an executive session to evaluate the director's job

performance. The director asked OIP by telephone whether the entire Council must meet in order to vote to approve the subcommittee's executive session for this purpose.

The OIP explained that the subcommittee itself is considered a "board" under the Sunshine Law. Thus, the subcommittee, not the Council, must vote

**in
this
section . . .**

*Excessive Fees for Search, Review,
and Segregation*

*Sunshine Law Requirements Fulfilled by a
Subcommittee Apart from Parent Board*

*Agency Can Choose to Allow Requester to
Make Copies of a Government Record*

Hawaii State Committee of Blind Vendors

Audiotape Responsive to Record Request

Stamping a Record "Confidential"

Confidential Business Information

Mass Mailing to Registered Boat Owners

Public Board Meeting on a Military Base

*Written Comments from Absent Board
Member*

Council Member's Speech to Private Group

*Public Testimony Allowed When Board
Votes to Name New Member*

*Touring Property Not Prohibited by
Sunshine Law*

UIPA Request Form a Government Record

*Inmate's Request for Records of
Another Inmate*

*Appraisal Reports Used to Establish
Fair Market Values*

to approve this executive session as well as be responsible for filing notice of the executive session, accepting testimony, and keeping minutes of the executive session.

Agency Can Choose to Allow Requester to Make Copies of a Government Record

An attorney requested the Department of Labor and Industrial Relations (DLIR) to provide a copy of the Official Disability Guidelines (ODG) published by the Work Loss Data Institute (WLDI) and purchased by DLIR. OIP confirmed with DLIR that the UIPA's definition of the term "government record" was broad so that it would include publications purchased by an agency and that the agency must allow inspection and copying.

DLIR wanted to fulfill its obligation under the UIPA by allowing the requester to borrow the large ODG volume to make the copy. OIP explained that the UIPA requires an agency to make available government records for copying as well as reasonable access to facilities for this purpose, but there is no requirement that an agency itself must make the copy.

DLIR's notice to the requester stated that the requester may borrow the record to make a copy, subject to any applicable copyright laws, and gave WLDI's telephone number for the requester to obtain permission to copy the ODG. When the requester appealed to OIP contending that DLIR was denying access, OIP consulted DLIR as to its position and informed the requester that DLIR was not conditioning access to the ODG upon the publisher's permission, but rather was allowing the requester to make a copy as required by the UIPA and informing the requester that copying may be restricted by copyright laws, which the UIPA does not vitiate.

Hawaii State Committee of Blind Vendors

The chairperson of the Hawaii State Committee of Blind Vendors (HSCBV) asked OIP if HSCBV was subject to the Sunshine Law. In its letter to HSCBV, OIP found that HSCBV was a committee of the State that was created by section 17-402-17, HAR. Because HSCBV performs its duties under this rule relating to the State's Business Enterprise Program, OIP also found that HSCBV has supervision, control, jurisdiction, or advisory power over specific matters, is required to take official actions and is required to conduct meetings.

Therefore, OIP found that HSCBV is a "board", as defined under the Sunshine Law and must, therefore, comply with the Sunshine Law's open meeting requirements. Although federal law requires the establishment of HSCBV, OIP distinguished HSCBV, whose existence and duties are governed by section 17-402-17, HAR, from those committees that are created by or pursuant to federal law only and, thus, not subject to the State's Sunshine Law.

Audiotape Responsive to Record Request

An agency had an audiotape that was responsive to a record request and wanted to know whether it could respond by simply providing a copy of the tape, or whether it was required to have the tape transcribed. OIP advised that since the requester wanted copies of the records, the agency needed only to provide a copy of the tape. The agency was not obligated to change the record to a different format, such as a transcription of an audiotape, if the record did not already exist in the different format and was readily retrievable in the requested format.

Stamping a Record “Confidential”

An agency had a policy of classifying records as confidential, for internal use only, and other categories. The agency wanted to know what happened if its classification conflicted with the UIPA, and whether the agency should stamp “confidential” on documents it considered confidential.

OIP advised that if the UIPA did not allow the record to be withheld, it must be disclosed upon request even if the agency considers the record to be confidential. If the agency’s reason for considering a record confidential fell within one of the UIPA’s exceptions, the UIPA would allow the agency to withhold the record. Stamping a record “confidential,” however, would not guarantee confidentiality, but it might be a way to warn staff to check for applicable UIPA exceptions.

Confidential Business Information

A business sent a letter containing what it considered to be confidential information to an agency, and the agency voluntarily released the letter to a competitor. The competitor suspected that the release might have been intended to help the competitor. A caller inquired as to whether the UIPA prohibited that disclosure.

OIP advised that the frustration exception, which can cover confidential business information provided to a government agency by a private entity, is discretionary. In other words, the agency can decide whether or not to release information that might fall within the exception, and the UIPA does not prohibit the disclosure. In addition, section 92F-16, HRS, provides immunity for good faith disclosures by an agency.

Mass Mailing to Registered Boat Owners

OIP was asked how the boating division of the Department of Land & Natural Resources (DLNR) could partner with a private business to do a mass mailing to registered boat owners, using DLNR’s database of registered boat owners. DLNR was concerned about safeguarding the names and home addresses of the boat owners from public disclosure.

OIP advised that the UIPA is not a confidentiality statute, but that where in an instance such as this the individuals identities are not required to be disclosed, agencies fulfilling record requests may generally segregate and withhold the names as well as home addresses of the individuals to protect their privacy interests.

OIP advised DLNR that, if it chose not to do the mailing itself, it could outsource the mailing to a third party, providing the names and home addresses on disc to be used only for the mailing authorized by DLNR and to be returned after the mailing was completed. OIP also advised that in such instance the agency should have the third party sign a confidentiality agreement.

Public Board Meeting on a Military Base

OIP was asked whether a board could hold its public meeting on a military base where picture ID is required for entry. The location of the meeting was unrelated to any business being considered by the board.

Based upon the express Legislative policy of opening up the governmental processes to public participation, OIP interpreted the statute to generally preclude a board from meeting at a location where identification was required for entry. OIP advised that an identification requirement would prevent those members of the public who did not have identification or did not wish to be identified from attending the meeting. To the greatest extent possible, a board must allow public participation in its meetings, which includes unrestricted attendance.

Written Comments from Absent Board Member

A caller stated that one of their board members was in a car accident and could not attend the board's meetings. The injured board member had a specific expertise and the board was relying upon her knowledge on the matters before them. The injured board member wanted to submit written comments to the board based upon her review of documents that had been provided to the board for review. The caller asked whether it was permissible for the injured board member to do this and how the board should handle the comments when received.

OIP advised that it believed that the department could accept her written comments. OIP advised that the department could pass the comments out to the board members at the meeting, but that the comments should also be read aloud at the meeting. This would, in effect, treat the comments as testimony offered for the board's consideration. OIP advised that for nominal, technical comments,

the board need not read the comments aloud at the public meeting, but could announce that those comments are available for review.

Council Member's Speech to Private Group

A member of the public questioned whether a member of the Hawaii County Council violated the Sunshine Law by giving a speech at a private function which was not open to the public. OIP opined that, since the event did not constitute a "meeting" as defined within the Sunshine Law and no other Council member participated in the event, the provisions of the Sunshine Law were not applicable.

Public Testimony Allowed When Board Votes to Name New Member

A Neighborhood Board member requested an opinion from OIP on whether the action of the board in voting to name a new member without allowing for public testimony was in violation of the Sunshine Law.

OIP advised that, under the Sunshine Law, a board must allow for public testimony on all matters being considered by the board at an open meeting. In this case, it was improper for the board to refuse to accept public testimony on the issue. OIP recommended that the board readdress the naming of the new member at a future meeting after allowing for public testimony on the matter.

Further, OIP advised that the board should review the actions taken subsequent to the improper appointment of the new member and if the vote of that person would have made a difference in the result of the board's action, then that matter should also be readdressed at a future meeting.

Touring Property Not Prohibited by Sunshine Law

A Neighborhood Board member was invited by a neighbor to tour a property which was involved in a complaint which the board was to address. He inquired of OIP whether his touring of the property would be a violation of the Sunshine Law. He was advised that, where there was no other board member present at the tour, the Sunshine Law would not prevent him from touring the property at the invitation of the owner.

Appraisal Reports Used to Establish Fair Market Values

The Department of Transportation (DOT) contacted OIP and inquired whether it could withhold appraisal reports which it used to establish fair market rental values. Upon questioning, DOT advised that its Attorney General had advised DOT that the reports were public. OIP advised that under the UIPA, the agency seeking to withhold a record has the burden of establishing that there is a legal basis for doing so. Absent any such basis, the record must be disclosed upon request.

UIPA Request Form a Government Record



An agency inquired whether a UIPA request form was itself a government record subject to disclosure. OIP advised that if the request form was maintained by the agency then it was a government record subject to the disclosure requirements of the UIPA.

Inmate's Request for Records of Another Inmate

The Department of Public Safety (PSD) called OIP and advised that an inmate had made a request for the records of another inmate and was complaining that the response from PSD was insufficient as it was heavily redacted and contained essentially only directory information. OIP advised that the requester could look to OIP Op. Ltr. 01-03 for guidance and that the PSD response appeared to be appropriate.

OIP Formal Opinion Letter Summaries

OIP has issued **300 formal advisory opinion letters** from 1989 through the end of June 2005. In Fiscal Year 2005, the OIP issued 22 formal opinion letters.

The following summarizes these formal opinion letters. The summaries should be used only as a broad reference guide. To fully understand an opinion, it is necessary to read the full text of the opinion. Summaries and full text of all opinion letters are available at www.hawaii.gov/oip.

❖ **UIPA:**

Disclosure of Intra-office Email Messages

The Division of Aquatic Resources (DAR) of the Department of Land and Natural Resources asked for an opinion as to required public access to intra-agency emails concerning an alleged violation of law.

OIP advised that the names of the individuals alleged to have violated the law, but not charged, could generally be withheld under the UIPA, as there is a significant privacy interest in information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or continue the investigation.

In making a disclosure determination under the privacy exception, the individual privacy interest is balanced against the public's interest in disclosure. As the emails did not reveal any wrongdoing by DAR, OIP determined that individual's identity could be withheld.

OIP also opined that the deliberative process privilege authorized withholding of almost all of the emails. This privilege applies when disclosure would frustrate a legitimate government function and is authorized so that agency employees can candidly and freely exchange ideas and opinions. To qualify for protection under the privilege, the document must contain a communication that is "antecedent to the adoption of an agency policy" and "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal policy matters." The emails reviewed contained a discussion of different ways of interpreting a law.

As DAR advised OIP that a final decision was not made as to what DAR believes to be a conclusive interpretation of the law, OIP concluded that DAR is authorized to withhold access to deliberative material contained in the mails.

[OIP Op. Ltr. No. 04-12, July 9, 2004]

Payroll Clearance Fund Escheated Warrants Report

The Department of Accounting and General Services (DAGS) should disclose Payroll Clearance Fund Escheated Warrants Reports for present and former state employees not involved in undercover law enforcement capacities because disclosure would not constitute an unwarranted invasion into the personal privacy of these employees.

The names of present or former employees engaged in undercover law enforcement capacities should be redacted from the reports because these employees' significant privacy interest, recognized by statute, in information that identifies them as government employees clearly

outweighs the public interest in disclosure.
[OIP Op. Ltr. No. 04-13, August 23, 2004]

Disclosure of Forecasts Prepared by Staff

An opinion was requested as to whether forecast sections of tax credit data tables (the Staff Forecasts) prepared by staff of the Tax Research and Planning Office for use by the Council on Revenues in deliberating and preparing the forecast of state general fund tax revenues must be open to public inspection under the UIPA.

The Constitution charges the Council with being the final decision-making agency with respect to the preparation of revenue estimates to be used to administer the State.

OIP found that the Staff Forecasts, by their very nature, reflect the preliminary judgments and opinions of the staff, not the policy or determination of the Council.

Because the Staff Forecasts consist of predecisional, deliberative intra-agency communications and the Council did not adopt or incorporate the Staff Forecasts into the Council's forecast, OIP found that the Staff Forecasts met the two requirements necessary to invoke the "deliberative process privilege" and therefore could be withheld from disclosure under the "frustration" exception to the UIPA set forth at §92F-13(3), HRS.

[OIP Op. Ltr. No. 04-15, August 30, 2004]

**in
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section . . .**

UIPA:

Disclosure of Intra-office Email Messages
Payroll Clearance Fund Escheated Warrants Report
Disclosure of Forecasts Prepared by Staff
Records to be Provided in Requested Format
Personal Calendars and Telephone Message Slips
Not Government Records
Transcript of Administrative Hearing Protected by
Confidentiality Statute
Charter Provision Providing Greater Disclosure
Report for Quality Improvement Forms
Traffic Accident Reports and Data
Cellular Telephone Invoices
University of Hawaii Campus Security Records
Samples of Live Organisms
Information from Survey Responses
Withholding of Inmate Records and Regulations on
Inmate Access Rights

SUNSHINE:

Briefing on Contested Cases and Executive Session
to Protect Privacy
University of Hawaii Institutional Animal Care &
Use Committee
Downtown Homeless Task Force
Speaking at Public Meetings on Matters Outside
the Agenda
Executive Meetings to Interview Mayor's Appointees
Public Testimony When Non-Sunshine Law
Requirements Apply
Charter Schools
Closed Public Building; Unreasonable Delay to
Start of Public Meeting

Records to be Provided in Requested Format

Government records required to be disclosed under the UIPA that are maintained in electronic format generally must be provided to a requester in paper format if requested. Under the UIPA and the OIP rules, an agency must make reasonable efforts to accommodate record requesters.

In this instance, the agency maintained a business directory in electronic format with public access available through its website. The agency could, however, convert the directory to paper format without unreasonable interference with its functions.

Accordingly, OIP instructed the agency that, although it could advise requesters of the directory's availability on its website, it must provide a paper copy of that directory when so requested. Prepayment of fees authorized by the OIP rules can be required.

[OIP Op. Ltr. No. 04-16, September 22, 2004]

Personal Calendars and Telephone Message Slips Not Government Records

OIP found it to be consistent with the definition of "government record" under the UIPA and its legislative history to distinguish between records held by an agency official in his or her personal capacity versus official capacity.

In line with other state and federal courts that have similarly construed other open records laws, OIP found that the determination of whether or not a record is a "government record" subject to disclosure under the UIPA or a personal record of an official depends on the totality of circumstances surrounding its creation, maintenance, and use.

The records at issue were the personal appointment or scheduling calendars (the Calendars) and telephone message slips of certain

current and former officials of the City and County of Honolulu (the City Officials).

Through the Corporation Counsel, the City Officials represented that their Calendars and telephone message slips are not required to be kept or maintained to document their official functions but are created solely for their personal convenience; are not circulated or intended for distribution within agency channels for official purposes, such as notifying others of their schedules; are not integrated into agency files but are maintained in a way indicating a private purpose with limited access by their respective secretaries; are not under agency control; and may be discarded at their sole discretion.

Based upon the totality of these representations, OIP found the Calendars and the telephone message slips generally to be personal records of the City Officials and not "government records" subject to disclosure under the UIPA.

[OIP Op. Ltr. No. 04-17, October 27, 2004]

Transcript of Administrative Hearing Protected by Confidentiality Statute

The UIPA authorizes agencies to withhold access to government records when a confidentiality statute explicitly restricts access to those records. Section 383-95(a), HRS, requires that information concerning unemployment compensation determinations be confidential and only made available as necessary to process a particular claim.

After an unemployment compensation hearing is concluded and where neither the claimant, the employer, nor the Department of Labor and Industrial Relations seeks to appeal within the statutory time limit, the transcript of the hearing is no longer necessary to process a particular claim. Therefore, according to section 383-95(a), HRS, the transcript is confidential.

Moreover, section 92F-4, HRS, waives compliance with the UIPA when compliance would cause an agency to lose or be denied funding, services, or other assistance from the federal government. In order for states to be certified to receive payment from the United States Department of Labor, federal law requires that the states adopt laws that provide for methods of administration determined by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. This requirement has been interpreted by the Secretary of Labor to require confidentiality of unemployment compensation information.

Accordingly, the transcript of the hearing is not required to be disclosed as the time for appeal has passed, and the provisions of the UIPA are waived to the extent necessary to protect eligibility for federal funding.

[OIP Op. Ltr. No. 04-18, November 15, 2004]

Charter Provision Providing Greater Disclosure

The Department of Finance, County of Kauai (Finance) asked OIP for an opinion concerning the disclosure of the job titles and the exact salaries of covered employees by Finance to the Kauai County Council.

Finance asked whether a provision in the Revised Charter of the County of Kauai, requiring the Council to make the information publicly available upon its receipt from Finance, is in conflict with and contrary to the UIPA provision that recognizes a covered employee's significant privacy interest in such information.

OIP found that a county charter provision requiring disclosure of the exact salaries of covered employees is not contrary to the UIPA. The UIPA is premised on disclosure, i.e., on allowing public access to records maintained by state and county agencies. While the UIPA confers on an agency the discretion to withhold certain types of records (or certain types of information contained in

records), it does not require an agency to deny access to those records.

Accordingly, OIP ruled that a county charter provision that requires disclosure of records that could otherwise be withheld under the UIPA did not violate or otherwise contradict the statute.

[OIP Op. Ltr. No. 05-03, January 19, 2005]

Report for Quality Improvement Forms

The Department of Emergency Services (DES), City and County of Honolulu, asked OIP whether it is appropriate under the UIPA for DES to disclose Report for Quality Improvement forms (RQIs) to (1) the public and (2) the United Public Workers Local 646 (UPW).

OIP concluded that certain information within the RQIs may be withheld from the public on the basis that their disclosure would constitute a clearly unwarranted invasion of privacy under the UIPA. Specifically, there are grounds for withholding the portions of the RQIs related to (a) the patient information and (b) the evaluation of the emergency personnel.

In addition to being withheld on the basis of the protection of personal privacy, the RQIs, or portions thereof, may possibly be withheld from disclosure under section 92F-13(3), HRS, which provides that government records may be withheld where they are of such nature that disclosure would frustrate a legitimate government purpose.

In the context of a class action grievance, the UIPA requires DES to provide the UPW with access to all RQIs involving Unit 10 employees, but only the portion of the RQI that constitutes the DES employee's personal record must be disclosed to the UPW. The portion of the RQI that constitutes the patient's personal record must be redacted prior to disclosing the RQI to the UPW.

[OIP Op. Ltr. No. 05-05, March 16, 2005]

Traffic Accident Reports and Data

The Honolulu Advertiser (Advertiser) and the Department of Transportation (DOT) asked OIP for an opinion regarding the Advertiser's request to DOT for an electronic copy of all statistical data on major vehicle traffic accidents reported to DOT for the calendar years 2002 and 2003 (Accident Data).

DOT maintains a traffic accident database derived from the State of Hawaii's Motor Vehicle Accident Report Forms. The Advertiser had previously obtained the Accident Data from the Honolulu Police Department, but was now specifically seeking that same information in the electronic format maintained by DOT.

DOT denied the Advertiser's record request, citing 23 U.S.C. § 152, chapter (sic) 291C-20, HRS, and section 15-5.3, Revised Ordinances of Honolulu, as the basis for the denial, but efforts were made by the parties to resolve the issue.

DOT represented to OIP that DOT's software allows it to display all 67 fields of the traffic accident database, but that it does not allow DOT to segregate the information fields and display selected fields within the traffic accident database.

This is relevant because the traffic accident database includes fields of information containing drivers' personal information that may be protected from disclosure and that, in any event, the Advertiser indicated it was not seeking. DOT further represented that it contacted the license holder of its software to determine the cost of obtaining the software that would allow it to display only selected fields from its traffic accident database and was quoted a cost of approximately \$20,000.

OIP concluded that 23 U.S.C. § 409 does not make the traffic accident database confidential and thereby protected from disclosure under the UIPA. OIP further concluded that the privacy exception, section 92F-13(1), HRS, may allow DOT to

withhold certain information or fields of information, but the traffic accident database, in its entirety, cannot be withheld from disclosure under the UIPA.

Based upon DOT's representation that it does not have the ability to segregate the personal information (that it is likely entitled to withhold from disclosure) from the traffic accident database without purchasing additional software at the cost of approximately \$20,000, however, OIP found that DOT is not required to make the Accident Data available in the requested electronic form.

OIP further found that the UIPA and its administrative rules did not require DOT to incur the cost to purchase the software that would allow it to segregate the traffic accident database. However, in the event that the Advertiser is willing to pay the software cost, DOT would then be required to make the segregated Accident Data available in the electronic format requested. [OIP Op. Ltr. No. 05-06, March 22, 2005]

Cellular Telephone Invoices

Cellular telephone records compiled and submitted by councilmembers to meet the requirement that they account for and substantiate the expenditure of their cell phone allowances are government records and a request for these records must be responded to under the UIPA, whether the request is to the council or to the individual councilmember.

Some information within the records may fall under an exception to the UIPA, though, in which case that information may be redacted from the records provided in response to a UIPA request. [OIP Op. Ltr. No. 05-08, April 12, 2005]

University of Hawaii Campus Security Records

The University of Hawaii asked OIP for an opinion regarding whether the University's Campus Security is required under the UIPA to disclose a report of a possible sexual assault that includes the written report of a Campus Security officer with an attached photograph of the person alleged to have committed the assault and three statements prepared by witnesses. The person who is the alleged victim of the assault requested access to the report.

OIP found generally that the report should be disclosed to the requester under part III of the UIPA because the report is the personal record of the requester and none of the exemptions to disclosure provided under part III apply.

OIP further found, however, that the portions of the report are joint personal records, i.e., they are also personal records of the alleged assailant and of each of the witnesses, and that certain personal information in the report is only "about" these individuals and not "about" the requester. This personal information that is not "about" the requester is not subject to disclosure as a personal record of the requester under part III of the UIPA. Instead, disclosure of this information must be analyzed as a general record request under part II of the UIPA.

Because OIP found under part II that disclosure would result in a clearly unwarranted invasion of the personal privacy of the other parties to the report, OIP concluded that this personal information may be redacted from the copy of the report made available to the requester.

[OIP Op. Ltr. No. 05-10, April 25, 2005]

Samples of Live Organisms

The State Laboratories Division (SLD) of the Department of Health asked the 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, under the UIPA, the term "government record" must be construed to be information that is written, stated, inscribed, or otherwise recorded in any medium. Accordingly, OIP concluded that the term "government record," as it is used in the UIPA, does not encompass samples of live organisms and, therefore, release of these 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, May 5, 2005]

Information from Survey Responses

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 topics that may be commercially sensitive, including (1) the factors most important to their businesses, (2) the marketing and promotion methods they use, (3) the transportation methods they use to get products and services to market and the destinations, (4) annual sales, (5) percentage of annual sales to county, mainland, and foreign destinations, (6) number of employees, (7) direct sales broken down by buyer category, (8) company name and contact information, and (9) other marketing information the respondent wishes to provide. The artists participating in the survey will be included in a database DBEDT intends to create with the responses. DBEDT believes that, without assurances of confidentiality, some respondents may be unwilling to participate in the survey.

OIP concluded 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, because release of such information would impair the agency's ability to get such information in the future and thus frustrate a legitimate function of the agency. See Haw. Rev. Stat. 92F-13(3) (1993).

DBEDT may withhold responses to the proposed voluntary survey under the UIPA's frustration exception, but only to the extent that the information submitted is of a kind that would customarily not be released to the public by the person from whom it was obtained. DBEDT may not use the frustration exception as a basis for withholding information that the respondents customarily release to the public.

[OIP Op. Ltr. No. 05-13, May 23, 2005]

Withholding of Inmate Records and Regulations on Inmate Access Rights

In response to a request by the Department of Public Safety (PSD), OIP reached the following conclusions on the withholding of inmate records and regulations on inmate access rights:

- (1) The UIPA does not permit PSD to make a blanket denial of access to inmates for all records in their institutional files. Section 92F-22(1)(B), HRS, by its express language, 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, May 26, 2005]

❖ Sunshine Law:

Briefing on Contested Cases and Executive Session to Protect Privacy

Even under a narrow reading of the term "adjudicatory functions," a staff briefing for a board regarding pending contested cases before that board is an adjudicatory function exercised by that board and thus not subject to the Sunshine Law.

A board may not hold an executive meeting to receive information about an alleged violator's personal problems in confidence. When a board is charged with taking action regarding violations of state law, if an alleged violator wishes to offer information about personal problems as a defense or mitigating factor for the alleged violation, then the public has a strong interest in knowing the information that was presented to the board. It is OIP's opinion that the privacy provision of the Hawaii Constitution does not require a board to keep such information confidential.

[OIP Op. Ltr. No. 04-14, August 27, 2004]

University of Hawaii Institutional Animal Care & Use Committee

OIP was asked whether the University of Hawaii Institutional Animal Care & Use Committee (the UH IACUC) must conduct its meetings in compliance with the provisions of the Sunshine Law and therefore allow the public to attend. OIP found the UH IACUC to be created pursuant

to federal law, deriving its official existence and official functions and duties from federal law rather than law of the state. Based upon a reading of the Sunshine Law as a consistent whole and with its legislative history, and absent any indication to the contrary, OIP opined that the Sunshine Law does not apply to any agency, board, commission, authority, or committee created by or pursuant to federal law.

OIP thus concluded that the UH IACUC was not subject to the provisions of the Sunshine Law and, therefore, could deny the public access to its meetings.

[OIP Op. Ltr. No. 04-19, November 12, 2004]

Downtown Homeless Task Force

OIP was asked whether the Downtown Homeless Task Force of the City and County of Honolulu is a board subject to the Sunshine Law.

OIP found that the Downtown Homeless Task Force does not “take official actions,” because it does not create recommendations that are to be acted upon by the City. Instead, the members agree on behalf of the various City and non-City organizations they represent to seek solutions to problems identified by the group. In addition, the group is not “required to conduct meetings” because the group does not need a quorum to reach a decision, so its meetings are not “meetings” as the term is defined in the Sunshine Law.

For these reasons OIP concluded that the Downtown Homeless Task Force is not a board subject to the Sunshine Law.

[OIP Op. Ltr. No. 05-01, January 19, 2005]

Speaking at Public Meetings on Matters Outside the Agenda

The County Clerk for the County of Hawaii asked OIP for an opinion on the Hawaii County Council’s practice of permitting members of the public to make statements at the end of each meeting regarding matters outside of the agenda. A member of the public subsequently asked OIP for an opinion regarding whether members of the public who testify at a public meeting may be restricted to speaking only about matters that are on the meeting agenda.

OIP found that a board may permit members of the public to speak at a meeting on matters that are not on the agenda, but is not required to do so. The board members themselves, however, may not discuss, deliberate, or decide matters that are not on the agenda.

Thus, if a board elects to hear public statements regarding matters not on the agenda and the statements relate to “board business,” i.e., matters over which the board has supervision, control, jurisdiction, or advisory power, the board members must be careful not to respond or discuss the matter.

[OIP Op. Ltr. No. 05-02, January 19, 2005]

Executive Session to Interview Mayor’s Appointees

A member of the Kauai County Council asked OIP for an advisory opinion regarding whether the Council may convene an executive session to interview individuals who are appointed by the Mayor to county boards and commissions.

OIP advised that the Council cannot meet in executive session in order to interview the nominees because the interviews do not qualify for any of the exemptions to the Sunshine Law’s open meeting requirements, as set forth in section 92-5, HRS.

OIP rejected the argument that the Council's interviews of nominees triggered the Sunshine Law exemption that allows a board to meet in executive session in order to "deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law" based upon the fact that the Council might have been able to protect certain information from disclosure for privacy reasons under the UIPA. The UIPA is not a state law under which information "must be kept confidential" because the UIPA does not mandate confidentiality of government records, but rather permits withholding under certain exceptions to its general rule of public disclosure.

Also, although the UIPA recognizes that individuals have a significant privacy interest in "applications" and "nominations" for "appointment to a governmental position," OIP has previously opined that this significant privacy interest is outweighed by the public interest in application information concerning successful applicants or nominees because such information "sheds light upon the composition, conduct, and potential conflicts of interest of government board and commission members."

Furthermore, although the Revised Charter of the County of Kauai requires open meetings "[w]ith the exception of deliberations relating to confirmation of appointees[,]" appearing to indicate that the Council's hearings to confirm appointees should be closed to the public, the Charter is not a "state law" for purposes of invoking the exemption to the open meeting requirements provided at section 92-5(a)(8), HRS.

Finally, because an individual nominated to a board or commission will not be serving for pay or compensation, a nominee cannot be considered a "hire" for purposes of invoking the exemption in section 92-5(a)(2).

[OIP Op. Ltr. No. 05-04, January 21, 2005]

Public Testimony When Non-Sunshine Law Requirements Apply

The Department of the Corporation Counsel, City and County of Honolulu, asked OIP for an opinion on several issues regarding the public's right to testify at a meeting subject to the Sunshine Law.

OIP concluded that boards other than the Land Use Commission are not subject to the Sunshine Law during the exercise of their adjudicatory functions. Thus, boards conducting contested case hearings or other adjudicatory processes need not follow the Sunshine Law's public testimony requirements while doing so. There is no Sunshine Law exception for boards holding public hearings on proposed rules under section 91-3, HRS, however. Boards must take care to follow the Sunshine Law's requirements as well as the requirements of section 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, March 31, 2005]

Charter Schools

The State Auditor asked OIP to reconsider OIP Opinion Letter No. 03-01, which concluded that new century charter schools and new century conversion charter schools (collectively "charter schools") are exempt from the Sunshine Law.

Based upon the information that the State Auditor provided, OIP also reconsidered OIP Opinion Letter No. 03-10, which concluded that charter schools are also exempt from the UIPA.

OIP concluded that the charter schools are subject to both the Sunshine Law and the UIPA. In 03-01, the OIP read section 302A-1184, HRS, as exempting charter schools from compliance with the Sunshine Law. The Attorney General, however, subsequently interpreted section 302A-1184, HRS, which exempts charter schools from “all applicable laws,” to encompass only those laws that apply directly to schools and education. Based upon the Attorney General’s interpretation, the exemption in section 302A-1184, HRS, does not shield charter schools from the Sunshine Law.

As OIP has found, the local school boards of charter schools (charter school boards) are “boards” of the State that are “created” by statute and have “supervision, control, jurisdiction or advisory power over specific matters.” They also are “required to conduct meetings and to take official actions.” Consequently, charter school boards fit the definition of the term “board” under the Sunshine Law and, therefore, must comply with the Sunshine Law’s requirements.

In addition, charter schools are public schools and are created, funded, and overseen by the State. In light of the Attorney General’s interpretation of section 302A-1184, HRS, as only exempting charter schools from “laws that apply directly to schools and education,” OIP found that charter schools are “agencies” as defined by the UIPA, and therefore, their records are subject to the UIPA’s disclosure requirements.

The conclusion reached in this letter replaces the conclusions reached in 03-01 and 03-10.

[OIP Op. Ltr. No. 05-09, April 20, 2005]

Closed Public Building; 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 were proper under the Sunshine Law. Specifically: (1) whether the building in which certain public 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 session does not violate the Sunshine Law. OIP strongly recommended, however, that boards hold executive sessions 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 and thus rendered the filed notices insufficient under the Sunshine Law. Any deviation from the time stated in a notice for a public meeting must be reasonable or the notice given for the meeting will be rendered insufficient under the Sunshine Law.

[OIP Op. Ltr. No. 05-11, April 27, 2005]



Legislation

One of OIP's functions is to make recommendations for legislative changes. OIP introduces legislation to amend the UIPA and/or the Sunshine Law to clarify areas that have created confusion in application or to amend provisions that work counter to the legislative mandate of open government. OIP also consults with government agencies and elected officials in the drafting of proposed bills.

To provide for uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA; the government's practices in the collection, use, maintenance, and dissemination of information; and the government's open meetings practices.



In 2005, OIP introduced 5 bills and reviewed and monitored 168 bills and resolutions as they progressed through the legislative process. The OIP Director and staff attorneys appeared frequently before the Legislature to testify on many of these bills.

The following summarizes some of the legislation that OIP introduced, collaborated on, or monitored during the 2005 legislative session.

Public Meetings (HB 551; Act 84)

This law amends the Sunshine Law, section 92-2.5(a), HRS, to allow two members of a board to discuss between themselves matters relating to official business of the board as long as no commitment to vote is made or solicited. The amendment was intended to clarify and to resolve conflicting interpretations of the section.

Act 84 also amended section 92-11, HRS, to permit a court to void final actions taken in violation of open meeting and public notice requirements without proof of willful conduct.

The original bill had also allowed more than two board members, but less than a quorum, to testify or make presentations at the meeting of another board or the Legislature. This part of the bill was deleted. OIP may seek to include this measure in a future legislative proposal.

Uniform Information Practices Act (Modified) (HB 553; Act 85)

This law amends section 92F-12, HRS, which contains a list of records that the Legislature has stated must be disclosed under the UIPA, to allow agencies to withhold certain personal information in those records listed.

The amendment also makes clear that, if a record listed in section 92F-12 is made confidential by a statute outside of the UIPA, the mandatory disclosure requirement of section 92F-12 is inapplicable. Such a record or portions thereof may be withheld pursuant to the exceptions to disclosure found at section 92F-13, HRS.

DNA Evidence (HB 1733; Act 112)

This law requires DNA testing of all felons. It provides procedures and duties for the collection and testing of DNA samples and for expungement

of DNA profiles. It extends the statute of limitations for felony cases where DNA evidence has been recovered.

Act 112 requires retention of evidence that can be used for DNA analysis; establishes procedures for post-conviction requests for analysis of DNA evidence; and requires notice to the victim of proceedings and outcomes and to probation and parole authorities of an outcome adverse to the defendant.

OIP testified that a general confidentiality clause in the bill was overbroad and that adequate protections already exist in the UIPA and in other sections of the bill. This general confidentiality clause was deleted in the final conference draft of the bill.

Social Security Numbers (HB 119; Act 13)

This law allows only the last four digits of a registered voter's social security number on nomination papers filed on behalf of a candidate.

Charter Schools (SB 1643; Act 87)

This law makes clarifying amendments to the new century charter school statutes. Part of the act invalidates OIP Opinion Letter 05-09.

In that opinion, OIP found that charter school boards fit the definition of the term "board" under the Sunshine Law and, therefore, must comply with the Sunshine Law's requirements. The conference committee amended SB 1643 to exclude charter schools from the Sunshine Law.

Sex Offender Records (SB 708; Act 45)

This law amends the current registration and public access laws governing sex offenders and offenders against minors.

OIP monitored this bill, which, among other things, establishes separate registries for sex offenders and offenders against children, clarifies that the standard of proof applicable to a covered offender petitioning the court for termination of public access to registration information is a preponderance of the evidence, and clarifies the scope and type of offender registration information and permitted disclosures of this information.

OIP had originally testified on this bill regarding its concern that this bill may be construed as making Internet access to public information about registered sex offenders the exclusive means of public access to this information. However, the Hawaii Criminal Justice Data Center (HCJDC) assured OIP that, in addition to the bill's Internet access requirements, HCJDC would continue to allow inspection and copying of the public information as required by the UIPA as well.

Public Meetings by Videoconference (HB 676/ SB 785)

Under these bills, public meetings conducted by video teleconferencing could continue even if the video connectivity is interrupted or terminated. Currently, the Sunshine Law provides that both the audio and video components must be maintained. If either becomes unavailable, the meeting must be terminated.

OIP had supported the bills' version that was proposed by the Hawaii Health Systems Corporation (HHSC) and introduced by both

houses of the Legislature, but had opposed amendments made to the bill by the Senate. OIP met with HHSC and also other agencies such as the State Council on Developmental Disabilities, which had supported the Senate amendments, to discuss concerns about the bill.

After their discussion, OIP and the other agencies agreed to recommend to the Senate that the Senate bill be amended to return to its original version. However, the bills were not considered further by the Legislature after crossover.

Civil Enforcement by OIP (HB 552/ SB 661)

Under these bills, OIP would have the authority to bring a civil action in circuit court for the purpose of enforcing the Sunshine Law and the UIPA. These bills would also make OIP's powers and duties in administering the Sunshine Law consistent with its powers and duties under the UIPA. After these bills' introduction at the Legislature, the Judiciary Committees in both houses declined to hold hearings on them.



Agency Public Reports

The UIPA requires all state and county agencies to “compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices.”

Haw. Rev. Stat. § 92F-18(b) (1993).

These public reports are filed with OIP and must be reviewed and updated annually. OIP is directed to make these reports available for public inspection.

The Records Report System

OIP developed the Records Report System (“RRS”), a computer database, to facilitate collection of information from agencies and to serve as a repository for all agency public reports.

From the beginning of 1994 when the first record report was added to the system up to July 1, 2005, state and county agencies have reported 30,846 records. See **Table 11**.



Records Report System

Status of Records Reported by Agencies: 2005 Update

Jurisdiction	Number of Records
State Executive Agencies	21,341
Legislature	841
Judiciary	1,645
City and County of Honolulu	4,433
County of Hawaii	976
County of Kauai	861
County of Maui	749
Total Records	30,846*

* This total includes 27,876 “live” records that can be browsed by all users, and 2,970 records still being edited by agencies and accessible only to those agencies, as of July 1, 2005.

Table 11

RRS Now on the Internet

The RRS was developed as a Wang computer-based system. In 2003, OIP worked with the Information and Communications Services Division of the Department of Accounting and General Services to migrate the RRS to the Internet, creating a system accessible to both government agencies and the public.

In January 2004, OIP began meeting with state RRS department coordinators to initiate the updating process. OIP also prepared new data entry forms and materials and posted them on OIP's website.

Beginning in October 2004, the RRS has been accessible on the Internet through OIP's website. Agencies may access the system directly to enter and update the agencies' records data. County agencies are awaiting a cable connection to the system before they can update their reports. Agencies and the public may access the system to view the data and to create various reports. A guide on how to retrieve information and how to create reports is also available on OIP's website.

Key Information: What's Public

The RRS requires agencies to enter, among other things, public access classifications for their records and to designate the agency official having control over each record. When a government agency receives a request for a record, it can use the RRS to make an initial determination as to public access to the record.

Agencies have reported 52% of their records as accessible to the public in their entirety; 18% as unconditionally confidential, with no public access permitted; and 24% in the category "confidential/conditional access." See **Chart 6**. In most cases, OIP has not reviewed the access classifications.

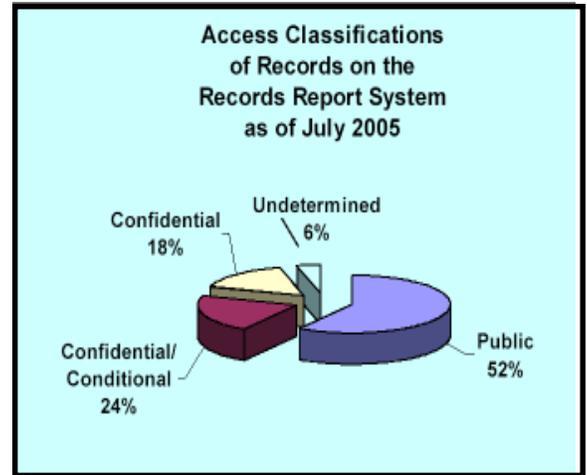


Chart 6

Records in the "confidential/conditional access" category are accessible after the segregation of confidential information, or accessible only to those persons, or under those conditions, described by specific statutes.

The RRS only describes government records and information regarding their accessibility. It does not contain the actual records. Accordingly, the record reports contain no confidential information and are public in their entirety.



Education

Publications and Website

OIP's publications and website play a vital role in the agency's ongoing efforts to inform the public and government agencies and boards about the UIPA, the Sunshine Law, and the work of OIP.



OpenLine

In FY 2005, OIP continued its traditional print publications, including the *Openline* newsletter and the *Office of Information Practices Annual Report 2004*, and published a new Open Meetings guide. OIP's publications are available on the website that OIP launched in April 1998.

Openline

The *Openline* newsletter, which originated in March 1989, has always played a major role in OIP's educational efforts. This past year, OIP distributed over 3,500 copies of each issue of the *Openline*. The newsletter goes out to all state and county agencies, boards and commissions, and libraries throughout the State.

Current and past issues of *Openline* are also available on the OIP website. FY 2005 issues included: summaries of recently published OIP opinion letters and information about the deliberative process privilege, the privacy exception, the public launch of the Records Report

System on the Internet, Sunshine Law training workshops, and legislation affecting information practices.

Open Meetings Guide

OIP's newest publication is *Open Meetings*, a 52-page guide to the Sunshine Law. The guide uses a question-and-answer format to give general information about the law and to cover such topics as public meetings, telephonic and videoconference meetings, testimony, recessing and reconvening meetings, discussions between board members outside of a meeting, social events, permitted interactions, executive meetings, emergency meetings, unanticipated events, limited meetings, notice and agenda, minutes, recordings, suit to void board action, and the role of OIP.



The guide also includes the full text of the Sunshine Law; the Sunshine Law Public Meeting Notice Checklist; an Executive Meetings Flowchart to help decide whether a board can convene an executive meeting; summaries of OIP opinion letters related to the Sunshine Law; and the form Request for Attorney General's Concurrence for Emergency Meeting.

Model Forms

OIP has prepared model forms for use by agencies, boards, and members of the public. To make a request to an agency, members of the public may use OIP's model form "**Request to**

Access a Government Record.”
 Agencies may respond to a record request using OIP’s model form “**Notice to Requester.**” In addition, agencies can use the newest OIP form, “**Acknowledgment to Requester.**”

Those requesters who have already been denied their request for records may use the form “**Request for Assistance to the Office of Information Practices**” to request assistance, including an advisory opinion, from OIP.

To assist agencies in complying with the Sunshine Law, OIP created the form “**Public Meeting Notice Checklist.**” All of these forms may be obtained online at www.hawaii.gov/oip.

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: _____
 TO: _____
 FROM: _____
NAME OF AGENCY
CONTACT INFORMATION

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

I WOULD LIKE: (please check one or more of the options below)

To inspect the government record.
 A copy of the government record. (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

Pick up at agency (date and time): _____
 Mail
 Fax (toll free and only if available) _____
 Other, if available (please specify): _____

If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
 Electronic Audio Other (please specify): _____

Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

OPTIONAL INFORMATION

NOTICE TO REQUESTER

DATE: _____
 TO: _____
 FROM: _____
Department Name, Name & Telephone Number of Contact Person at Agency

ACCESS TO THE GOVERNMENT RECORD YOU REQUESTED (copy of request attached or brief description below)

will be granted in its entirety.
 cannot be granted because
 agency does not maintain the requested record.
 agency needs a further description or clarification of the requested record. Please contact the agency within _____ days or your request will be considered abandoned.
 The request would require the agency to create a summary or compilation from records that are not readily retrievable.

is denied in its entirety or will be granted only to certain part(s) of this government record. Basis of access to this or portions of this government record is based upon the following subsections of SECTION 92F-13, HAWAII REVISED STATUTES, or other laws as cited below. The portions of the record that the agency will not disclose are described in general terms:

STATUTE RECORD OR PORTIONS WITHHELD

METHOD AND DATE OF DISCLOSURE:

Inspection at the following location: _____ on (date/time): _____
 Copy provided to you:
 available for pick-up at the agency on (date/time) _____
 to be mailed _____
 transmitted by other means as requested _____

Incremental Disclosure: The record will be disclosed in increments. (The agency must attach a description of extenuating circumstances that support its intention to disclose incrementally. See 92-71-15 H.A.R.) The first increment will be available on _____.

See Back for Information on Fees

Should you have questions about the agency's response, you may contact the person named above. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 888-386-5868.

OIP 10m/9/2000

following sections.

The OIP Website

The OIP website, at www.hawaii.gov/oip, has become the agency's primary means of disseminating and publishing information. Given OIP's reduced budget and consequently limited resources to implement training, the site plays a major role in educating and informing government agencies and citizens about access to state and county government records and meetings.

Visitors to the site can access, among other things, the following information and materials:

- the UIPA and the Sunshine Law
- OIP's administrative rules
- current and past *Openline* newsletters
- OIP's recent annual reports
- model forms created by OIP
- OIP's formal opinion letters
- summaries of the opinion letters
- subject index for the opinion letters
- Openline meetings guide
- RRS
- general guidance for commonly asked questions

The OIP site also serves as a gateway to websites on public records, privacy, and informational practices in Hawaii, the USA, and the international community.

Features

The website is updated weekly. For those unfamiliar with OIP, the homepage gives a quick overview of the agency. The site features a menu on the left margin to help visitors navigate the

“Laws/ Rules/ Opinions”

This section features three major legal sections:

- *Laws*: the complete text of the UIPA and the Sunshine Law, with quick links to each section. With an Internet browser, a user can perform a key word search of the law.
- *Rules*: the full text of OIP's administrative rules (“Agency Procedures and Fees for Processing Government Record Requests”), along with a quick guide to the rules and OIP's impact statement for the rules.
- *Opinions*: a chronological list of all OIP opinion letters, an updated subject index, a summary of each letter, and the full text of each letter.

“Forms”

Visitors can view and print the model forms created by OIP to help implement the UIPA, the Sunshine Law, and OIP's administrative rules.

“Openline/ Guidance”

The *Openline* newsletter is available online. Back issues, beginning with the November 1997 newsletter, are archived here and easily accessed.

Online guidance includes answers to frequently asked questions from government agencies and boards and members of the public, including the following:

What types of records are public? What are the guidelines for inspecting government records? What are agencies' responsibilities to individuals? What are the possible responses to your record request? What are an individual's rights if denied a record?

Answers to these and other questions are available online 24 hours a day, seven days a week. This section also includes announcements from OIP.

“Reports”

OIP’s annual reports are available here for viewing and printing, beginning with the annual report for FY 2000. Other reports available include reports to the Legislature on the commercial use of personal information and on medical privacy. This is also the place to read about, and link to, the Records Report System.

“Related Links”

To expand a search, visit the growing page of links to related sites concerned with freedom of information and privacy protection.



link to the State’s home-page: state government agencies and information about Hawaii

link to the State’s many online services

link to important information about Hawaii

find out when the site was last updated



main menu: link to laws, rules, opinions, forms, guidance, reports

contact information



UIPA Training

OIP provided training sessions on the UIPA for the following agencies and groups:

07/16/04	Liquor Commission
07/27/04	DCCA/CATV Advisory Comm & PEG Entities
08/13/04	Maui Corp Counsel
08/23/04	DCCA/PVL (1st Session)
08/24/04	DCCA/PVL (2nd Session)
10/28/04	DOE-(Principals/Athletic Directors)
12/14/04	HI Digital Government Summit
03/22/05	HI County (West Hawaii)
03/30/05	GOV - Information Officers
05/12/05	Annual Statewide Police Commissioners Conference (on Kauai)
06/30/05	DLNR-Burial Council Members-Kauai

Each year, OIP makes presentations and provides training in information practices and the Sunshine Law. OIP conducts this outreach effort as part of its mission to inform the public of its rights and to assist government agencies in complying with the UIPA and the Sunshine Law.

Following the substantial budget cutback and staff reduction at the beginning of FY 1999, OIP focused much of its educational and training efforts on the OIP website. For more information about this resource, see pages 45-46.

In spite of its limited budget, OIP continues to conduct extensive training, expanding its training program from 20 sessions in FY 2004 to 28 in FY 2005.

Sunshine Law Workshop

In August 2004, OIP's Director and staff attorneys conducted a three-hour training workshop on the Sunshine Law for State board members and commissioners as well as staff assigned to assist State boards and commissions. OIP plans to continue this training annually, and will look to hold a similar training workshop on the UIPA.

Sunshine Training

OIP trained the following agencies and groups on the Sunshine Law:

08/05/04	Sunshine Training for State Boards and Commission
09/15/04	BOE - Board Members
09/24/04	HI - Corp Counsel (Municipal Attys Training Conference)
10/15/04	DCCA/PVL
10/20/04	DOA -Agribusiness Dev. Corp.
10/28/04	AG (AGs assigned to Bds/ Cmmn)
11/17/04	Greg Farstrup (Fatherhood Comm)
11/18/04	DOH-Disability & Access Bd.
12/2/04	DBEDT-Land Use Commission
01/25/05	LEG-Workshop for Media
02/16/05	DOE-Bd of Education Members
03/22/05	HI County (West Hawaii)
04/1/05	Kauai County Atty. Office & County Employees
05/12/05	Annual Statewide Police Commissioners Conference
05/14/05	C&C Trng (1of2) Neighborhood Bd., City Bds. and Comm. Members Training
06/30/05	DLNR-Burial Council Members-Kauai



