

Summaries of Recent OIP Opinion Letters

► *Police Department Mug Shots*

In OIP Opinion Letter Number 94-12, the OIP opined that a Hawaii Police Department mug shot must be made available for public inspection and copying under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). Thereafter, the

Honolulu Police Department asked the OIP to address related issues concerning the disclosure of mug shots. The OIP opined as follows.



When an arrest is expunged, there is no longer any public record of the arrest. The OIP determined that Police Department mug shots of arrests that have been expunged by order of the Attorney General are protected from public inspection and copying under section 92F-13(4), Hawaii Revised Statutes ("HRS"). Nevertheless, the UIPA does not authorize the withholding of access to mug shots due to the possibility that an expungement order may be obtained in the future.

Chapter 846, HRS, which covers disclosure of criminal history record information, does not restrict the disclosure of mug shots if the arrest is less than one year old, if active prosecution of the charge remains pending, or if a conviction results. Juvenile records can only be disclosed as authorized by section 846-12, HRS.



If the mug shot is disclosable, state identification numbers and dates of arrest contained on mug shots are to be disclosed as well.

Mug shots cannot be categorically withheld from public access based on considerations that disclosure would place an individual in physical danger or reveal a part of a confidential investigation.

Likewise, public disclosure of mug shots cannot be withheld based on concerns that an arrested person's mug shot could lead to the inadmissibility of the results of a photographic or other lineup identification procedure. [OIP Op. Ltr. No. 03-09, June 26, 2003]

► *Charter Schools and the UIPA*

Section 302A-1184, Hawaii Revised Statutes, exempts new century charter schools from most State laws, including the UIPA. Therefore, charter schools need not comply with record requests in accordance with the UIPA. [OIP Op. Ltr. No. 03-10, June 30, 2003]



See OIP Opinions, p. 2

Photocopy Charges

Agencies and members of the public often call to ask about fees for photocopies of State and county government records. Under section 92-21, Hawaii Revised Statutes ("HRS"), as amended by Act 160 in 1999, copy costs "shall not be less than 5 cents per page."



In addition, agencies that intend to adopt administrative rules under chapter 91, HRS, should be aware that section 91-2.5, HRS, allows them to charge a maximum of 10 cents per page, plus the actual costs of mailing, for the reproduction of paper copies of: (1) proposed and final rules, whether new rules, amended rules, or repealed rules, in any format, and (2) notices of proposed rulemaking actions pursuant to section 91-3(a)(1).

Copies of informational or educational publications produced by agencies for noncommercial use and which contain copies of state statutes, proposed or final rules, or both, may also be charged at a rate of up to 10 cents per page under section 91-2.5, HRS.

Agencies have sometimes inquired about the procedures they should follow if they do not wish to charge photocopy fees, or if they want to charge other than the statutory amounts listed.

The OIP does not have jurisdiction to opine on copy fee issues under section 92-21, HRS, or other laws. Agencies should contact their Deputy Corporation Counsel, Deputy Attorney General, or in-house counsel if they seek advice in this area. 

OIP Opinions (from p. 1)



► Evidence from Pending Police Investigation File

Section 92F-22(1)(A), Hawaii Revised Statutes, allows police departments to deny personal record requests for evidence that was originally submitted by the requester and is part of a pending police investigation file. [OIP Op. Ltr. No. 03-11, July 8, 2003]

► Attendance at Executive Meetings by Parties Other Than Council or Board Members

A county council and its Corporation Counsel asked the OIP to issue an opinion after a member of the public questioned the county council's practices of: (1) allowing non-council members to attend executive meetings, and (2) permitting more than one attorney from the Office of the Corporation Counsel to attend executive meetings.

When, in order to accomplish the purpose of convening an executive meeting, a board requires the assistance of non-board members, a board is authorized under the Sunshine Law to summon the non-board members to participate in the closed board meeting.



Furthermore, more than one of a board's attorneys may attend an executive meeting to advise the board concerning the board's powers, duties, privileges, immunities, and liabilities.

Non-board members should remain at the meeting only so long as their presence is essential to the agenda item being considered in the executive meeting. Once the agenda item for which the non-board member's participation is needed has been concluded, the non-board member should be excused. [OIP Op. Ltr. No. 03-12, July 14, 2003]

► Views of Non-Board Members Included in Minutes

The Sunshine Law requires that boards keep written minutes of all meetings which "give a true reflection of the matters discussed at the meeting and the views of the participants." Haw. Rev. Stat. § 92-9 (1993).

With this statutory mandate in mind, the OIP found that the primary purpose for keeping minutes is to reflect what a board did at a meeting. Looking to the Sunshine Law's policy of protecting the public's right to know, it

is of primary importance to know the actions taken by the decision-makers (board members) so that the public can scrutinize their actions.

Thus, the OIP concluded that, while the Sunshine Law requires that minutes reflect the views of non-board members who participated in meetings, it is sufficient for the minutes to describe, in very general terms, the positions expressed by the non-board members.

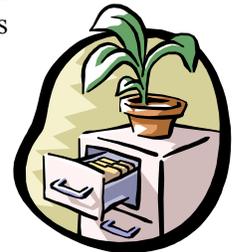


Therefore, the OIP found that minutes of a Land Use Commission ("LUC") meeting were sufficient despite a complaint by a member of the public that points enumerated in her presentation to the LUC were not individually listed in the minutes. [OIP Op. Ltr. No. 03-13, July 14, 2003]

► Disclosure of Grievance File to the Office of the Legislative Auditor

Under the UIPA, State agencies are required to disclose government records where there is a State law that authorizes disclosure. As disclosure to the Office of the Legislative Auditor ("Auditor") is authorized by State law, agencies must disclose government records to the Auditor, any law to the contrary notwithstanding.

In addition, State agencies are not required to obtain consent by employees named in government records before disclosure to the Auditor. The UIPA's mandatory disclosure provisions are to be read in the disjunctive, i.e., as expressing alternative categories of documents that must be disclosed as a matter of law.



Therefore, if one of the categories of records listed in section 92F-12(b), Hawaii Revised Statutes, requires disclosure, an agency must disclose the records, as a matter of law. [OIP Op. Ltr. No. 03-14, July 17, 2003] 📄

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Director: Leslie H. Kondo
 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

