

The Office of Information Practices (“OIP”) administers 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”).

## 2008 Legislative Update

The House and Senate each approved several bills amending the Sunshine Law and sent the bills to the other house for further consideration. A primary theme of these bills is to allow board members to meet under certain circumstances and conditions as exceptions to the Sunshine Law’s open meeting requirements.

In addition to bills amending the Sunshine Law, many bills this year seek to create a new council, task force, or similar body and include provisions to exempt those bodies from chapter 92, HRS.

The following summarizes several bills that crossed over and their current status.

### SB 3105 - Public Agency Meetings

This bill allows boards to conduct on-site inspections of locations as a limited meeting when attendance by the public is not practicable. However, the board must obtain OIP approval to hold the limited meeting, make a videotape of the meeting for public viewing, and comply with other conditions.

OIP proposed this bill to address those situations where board inspection would assist the board in its decision making but public attendance made the inspection impracticable. This bill was approved by both senate and house judiciary committees.

### SB 2295 - Public Meetings

This bill allows two or more board members, but less than a quorum of the board, to attend and discuss their individual positions at a meeting of another board or a hearing at the Legislature, as well as to attend informational meetings and presentations related to board business.

Under this bill, board members may also be polled, in writing, about their positions regarding board business. This bill has been deferred.

### SB 2147/ HB 2216 - Public Agency Meetings

These bills propose a significant policy shift underlying the Sunshine Laws by allowing any number of members less than a quorum to discuss official board business outside of a public meeting so long as no commitment to vote is made or sought. No hearings have been scheduled for these bills by the receiving house.



### HB 1512/ HB 2730/ SB 2201 - Neighborhood Boards

These bills would allow neighborhood boards to: discuss items not on their agenda that are raised in public comments so long as no decision is made until a later meeting; hear testimony and presentations without a quorum; and attend community meetings or presentations in numbers less than a quorum.

These bills would also amend the requirements for a neighborhood board to hold an emergency meeting to address an unanticipated event. The Senate Judiciary Committee has recommended that HB 2730 be passed without amendment. 

### Staff Update

OIP is pleased to welcome a new staff attorney, **Linden H. Joesting**.

Linden is a graduate of Wellesley College and Stanford Law School, where she was an associate editor of the Stanford Law Review. Linden spent seven years on active duty in the U.S. Coast Guard, clerked at the circuit court, and then worked for the Department of the Attorney General and the Department of Transportation. She comes to us from the Office of the Auditor.

Welcome, Linden!



# OIP Opinion Letters

## **UIPA** Police Blotter Information



The Kauai Police Department (“KPD”) sought an opinion on whether it may redact from its Daily Arrest Log the names of individuals who were arrested and either released without charges being filed

or released pending further investigation.

OIP concluded that the fact that an arrestee was released without charges being filed or released pending investigation does not alter the conclusion reached in OIP Opinion Letter Number 91-4 that police blotter data concerning adult offenders must be made publicly available upon request.

OIP stated that it is the overwhelming public interest in how the executive branch of government exercises the arrest power that is dispositive, not the particular circumstances of whether an arrestee is subsequently determined to be innocent or whether law enforcement might find it useful to conceal a potential informant’s arrest. [OIP Op. Ltr. No. 07-04]

## Right to Present Testimony

A requester sought an opinion as to whether the Maui Planning Commission violated the Sunshine Law by denying a member of the public the right to testify during the meeting.



The Commission had restricted testimony from a member of the public to the subject matter the Commission had intended the agenda item to cover, even though the

testifier believed the proffered testimony fell within the subject matter as listed on the filed agenda.

OIP opined that the Commission had violated the Sunshine Law, although the violation was not intentional. A board can require that testimony be related to the agenda item, but it must interpret the agenda item broadly for the purpose of determining whether testimony is related to the agenda item.

A board may not restrict the public from testifying on issues that fall within the general subject matter of an agenda item, and the scope of an agenda item is determined by the language used on the filed agenda, not the board’s intent as to the meaning of the agenda item. [OIP Op. Ltr. No. 07-10]

## **UIPA** Applications for Permits to Enter Marine Refuge

The Department of Land and Natural Resources (DLNR) requested an opinion regarding public disclosure of the permit applications for entry and activity in the Northwestern Hawaiian Islands Refuge (“Applications”), as well as related records.



OIP opined that the Applications must generally be disclosed upon request, but DLNR may withhold certain limited information. Under the UIPA’s privacy exception, DLNR may withhold personal information, such as personal contact information and social security numbers, which sheds no light on an Application’s consideration by its board (BLNR).

Unless and until DLNR submits an Application to BLNR for approval at a meeting, DLNR may also withhold from an Application before requested disclosure: medical history information, personal financial information, and personal details relating to proposed cultural activities. Once BLNR gives public notice on its agenda that it will be considering an Application at a public meeting, these types of information must be disclosed to the extent that they are relevant to BLNR’s consideration of the Application and, thus, will likely be discussed at its public meeting.

DLNR may also withhold information that it finds to be confidential commercial or financial information or proprietary information because such information is exempt from public disclosure under the UIPA’s “frustration of a legitimate government function” exception. In addition, under the “frustration” exception, DLNR is also not required to disclose recommendations and comments DLNR receives from staff and outside experts as well as its recommendations to BLNR that are predecisional and deliberative in nature, unless BLNR waives this exemption by publicly disclosing these records, or specifically referring to or incorporating them in its decision. [OIP Op. Ltr. No. 07-11] 

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