



**Office of
Information
Practices**

State of Hawaii

Annual Report 2000

This report to the Governor and the Legislature describes the work of the Office of Information Practices in implementing the State of Hawaii's public records law, known as the Uniform Information Practices Act (Modified), from 1999 to 2000.

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Director's Message

This report describes the work of the Office of Information Practices during Fiscal Year 2000. The twelve-month period includes the final six months of 1999 and the first six months of the new century. For the Office of Information Practices ("OIP"), this was a time of transition, as the agency continued its traditional work in a new setting, and met fresh challenges.

The OIP continued its ongoing mission of administering, in a cost effective manner, Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes. In 1998 the Legislature gave the OIP the additional responsibility of administering the open meetings law, part I of chapter 92, Hawaii Revised Statutes (Hawaii's "Sunshine Law"), and in 1999 the responsibility for rulemaking and educational activities for medical privacy. The OIP continues its services to government and the public. These services include:

- ◆ responding to requests for assistance, guidance, and opinions;
- ◆ adopting rules;
- ◆ monitoring UIPA-related litigation;
- ◆ monitoring, and assisting with, legislation related to the UIPA and the Sunshine Law; and
- ◆ educating by means of OIP presentations, publications, and web site.

Opening Up the Bottleneck

By 1996, it was clear that many government agencies would not disclose government records until the OIP provided advice and guidance. This dependence overwhelmed the OIP with requests from government agencies, thereby increasing the workload. As the workload increased, the time between a request for

information and the time of disclosure gradually increased. This dependence on the OIP caused opinions to bottleneck. The OIP's long-term plan to solve this problem employed a variety of means.

First, we adopted rules, which would require agencies to answer requests in ten business days. This would have the effect of removing dependence upon the OIP.

Second, we created a web site, posting information and guidance there for both government employees and members of the public.

Third, we stepped up our educational efforts to government agencies, attempting to train the agencies in the duties and responsibilities imposed on the agencies by law.

Fourth, we created model forms, which both members of the public and government employees could use to streamline the process for requesting and responding to requests for information.

This year's data shows that this long-term plan has begun to have an effect. Information and guidance from the OIP is available around the clock on the OIP web site. The OIP's web site has been a great success — in fact, the average monthly "hits" on the web site have tripled this year, from 5,000 per month to over 15,000 per month. Further details about the actual numbers of files downloaded and other data are reported later in this report. The OIP web site has proven to be effective and widely used by our community.

Requests to the OIP for assistance from government agencies have fallen, although calls from government attorneys increased slightly. These changes indicate that the rules adopted by the OIP have had the impact of forcing agencies to answer requests for government records, thus opening up the bottleneck. Now agencies are actually deciding for themselves whether to disclose records, without first relying upon calls to the OIP for guidance.

A Decrease in Openness?

On the other hand, requests to the OIP for assistance from the public have almost doubled. Now more than 50% of telephone requests for assistance come from members of the public. This increase in calls for help from the public may also reflect that agencies, rather than simply disclosing records, are actually denying access to records in greater numbers. This conclusion is also supported by the increase in written requests to the OIP for assistance. While the OIP's staff attorneys can respond to requests for assistance quickly, we lack the resources to respond rapidly to requests for opinions.

Other statistics collected by the OIP make me wonder whether the State of Hawaii is experiencing a decrease in openness, or whether people are exercising their right to know more vigorously.

For example, there appears to be an increase in litigation. All of the cases reported in the litigation section of this report appear to have substantial issues raised under the UIPA.

Moreover, we are seeing the government agencies themselves classify more records as being not open to the public. Government agency employees continue to input data into the Records Reporting System ("RRS"). This year saw a small increase of records reported by government agencies, to 33,649 records. Government agencies themselves have classified the public's access to these records as follows:

- ◆ 59% are completely open to the public,
- ◆ 16% are absolutely confidential,
- ◆ 21% are subject to redaction before being made public, and
- ◆ 4% are yet to be determined.

These numbers represent a one percent decrease in records that are completely open to the public. The OIP will continue to monitor these statistics to determine whether openness is decreasing.

Informational Practice Projects

In the last ten years, the development of electronic technology and the capacity to digitize information, the widely available personal computer, user-friendly databases, and the Internet have crystallized the concern over information practices, specifically protecting privacy.

Before the age of electronic technology, bits of information about us may have been collected and stored on paper records by government and businesses. Today, the new database technologies allow government and businesses to compile separate bits of information from different databases and use this information to create highly detailed 'profiles' of a person's medical, financial, transactional, or political history.

The large-scale commercial use of database technology, the growth of home computing, and increasing use of the Internet have dramatically altered government and business practices globally. This development of electronic technologies, accompanied by the present push for the development of more electronic commerce, has serious consequences for individual privacy. As noted by Adam L. Penenberg in his article "The End of Privacy," *Forbes*, November 29, 1999, computers "hold half a billion bank accounts, half a billion credit card accounts, hundred of millions of mortgages and retirement funds and medical claims and more. The Web seamlessly links it all together."

It is this unfettered ability to combine and compile personal information that presents policy makers with one of the major public policy issues of the millennium. This office has been researching the issues involved in information practices. As a result of some of this work, those who work in data protection in the Asia Pacific region have expressed interest in Hawaii hosting a meeting of data protection commissioners. This report presents some of the OIP's work in this area.

Commercial Use of Personal Information

In April 1999, the Legislature asked the OIP to study some aspects of privacy. Hawaii is one of a handful of states that guarantees, explicitly, the right to informational privacy. The Hawaii State Constitution states in Article 1:

Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

The Legislature asked the OIP to coordinate a study of the commercial use of personal information, and to submit proposed legislation to the 2000 legislative session. The OIP's completed study, *The Commercial Use of Personal Information*, included the following major sections:

- ◆ Use of personal information in the commercial environment;
- ◆ Legal protections of personal information on the national and state levels; and
- ◆ Recommendations to extend Hawaii's informational privacy scheme in government records to cover the use of personal information in the private sector; to adopt fair information practice standards; to create codes of practice based on an industry's particular needs while still ensuring that privacy is protected; to establish a nonjudicial dispute resolution mechanism; and to create an independent monitoring agency.

The OIP's recommendations were incorporated into proposed legislation, which was introduced in the 2000 session. This legislation died after crossover. It is not clear whether similar legislation will be introduced again this coming year. However, the public policy concerns will continue to be in play. I urge the administration and the Legislature to continue dealing with these issues.

Medical Records Privacy

In the 2000 Regular Session, the Legislature established a new Medical Privacy Task Force to advise and assist the OIP in analyzing health care information issues for the purpose of drafting rules to implement the requirements of chapter 323C, Hawaii Revised Statutes. Originally, chapter 323C, Hawaii Revised Statutes, was to have taken effect on July 1, 2000. However, in a special session in August 2000, although Senate and House leaders expressed their desire to support the law, the Legislature postponed the effective date by one year to July 1, 2001. The 2001 Legislative Session will provide an opportunity to clarify the law.

The Medical Privacy Task Force and the OIP worked diligently to address the difficult issues surrounding medical records privacy and prepare a report to the Legislature before the 2001 Session. The meetings of the full task force, and those of its work groups (Rules; Compliance; Employment; and Education) were open to the public. Meeting notices, agendas, and minutes were also posted on the OIP's web site. The work groups met 39 times from August to October, and the Task Force met for a period of 22 days, often up to eight hours a day, between October and December.

In 2000, I made almost daily educational presentations to community groups regarding the medical privacy law for a total of 1,150 people. In the summer of 2000, the OIP staff assisted hundreds of callers with legal questions and informational questions on medical privacy. Educational efforts have continued into the next fiscal year.

The Medical Privacy Task Force recognizes that chapter 323C, Hawaii Revised Statutes, was designed to protect our medical records, but notes the widespread impact on many businesses in the state, including members of the health care industry, insurers, and all employers. The Task Force has completed its work, which is published in a separate report. The Task Force proposes certain amendments to chapter 323C, Hawaii Revised Statutes, to reduce confusion in the community, reduce costs, and clarify certain aspects of the law.

Information Practices Project

In the spring of 2000, I was invited to be a founding member in a nationwide project to develop privacy policies for state and local governments. Through a series of telephone conferences, the Information Practices Project (“IPP”) has now become an official project of the National Association of Public Administrators (“NAPA”). The IPP Charter states:

The Information Practices Project (IPP) supports information practices issues at the state and local government level. All state and local government units and organizations are welcome to participate as members of the IPP. The IPP seeks Federal governmental agencies and organizations, non-governmental organizations, academic institutions, foundations, and the private sector to serve as advisors and observers to the IPP deliberations.

The IPP serves as a government-based platform for its members to facilitate the assessment of privacy and policy issues and the implementation of clear standards-based information practices.

The IPP supports and encourages:

- ◆ Open discussions among its members regarding issues of importance to them relating to governmental information practices;
- ◆ Research to support development of clear standards-based information policies and practices, and
- ◆ An internal and external education program to promote its information policies and practices standards.

NAPA has planned to create the IPP Privacy Clearinghouse, in conjunction with the Information Technology Association of America. The Privacy Clearinghouse will bring together information on issues under the project’s umbrella, including public access to government records, privacy in government records, privacy in the private sector, and other issues related to government and privacy. In addition, NAPA will host several conferences throughout the United States to begin the national dialogue on these issues.

Resources and Challenges

The OIP was on the move in many ways during this year. For the fourth time in ten years, the agency moved offices, going from the Leiopapa a Kamehameha Building (State Office Tower) to the No. 1 Capitol District Building (Hemmeter Building). Planning for the move began in 1999. The move itself, which took place in May 2000, placed the OIP’s office a bit closer to the State Capitol.

In addition to the challenge of moving to a new office space in 2000, the OIP continues to feel the effects of significant budget cuts going back to 1998. The 1998 Legislature cut \$216,776 and three of eight permanent positions at the OIP. In total that meant that funding for four positions was eliminated and 60% of the OIP’s operating expenses was cut. Since the summer of 1998, the OIP’s limited personnel and operational resources have been stretched thin by the continuing work of administering Hawaii’s public records law (“UIPA”), along with the added responsibilities of receiving and resolving complaints on open meetings (“Sunshine Law”) and working with two task forces to create a new medical privacy law.

Presentations

International Data Protection Commissioners 21st Annual Meeting, Special Administrative Region of Hong Kong, China

I was honored by the request of the International Data Protection Commissioners both to attend and to participate on a panel at its 21st Annual Meeting in September 1999 in the Special Administrative Region of Hong Kong, China. The International Data Protection Commissioners are government watchdogs with jurisdiction over privacy issues, both in the public and private sectors. Some of these commissioners, notably the Data Protection Registrar of the United Kingdom, the Freedom of Information Commissioner for Victoria, Australia, and the Freedom of Information and Privacy Commissioners of British Columbia, Alberta and Ontario, Canada, also have freedom of information jurisdiction, as does the Office of Information Practices.

I was part of a panel entitled “Data Protection and Freedom of Information: Two Sides of the Same Coin?” Presenters on this panel included Professor David Flaherty, past Freedom of Information and Privacy Commissioner of British Columbia, Mr. Michel Gentot, President of the National Data Processing and Liberties Commission, Commission Nationale de L’Informatique et des Libertes (CNIL), France, Fergus Glavey, past Data Protection Commissioner of Ireland, and Professor Charles Raab of the University of Edinburgh, Scotland.

The policy issue before the panel was whether it was possible to resolve fairly the tension between disclosure of a government record and protection of private data in that record. Commissioners raised the concern that a regime favoring disclosure of public records would overwhelm policies protecting privacy. Using the State of Hawaii’s “balancing test” found at 92F-14(a), Hawaii Revised Statutes, I provided examples of how most of the tensions between these two public policies would be resolved.

I was also invited to attend and participate in the Asia-Pacific Data Protection Commissioners Second Annual Meeting held in conjunction with the International Meeting. Discussion at this series of meetings was aimed at surveying Asia-Pacific region countries’ policies on privacy and freedom of information and laying the groundwork for regional associations.

Finally, I was asked to make a presentation at the panel of the Freedom Forum on freedom of information following the international meeting. Unfortunately, this panel was cancelled due to the arrival of Hong Kong’s largest hurricane in at least ten years.

COGEL Conference 1999

The Council on Government Ethics Laws, which includes the Office of Information Practices, the State Ethics Commission, the City and County of Honolulu Ethics Commission, and the State Campaign Spending Commission watchdogs, held its annual meeting in Rhode Island. The OIP was unable to attend that conference, and instead sent a power-point presentation on Hawaii’s new medical privacy law.

University of Hawaii William S. Richardson School of Law

In the spring of 2000, Professor Casey Jarman invited me to take her administrative law class through hypothetical exercises in application of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”). This very rewarding experience involved active participation from the law students with application of the UIPA and the OIP’s administrative rules and applicable case law.

State Boards and Commissions

A staff attorney gave the OIP’s presentation to the newly appointed members of the State’s Boards and Commissions on application of the UIPA and the OIP’s role with the Sunshine Law.

Medical Records Privacy Presentations

As part of our statutory requirement under chapter 323C, Hawaii Revised Statutes, and as reported in this report, I made 29 presentations, reaching 1,150 people throughout the State of Hawaii on the subject of medical privacy. These presentations were to people in the health care industry, the insurance industry, and employers.

Moya T. Davenport Gray
Director

Highlights of the OIP's Work in Fiscal Year 1999-2000

Requests for Assistance, Guidance, and Opinions

The UIPA requires the OIP to assist, guide, and issue advisory opinions on the responsibilities of a government agency under the UIPA. Therefore, the OIP gives high priority and much of its resources and energy to educating, assisting, and guiding government agencies and members of the public. Each year, the OIP reviews the number of requests for assistance it has received to identify problem areas in the administration of the UIPA, and to assess the need for further education and training projects.

Who Sought the OIP's Services

Over the years the OIP has provided timely legal guidance and assistance through the "Attorney of the Day" service. Through this service the OIP assists both members of the public with their requests for records, and employees of government in responding to requests for information.

Requesters

Telephone calls to the OIP for assistance increased dramatically in FY 2000. Calls for assistance increased by 19% in FY 2000. The OIP received a total of 874 calls for assistance (including 68 e-mail requests), up from the 733 calls in FY 1999.

Significantly, more than half of these calls, 56%, came from members of the public made as detailed in **Chart 1**. This too is an increase from FY 1999, when members of the public made 46% of the total calls received by the OIP.

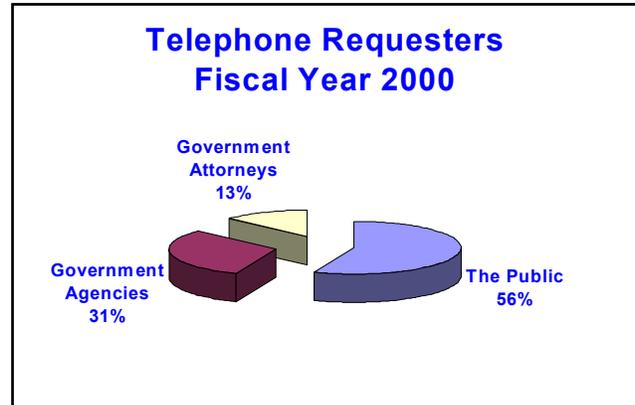


Chart 1

As in the recent past, the majority of calls from the public came from private individuals. Of the 424 calls from the public, 235 calls, or 55%, came from private individuals. Business made 21% of the calls, private attorneys 11%, and the news media 9%. See **Table 1** below for details.

Types of Callers	Number of Calls
Private Individual	235
Business	77
Private Attorney	47
Newspaper	31
Public Interest Group	8
Hospital	6
Clinic	5
Television	5
Magazine	2
Radio	1
Provider	1
Plan	1
Other	5
TOTAL	424

Table 1

State and county government agencies made 31% of the calls for assistance in FY 2000, a decrease from 43% in FY 1999. The remaining 13% of calls in FY 2000 came from government attorneys, up slightly from 11% in FY 1999.

More than half of the calls for assistance from government agencies, 59%, came from State Executive agencies. County Executive agencies made 16% of the calls, the State Legislative branch 14%, and the State Judicial branch 4%.

For the full breakdown on the telephone requests from government agencies received in FY 2000, see **Table 2** below.

Government Agencies' Calls to the OIP - FY 2000	
Jurisdiction	Number of Calls
State Executive	137
State Legislature	34
State Judiciary	10
County Executive	39
County Council	4
Federal Agency	3
Unspecified Agency	2
TOTAL	232

Table 2

Telephone Requests About Agencies

The OIP also monitors which government agencies are involved when callers need assistance. This helps the OIP evaluate whether the public is receiving timely access to government records.

State Agencies

In FY 2000, the OIP received a total of 530 telephone inquiries concerning State agencies, up by 10% from FY 1999. About two-thirds of these calls (356) concerned ten agencies: Office of Information Practices (50), Commerce and Consumer Affairs (50), Education (42), Land and Natural Resources (41), Health (40), Human Services (34), the University of Hawaii System (29), Transportation (26), Attorney General (24), and Labor and Industrial Relations (20). Refer to **Table 3** on page 14 for more details.

Most of the 50 calls relating to the OIP were inquiries about the work of the OIP. The OIP received 28 calls about the legislative branch of State government, 22 calls about the judicial branch, and 5 calls about the Office of Hawaiian Affairs.

County Agencies

The OIP received 121 calls for assistance concerning county agencies. Almost half of these calls, 59, concerned City and County of Honolulu agencies. The largest number concerned the Liquor Commission, which was the subject of 21 of these calls.

The OIP received 62 calls for assistance concerning the other three Hawaii counties: 27 calls about Kauai County agencies, 20 about Hawaii County agencies, and 15 about Maui County agencies. Refer to **Tables 4-7** on pages 15 and 16 for details.

Requests for Assistance and Opinions

During the past four years, from FY 1997 through FY 2000, the OIP received an increasing number of requests for assistance. The OIP opened 277 new cases in FY 1997, opened 343 in FY 1998, opened 456 in FY 1999, and opened 403 in FY 2000. The OIP worked steadily in the past four years to answer many of these informal and formal requests for assistance. In FY 2000 the OIP staff reviewed and closed 461 cases from its files of pending assignments.

**Public Calls to the OIP About
State Government Agencies -
FY 2000**

Executive Branch Department	Requests
Office of Information Practices	50
Commerce and Consumer Affairs	50
Education (including Public Libraries)	42
Land and Natural Resources	41
Health	40
Human Services	34
University of Hawaii System	29
Transportation	26
Attorney General	24
Labor and Industrial Relations	20
Public Safety	19
Accounting and General Services	18
Business, Economic Development, and Tourism	17
Budget and Finance	14
Lieutenant Governor	14
Taxation	13
Agriculture	9
Governor	4
Hawaiian Home Lands	4
Human Resources Development	4
Defense	3
TOTAL EXECUTIVE	475
TOTAL LEGISLATURE	28
TOTAL JUDICIARY	22
Office of Hawaiian Affairs	5
TOTAL STATE AGENCIES	530

Table 3

**Public Calls to the OIP About
City and County of Honolulu
Government Agencies - FY 2000**

Department	Requests
Liquor Commission	21
Board of Water Supply	8
Planning and Permitting	5
Civil Defense	4
Community Services	4
Police	4
City Council	2
Design and Construction	2
Corporation Council	1
Economic Development	1
Neighborhood Commission	1
Prosecuting Attorney	1
Unspecified	5
TOTAL	59

Table 4

**Public Calls to the OIP About
Hawaii County
Government Agencies - FY 2000**

Department	Requests
Hawaii Redevelopment	4
County Physician	3
Police	3
Finance	2
Liquor Control	2
Housing	2
Mayor	1
Unspecified	3
TOTAL	20

Table 5

**Public Calls to the OIP About
Kauai County
Government Agencies - FY 2000**

Department	Requests
Planning	5
County Council	4
Mayor	2
Personnel Services	2
Police	2
County Attorney	1
Economic Development	1
Elderly Affairs	1
Finance	1
Medical Examiner	1
Unspecified	7
TOTAL	27

Table 6

**Public Calls to the OIP About
Maui County
Government Agencies - FY 2000**

Department	Requests
Police	4
Housing and Human Concerns	3
Water Supply	3
County Council	1
Economic Development	1
Planning	1
Unspecified	2
TOTAL	15

Table 7

Case Summaries

Draft Administrative Rules

A State agency employee asked whether her department may disclose draft administrative rules scheduled for public hearing in the future. Although the draft is the version the department will take to public hearing, the employee's concern was that this draft may not be the final version of the administrative rules. She recalled that the OIP had issued opinions indicating that draft documents may be withheld from public disclosure under section 92F-13(3), Hawaii Revised Statutes. This section states that agencies need not disclose information which, if disclosed, would cause the frustration of a legitimate government function. Draft documents fall under the "frustration" exception if they are both predecisional and deliberative.

The OIP advised the employee that so long as there is no statutory or judicial prohibition, an agency may waive or choose not to invoke the UIPA's exceptions to disclosure listed at section 92F-13, Hawaii Revised Statutes. However, in this case, as the proposed draft rules were required to be disclosed for the public hearing, the OIP advised a "frustration" argument would not apply.

Fee Waivers

A County agency has received many record requests from inmates. The agency has processed these requests and imposed fees both for photocopying, under section 92-21, Hawaii Revised Statutes, and for search, review, and segregation, under the OIP's administrative rules, chapter 2-71, Hawaii Administrative Rules. Some record requesters have asked for waivers of these fees because they are unable to pay. The agency wanted to know its duties under the law.

The OIP advised that it does not have jurisdiction over section 92-21, Hawaii Revised Statutes, and referred the agency to the county attorney on that matter. The

OIP is not aware, however, of any statute authorizing a waiver of photocopy charges. As for fees imposed under the OIP's rules, chapter 2-71, Hawaii Administrative Rules, the OIP advised that these fees are discretionary, not mandatory; thus the agency has the discretion not to assess these fees. However, should the agency assess the fees, the OIP rules require that the first \$30 in fees be waived. For charges beyond the initial \$30, the OIP rules also allow an additional waiver of \$30 if the request is in the public interest.

Personnel Records

A State agency received a request from a private organization for personnel records of its former employee. The private organization had been part of the State agency and was now a private organization. The former employee had been employed with the private organization when it was part of the State agency.

Subsequent to the formation of the private organization, the former employee filed a complaint with the Hawaii Civil Rights Commission ("HCRC"). Pursuant to the complaint, the HCRC requested personnel information from the private organization. The private organization then requested the information from the State agency, which still maintained the records. Because the private organization was no longer attached to a government agency, it was deemed to be a member of the public for purposes of this record request.

The OIP advised that some information about current or former government employees is public under section 92F-12(a)(14), Hawaii Revised Statutes. That information could be immediately disclosed to the private organization. The rest of the information requested may contain privacy interests of the former employee, and disclosing that information publicly could violate the former employee's privacy rights.

The State agency granted the request as to information that is public by law under section 92F-12(a)(14), Hawaii Revised Statutes, only. The HCRC, pursuant to its statutory powers to investigate and resolve complaints, thereafter requested the information directly from the State agency holding the records.

Good Faith Estimate of Fees

An attorney called on behalf of his client, who had made a record request to a State agency and received a bill for \$800. The attorney asked whether this was proper. The OIP advised that agencies are allowed to charge photocopy fees under section 92-21, Hawaii Revised Statutes, fees for search, review, and segregation of records under the OIP's rules, and any other lawful fees. However, the OIP's rules require that agencies intending to impose fees must first provide the requester with a good faith estimate of those fees. If his client did not first receive a good faith estimate and accept the charges, the agency should not require payment.

Names and Qualifications of Committee Members

A county assembled a committee to review bids submitted in response to a request for proposal ("RFP") to dispose of solid waste. The county received a request for the names and qualifications of the committee members. The county did not want to disclose this data because the committee members were working towards making a recommendation narrowing the list of bidders. The county feared that disclosure would taint the bidding process by exposing the members to undue pressure from bidders. The OIP had several discussions with the county, its attorneys, the State Procurement Office, and three newspapers. The county ultimately declined the OIP's offer to receive an expedited opinion where those concerned would orally (rather than the standard written correspondence) provide the OIP with their positions. The OIP was therefore constrained to provide general advice only.

The OIP advised that bid information is generally protected from disclosure prior to execution of a contract in order to protect the integrity of the process. However, the OIP advised that disclosure of the names and qualifications of the bid review committee members was not a disclosure of bid information that would taint the RFP process. Moreover, the names and qualifications of government employees are public under the UIPA. As only one member of the committee was a county employee, the issue was

whether the committee members were performing a government function to the extent that they were subject to the UIPA. Even assuming, for the sake of argument, that the remainder of the members were not government employees, disclosure of the committee members' names and qualifications to be members, would not taint the integrity of the bidding process.

It is clear that the committee members were performing a legitimate government function by eliminating some bidders from the list of bidders to be considered by the county. Nonetheless, this function would not be frustrated by the disclosure of the names and qualifications of the committee members. While the committee members may be exposed to pressure from bidders, it is clear that their duty is to choose appropriately, notwithstanding these pressures. More significantly, the public has a right to know who is reviewing bids for government contracts, and what their qualifications are.

Accessibility of Records

A requester sought records at a local police station, and was told that although the station maintained the requested records, all record requests were required to go to the custodian of records of the Police Department, located at the county seat on a different island. The local station explained that they maintained only "district" copies which may not be complete or accurate because they could be missing attachments from other districts.

The OIP advised the Chief of the Police Department and the local station that section 2-71-18(a), Hawaii Administrative Rules, states that "[t]he location where an agency makes a record available to the requester for inspection or copying shall be where the agency maintains the record or where the agency has accommodations for inspection and copying." Thus, if the local station is able to accommodate for the inspection and copying of the records it maintains, it should do so.

The OIP further advised that the fact that the records maintained by the local station are "district" copies, which may or may not be entirely complete, should not preclude their disclosure. The OIP previously opined that records in an "unofficial" file maintained by a

department within a state agency should be made available to the requester, despite the fact that they were not available in the agency's "official" file. The UIPA contains no exemption to disclosure based on the fact that access to the "official" record is available elsewhere.

Reason for Request Not Relevant

An agency received a request for a list of employees who worked on a specific project, and a list of former employees. Both of these lists were maintained by the agency and thus qualified as a government record. The agency was concerned about disclosure because the news media were attempting to identify which former employee was currently under criminal investigation.

Law enforcement agencies can withhold the identification of subjects of criminal investigations in order to protect the investigation. Employees also have some rights to privacy until they have been charged. However, in this case the agency was not a law enforcement agency and could not employ this exception.

Moreover, as the OIP advised the agency, the UIPA mandates that certain information on present and former government employees be disclosed to the public, including name, job title and description, and the dates of employment.

E-mail Presumed Public

A caller wanted to know if e-mail between state employees is confidential. The OIP informed the caller that any record (including those in electronic format) maintained by an agency is a government record under the UIPA, and thus would be subject to disclosure. All government records are presumed to be accessible by the public unless one of the exceptions to disclosure applies. If one of the exceptions did apply, the information falling under it could be redacted (if that is reasonable) and the rest disclosed.

Privacy Interest v. Public's Interest

An agency was conducting an internal investigation regarding a claim of sexual harassment against an employee. The agency wanted to know what must be disclosed to the news media when the investigation is concluded, if disciplinary action does not result in suspension or discharge.

The OIP advised the caller that under section 92F-14(b)(4), Hawaii Revised Statutes, an individual has a significant privacy interest in information in an agency's personnel file except for information required to be disclosed under section 92F-12(a)(14), Hawaii Revised Statutes, and information related to employee misconduct that results in the suspension or discharge of the employee.

Thus, if not suspended or discharged, the employee has a significant privacy interest in the information. However, if the public interest in the disclosure of this information outweighs the privacy interest of the individual, then disclosure of this information would not be a clearly unwarranted invasion of personal privacy.

Public Interest Fee Waivers and Incremental Disclosure Fees for Record Requests

A State agency asked whether the public interest fee waiver referred to in section 2-71-31(d), Hawaii Administrative Rules, is the same as the waiver referred to in section 2-71-32, Hawaii Administrative Rules, and if so, whether the waiver was for \$60 of fees or for the full amount of fees. The agency also asked how fees are prepaid when the agency is responding to a public record request with incremental disclosures.

The OIP advised the agency that the same public interest fee waiver is referred to in sections 2-71-31(d) and 2-71-32, Hawaii Administrative Rules. The rules require an agency to waive only \$30 of its fees for search, segregation, and review when the request is in the public interest. However, the agency is always free to waive a greater amount. There is also a so-called

“mandatory waiver” of the first \$30 in fees charged for any request under chapter 2-71, Hawaii Administrative Rules.

The OIP also advised that each increment of an incrementally disclosed record request is treated separately for the purpose of charging fees. An agency can require prepayment of up to one half the fee attributable to each before it begins processing that increment, and can require payment of the balance of the fee upon its completion.

Privacy Interest and Environmental Reports

Two government agencies called to inquire whether home addresses and telephone numbers should be released when that information is contained in a report of the results of environmental testing done in the yard of a person’s home. The OIP advised that home addresses and telephone numbers are information in which a person has a significant privacy interest, and should not be disclosed unless the public interest in the information outweighs the privacy interest.

When the testing is done randomly or does not reveal a health hazard at the site, the public interest in the address of the home, or its telephone number, does not outweigh the privacy interest in that information. Therefore, disclosure of the home address or telephone number would be an unwarranted invasion of personal privacy.

Vendors who Received Copies of a Request for Proposal

A State agency received a request for the list of vendors to whom it sent copies of a Request for Proposal (“RFP”). Of those listed, some of the vendors had asked to receive the RFP, and others were picked out of the phone book. The OIP advised the caller that because the list is of businesses, not individuals, there is not a personal privacy interest in the names. However, disclosure of RFP information before the deadline for submission of bids could interfere with a legitimate

government function by allowing bidders to collude or by giving an unfair advantage to a bidder who saw the list of potential competitors. Therefore, the OIP advised the agency not to release the list of vendors until after the deadline for submission of bids, at which point it should be made available to the public. See OIP Op. Ltr. 94-26 (December 15, 1994).

State and County Employees Treated Alike

A caller inquired whether an OIP opinion letter regarding county government employees also applied to State government employees. The OIP informed the caller that the UIPA refers to public employees generally, and does not distinguish between county and State government employees. Therefore, an opinion under the UIPA dealing with public employees would apply the same way to a county or a State government employee.

Protection of Agency Records

A State agency called regarding a record request from a requester who uses a portable scanner to scan in documents. The requester wanted to scan in the requested documents. The documents requested were in multiple thick files, were in a particular order, and were held together by various clips, staples, and fasteners. The agency was concerned that giving the requester unlimited access to these documents would result in damage to the documents as they were pulled apart, as well as documents being replaced in the wrong order or in the wrong files.

The agency wanted to require the requester to tab the documents he wanted to scan, and the agency would then make copies of those documents to be scanned. The agency asked if such a requirement would comply with the UIPA, and if so, whether the agency could charge for the copies it would have to make.

The OIP discussed with the agency the need to balance the agency’s duty to protect its original records with its obligation to make reasonable efforts to comply with

the requester's preferred method of getting copies. The agency's proposed approach would balance those principles appropriately under the UIPA. However, the extra copies made by the agency to protect its records are similar to the extra copies that an agency has to make when it is segregating non-public information in records. The OIP recommends that agencies not charge for extra copies made in the course of segregation. Similarly, the OIP would recommend that an agency not charge for extra copies made here, as these copies would serve to protect the agency's records rather than responding to the request of the requester.

Minutes of Public Meetings

A caller asked how to apply the Sunshine Law requirement that minutes be available to the public within 30 days to a board that does not meet every 30 days. The board refused to make the minutes publicly available until the board had approved them at its next meeting.

The OIP advised the caller that the Sunshine does not require that a board approve minutes before making them available to the public. A board that holds infrequent meetings, and therefore cannot approve its minutes within 30 days, is not excused from the requirement that minutes be public within 30 days. The OIP advised that unapproved minutes can be disclosed, and should be clearly marked as "unapproved."

Interagency Release of Employees' Home Addresses

Agency "A" requested other agencies to provide it with the other agencies' employees' home addresses. Agency "A" wanted to use the addresses to study where employees live compared to where they work. The other agencies called the OIP for advice on what to release.

The OIP advised that home addresses generally implicate privacy interests and fall within the unwarranted invasion of personal privacy exception to public

disclosure. A release from one agency to another may still be permitted despite the privacy interest when the release is necessary for the performance of the requesting agency's duties and functions, and is compatible with the purpose for which the information was collected or is consistent with the reasonable expectations of use and disclosure under which the information was provided.

However, in this case, Agency "A" would not need employees' actual street addresses to create statistics on where employees live. The city and zip code of each employee's residence would be enough information. Therefore, the OIP advised the agencies that inter-agency disclosure of the city and zip code of employees' home addresses would be permitted, but that actual street addresses should be withheld.

Administrative Rules

Protected Health Information

The Rules Work Group, part of the Medical Privacy Task Force, with administrative assistance from the OIP, completed its proposal to the OIP as to rules to implement the requirements in chapter 323C, Hawaii Revised Statutes, and rules setting forth administrative, physical, and technical safeguards of protected health information. The OIP is currently reviewing the Task Force's proposal. Pending legislative action in the coming 2001 session, and upon completing its review and revision, the OIP will circulate the proposed rules to the Attorney General and affected agencies.

Appeals Rules

The OIP is substantially redrafting its proposed administrative rules and impact statement regarding appeals to the OIP under the UIPA, to take into account public and agency comments. The new proposed rules call for a simpler and faster appeal process, which will better fulfill the legislative intent expressed in the UIPA that appeals to the OIP be inexpensive, easy, and different from the more formal administrative appeal processes used by other agencies.

Unlike administrative appeals to other agencies, appeals to the OIP are not a prerequisite to filing suit under the UIPA. A member of the public who wants a more formal legal process for a UIPA dispute can still go straight to court without having to appeal to the OIP first. The OIP's appeal process will therefore provide a simpler and more expedient alternative to litigation for those who desire such an alternative.

Correction and Amendment of Personal Records

The OIP is also redrafting its proposed administrative rules and impact statement regarding individuals' access to and right to correction and amendment of their personal records. The OIP redrafted these rules to reflect better the statutory requirements for agencies handling personal record requests.

As redrafted, and where appropriate, the rules also track the existing administrative rules regarding public government records. This is intended to make the two types of requests less confusing for agencies.

Litigation Report

Privacy

The OIP is monitoring two appeals before the Hawaii Supreme Court involving the same issue. At issue is whether chapter 846E, Hawaii Revised Statutes, which requires making certain information about convicted sexual offenders available to the public, is consistent with Hawaii's constitutional right to privacy. **State of Hawaii v. Richard Epps**, Crim. No. 96-1141 (appeal filed April 22, 1999); **State of Hawaii v. John R. Guidry**, Crim. No. 99-0573 (appeal filed August 5, 1999).

Failure to Respond and Denial of Access

A single plaintiff, claiming that various agencies violated the UIPA, filed eleven different civil suits against the State of Hawaii. **Daniel A. Johnson v. State of Hawaii**, Civ. Nos. 99-154, 99-155, 99-173, 99-174, 99-231, 99-246, 99-297, 99-367, 99-412, 00-1-0010, and 00-100035 (3d Cir. Haw.) The suits allege that agencies failed to respond to the plaintiff's requests to access or correct his personal records within the statutory time period, or alleged that agencies wrongfully denied him access to his records.

Section 92F-27(c), Hawaii Revised Statutes, states that a plaintiff is entitled to receive not less than \$1,000 where an agency has been found to have knowingly or intentionally violated a provision under part III of the UIPA. Plaintiff Johnson was awarded one thousand dollars each in four of the suits where the court found the agencies had not complied with the UIPA. The OIP is monitoring the seven suits that are ongoing.

The UIPA and Litigation Discovery

The OIP was named on a Motion for Protective Order filed by the City and County of Honolulu in the case of **Nursall v. Nakamura et al.**, Civ. No. 98-3443-07 (1st Cir. Haw., filed Dec. 9, 1999). The Motion for Protective Order was sought to prevent the plaintiff from contacting the Police Department directly rather than through the Corporation Counsel and to prevent plaintiff from abusing the UIPA to circumvent the discovery process.

On the OIP's behalf, the Attorney General's Office submitted a memorandum on the motion stressing that the discovery rules under the Hawaii Rules of Civil Procedure and chapter 92F, Hawaii Revised Statutes, are separate and distinct mechanisms relating to the disclosure of records, and that an individual is not prohibited from seeking disclosure under chapter 92F, Hawaii Revised Statutes, simply by virtue of being a party litigant.

The Court granted the Motion for Protective Order, but emphasized that the Court was not making the determination that a party litigant is prohibited from seeking disclosure of an agency's records simply because of their status as a party to the litigation. The Court felt that a protective order was appropriate in this case because of plaintiff's improper use of chapter 92F, Hawaii Revised Statutes, for discovery purposes.

Fiscal and Audit Reports of Non-profit Corporation Maintained by a State Agency

In **Yuen v. State of Hawaii**, S.P. 00-1-0004 (1st Cir. Haw., filed Jan. 3, 2000), plaintiff filed an Application for an Order Allowing Inspection of Records Concerning the Expenditure of Public Funds. Plaintiff requested from the Med-Quest Division of the Department of Human Services, the fiscal and audit reports of AlohaCare, which provides health care through a contract with Med-Quest.

Med-Quest responded that AlohaCare claims that the fiscal reports are protected from disclosure by federal law, and are therefore exempt from disclosure under section 92F-13(4), Hawaii Revised Statutes. Further, Med-Quest claims that the requested records contain confidential financial information, the disclosure of which would result in the frustration of a legitimate government function, and therefore fall within the exception to disclosure contained in section 92F-13(3), Hawaii Revised Statutes.

Plaintiff disagreed with those claims and filed this court action. AlohaCare has intervened in the action, and the Court is currently considering their Motion for Summary Judgment. The OIP continues to monitor the case.

Government Purchasing Information

Plaintiff Royal State National Insurance Company, Ltd. ("Royal") was the successful bidder on a request for proposal ("RFP"), but the defendant, Hawaii Public Employees Health Fund ("Health Fund"), failed to award the contract to Royal. Royal then made a record request for all records related to the RFP, the contract award, and the basis for the decision to suspend execution of the contract with Royal. Health Fund denied access, and Royal filed suit. **Royal State National Insurance Company, Ltd. v. The Board of Trustees of the Hawaii Public Employees Health Fund, Cedric Ho, Administrator; Hawaii Public**

Employees Health Fund, Civ. 99-0400-01 (1st Cir. Haw. filed Jan. 29, 1999). The OIP received notice of this lawsuit from Royal on February 18, 1999, along with a copy of the complaint.

Royal's motion for injunction, heard by the court on March 2, 1999, sought to restrain Health Fund from withholding access. This motion was denied for lack of jurisdiction. The Court held that the UIPA requirement that the OIP be notified when filing a UIPA lawsuit is mandatory, and that no jurisdiction lies to hear the suit if the OIP is not served. On April 9, 1999, the Defendant awarded the contract to the Plaintiff.

Royal filed a motion to reconsider, which was heard on May 4, 1999, asserting that the Court's interpretation of jurisdiction was wrong, that the OIP was notified, and that Royal was not required to prove jurisdiction in this case.

On the motion to reconsider, the Court ruled that the OIP was notified, and that it did have jurisdiction. The Court also ruled that section 92F-12, Hawaii Revised Statutes, makes government purchasing information public except to the extent it is protected by section 92F-13, Hawaii Revised Statutes, and that the requested information comes under section 92F-12, Hawaii Revised Statutes. The Court also ruled that some of the requested information is temporarily protected by the frustration exception, and it need not be disclosed until after the parties have signed the contract. The remaining information was ordered to be made immediately available. On June 25, 1999, the contract was signed.

On March 2, 2000, Royal filed a motion for summary judgment, asking the court to enter judgement against the Health Fund, order them to disclose the remaining requested information, and assess attorney fees. Subsequently, the Health Fund disclosed the remaining records. The court granted the summary judgement in part and required the Health Fund to pay Royal's attorney fees, which were later determined to total \$22,668.44. The court denied as moot the remainder of Royal's motion for summary judgement, because all of the records had been disclosed.

Access to Employee Records

A member of the public sought access to the Department of Transportation's ("DOT") D-55 forms for a specifically identified employee. The D-55 forms contain hours of work, overtime, employee's name, social security number, and pay scale. An OIP staff attorney attempted to resolve this matter through the Attorney of the Day service by advising that hours of work are likely public based on prior OIP opinions. The pay scale, however, raised privacy concerns that had to be balanced against the public interest based on the requester's assertion of fraud in reporting hours.

The requester chose to file suit rather than wait for a written OIP opinion on this matter: **Lewis W. Poe v. Harbors Division, Oahu District, Department of Transportation, State of Hawaii**, Civil No. 99-0305-01 (1st Cir. Haw. filed Jan. 25, 1999). The plaintiff notified the OIP of the suit, as required by section 92F-15.3, Hawaii Revised Statutes.

On January 19, 2000, the court issued an order granting limited disclosure of documents that had been submitted for *in camera* review. The court ordered the individual time sheets to be disclosed to the plaintiff with the social security number and rate of pay information redacted. In his pretrial statement, filed on February 11, 2000, the plaintiff states the relief being sought is the disclosure of the records with only the social security number redacted.

The court set trial for the week of November 6, 2000, but the case settled before trial. The DOT released the time sheets with only the Social Security Number redacted. The named employee consented in writing to the release of his amount of pay, so this information was not redacted. The DOT also reimbursed the plaintiff for his costs of \$425.

Names of Disciplined Government Employees: SHOPO II

The Department of Corporation Counsel of the City and County of Honolulu requested an advisory opinion from the OIP as to whether, after the passage of Act 242 in 1995, the Honolulu Police Department ("HPD") was required to disclose the names of certain disciplined officers who had been suspended.

In response, the OIP issued Opinion Letter No. 97-1 (Feb. 21, 1997), which concluded that the information must be disclosed in light of the Supreme Court's decision in **State of Hawaii Organization of Police Officers (SHOPO) v. Society of Professional Journalists—University of Hawaii Chapter**, 83 Haw. 378, 927 P.2d 386 (1996) ("SHOPO I").

The OIP was constrained to find that the disclosure of the information about suspended police officers would not constitute a clearly unwarranted invasion of privacy based on the Hawaii Supreme Court's holding in **SHOPO I** that this information was not protected under the Hawaii State Constitution's right to privacy.

When the HPD informed SHOPO of its intention to release information about suspended police officers, SHOPO filed a lawsuit against the City and County of Honolulu to prevent the HPD's disclosure, and brought a motion for a temporary restraining order prohibiting the release. **State of Hawaii Organization of Police Officers (SHOPO) v. City and County of Honolulu**, Civil No. 97-1514-04 (1st Cir. Haw. filed April 15, 1997) ("SHOPO II"). The Court denied SHOPO's motion, but SHOPO filed a writ of mandamus with the Hawaii Supreme Court. The Hawaii Supreme Court granted the writ and stayed the circuit court's order denying SHOPO's motion.

On October 20, 1999, the Circuit Court entered an order dismissing the action with prejudice, stating that the last case activity was on May 12, 1999, and no final document has been filed with the court.

Legislation

The OIP is required to review legislation and make recommendations to the legislative body. One of the goals of the UIPA is to provide for uniform legislation in the area of government information practices. To further this goal, the OIP monitors proposed legislation that may have an impact on the UIPA and on government's practices in the collection, use, maintenance, and dissemination of information.

Work in the 2000 Legislative Session

In 2000, the OIP reviewed over 400 legislative initiatives and monitored 195 of these measures as they progressed through the Legislature. All of the bills tracked by the OIP in 2000 affected government's information practices, public access to government records and meetings, or the privacy rights of individuals. The OIP staff attorneys and Director appeared frequently at the Legislature to testify about bills insofar as they related to these subjects.

Consultation

The OIP consulted with several government agencies and elected officials in the drafting of proposed bills during the 2000 legislative session. Highlights of the OIP's efforts in this regard are also discussed in the following sections.

Reporters of Child Abuse

The OIP supported HB 3018 (Act 248) because it serves to provide necessary information to protect children from abuse without subjecting the reporter to privacy concerns. This bill provides that the identities of individuals required by law to report cases of child abuse to a police department or the Department of Human Services remain confidential, except by court order or with the reporter's written consent.

Confidentiality of Auditor's Working Papers

The original version of SB 3045 would have made all working papers of the auditor exempt from public disclosure, and would exempt these working papers and their contents from disclosure in a judicial, quasi-judicial, or administrative process, even after the auditor issues a report, study, or public documents. This "auditor's working papers privilege" would have extended to all working papers collected by, reviewed by, and provided to the Office of the Auditor, its appointed officials, employees, consultants, and independent contractors in the course of their duties to investigate, audit, and produce reports. The OIP opposed this bill.

The final version of this bill, SB 3045 SD1 HD2 CD1 (Act 275), was quite different. It gave the auditor subpoena powers (rather than precepts under the old law) and clarified the penalty for violation and false evidence. The language regarding the working papers privilege was deleted. The committee report for HD2 explained this deletion, noting that the Committee on Judiciary and Hawaiian Affairs deemed it prudent to defer enacting a specific "auditor's working papers privilege" pending action by the Hawaii Supreme Court Standing Committee on the Rules of Evidence.

Open Meetings by Videoconference

Act 284 (SB 2924) removes the requirement in the “Sunshine Law” that State and county boards adopt administrative rules on procedures for meetings conducted by videoconference. The OIP, as well as the Department of the Attorney General and the Office of the Lieutenant Governor, testified in support of the bill. The OIP believed that removing the additional, and often cumbersome, step of having to adopt administrative rules prior to conducting videoconferenced meetings would increase public access to government without undermining the spirit of the Sunshine Law.

Ten Working Days to Respond to Requests

Act 254 (SB 2927) clarifies when the time period begins for an agency to respond to personal record requests. There had been some interpretive confusion with the former language of section 92F-23, Hawaii Revised Statutes, which required an agency to respond “within ten working days following the date of the request.” Section 92F-23, Hawaii Revised Statutes. To clarify the agency’s obligation, the language was changed to require a response “within ten working days following the date of receipt of the request by the agency.”

State Internet Portal

SB 2832 (Act 292) established the Access Hawaii Committee to provide oversight of the State’s Internet portal manager. The Director of the OIP is one of eleven committee members. The committee is chaired by the Governor’s Special Advisor for Technology Development. Among other things, the Committee will review the annual strategic plan and periodic reports on new applications and services submitted by the portal manager, and review and approve all charges to portal users.

Statutory fees collected by the portal manager will be remitted in full to the government agency. There may also be charges for “value added services.” These “value added services” include the following: providing periodic or ongoing access to information without making separate requests, compiling data, or performing researching services; the electronic filing of reports, renewals, and applications; and transacting business through the portal. Charges for “value added services” will be retained by the portal manager to operate, update, and improve the portal.

The Committee is also charged with assisting the State Public Library System in providing access to the Internet portal. The Act also appropriated \$250,000 to the library system for Internet access computers and equipment to provide the general public with greater access to the Internet.

Privacy of Health Care Information

SB 2254 (Act 140) amended the Privacy of Health Care Information Law, chapter 323C, Hawaii Revised Statutes. The definition of “nonidentifiable health information” was amended to be less subjective while preserving the identity of the subjects of the information. Technical amendments were made to section 323C-21(b), Hawaii Revised Statutes, to clarify that the use and disclosure of protected health information for the purposes of treatment, payment, and qualified health care operations is allowed without the patient authorization as long as it is properly noticed. Finally, section 323C-37, Hawaii Revised Statutes, was amended to clarify the requirements for health research under the law.

Act 140 also established the Medical Privacy Task Force to advise and assist the OIP in analyzing health care information issues for the purpose of drafting rules to implement the requirements of chapter 323C, Hawaii Revised Statutes. The Medical Privacy Task Force is to report to the legislature on its findings and recommendations, including recommended legislation concerning health care issues that require revision of chapter 323C, Hawaii Revised Statutes.

HB 1491, which was signed into law as Act 91, clarified one's ability to obtain protected health information pursuant to a discovery request or subpoena under chapter 323C, Hawaii Revised Statutes. Section 323C-38, Hawaii Revised Statutes, would have required a court order or an authorization to obtain protected health information unless the information was both nonidentifiable and related to a party in litigation whose medical condition is at issue. However, Act 91 amended section 323C-38, Hawaii Revised Statutes, to allow for the release of protected health information without a court order or written authorization if the information is either nonidentifiable or related to a party in litigation whose medical condition is at issue.

Firearms

SB 2151 (Act 127), intended to strengthen Hawaii's gun control law, required a health care provider to disclose health information relating to an individual's mental health history in response to a request for the information from the chief of police, but added two limitations. First, the information could be used only to determine the individual's fitness to own or acquire a firearm, and second, the individual must have signed a waiver permitting release of the information for that purpose.

The OIP testified against an earlier version of the bill which would have required health care providers to transmit information to the chief of police about any patient treated or counseled for substance abuse or diagnosed with certain mental illnesses, regardless of whether or not they have registered firearms or have a propensity toward violence.

Sunshine Report

Hawaii's Sunshine Law, chapter 92, Hawaii Revised Statutes, was enacted to ensure that governmental processes are open to public scrutiny and participation. To this end, the law declares that it is the policy of this State "that the formation and conduct of public policy – the discussions, deliberations, decisions, and actions of governmental agencies – shall be conducted as openly as possible."

Outside of certain exceptions, the law requires all meetings of agencies, boards, and commissions subject to the Sunshine Law to be announced and open to public attendance and participation. The law also requires that written minutes of all meetings be kept. Minutes must be made available to the public within thirty days of the meeting, except minutes of executive meetings, which may be withheld for only so long as their publication would defeat the purpose of the executive meeting.

During FY 2000 the OIP received fifty-seven telephone inquiries regarding the Sunshine Law and its operation in specific circumstances, an increase of eleven percent compared to FY 1999. In addition, the OIP opened the following ten case files in response to written requests for assistance, an increase of fifty percent compared to FY 1999.

Partly Cloudy?

The OIP received a complaint against the Hawaii County Police Commission alleging several violations of the Sunshine Law. The complaint stated that the Chair of the Commission placed an arbitrary time limit on oral testimony, that the Chair refused to allow testimony on items listed on the agenda to be heard in executive session, and that the minutes did not accurately reflect matters discussed at a meeting.

The complaint also alleged that a Commission meeting was held in a room too small to accommodate the number of people reasonably expected to attend, and therefore the meeting was not "open" as required by the Sunshine Law. This meeting was recessed without conducting any business. Lastly, the complaint alleged that an agenda item was wrongly heard in executive session, rather than in an open meeting.

The OIP sought the position of the Commission, and is in the process of analyzing the issues in order to set forth its conclusions.

Broad Agendas

A member of the news media expressed concerns regarding the "notice and agenda" published by a county council for meetings at which a county mayor's Annual Budget Ordinance would be reviewed. After setting forth dates and times for each departmental/agency review session, the "notice and agenda" listed every date, including Saturdays and Sundays, between April 3 and June 4, 2000, under the heading "Department Call-Backs & Additional Review, 9:00 a.m. – 4:00 p.m. (as appropriate)." The "notice and agenda" then went on to list every date, including Saturdays and Sundays, between May 8 and June 4, 2000, under the heading "Decision Making, 9:00 a.m. – 4:00 p.m."

Feeling that this was much too broad a notice and agenda to meet the requirements of the Sunshine Law, the member of the media asked the OIP to look into the practice. The OIP is in the process of analyzing the issues to make a determination.

Broad Agendas 2

A State Senator asked the OIP to inform the Board of Land and Natural Resources and the Neighborhood Commission of the notice requirements for executive meetings under the Sunshine Law. The Senator felt that the notices were too broad and vague because they mentioned only that the board and commission will go into executive session to "consult with legal counsel."

The OIP notified both the Board of Land and Natural Resources and the Neighborhood Commission of the statutory requirements for notice and executive meetings under sections 92-4 and 92-7, Hawaii Revised Statutes, respectively. The OIP emphasized that section 92-4, Hawaii Revised Statutes, states that “[t]he reason for holding [an executive] meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting.”

The OIP advised that if a board is consulting with legal counsel as to its “powers, duties, privileges, immunities, and liabilities” under section 92-5(a)(4), Hawaii Revised Statutes, it may proceed to executive meeting with the proper vote.

Meeting Agendas and Public Comment Period

A county clerk asked the OIP whether the County Council’s practice of including on meeting agendas the category “Statements from the Public” was proper under the Sunshine Law. The OIP was informed that matters raised during this public comment period are often not related to items listed on the agenda and council members often engage in discussion of these matters once they are raised.

The OIP referred the county clerk to a well reasoned opinion letter by the Attorney General of Texas that addressed the same issue. That letter noted that a governmental body cannot be expected to foresee the variety of matters citizens wish to bring to its attention, and to require specific notice of the items raised during a public comment period would effectively end the practice. Further, entirely prohibiting public comment sessions would be inconsistent with the principles of open government advanced by the Sunshine Law. The letter concluded that a generic term such as “public comment” was sufficient notice for that type of session. However, the use of “public comment,” or a similar term, will not provide adequate notice if the board is, prior to the meeting, aware, or reasonably should be aware, of the specific topics to be raised by members of the public.

The OIP suggested that until the OIP is able to formally advise the clerk on the matter, the council should not engage in discussion of topics raised during a public comment period, but could ask that the matter be placed on the agenda for discussion at a future meeting. The OIP is in the process of analyzing the issues to make a determination.

Oral Testimony

The OIP was asked to determine whether under section 92-3, Hawaii Revised Statutes, an opportunity to present oral testimony must be allowed on an agenda item that is properly noticed and brought up for discussion at a meeting.

An unsuccessful applicant for a liquor license filed a Motion for Reconsideration with the Honolulu Liquor Commission. The Commission placed this motion on its August 26, 1999, agenda. At that meeting the applicant asked that its Motion for Reconsideration be continued. There was discussion between the Commission and the applicant, and the Commission decided to continue the matter. Some members of the public requested an opportunity to give oral testimony on the agenda item. However, the Commission allowed no further testimony on the agenda item (Motion for Reconsideration) or on the issue of continuing the motion.

Issuing an oral opinion on the matter, in the interest of time, the OIP noted that section 92-3, Hawaii Revised Statutes, plainly states that “boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item.” The legislative intent behind this language, as indicated in the committee report, was to “require the board to hear oral testimony.”

Thus, the OIP recommended that if an agenda item is called at a duly noticed meeting, the public has a right to present, and the Commission has a duty to allow, oral testimony on the item. The spirit of the Sunshine Law requires openness and public participation in government deliberations and decisions.

Vision Teams and Neighborhood Boards

The OIP received a request to investigate the applicability of the Sunshine Law to the City and County of Honolulu Vision Teams, and whether attendance at Vision Team meetings by more than two members of a neighborhood board violates the Sunshine Law. The OIP later received two other requests to consider the same issues. The OIP met with many of the interested parties and received written statements from all that wished to submit them. The OIP is in the process of drafting an advisory letter to help resolve the issues.

Executive Session Minutes

Common Cause Hawaii asked the OIP to investigate whether executive meeting minutes for several state boards and commissions comply with the Sunshine Law. The request was prompted by the State Auditor's Report No. 99-20, which stated that the Hawaii Public Employee's Health Fund's executive meeting "minutes did not indicate what companies were under consideration by the board, or the views expressed by board members when considering the award of the contract."

Section 92-9, Hawaii Revised Statutes, entitled "Minutes," states that "neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants." The OIP requested, and has received, the minutes of the meetings relating to the Auditor's Report from the Hawaii Public Employee's Health Fund, and is in the process of analyzing the issue to determine whether the minutes comply with the Sunshine Law.

City Council Decision by Letter

The OIP was asked to investigate whether a letter sent to a circuit court Judge could constitute a decision by the Honolulu City Council in violation of the Sunshine Law. The letter dealt with the Natatorium restoration project litigation and stated, "we are canceling that portion of the contract relating to the pool and all ocean-based improvements."

The letter, on City and County of Honolulu letterhead, was signed by the Mayor and five of seven city council members. The person requesting the investigation felt that the signatures of the five council members could be construed as an agreement or decision made by the council that was never the subject of a duly called meeting.

The City Council Chair responded that only the Mayor and administration have the authority to modify or change contracts, and that he and the other council members individually signed the letter to demonstrate that they had no objection to the administration's proposal. The OIP is continuing to analyze the issue to determine whether the letter constituted a decision by the city council in violation of the Sunshine Law.

Items Added to Agenda

The OIP was asked to opine whether the addition of items to an agenda filed by the Honolulu Liquor Commission violated the Sunshine Law. At a meeting, the Liquor Commission added to the agenda several requests by establishments to extend their hours of operation from 2:00 a.m. to 4:00 a.m. on January 1, 2000.

Section 92-7(d), Hawaii Revised Statutes, states that items may not be added to a filed agenda without a two-thirds vote of the board, and that "no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons." The Liquor Commission's position is that the added items would not affect a significant number of people. The OIP is in the process of the analyzing the issues to make a determination.

Oral Testimony at Honolulu City Council Meetings

Common Cause Hawaii brought forth two complaints it received about meeting procedures at the Honolulu City Council. The first was that the Council allows oral testimony at meetings only from persons who have signed up to testify by the time the meeting begins. The second was that the Council limits oral testimony to three minutes per person in committee meetings and one minute per person at meetings before the full Council.

Section 92-3, Hawaii Revised Statutes, provides that while all interested persons must be allowed to present oral testimony on any agenda item, “boards may provide for reasonable administration of oral testimony by rule.” The City Council provided the OIP with copies of its rules, which provide for the limits on oral testimony described in the complaints. The OIP is in the process of determining whether the City Council’s rules limiting oral testimony are “reasonable” under the Sunshine Law.

Records Report System

Under section 92F-18(b), Hawaii Revised Statutes, each agency of the State and county executive, legislative, and judicial (administrative functions only) branches of government is required to “compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices.” The UIPA requires that these reports be open to public inspection and be updated annually.

To automate the collection of this information, the OIP developed the Records Report System (“RRS”). The RRS is a computerized database designed to collect the public report of each agency, and serves as a repository for all the public reports. The RRS features browse and query functions for accessing the information. In addition, government agencies are able to add and edit their own record reports and to generate a variety of reports about their records report information on the RRS.

Status of Records Report

Since the beginning of 1994, when the first record report was added to the system by the Office of the Ombudsman, State and county agencies have reported 33,649 sets of records (as of July 1, 2000). This represents an increase from the 33,411 sets of records reported as of July 1, 1999. Each “set” of records is generally a record title, and may be a form or other record. For a summary see **Table 8** on page 34.

Key Information: What’s Public

Information in the RRS allows a statistical look at State and county government records. The RRS allows one to determine what percentage of these records are public records and what percentage are not. Thus, when a government agency receives a request for a record, it can use the RRS to make an initial determination as to the record’s classification.

Although in most cases the OIP has not reviewed the access classifications, agencies themselves report that only 16 percent of their records are unconditionally confidential, with no public access permitted. By contrast, roughly three out of four records are available to the public in whole or in part (see **Chart 2** below). Nonetheless, this represents a one percent decrease since 1997 in records classified as unconditionally open to the public.

Of all the records reported on the RRS, 59 percent are accessible to the public in their entirety. Another 21 percent are in the category “confidential/conditional access,” as displayed in **Chart 2**. Most records in this category are accessible after the segregation of confidential information (14 percent of the total records). The other records in this category are accessible only to those persons, or under those conditions, described by specific statutes (7 percent of the total records).

The record reports themselves, which only describe government records, contain no confidential information and are completely public.

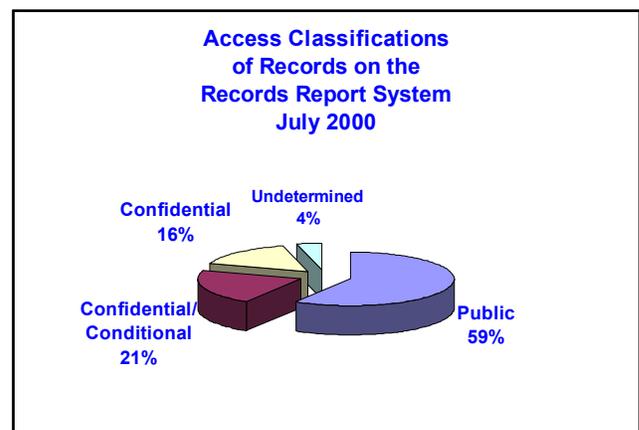


Chart 2

Records Report System

**Status of Records Reported by Agencies:
2000 Update**

Jurisdiction	Number of Records
State Executive Agencies	24,169
Legislature	816
Judiciary	1,645
City and County of Honolulu	4,433
County of Hawaii	976
County of Kauai	861
County of Maui	749
Total Records	33,649*

*This total includes 30,147 "live" records that can be browsed by all users, 105 records on disk awaiting upload, and 3,397 records still being edited by agencies and accessible only to those agencies, as of **July 1, 2000**.

Table 8

Budget

The OIP's annual budget has declined in the past six years from a high of \$827,537 in Fiscal Year 1994 to a low of \$346,727 in Fiscal Year 2000 (see **Tables 9 and 10** on page 36). The agency's budget was most deeply affected in 1998 when the Legislature decreased the OIP's overall budget by \$216,776 and eliminated three of eight permanent positions. This reduction in funding translated into downsizing of office personnel by four positions and eliminating 60% of the OIP's operating budget.

The OIP continues to function with the smallest staff since its beginning years of existence: a director, two staff attorneys, and three other staff members. The OIP's operational budget is also at an all-time low of \$37,991. With a reduced operational budget, the agency has begun to do all of its printing in-house and has reduced the number of times that it prints.

Given these cuts it has been a standard practice for the OIP personnel to advise requesters, at the initial contact with the office, that their requests may not be responded to for some time. The OIP anticipates that the public will increasingly be frustrated with government's response to requests for information. This frustration will, ultimately, lead to increased opposition to government, and litigation, raising the cost of compliance and the taxpayers' burden. We can already see the increase in litigation as reported earlier in this report.

Office of Information Practices Budget FY 1989 to 2000					
Fiscal Year	Operational Costs	Personnel Costs	Allocations	Permanent Positions	Temporary Positions
FY 00	37,991	308,736	346,727	5	3
FY 99	45,768	308,736	354,504	5	3
FY 98	119,214	446,856	566,070	5	3
FY 97	154,424	458,882	613,306	8	3
FY 96	171,524	492,882	664,406	8	4
FY 95	171,524	520,020	692,544	10	5
FY 94	249,024	578,513	827,537	10	5
FY 93	248,934	510,060	758,994	10	5
FY 92	167,964	385,338	553,302	6	4
FY 91	169,685	302,080	471,765	6	4
FY 90	417,057	226,575	643,632	6	4
FY 89	70,000	86,000	156,000	4	0

Table 9

Office of Information Practices Budget FY 2000 and FY 2001		
	FY 99-00	FY 00-01
Permanent Positions (5)	218,868	218,868
Temporary Positions	(3) 89,868	(2) 75,999
Total Personnel Expenses	308,736	294,867
Total Operating Expenses	37,991	37,991
TOTAL ALLOCATION	346,727	332,858

Table 10

Appendix A:

OIP Advisory Opinions

1999-2000

OIP Opinion Letter No. 99-4

Attempted Disclosure of Government Record While OIP Opinion Is Pending

A requester who was refused access to health insurance contracts with a community hospital asked the OIP for an opinion on whether the information requested was public. While the OIP opinion letter (No. 98-2) was still being drafted, the requester had discussions with a State Senator about these contracts. The Senator requested, and was given, a copy of the hospital's contract with the insurance company. The requester alleged that the Senator then attempted to give the contract to him, but he refused to take the copy.

The requester asked the OIP whether the Senator violated section 84-12, Hawaii Revised Statutes, by obtaining a copy of the contract under section 92F-19, Hawaii Revised Statutes, and then attempting to give a copy to the requester. Section 92F-19 allows agencies to share private or confidential information with the legislature or a county council. Section 84-12 forbids legislators from disclosing confidential information acquired in the course of the legislator's official duties.

The OIP opined that the Senator did not violate chapter 92F, Hawaii Revised Statutes, because the information he attempted to give to the requester was always public (see OIP Opinion Letter No. 98-2, April 24, 1998).
[OIP Op. Ltr. No. 99-4, Oct. 15, 1999]

OIP Opinion Letter No. 99-5

Building Permit Information

The OIP was asked to revisit the advice set forth in OIP Opinion Letter Number 90-20. Opinion Letter 90-20 opined that section 92F-12(a)(11), Hawaii Revised Statutes, which mandates disclosure of "building permit

information," includes information submitted to a government agency both before and after the issuance of a building permit.

Since the issuance of that opinion, government agencies have received complaints about disclosure of certain building permit information, such as building plans. Some individuals feel that building plans can be used to obtain access to a home to commit a crime, or can be used to build an identical home. The OIP reaffirmed its prior opinion, noting that there has been no change in the UIPA and no Hawaii case law that would affect its prior opinion.

Agencies cannot condition disclosure of building permit information on prior approval of the homeowner or of the architect who drafted the building plans and who may hold a copyright on the plans. The OIP also opined that "access" under the UIPA includes inspection and copying, and that agencies must permit both upon request.

Finally, because some building plans have been copyrighted, the OIP advised agencies to contact their Attorney General or Corporation Counsel when they receive requests for copyrighted information, as copyright issues fall outside the jurisdiction of the OIP.
[OIP Op. Ltr. No. 99-5, Oct. 19, 1999]

OIP Opinion Letter No. 99-6

Seniors Mailing List

A member of the public asked the County of Kauai Office of Elderly Affairs ("OEA") for a copy of the names and addresses in its database. This information is collected by the OEA for, among other things, planning services and programs, statistical record-keeping, complying with reporting requirements to State and federal agencies, and identifying seniors who may benefit from services offered. The database does not differentiate between business and home addresses, it merely collects whatever address was supplied by each senior.

The OIP opined that home addresses implicate privacy interests. As disclosure of the addresses would not shed light on the workings of government, they need not be disclosed because disclosure would constitute a

clearly unwarranted invasion of personal privacy. The OIP also opined that in cases where it cannot be determined whether a particular address is a business or home address, the address need not be disclosed.

Neither should the agency disclose post office box numbers because even if the box is being used for business purposes, the United States Postal Service will disclose the name and home address of the registered user of the box. This could lead to the discovery of an individual's home address.

[OIP Op. Ltr. No. 99-6, Oct. 28, 1999]

OIP Opinion Letter No. 99-7 **Identities of Complainants**

The Department of Health ("DOH") advised the OIP that it sometimes receives complaints from individuals alleging violations of Hawaii laws under the jurisdiction of the DOH. The DOH may conduct a civil law enforcement investigation based on these allegations. For example, a food distribution business had reported its belief that a competitor violated Hawaii's food labeling laws. A representative of the business that was the subject of the investigation ("Subject") then requested a copy of the DOH complaint investigation report. The DOH noted that the Subject believed it knew the identity of the complainant and was considering legal action against the complainant.

The DOH asked whether it must disclose the identity of a complainant, as well as other information which, if disclosed, could lead to discovery of the actual identity of the complainant in a civil law enforcement investigation report after the investigation has been completed and closed.

The OIP opined that the DOH relies on information from complainants to perform its legitimate government function of investigating alleged law violations. If identities of these informants were made public, it would likely chill the ability of DOH to obtain such information in the future, thus frustrating its ability to investigate alleged violations. Individuals would be less likely to come forward with information if they knew their identities would be revealed to the alleged violators. Therefore, the DOH may withhold disclosure

of an informant's identity under section 92F-13(3), Hawaii Revised Statutes.

[OIP Op. Ltr. No. 99-7, Nov. 23, 1999]

OIP Opinion Letter No. 99-8 **Identities of Informants**

The Department of Land and Natural Resources ("DLNR") asked the OIP whether the DLNR harbor staff must publicly disclose the names of persons reporting violations. The DLNR's Division of Boating and Ocean Recreation is responsible for the management of State small boat harbors on Oahu. At two of these harbors, Ala Wai Small Boat Harbor and Keehi Small Boat Harbor, a limited number of tenant vessels may be used for principal habitation ("live-aboard"). There is often a waiting list for live-aboard permits because the demand for permits exceeds the maximum allowed number of permits to be issued. There is an on-going problem of people without permits living on vessels moored at Ala Wai and Keehi Small Boat Harbors.

The DLNR is made aware of these violators primarily by harbor tenants, usually by people who have proper live-aboard permits. Informants have expressed concerns about disclosure of their identities by the DLNR because they fear retribution. The DLNR would like to use information provided by harbor tenants to evict illegal live-aboards. There has not been a record request for names of persons reporting alleged illegal live-aboards. The DLNR fears, however, that if it must make informants' names public, it will chill the DLNR's ability to receive such tips in the future.

The OIP opined that the DLNR relies on information from tenants with live-aboard permits to perform its legitimate government function of investigating alleged permit violations. If identities of these informants were made public, it would likely chill the DLNR's ability to obtain such information in the future, thus impairing its ability to investigate alleged violations. Therefore, the DLNR may withhold disclosure of informant's identity under section 92F-13(3), Hawaii Revised Statutes.

[OIP Op. Ltr. No. 99-8, Nov. 29, 1999]

OIP Opinion Letter No. 99-9 **Persons Named in Criminal Law Enforcement Investigations**

The Department of Land and Natural Resources Conservation and Resources Enforcement Division (“DOCARE”) is vested with criminal law enforcement powers under chapter 199, Hawaii Revised Statutes. Upon request, DOCARE provided a member of the public with a redacted copy of a report prepared following an investigation conducted into whether on-duty Maui County Fire Department personnel had illegally caught lobster out of season using a department vessel. All information that would allow identification of individuals named in the report was redacted. DOCARE asserted disclosure of their identities would be a clearly unwarranted invasion of personal privacy. The record requester then asked the OIP for an opinion on whether identities of individuals named in the report were properly redacted.

The OIP followed prior OIP opinion letters that found identities of persons and suspects named in criminal investigations carry significant privacy interests, which, in most cases, outweigh the public interest in disclosure. These privacy interests are diminished once an arrest has been made. In this case, however, no one was ever charged with a crime. Therefore, DOCARE properly redacted the identities of persons named in its report before disclosing it publicly.

[OIP Op. Ltr. No. 99-9, Dec. 3, 1999]

OIP Opinion Letter No. 00-1 **Public Disclosure of Legislative Materials**

A State Senator asked the OIP for a general advisory letter regarding the public disclosure requirements for legislative materials under Hawaii’s public records law. Specifically, what is an elected official obligated to disclose when a private citizen requests access to all materials relating to the policy development of an issue, including correspondence and personal notes from a majority caucus on the issue?

The OIP advised that a government agency has the discretion to withhold from public disclosure information that it maintains as part of its decision-making function pursuant to the deliberative process privilege under section 92F-13(3), Hawaii Revised Statutes, so

long as the information is not mandated to be disclosed under section 92F-12, Hawaii Revised Statutes. To qualify for this privilege, the deliberative material must have been created before the adoption of an agency policy and must be “a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal policy matters.” OIP Op. Ltr. 90-21 at 5 (June 20, 1990).

[OIP Op. Ltr. No. 00-1, April. 12, 2000]

OIP Opinion Letter No. 00-2 **DHS Fair Hearing Decisions**

A member of the public requested copies of Department of Human Services (“DHS”) fair hearing decisions which determine eligibility for general assistance. These decisions identify the individuals to whom they pertain, and often contain sensitive medical or psychological information.

The UIPA requires that agencies make final opinions available to the public. This public policy protects the public’s interest in open government by ensuring that agencies do not maintain secret law upon which their decisions are based. On the other hand, Section 346-10, Hawaii Revised Statutes, requires that all applications and records concerning any applicant or recipient of public services or assistance be confidential. The OIP concluded that the policies behind the two statutes are not mutually exclusive, and that decisions from which individually identifying information has been removed will give effect to both sections 92F-12(a)(2) and 346-10, Hawaii Revised Statutes.

The requester also complained about the agency’s charging him for the cost of redacting this personal information. The OIP concluded that because the identifying information contained in the decisions is not necessarily a part of the law of the agency, it need not have been included in them. The DHS, being aware of both sections 92F-12(a)(2) and 346-10, Hawaii Revised Statutes, continued to incorporate confidential information into the decisions, and therefore, should be responsible for the costs of redaction. Finally, the OIP recommended that in the future the DHS Administrative Appeals Office format the decisions to ensure that these decisions do not contain information which will identify the individuals concerned.

[OIP Op. Ltr. No. 00-2, May 23, 2000]

Appendix B: Publications and Web Site

As part of the continuing efforts to inform the public and government agencies about the UIPA and the work of the OIP, the OIP's publications play a vital role.

In Fiscal Year 2000, the OIP continued its traditional print publications, including the monthly *Openline* newsletter and the *Office of Information Practices Annual Report 1999*. In addition, the OIP continued to expand the web site that it launched on the Internet in April 1998.

The OIP's Web Site

The OIP's web site, at www.state.hi.us/oip, has quickly become the agency's primary means of publishing information. It plays a major role in educating and informing government agencies and citizens about access to State and county government records and meetings.

With a decreased budget in the past few years, and consequently limited resources for training, the OIP views the site as an even more valuable educational tool.

Visitors can access the State's public records law and Sunshine Law, read the OIP's current and past *Openline* newsletters, look at the new administrative rules and related information, link to the OIP's formal opinion letters, and receive general guidance for commonly asked questions. The OIP site also serves as a gateway to sites on public records, privacy, and informational practices in Hawaii, the USA, and the international community.

The OIP developed its site in-house, with the technical assistance of the State Information and Communications Services Division of the Department of Accounting and General Services, and the Campaign Spending Commission.

Increased Use of the Site

From its inception, the OIP site has received a substantial number of Internet visits, but the number increased dramatically in FY 2000. There were 103,464 "hits" (requests for web site files) in FY 2000. The monthly average was 8,622 requests, up 245 percent from 3,519 requests per month in FY 1999. The site received an average of 288 requests per day in FY 2000.

Most visits were directed at the home page, the Rules, UIPA and Sunshine Law, *Openline*, links, and the Medical Privacy Task Force page. Many callers to the OIP throughout the year mention the site and its features, and many others are directed to the resources available to them there. These callers appear to reflect the makeup of the callers making requests for assistance: the majority are members of the public, but many are government employees.

Government web sites have greatly increased accessibility. They bring information about government into the home and public libraries, as well as into public and private offices, 24 hours a day. The only waiting is the time it takes to download the information online. The OIP's site, with a minimum of graphics, is designed to download fast with useful information about the law and the agency's work. For example, information about the new medical privacy law and the Medical Privacy Task Force has been readily available on the OIP's site.

Hawaii's Internet Portal

The OIP site is linked to Hawaii's new Internet portal, www.ehawaii.gov.org, which provides information for visitors and residents and features a growing number of interactive services. These online services include business name search, certificate of good standing search, tax licenses, insurance licensee search, freshwater game fishing application, and sex offender registry. The eHawaiiGov index provides a link to the OIP under the heading "Public Records and Privacy."

Features

The web site is updated weekly. For those unfamiliar with the OIP, the home page gives a quick overview of the agency, and the Director's Message goes into more detail. The site features a "Contents" bar at the left on each page to help visitors navigate. The contents include the following sections.

"OIP Openline"

The monthly *Openline* newsletter, with a distribution of about 5,000 copies throughout Hawaii and the United States, and internationally, is available online. Back issues, beginning with the November 1997 newsletter, are archived here and easily accessed.

"Opinion Letters"

The OIP's attorneys have been issuing formal opinion letters since 1989. The site includes a link to the full text of these opinion letters, which total over 200 letters.

"Guidance"

The site offers practical help for frequently asked questions from government agencies and members of the public. What types of records are public? What are the guidelines for inspecting government records? What are agencies' responsibilities to individuals? What are the possible responses to your record request? What are an individual's rights if denied a record? Answers to these and other questions are available online 24 hours a day, seven days a week.

"The Law"

The Guidance pages include links to the relevant sections of the UIPA. The site features the complete text of the UIPA (chapter 92F, Hawaii Revised Statutes) and the Sunshine Law (chapter 92, Hawaii Revised Statutes), with quick links to each section. Using an Internet browser, of course, a visitor can perform a key word search of the law. In FY 2000 the OIP added a link to the new medical privacy law (chapter 323C, Hawaii Revised Statutes).

"Administrative Rules"

Visitors can access two sets of OIP rules: (1) the public records rules, which became effective February 26, 1999; and (2) the proposed appeals rules, which are still in draft.

The section "Rules: Public Records" includes the full text of "Agency Procedures and Fees for Processing Government Record Requests." It also features a quick guide to the new rules, an impact statement, and a statement on amendments made to the rules following public hearings.

Visitors can also view and print the two model forms created by the OIP to help implement the rules: "Request to Access a Government Record" and "Notice to Requester."

The second rules section contains the text of the OIP's proposed appeals rules, first draft. These rules would govern appeals to the OIP of government agencies' denial of access to public records. The section also includes an impact statement. Future notices and drafts of the appeals rules will appear in this section.

The rules sections also link to the Lieutenant Governor's web site, which hosts, or links to, all of the State's administrative rules.

"Other Links"

To expand a search, visit the growing page of links to related sites: Hawaii government, freedom of information, privacy, and agencies in the United States, Canada, and elsewhere responsible for freedom of information and privacy protection.

Another page provides a directory that tells where to call for other government information, including State, county, and federal telephone numbers.

Model Forms

The OIP has prepared, and makes available, model forms that agencies and members of the public may use to follow the procedures set forth in the OIP's rules for making, and responding to, record requests. For making a request to an agency, members of the public may use the OIP's model form "Request to Access a Government Record." Agencies may respond to a record request using the OIP's model form "Notice to Requester." The model forms may be obtained online at the OIP's web site, www.state.hi.us/oip.

Appendix C: **Education and Training**

Each year, the OIP gives presentations and provides training on the application of the UIPA. This is done as part of the OIP's continuing effort to inform the public of its rights under the UIPA and to assist government agencies in complying with the provisions of the UIPA.

In FY 2000, the OIP gave its annual presentation on the UIPA to new members of the State's Boards and Commissions. The OIP's Director made a presentation on the UIPA to Professor Jarman's Administrative Law class at the William S. Richardson School of Law at the University of Hawaii.

Because of the importance of Hawaii's new Medical Records Privacy Law (chapter 323C, Hawaii Revised Statutes), and the community's many requests for information, the OIP's Director made 29 presentations on the new law, training a total of 1,150 persons. For more information about the OIP's, and the Director's, presentations, please see the Director's Message at the beginning of this report.

Following the substantial budget cutback and staff reduction at the beginning of FY 1999, the OIP has continued to refocus much of its education and training efforts on the OIP web site. For more information about this resource, please see Appendix B of this report.