

## Recent OIP Opinion Letters

### ► Public's Right to Testify

A member of the City Council requested an opinion regarding compliance by the Honolulu Liquor Commission ("Liquor Commission") with part I of chapter 92, Hawaii Revised Statutes ("Sunshine Law").



The OIP found that the agenda for the meeting held April 9, 1998, failed to notify the public that the Liquor Commission would deliberate or decide on a set of proposed rule revisions previously considered on December 10, 1997.

The Liquor Commission held separate meetings on March 19, 1998, and April 9, 1998. The OIP found that the Liquor Commission, at its April 9 meeting, violated the Sunshine Law by prohibiting public testimony on the agenda item listed as "Decision-making on Proposed Rules of the Liquor Commission (Continued from March 19, 1998)."

Even when the public has had an opportunity to testify on an agenda item at a previous meeting, the Sunshine Law requires a board to afford interested members of the public an opportunity to present oral or written testimony on any agenda item at every meeting.

The OIP found no conflict between sections 91-3 and 92-3, HRS. Section 91-3, which requires a public hearing as part of the rulemaking process, does not prohibit an agency from accepting public testimony on the date the agency announces its decision as to proposed rule revisions. Thus, it is possible for a board to follow both section 91-3 and the Sunshine Law without violating either.

Further, a board subject to the Sunshine Law may make its decision on proposed rule revisions at a later date than the public hearing without accepting further public testimony during its decision making, by continuing the decision making portion of the public hearing or meeting to a reasonable day and time as provided by section 92-7(d), HRS. [OIP Op. Ltr. No. 01-06, December 31, 2001]

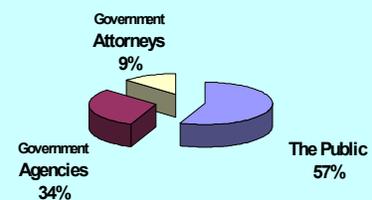
### ► Routing Record Requests Through an Agency's Executive

A member of the Maui County Council requested an opinion on whether section 3-8 of the Charter of the County of  
*See Opinions, p. 2*

## OIP's Latest Annual Report Available Online

The Office of Information Practices *Annual Report 2001* is available at the OIP's web site at [www.state.hi.us/oip/annual.htm](http://www.state.hi.us/oip/annual.htm). This is the latest in the OIP's annual reports to the Governor and the Legislature, as required in section 92F-42 (7), Hawaii Revised Statutes.

### Telephone Requesters Fiscal Year 2001



The Director's Message addresses the state of open government in Hawaii and the role the OIP has played since its establishment by the Legislature and enactment of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), in 1988.

Director Moya T. Davenport Gray reports that "during this time, the OIP has worked to institutionalize an open government by educating, providing quick legal advice, and setting clear legal standards." The Director states that "a healthy democracy requires the vigorous enforcement of open government laws," and concludes that "much more work must be done" and "no agency can avoid the responsibility of responding to members of the public."

### Requests to OIP - FY 2001

Written Requests	415
Telephone Requests	830
<b>TOTAL</b>	<b>1,245</b>

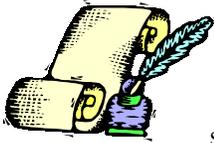
The report includes summaries of cases and opinion letters; information on investigations, litigation, legislation, administrative rules, budget, publication and web site, education and training; and a report on requests for assistance, guidance, and opinions. 📞



## Opinions *(from p. 1)*

Maui can require council members to route requests to county agencies for public information through the Mayor's office.

The OIP found that the county charter cannot require this routing. The UIPA allows "any person" access to government records. Should an executive choose to institute a routing system for record requests, however, the executive should ensure not to discriminate against a particular class of "persons" who are entitled by law to request records, such as council members.



In addition, while the UIPA does not prohibit routing of all requests for government records through the executive of a government administration, the OIP does not recommend that such a practice be standard operating procedure.

Such a routing of record requests through a central office will likely cause unnecessary delays in the receipt of public records, which would violate the UIPA's policy that the public be given accurate, relevant, timely, and complete government records. Haw. Rev. Stat. section 92F-2 (1993).

This practice may also violate the time limits and procedures for processing record requests that are set forth at section 2-71-13, Hawaii Administrative Rules. [OIP Op. Ltr. No. 01-07, December 31, 2001]

### ► Request for Disclosure of Settlement Agreement Between an Agency and a Private Party

A reporter requested an opinion concerning public access to a settlement agreement ("Agreement") between an individual and the University of Hawaii ("University"). The lawsuit involved the right to profits derived from research into the genetic cloning of animals conducted at the University.

The OIP informed the University that settlement agreements between agencies and members of the public are generally public documents required to be disclosed under the UIPA, and asked the University to provide it with the record for confidential review to determine if the UIPA requires disclosure.

After the University refused to turn the record over to the OIP without a court order requiring disclosure, the Attorney General assigned a deputy to the case. A

## Staff Update

The Office of Information Practices welcomes new legal assistant **Adrienne Dacuag**. Adrienne was born in Honolulu and grew up in the Seattle area. She is a graduate of the Kamehameha Schools and Chaminade University, with a major in criminal justice. Adrienne enjoys reading, especially local writers and local stories, and also has a talent for crafts. Welcome, Adrienne!



Petition to Examine Records of Agency was drafted for filing in Circuit Court. Shortly before the suit was to be filed, the University agreed to turn over the Agreement to the OIP.

The OIP reviewed the Agreement, and found that the Agreement contains no information that would qualify as a significant privacy interest, and that the Agreement does not contain information that would not be discoverable in a judicial or quasi-judicial action to which the University is or may be a party. The OIP also found that disclosure of the Agreement would not cause the frustration of a legitimate government function.

Regarding confidentiality agreements, the OIP found that a confidentiality provision in a settlement agreement that contravenes the agency's duty to the public is impermissible under Hawaii law.

Addressing a critical issue raised in the case, the OIP found that a government agency has a statutory duty, under the UIPA, to provide the OIP with documents for examination by the OIP for the purpose of conducting inquiries regarding compliance with the UIPA by an agency, and for the investigation of possible violations by an agency. [OIP Op. Ltr. No. 02-01, February 1, 2002] 

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

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