

Since 1989**OIP's Attorney of the Day Service**

For the past 12 years, from the agency's early days in 1989, the Office of Information Practices has provided timely legal guidance and assistance through its "Attorney of the Day" service. The OIP assists both members of the public with their requests for records, and employees of government in responding to requests for information.



The Attorney of the Day duty rotates among the three staff attorneys, who receive hundreds of such calls each year (830 requests for legal assistance in fiscal 2001). The following

summaries describe a few recent cases that began with calls to the Attorney of the Day. For more case summaries, see the OIP's *Annual Report 2000*, available online at www.state.hi.us/oip.

► Requests for Copies of Official Records

A member of the public requested the OIP's assistance in obtaining government records maintained in an outlying district office of a county agency. The county agency maintained that the district office records were incomplete and often were just copies of the official record maintained at the agency's main office.

According to Agency Procedures and Fees for Processing Government Record Requests, section 2-71-18(a), Hawaii Administrative Rules, "[t]he location where an agency makes a record available to the requester for inspection or copying shall be where the agency **maintains** the record or where the agency has accommodations for inspection and copying" [emphasis added]. In OIP Opinion Letter Number 94-29 the term "maintain" is defined to include information possessed or controlled **in any way** by an agency.

The OIP concluded that the outlying district office should have made available to the public for inspection and copying, the government records it maintains subject to the exemptions and exceptions of the UIPA.

The OIP also noted in this case that it is within the discretion of an agency to determine who within the agency makes the decisions as to what items of information should be withheld or disclosed.

► Disclosure of Minutes From Executive Meetings

A member of the news media wanted to know if Hawaii's Sunshine Law allowed a county council to meet in executive session to consider the hiring of a person, and whether the minutes of the executive session would be public.

According to section 92-5(a)(2), Hawaii Revised Statutes, a board is permitted to hold a meeting closed to the public when considering, in part, the hire, evaluation, dismissal, or discipline of an employee. However, if the individual concerned requests an open meeting, a meeting must be held that is open to the public. Haw. Rev. Stat. §92-5(a)(2) (Supp. 2000).

Finally, while a board must take minutes during an executive session, the minutes produced from that session may be withheld for as long as their publication would defeat the lawful purpose of the executive session, **but no longer**. Haw. Rev. Stat. §92-9(b) (1993).

► Dealing With a Broad Request

A state agency received a request for everything the requester had ever sent the agency, every response the agency had ever made to the requester, and correspondence between the agency and other agencies. Responding to such a broad request would require the agency to search all its correspondence files. The agency asked the requester to clarify his request by specifying the time periods he was interested in.

The requester declined to do so, explaining that the reason for his request was that he did not know when he might have corresponded with the agency.

The agency then asked the OIP what its next step should be: should it deny the request based on the requester's failure to clarify, or should it estimate the very large fee for the staff time required to perform the broad search and send the requester a bill for prepayment of half that fee before starting to search?

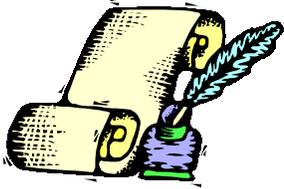
The OIP advised the agency that when a requester is unwilling or unable to clarify a request, the agency's next step



OIP Opinion

Disclosure of Sexual Harassment Complaint Investigation Records

The Research Corporation of the University of Hawaii (“RCUH”) administers research projects for the University of Hawaii. During one project, an Equal Employment Opportunity complaint was filed alleging sexual harassment.



After investigating the complaint, the RCUH wrote a Closing Report and issued two formal letters of determination (“investigative records”) to the subject of the complaint (“Subject”) and to the complainant. The letters stated that the RCUH found that there was no evidence to support a breach of the RCUH Sexual Harassment policy or EEO policy, and that the case was closed.

The Subject asked the RCUH for copies of the investigative records pertaining to the sexual harassment claim filed against him. The RCUH asked the OIP for an opinion on whether the letter to the complainant and the RCUH’s Closing Report for the case must be disclosed to the Subject.

The OIP noted that the UIPA requires that personal record requesters be given access to their personal records, subject to the exemptions set forth at section 92F-22, Hawaii Revised Statutes.

The OIP advised the RCUH that the investigative records must be disclosed to the Subject of the complaint, except for information that may be withheld from disclosure under section 92F-22(2), Hawaii Revised Statutes. Among other things, this section allows agencies to withhold records or information the disclosure of which would reveal the identity of a source who furnished information under an express or implied promise of confidentiality.

Normally, section 92F-22(2), Hawaii Revised Statutes, protects only witness names, and not the information provided by that source. In this instance, however, because the witness came from a small group of people who worked closely together, disclosure of the information provided by a witness would likely lead to the identification of that witness.

Therefore, redaction of the witness statements, and other information that would allow identification of witnesses in other sections of the RCUH’s Closing Report, is warranted in order to protect their identities. [OIP Op. Ltr. No.01-04, October 29, 2001] 

Attorney of the Day (from p. 1)

depends upon whether it is possible to search for the records as requested. Where it is possible to do the search, even though the search would be broad, the agency should not deny the request. Instead, the agency should calculate its estimated fees for the staff time required to search for, review, and segregate the requested records (less the \$30 waiver to which a requester is entitled). The agency can then require prepayment of half those fees.



The requester may be unlikely to pursue a request when the fees are very high, but the requester still has the option of paying the fees required to fulfill his broad request. The requester may instead choose to narrow down the request after all, or choose to abandon the request. The choice, however, should remain with the requester.

► Vexatious Requesters

A member of the public made a record request to an agency. The agency advised it would be responding within ten business days in accordance with the OIP’s administrative rules. The requester thereafter called and emailed several times each day to ask for the same record. The agency felt it was being harassed and asked the OIP whether this could be considered a vexatious request, and whether it had to respond to each subsequent request for the same record when it had not yet had a chance to address the first request. A vexatious request is one that is not bona fide, but is made to annoy or embarrass.

The OIP advised that the agency should determine whether the requester was indeed making multiple requests for the same record, or whether the requester was contacting the agency to check on the status of the original request. Other jurisdictions have addressed this issue. The OIP has not yet been asked to opine on what constitutes a vexatious requester under the UIPA. 

Openline is a monthly publication of the Office of Information Practices, State of Hawaii.



Director: Moya T. Davenport Gray
 Editor: Michael V. Little
 Address: No. 1 Capitol District Building
 250 S. Hotel St., Suite 107
 Honolulu, Hawaii 96813
 Phone: (808) 586-1400
 Internet: www.state.hi.us/oip

Fax: (808) 586-1412
 email: oip@state.hi.us