

The Office of Information Practices (“OIP”) is charged with the administration of Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, chapter 92, HRS (the “Sunshine Law”).

Legislative Wrap-Up

During the 2006 Legislative Session, OIP reviewed and monitored 270 bills and resolutions affecting government information practices and public meetings.

OIP also introduced six bills designed to address ambiguities in the Sunshine Law and complaints made by boards regarding the limitations placed on their ability to participate in community meetings and meetings of other boards, and to provide OIP with the authority to seek court orders to compel agency and board compliance with its decisions rendered under the UIPA and Sunshine Law, respectively. Unfortunately, none of these bills garnered the necessary support to pass out of committee.



Two pieces of legislation were enacted into law directly relating to the Sunshine Law:

Public Meetings by Video Teleconference (SB785/Act 152)

The Act amends HRS section 92-3.5 to allow public meetings by video teleconference to continue even where the video connection is interrupted or terminated. A meeting may continue by audio communication alone, if visual aids and other materials available to the public at the meeting site are also available to participants at the affected videoconference locations.

Public Policy Dialogs On Open Government (SR107 SD1)

The Senate Resolution calls for the University of Hawaii, College of Social Sciences Public Policy Center, to hold a series of public policy dialogs on the Sunshine Law. The Center is to report its findings and recommendation to the Legislature before the next legislative session.

The Center was asked to include representatives of the major stakeholders interested in open meeting issues, including

OIP; the Open Government Coalition of Hawaii; The League of Women Voters of Hawaii; the Society of Professional Journalists; the Hawaii Pro-Democracy Initiative; the Big Island Press Club, the Attorney General; the Corporation Counsels of each county; and members from various boards.

UIPA Agency Audit

In March, as part of national Sunshine Week, a group of 10 community organizations performed a Freedom of Information Audit to assess the degree to which state and county agencies are complying with the UIPA. As part of the audit, a number of citizen volunteers across the state made a total of 59 UIPA requests to state and county agencies for various government records.

The group published an audit report, which compiled the information about the agencies’ responses to the volunteers’ requests. The report is available through OIP’s website. The report states: “43 of 59 record requests were met. But it took persistence by the volunteers. Only 17 of the 59 record requests were fulfilled on the first visit.”

The two main points stressed by the Report are that agencies should not require requesters to come back for records that are clearly public and should not ask requesters who they are and why they need the records. The Report cautions that these actions may have a chilling effect on requesters who may be intimidated or frustrated and give up.

OIP’s guidance memorandum addresses these issues and offers the following advice to agency staff:

- Create a Culture of Openness
- Presume Access
- Give Timely Access
- Ask Only What You Need To and Explain Why You Are Asking
- Communicate Well
- Seek OIP Assistance and Training

Recent OIP Opinions

Finance Investigative Task Force

The Natural Energy Laboratory of Hawaii Authority's ("NELHA") Board of Directors formed a Finance Investigative Committee, as a permitted interaction, to investigate the charges to be used in negotiating the land rental rates with NELHA's tenants.



A requester asked whether the Sunshine Law permitted the Committee to consider other financial matters beyond the scope of the investigation that it was created to perform.

OIP determined that, after the Committee reported back to the Board on the matter it was originally authorized to investigate, it ceased to be an investigative task force under section 92-2.5(b)(1). Accordingly, the Committee's meetings after that point were not permitted by section 92-2.5(b)(1) and, in the absence of any other applicable permitted interaction or exception, should have been open to the public in accordance with the Sunshine Law.

OIP noted that given the length of time that the Committee had been meeting, it was unlikely that the Board could entirely "cure" its past violations. Thus, OIP recommended that the Board, at a minimum, make the minutes of and any other records relating to those closed Committee meetings publicly available. [OIP Opinion Letter No. 06-02]

UIPA Student-Athlete Drug Testing Records

The Athletic Department of the University of Hawaii at Manoa withheld records relating to its testing of student-athletes for banned substances. The Honolulu Advertiser appealed that denial to OIP.

Specifically, the Honolulu Advertiser had requested access to records relating to the number of student-athletes who tested positive and the specific actions taken by the Athletic Department with respect to those student-athletes.



OIP agreed with the Athletic Department that the student-athletes' privacy interests protected the identity of the student-athletes. However, because the request made specifically did not seek disclosure of the names of the student-athletes, the question was whether the requested information would reasonably allow the public to determine the identities of student-athletes who had tested positive for a banned substance.

With respect to the number of positive tests, OIP found that the number alone provided insufficient information from which one could reasonably identify the individual student-athletes who tested positive. OIP therefore concluded that the UIPA did not support the Athletic Department's denial of that information and directed the Athletic Department to disclose the total number of positive test results.

OIP next found that given the relatively small number of student-athletes who are suspended, disclosure of the breakdown of specific sanctions could reasonably allow the identification of specific student-athletes or, in the alternative, could stigmatize all student-athletes who received the same suspensions. OIP thus determined that, because the public interest in disclosure of the information did not outweigh the student-athletes' privacy interests, the Athletic Department could withhold the breakdown of sanctions under the "privacy" exception to the UIPA. [OIP Opinion Letter No. 06-03]

REMINDER

Agencies Must Update Record Reports By July 1

Section 92F-18(c), HRS, requires agencies to update their reports annually by July 1 to, among other things, report new categories of records and reflect the current status and location of the records that the agency maintains. Questions about updating your agency's record report or general questions about the Records Reporting System may be directed to James Maruyama, OIP's RRS Specialist.

Office of Information Practices
Leslie H. Kondo
Director

Address: No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813

Phone: (808) 586-1400 Fax: (808) 586-1412
Internet: www.hawaii.gov/oip E-mail: oip@hawaii.gov