

The Office of Information Practices ("OIP") is charged with the administration of Hawai'i's open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the "UIPA"), and Hawai'i's open meetings law, part I of chapter 92, HRS (the "Sunshine Law").

## Q&A: OIP Facts

### Q. What does the Office of Information Practices (OIP) do?

As the state agency that administers the open records and open meeting laws, OIP annually receives over 800 requests for advice, assistance, or training regarding the Uniform Information Practices Act (UIPA) and the Sunshine Law.



Besides providing uniform advice and training to the many state and county agencies and boards, OIP offers the public a free means to resolve open government disputes.

Although the public can always sue to have the courts enforce the UIPA or Sunshine Law without first going through OIP, OIP's informal process is the preferred alternative because most disputes can be timely resolved without the need to hire attorneys.

More than 80% of the requests to OIP are resolved the same day through OIP's attorney of the day service, and over 70% of these daily inquiries come from agencies seeking guidance to voluntarily comply with the law. When complaints against agencies are filed, OIP conducts investigations. OIP also writes formal and informal advisory opinions, which totaled 33 in the fiscal year ending in June 2011.

OIP also administers the Records Report System (RRS), which is a computerized database of over 29,000 titles of government records that the public may obtain from state and county agencies.

### Q. What resources does OIP have to do its job?

OIP performs twice the responsibilities, with one-third of the budget and half the number of positions that it once had. In 1993-94 when it administered only the UIPA, OIP had a \$1.2 million budget (inflation-adjusted) and 15 positions. OIP now administers both the UIPA and Sunshine Law, with a reduced budget allocation of approximately \$400,000 and 7.5 total approved positions, of which one staff attorney position has been largely unfilled since FY 2008 due to budget restrictions.

### Q. Given its limited resources, what are OIP's priorities?

OIP is focused on reducing the backlog created during two years of litigating earlier appeals, preventing violations through better education, and leveraging OIP's limited resources so as to assist the broadest range of individuals, organizations, and government agencies and boards.

### Q. What's new at OIP?

To effectively augment its small legal staff, OIP is encouraging the hundreds of state and county government attorneys to learn how they can properly advise their agencies and boards in order to prevent violations from occurring. Thus, for the first time, OIP has developed a training course that rewards attorneys with legal education credits.

The first legal education course has already been presented to 26 attorneys on Maui. After two additional courses are accredited, OIP will present all three legal education courses at a seminar planned in Honolulu for government attorneys on September 28, 2011.

Legal education seminars are being planned on the neighbor islands as well.

OIP has also updated its on-line training guides, which are written in plain English and are freely available to government

officials, neighborhood and other board members, and the general public. In addition to providing live training on all islands to agencies, OIP has a new training video that is conveniently available 24/7 on OIP's website ([hawaii.gov/oip](http://hawaii.gov/oip)) for viewing by all agencies as well as the public.

OIP's website has been improved with better linkages to make it easier to find training materials, formal and informal opinions (including a subject matter index), and other resources. Besides weekly updates and links to open government news from around the nation, the What's New



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site will have updates on OIP's legislative proposals for the 2012 session, which OIP is currently developing.

### *Q. How does OIP obtain compliance?*



Although OIP was never provided with statutory powers to itself go to court or compel agency compliance, lawsuits have rarely been necessary as OIP usually obtains government agencies' voluntary compliance with its formal and informal advice under both the UIPA and Sunshine Laws.

### *Q. What happens if an agency refuses to comply?*

In the rare case when an agency refuses to comply, the requester has the right to seek judicial enforcement of OIP's opinion, which is admissible in court and entitled to great deference. **Even without an OIP opinion, a requester can sue** an agency to obtain records that the agency has refused to disclose under the UIPA or to void board action taken in violation of the Sunshine Law. If successful, the requester will be awarded attorney's fees and costs.

### *Q. Can agencies appeal in court to challenge an OIP opinion?*

The UIPA does not contain a provision giving agencies the same right as the requester to challenge OIP's opinions in court. OIP has vigorously argued that the lack of an appeals process for agencies and the statutory language requiring agencies to comply made OIP's decisions binding, which was consistent with the express legislative intent that agencies should not sue agencies. Nonetheless, in 2009, Hawaii's top courts rejected OIP's arguments and interpreted the Sunshine Law to allow a county to judicially challenge OIP's opinion that had mandated disclosure in a UIPA records request case. Since those adverse judicial decisions in 2009, OIP has chosen to avoid further costly and expensive litigation and instead plans to seek legislative clarification of its authority and agencies' appeal rights under both laws.

### *Q. Why did OIP stop issuing determinations in 2009?*

Within the context of the UIPA, OIP's formal opinions may be either determinations **mandating** disclosure of records or advisory opinions **recommending** disclosure.

After the final court decision described above, OIP suspended the issuance of determinations **mandating** the disclosure of records in 2009. This was done to avoid


having OIP needlessly dragged into new litigation that could be initiated by agencies challenging OIP determinations. **OIP, however, continues to issue advisory opinions, which may recommend disclosure and are admissible in court, where they are entitled to the same deference as determinations** and do not require OIP's further involvement on appeal.

This legal change in the wording of OIP's opinions has had no practical effect on OIP's operations, except to eliminate the risk of having OIP's limited resources consumed by potential appeals in a few cases involving recalcitrant agencies. OIP continues to effectively fulfill its duty to resolve more than 800 requests annually by focusing on helping the overwhelming majority of the general public and the government agencies that want OIP's assistance and voluntarily comply with the open government laws.

### *Q. Why have some people claimed that OIP is not doing its job because it didn't order the Governor to disclose the names of unsuccessful judicial nominees?*

OIP cannot speak to the motives or opinions of others and can only respond with facts concerning OIP's actions. As explained above, OIP suspended the issuance of determinations in 2009. Moreover, OIP had already issued advisory opinion number 03-03 on this same matter, which still stands and is admissible in court, where it is entitled to great deference. The Governor has refused to provide the names without a court order and OIP has no power to compel the disclosure. Only the courts can enforce OIP's opinions and decide legal and constitutional issues with finality, and that is where the judicial nominee case belongs.

OIP has informed the media requesters of their right to sue for judicial enforcement. Even without an OIP opinion, requesters can sue to obtain disclosure, as one newspaper recently did by suing the Honolulu Police Department for the release of 911 tapes.

Through its free and informal services, OIP is doing its job to promote open government by, among other things, helping the general public resolve disputes out of court and providing uniform advice and training for the numerous state and county agencies, boards, and commissions. 

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