

2002 Legislative Wrap-Up: Information Practices

During the 2002 Legislative Session, the Office of Information Practices ("OIP") reviewed and monitored 194 bills and resolutions for their effect on government information practices. The bills listed below, unless otherwise noted, passed both houses of the Legislature and were sent to the Governor for signature.

For current information about bill status, text of bills, committee reports, list of acts, and list of vetoed measures, consult the Legislature's web site at www.Capitol.hawaii.gov.

► Office of Information Practices

Funding of OIP

HB 1800 HD1 SD1 CD1, the major budget bill, includes funding for the OIP for the upcoming fiscal year (beginning July 1, 2002) but reduced by two percent.

► Government Records

Adult Residential Care Homes

HB 1749 HD2 SD1 CD1 requires the Department of Health to disclose to adult residential care home operators the prior criminal history of certain prospective residents under certain circumstances.

Auditor's Records

HB 2231 clarifies the confidential nature of the Auditor's records in the education area.

Juror Privacy

HB 2304 HD1 SD1 provides that juror qualification forms shall not be disclosed except to the litigants in redacted form and in accordance with other laws. It allows for redacted forms to be made available.

Cave Protection

SB 2898 SD2 HD2 CD1 protects caves, and the unique cultural and natural resources inside them, of the State of Hawaii. The OIP supported the House version, which allowed the Department of Land and Natural Resources ("DLNR") to determine the confidentiality of cave location or resource information. However, the Senate version, which allows a cave owner to unilaterally require the DLNR to keep the information confidential, was adopted at conference.

Birth Defects

SB 2763 SD2 HD2 CD1 establishes the Hawaii birth defects program and registry. Following the testimony of the OIP and others, privacy protections were inserted.



► Privacy

Identity Theft

HB 2438 HD1 SD1 CD1 provides criminal penalties for those who steal the identity of another, and for those who obtain identity documents under false pretenses. The OIP testified in support of the intent of the bill.

Hawaii Long-Term Care Financing Act

HB 2638 HD2 SD1 CD1 and SB 2416 SD2 HD2 CD1 would enact the Hawaii Long-Term Care Financing Act. The OIP testified on earlier versions against the use of social security numbers unless required by law.

See Bills, p. 2

OIP Guidance on Disclosure of Agency Records and Information to Auditors

In response to questions from agencies about disclosure of agency records and information to auditors, the Office of Information Practices has issued a guidance letter. The letter, dated May 1, 2002, was distributed to all State department heads, as well as all county department heads and directors.

To view the guidance letter, go to www.state.hi.us/oip/auditors.



The letter is intended to assist agencies in responding to requests for records and information from auditors in accordance with the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). The guidance applies to government records maintained by all State and county agencies, including the executive branch agencies, the State legislature, the county councils, and the administrative functions of the State judiciary.

The guidance letter begins with a reminder that the UIPA operates on the presumption that all government records are open for public inspection and copying unless an exception to disclosure applies. Haw. Rev. Stat. § 92F-11 (1993). It then lists the five exceptions to this general rule of disclosure in section 92F-13. Of the five exceptions, the first exception, for records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, is most commonly at issue when records are requested by an auditor.

Disclosure to Non-Governmental Auditors

Disclosure to auditors that are not part of State or county government can be problematic because such disclosures are considered public disclosures under the UIPA. If the auditors seek records or information that contain privacy interests,

See Guidance, p. 2

Bills (from p. 1)

► **Privacy of Financial & Insurance Records**

Insurance

HB 1761 HD1 SD2 CD1 gives the Insurance Commissioner power to regulate

health insurance rates. The OIP testified in support of the bill's intent, but requested that the measure require all records to be subject to disclosure as required by the UIPA. The OIP's request, however, was not adopted.

Captive Insurance

SB 3040 SD2 HD2 CD1 gives the Insurance Commissioner discretion to decide whether to publicly release information filed by a captive insurance company that was not already a government record. The OIP testified in opposition to this bill.

Health Insurance

SB 2093 SD1 HD1 establishes immunity from civil liability for a person who reports insurance fraud, except in the case of malicious reporting or perjury. The OIP testified that the records the bill seeks to protect would already be permitted to be withheld from disclosure by the present provisions of the UIPA. 📄

Guidance (from p. 1)

disclosure is potentially an unwarranted invasion of personal privacy under sections 92F-13(1) and 92F-14(a), Hawaii Revised



Statutes, unless there is a specific legal requirement that the information be shared with an auditor. To avoid liability for unconstitutional invasions of privacy, prior to

making such disclosures, agencies should ensure that privacy rights of any individuals are adequately protected.

Perhaps the easiest way to ensure that privacy interests are protected is to obtain a written consent from each individual whose information the agency needs to disclose. Once the individual has consented in writing, the disclosure is permitted. The agency should also obtain a written assurance from the auditor that it will use the information for the limited purpose of the audit, that it will not make further disclosures of the information, and that it will return all copies of the records it received when the audit is completed. Information carrying privacy interests that an auditor does not require should not be disclosed.

Disclosure to Internal Agency Auditors

The UIPA does not specifically address sharing of information within a department between different units. When an internal auditor requests records of a unit of an agency, the OIP recommends that agency officers and employees who do not have an official need to have access to records or information containing privacy interests should not have access to that information. Internal auditors may have such an official need to know.

Disclosure to the Legislative Auditor

The State Auditor has express statutory authority to obtain records and information from agencies. If an agency receives a request for

records or information from the State Auditor pursuant to the Auditor's official duties, it should comply with the request.

The State Auditor's authority to obtain records and information is also recognized by the UIPA. The UIPA allows agencies to share their records,

including records that would not normally be disclosed publicly, with the Auditor. Haw. Rev. Stat. § 92F-19 (a) (9) (1993).

Federal Funding

Agencies are not required to comply with the UIPA when federal assistance or funding may be jeopardized. Haw. Rev. Stat. § 92F-4 (1993). Agencies should keep in mind that only information that is necessary for the specified purpose of the audit should be disclosed. For information that is protected from disclosure by a State or federal law, the OIP also recommends that the auditor sign a confidentiality agreement promising not to further disclose the information, and to return all copies. Information that an auditor does not require should not be disclosed.

Deceased Individuals

The issue of whether privacy rights that existed while a person was alive can be exercised after death is not fully settled in this state. When the issue arises as to whether there is a privacy interest in information relating to a deceased individual, an agency should consult with the OIP, or its own attorney.

Liability

The UIPA makes it a criminal misdemeanor for agency employees to intentionally disclose records or information that are protected by confidentiality statutes. Haw. Rev. Stat. § 92F-17(a) (1993). It is also a criminal misdemeanor for anyone to intentionally gain access to government records by false pretense, bribery, or theft, with actual knowledge that disclosure is prohibited. Haw. Rev. Stat. § 92F-17(b) (1993). The UIPA provides immunity from civil and criminal liability to anyone who, in good faith, discloses or does not disclose a government record. Haw. Rev. Stat. § 92F-16 (1993).

Wrongful disclosure of information containing privacy interests could also subject an individual or an agency to a civil lawsuit for invasion of privacy based on State constitutional provisions protecting privacy. 📄

... to view the guidance letter, go to www.state.hi.us/oip/auditors ... for further information, call the OIP's Attorney of the Day at 586-1400.



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