

Guidance: Fielding Record Requests

It's baseball season, so baseballs are flying all over the country. For government agencies, however, record request season is year round.



When challenging requests for government records are hit your way, are you ready to field them?

Some are softballs, easy to scoop up. Others are more difficult. They're hit harder and take some chasing down. Are you ready for the highlights show? Want to make the play of the day? Read on.

Procedures: By the book!

The procedures for responding to requests for records (other than one's own personal records) are covered by the administrative rules entitled "Agency Procedures and Fees for Processing Government Record Requests." These rules, which took effect on February 26, 1999, are set forth in Chapter 71 of Title 2 of the Hawaii Administrative Rules.

The text of the rules, and a quick guide, are available on the Internet at www.state.hi.us/oip (click on "Rules: Public Records").

These rules apply to requests under *Part II* of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). Requests under *Part III*, for one's own personal records, were discussed in the July issue of *Openline*. The OIP is currently drafting rules for Part III requests.

Q&A: Things to remember!

1. Which agencies must comply with these rules?

ALL executive and legislative agencies of the State and of all counties in the State, including boards and commissions. These rules also apply to the administrative functions of the Judiciary.

2. When do these rules apply?

These rules apply whenever an agency receives a request for access to a government record under Part II of the UIPA, either to view or to obtain a copy of the record.

3. What are the requirements for submitting a request for access to a government record?



A requester can make an informal, oral request. However, to make the request clear and easier to respond to, a requester should consider submitting a "formal request" which:

- ✓ is written;
- ✓ provides enough information to allow the agency to contact the requester;
- ✓ requests to inspect and/or to copy a particular government record, or a particular type of record;
- ✓ clearly and adequately describes that government record; and
- ✓ if the requester wishes to request a waiver of search, review, and segregation fees, includes facts supporting the waiver request.

See *Record Requests*, p. 2

Model Forms: Make it look easy!

To help agencies and the public follow the rules for Part II requests, the OIP created two model forms in 1999 with input from the agencies and the public.



The forms are designed to smooth the way, and speed the process, for both the requester and the agency. They give key information about the request procedure, the requester's responsibilities, and the agency's responsibilities. Both forms are available at the OIP's web site (click on "Model Forms"), and also at the State's forms site, www.state.hi.us/forms.

The "Request to Access a Government Record" form is used to make a request for records. Agencies are welcome to make this form available to record requesters. This easy-to-follow form leads the requester through the necessary steps to request information, with check boxes and lines to fill in.

The second form, "Notice to Requester," is used by the agency to respond to the record request and communicate with the requester, in compliance with the administrative rules.

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4. When does the agency have to respond?

Public Records: The agency has 10 business days to disclose public government records that will be disclosed in their entirety.

Partially Public Records: For those records that will be segregated, the agency has 10 business days to provide notice. The agency then must disclose public parts of the record within 5 days of providing notice. Prepayment may be required before disclosure.

Extenuating Circumstances: When an agency is affected by extenuating circumstances, the agency must first provide written acknowledgement of the request within 5 days, provide a notice within 20 days after receiving the request, and then disclose public parts of the record within 5 days of providing notice.

5. What must an agency's notice state?

The agency's notice must state one, or a combination, of the following:

Notice of Access: If an agency will be disclosing all or part of the record requested, the notice must tell the requester whether the record will be made available for inspection and copying and where, the estimated amount of fees to process the record request, and any other instructions.


Notice of Denial: If an agency will be denying access to all or even a part of the record requested, the notice must inform the requester that all or a portion of the record will not be disclosed. The notice must also state the specific legal authorities for the agency's denial.

Notice of Agency Unable to Disclose: If an agency is unable to disclose a record, the notice must state the reason.

6. What kind of fees do the rules allow agencies to charge?

In order to process a request for access to a government record, an agency may only charge the requester the following fees:

- ✓ \$2.50 per fifteen minutes, or fraction thereof, to search for the record; and
- ✓ \$5.00 per fifteen minutes, or fraction thereof, to review and segregate the record.

If the agency does charge, it must waive the first \$30 of the above fees to the requester. In addition, a fee waiver in the public interest is also available. The criteria for this fee waiver are set forth in section 2-71-32, Hawaii Administrative Rules, and are stated in the model form "Notice to Requester." 

In the News

➔ This month "In the News" looks at some old, and new, privacy and freedom of information offices.



FOI and Privacy Agencies


Agencies like Hawaii's Office of Information Practices have existed for many years in Connecticut and New York, and more recently in some of the provinces of Canada, in Australia, the UK, and elsewhere. Different governments use different names, but these agencies are all involved with freedom of information or privacy protection, and often both. The two oldest such agencies are in Connecticut and New York.

Connecticut: The Freedom of Information Commission was created by the state's General Assembly in 1975 with the passage of the Freedom of Information Act. The Act provides the public with rights of access to records and meetings of public agencies. The Commission, which has 15 employees and an annual budget of \$1.1 million, hears appeals and issues reports. For more information, visit www.state.ct.us/foi.

New York: The Committee on Open Government (New York State Department of State) oversees and advises regarding the Freedom of Information, Open Meetings, and Personal Privacy Protection Laws. See www.dos.state.ny.us/coog.

Indiana: Indiana has a Public Access Counselor to administer both the Indiana Open Door Law (governing meetings) and the Indiana Access to Public Records Act (governing records). See www.IN.gov/pac.

Virginia: The Virginia Freedom of Information Advisory Council administers that state's Freedom of Information Act. See dls.state.va.us/foiacouncil.

New Agencies in the United States: California's first State Privacy Office will have an annual budget of \$1.4 million, with a full-time staff of seven, and will help identify theft victims and watch over State agencies' data practices. Florida is also taking initial steps toward a similar agency. In the next issue of *Openline*, "In the News" will take a look at these and other such agencies. 

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