

Office of Information Practices

State of Hawaii

Annual Report 2001



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), and the open meetings law, Part I of chapter 92, Hawaii Revised Statutes, from 2000 to 2001.

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Director's Message

Focus on Government Employees

The Office of Information Practices ("OIP") is a grand 12 years old. The Legislature established the OIP in 1988 to administer the public records law, entitled the Uniform Information Practices Act (Modified) ("UIPA").

The impetus for the new law, as set forth in the OIP's *UIPA Reference Manual*, arose from universal criticism and concern among the media, government, business, and private citizens that the existing laws concerning public records and the individual's right to privacy were vague and difficult to interpret. In some cases, the laws actually stood in the way of the public's right to know what its government was doing

The State Legislature, in its enactment of the UIPA, urged "all agencies to accept the new law as a challenge and mandate to insure public access to the public's government." The OIP notes that the success of an open government is dependent on the attitude of those who implement the law. In a practical sense, this means each officer and employee of every State and county government agency.

Recognizing the role that the OIP plays in the creation and maintenance of an open government, the Legislature in 1998 added to the OIP's responsibilities dispute resolution of

complaints about the open meetings law. That law, part I of chapter 92, Hawaii Revised Statutes, is known as the "Sunshine" or "open meetings" law. These two laws, UIPA and Sunshine, together form the basis for an open government.

Today, the OIP plays a significant role in an open government's comprehensive legal framework, and 13 years after the UIPA went into effect, the OIP can look back on a long period of growth and leadership in creating an open government in Hawaii. During this time, the OIP has worked to institutionalize an open government by educating, providing quick legal advice, and setting clear legal standards.



Education

In 1988 the OIP began to educate government agencies and the public about the new law. Ten years later, in 1998, the OIP launched its web site, posting information and guidance there for both government employees and members of the public. As the OIP's resources have continued to shrink, the web site has continued to grow and in the past year alone has seen a 62% increase in visitors. The OIP's presence on the Internet has been a vital part of an ongoing effort to educate government and the public across the state, given the OIP's small staff and limited resources.

Quick Legal Advice

The OIP has kept an “open door” policy by providing quick legal advice through its telephone advice service (“Attorney of the Day”) for both members of the public and members of government, and through published formal opinion letters and guidance.

Clear Legal Standards

A critical goal was the elimination of the “bottleneck” created by agencies waiting for the OIP to tell them what to do. The OIP achieved this goal by adopting two administrative rules which set out the procedures agencies must follow and the fees that the agency may charge under the UIPA.

Now, all agencies are required to respond to requesters within a 10-day period. While an agency may seek advice and guidance from the OIP’s Attorney of the Day, no agency can avoid its responsibility to respond to members of the public.

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Enforcing Open Government: Investigations of Government Agencies

The OIP’s work does help to institutionalize openness, and leadership that advocates an open government strengthens a democracy. But a healthy democracy requires the vigorous enforcement of open government laws. In this area, I conclude that much more work must be done.

Toward this end, the OIP has increased its investigative work. In many instances, the OIP will investigate an agency without a specific complaint because through its monitoring systems, the OIP perceives a pattern of calls or requests about a particular agency that raises significant compliance concerns. However, just as significantly, the OIP has received an increased number of requests to investigate specific agencies.

Through investigations, the OIP determines if a violation has occurred. If there is no violation, we advise both the complainant and the agency in writing. If there is a violation, the OIP puts its conclusions in writing and again advises both parties. The OIP will recommend specific action for the agency to take to ensure that the violation does not occur again.

The agency usually will work with the OIP to ensure that its personnel are properly trained and appropriate procedures are put into place. Once this is done, in most instances, the calls about that agency decrease.

... a healthy democracy requires the vigorous enforcement of open government laws...

The OIP has not yet found circumstances that justify a recommendation to discipline an employee for violations of the law. The OIP, however, has found among government employees a strong reluctance to follow the law because of “inconvenience.”

For example, we have heard that it is not convenient for boards and commissions to provide notice of their meetings within the time frame required by the law.

We have received complaints that when a board is involved in a controversy, and is reluctant to hold its discussions in an open meeting, the board goes into executive session on the slightest pretext.

We have heard complaints that boards go into executive session to discuss complaints about employees, even when those employees want to have those meetings open to the public.

We have discovered that boards do not keep lists of people who want to receive notices of meetings by mail, although it is required by law.

We have heard complaints from government employees and supervisors that the public records law is “humbug” for them because it “interferes” with what they feel is the agency’s primary duty.

We hear complaints from government employees that they should not have to provide a document to the public because that document is available elsewhere.

Attitude of Government Employees

The idea that the work required by an open government is inconvenient confirms the deep and abiding sense on the part of the citizenry that government is not responsive to

the people.

Without a doubt, most government employees are generally supportive of the idea of an open government. But many other employees simply do not care, and when faced with a citizen who has an issue with government, that employee is likely to look for barriers to erect between government and the public.

Although sometimes this attitude arises because government employees are required to do more with fewer resources, much of this attitude simply comes from ignorance of the role the government employee plays vis-a-vis members of the public.

In that regard, the OIP anticipates that the learning curve for new employees of a new administration, in particular the political appointees, will be high.

The OIP believes that members of the public will undoubtedly suffer from the confusion engendered by new employees learning the rules of open government.

When the OIP’s staff attorneys are faced with this attitude, they attempt to explain

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the spirit and letter of the law. Nevertheless, I conclude that the attitude of government employees can be changed only by a systematic effort on the part of the Legislature to ensure that the policy of an open government is carried out. Therefore, the OIP concludes that “openness” will decrease unless the Legislature takes proactive steps to keep government open.

Recommendations



It is clear that state revenues will be affected by the economic difficulties the state faces following the events of September 11, 2001. Nevertheless, I encourage the Legislature to put serious money into solving this problem.

Our society cannot afford to lose an open government. Therefore, I strongly recommend the following:

- **That a specific percentage, or a specific amount, be set aside in each department's budget to comply with the open government laws.**
- **That the Legislature require all government agencies to train, through the OIP, all agency personnel responsible for compliance with the open government laws.**
- **That an association be created of those personnel who are responsible for compliance with the open government laws. This association can provide the structure required to support the training of government employees. A similar association already exists at the federal level.**

Conclusion

Thomas Jefferson wrote out a list of 27 reasons to declare our independence from England. Fourth among those reasons was that the King had kept his records far from the people in the colonies. This declaration in support of public records is the foundation for all American public records laws today. These 27 reasons articulated the frustration felt by the colonists, who lived under a government that was secretive and not responsive to them.

The people who supported our Declaration of Independence knew that there was a heavy price to pay for the freedoms that came with independence. Some of these colonists paid the ultimate price in the War for Independence. As on other days in our nation's history, we were again reminded on September 11, 2001, that the price we pay for our freedoms is always high.

Whether we face wars or terrorists, the people of Hawaii will carry the responsibility to keep our freedoms and to ensure an open government. The OIP will continue to serve and assist the public with that responsibility.

Moya T. Davenport Gray
Director

Executive Summary of the Report

For the past 12 years, the OIP has provided timely legal guidance and assistance to members of the public and government employees. This year the OIP opened 1,245 assignments, and closed 1,247 assigned items. Of these 1,247, the staff attorneys received 965 cases (830 telephone calls for legal advice through the Attorney of the Day service, a duty that rotates among the staff attorneys, and 135 specific written requests for legal assistance).

The remainder of the assignments included reviewing, monitoring, and reporting on 224 legislative items, as well as administrative rules, publications, educational presentations, and research assignments. The remainder of this report will detail most of these items.

As it was last year, more calls for assistance to the OIP are coming from private individuals and not from government agencies, government attorneys, or even the news media. See Tables 4-8 at pages 15-17.

This past year, the OIP opened eight new investigations. Of those, five were related to alleged violations of the Sunshine law and three were related to alleged violations of the UIPA. Requests to the OIP for assistance with open meetings have also steadily increased.

One of these investigations resulted in a formal opinion letter, OIP Opinion Letter Number 00-03. This opinion is reported in the OIP Opinions section of this report, on page 31, rather than the Investigations section.

Education

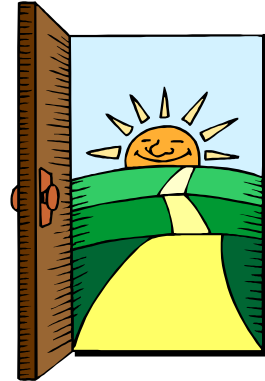
The OIP is mandated by the UIPA to spread the word about the law, and in this spirit the office has devoted considerable time and resources to education and training. Much of that training is done through the Attorney of the Day service. Additionally, the OIP uses its monthly newsletter, *Openline*, to educate agencies and the public.

However, government agencies, both State and county, sporadically request and receive formal training from the OIP's legal team.

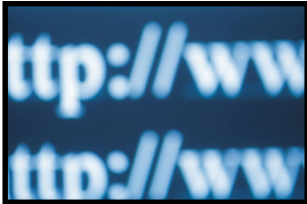
In 1998, the OIP took its educational efforts to cyberspace and launched a web site. In the past three years that site has grown steadily, both in content and in number of visitors. The OIP considers this site to be an educational tool and therefore makes a concerted effort to ensure that people have access to as much information as possible.

At this site, government employees and members of the public can

- read the law and the rules,
- receive general guidance for commonly asked questions,
- download and use model forms for record requests,



- conduct legal research for relevant opinion letters,
- read the current and past issues of the *Openline*,



- access the OIP's annual report, and
- link to related sites.

Visitors to the web site have increased by 62% over the previous year. With limited staff and resources, the OIP continues to look to its web site to carry a large part of the educational load for the agency. For more information about the site, see page 43 of this report.

Records Report System

As required by the UIPA, government agencies report the types of records they maintain and, among other items, whether these records are public in their entirety, partially confidential or conditionally accessible, or completely confidential. Again, the agencies are reporting that 16% of the records are completely confidential, 59% totally open to the public, and 21% partially confidential.

Case Summaries

As in the past, the OIP has prepared summaries of some of the cases it has dealt with in the past year. These begin on page 20.



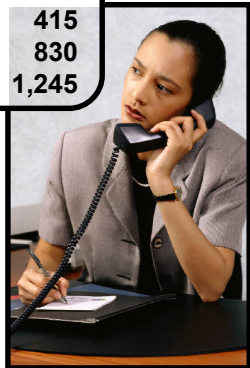
Highlights of the OIP's Work in Fiscal Year 2000-2001



Requests for Assistance, Guidance, and Opinions

Requests - FY 2001

Written Requests	415
Telephone Requests	830
TOTAL	1,245



The OIP receives numerous requests for legal assistance. Depending upon the nature of the question, the OIP staff attorneys will handle the requests by providing immediate legal advice on the phone, or by writing informal or formal published letters.

The OIP staff attorneys also provide assistance when clarification or mediation is appropriate.

Telephone Requests for Assistance

The OIP's Attorney of the Day service is a valuable resource for our community. The Attorney of the Day service is the fundamental resource used by government agencies. Rather than struggle with uncertainty regarding a record request, the agencies phone the OIP early in the process to ask for guidance and assistance in responding to the request.

Most of the agency questions are answered during that first call, saving everyone time and ensuring a timely response to requests. Other questions require study and research. If necessary, the OIP staff attorney examines the

records involved, researches the issues, and applies the law.

When a member of the public phones the OIP's Attorney of the Day, the caller is usually seeking assistance because a government agency employee won't give out a public record, or the caller wants to know what his or her rights are.

Often the OIP works with both the requester and the agency to resolve issues inherent in the request. Numerical summaries of the telephone calls received by the OIP staff attorneys are found on pages 12-17. Case summaries of some of these calls begin on page 20.

Requesters

Telephone requests to the OIP remained high in FY 2001. The OIP received a total of 830 requests for assistance, including 108 e-mail requests. Of the 830 telephone requests, 57% came from members of the public, 34% from government agencies, and 9% from government attorneys, as detailed in **Chart 1** below.

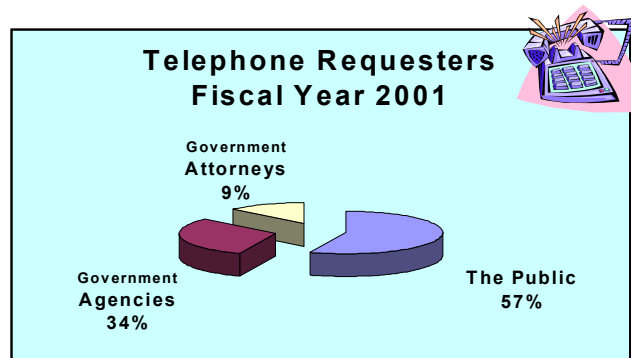


Chart 1

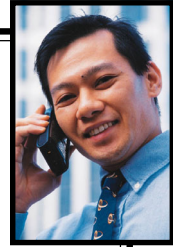
Telephone calls and e-mails from the public continued an upward trend begun in 1998. As shown in **Table 1**, inquiries from the public have risen every year since 1998, when there were 301 public inquiries. Since then, the number of inquiries has jumped to 469 telephone calls and e-mails in 2001.

As in the recent past, the largest group of calls from the public came from private individuals. Of the 469 calls from the public, 224 calls, or 48%, came from private individuals. Business made up 17% of the calls, private attorneys 12%, health providers (regarding informational privacy) 10%, and the news media 5%. See **Table 2** for details.

Alternatively, requests for assistance calls from government agencies have continued to decrease from a high of 2,246 requests in FY 1996 to the low of 214 requests in FY 2001.

In FY 2001, state and county government agencies comprised 34% of the calls for assistance. The remaining 9% of calls, or 147 requests, came from government attorneys, down from a high of 218 in FY 2000.

Telephone Requests from the Public FY 2001



Number of Callers	Types of Calls
Private Individual	224
Business	83
Private Attorney	59
Health Provider	46
Newspaper	16
Hospital	10
Public Interest Group	9
Television	4
Magazine	3
Plan	2
Radio	1
Other	12
TOTAL	469

Table 2

Telephone Requests

Fiscal Year	Total	Public	Government Agencies	Government Attorneys	E-Mail
FY 01	830*	469	214	147	108
FY 00	874*	424	232	218	68
FY 99	733*	336	314	83	71
FY 98	872	301	436	135	
FY 97	840	319	456	65	
FY 96	1,626	456	1,170		
FY 95	2,826	580	2,246		
FY 94	1,452	658	794		
FY 93	1,313	495	818		
FY 92	1,358	431	927		
FY 91**	665	254	411		

* Total includes e-mail requests.

** Data available for only half of FY 91.

Table 1



Government Agencies' Calls to the OIP FY 2001

<i>Jurisdiction</i>	<i>Number of Calls</i>
State Executive	116
State Legislature	29
State Judiciary	8
County Executive	40
County Council	7
Federal Agency	3
Unspecified Agency	11
TOTAL	214

Table 3

For a full breakdown of telephone requests from government agencies received in FY 2001, see **Table 3**.

Telephone Requests About Agencies

In addition to tracking the type of requester, the OIP also monitors which government agencies are involved when callers need assistance. This helps the OIP evaluate problems with access to government records.

State Agencies

In FY 2001, the OIP received a total of 401 telephone inquiries concerning State agencies, down from 530 inquiries in FY 2000.

About half of this year's calls concerned eight agencies: Health (38), Office of Information Practices (36), Education (24), Attorney General (22), Commerce and Consumer Affairs (20), University of Hawaii (20), Land and Natural Resources (19), and Lieutenant Governor (19). For the complete list, please refer to **Table 4** on page 15. Most of the 36 calls relating to the OIP were inquiries about the OIP's work.

The OIP received 25 calls about the legislative branch of State government, 14 calls about the judicial branch, and 12 calls about the Office of Hawaiian Affairs.

County Agencies

The OIP received 98 calls for assistance concerning county agencies. Almost half of these calls (45) concerned City and County of Honolulu agencies. Of these, the largest number (18) concerned the Honolulu Police Department.

The OIP received 53 calls for assistance concerning the other three Hawaii counties: 25 calls about Hawaii County agencies, 20 about Maui County agencies, and 8 about Kauai County agencies. Refer to **Tables 5-8** on pages 16 and 17 for details.

Public Calls to the OIP About State Government Agencies - FY 2001



Executive Branch Department	Requests
Health	38
Office of Information Practices	36
Education (including Public Libraries)	24
Attorney General	22
Commerce and Consumer Affairs	20
University of Hawaii System	20
Land and Natural Resources	19
Lieutenant Governor	19
Human Services	16
Agriculture	14
Business, Economic Development, and Tourism	13
Labor and Industrial Relations	11
Transportation	11
Budget and Finance	9
Accounting and General Services	7
Taxation	7
Public Safety	6
Human Resources Development	3
Defense	2
Governor	2
Hawaiian Home Lands	0
TOTAL EXECUTIVE	350
TOTAL LEGISLATURE	25
TOTAL JUDICIARY	14
Office of Hawaiian Affairs	12
TOTAL STATE AGENCIES	401

Table 4



**Public Calls to the OIP About
City and County of Honolulu
Government Agencies - FY 2001**

Department	Requests
Police	18
Neighborhood Commission	6
Budget and Fiscal Services	2
City Council	2
Customer Services	2
Human Resources	2
Mayor	2
Board of Water Supply	1
Community Services	1
Corporation Council	1
Design and Construction	1
Emergency Services	1
Environmental Services	1
Planning and Permitting	1
Prosecuting Attorney	1
Transportation Services	1
Unspecified	2
TOTAL	45

Table 5



**Public Calls to the OIP About
Hawaii County
Government Agencies - FY 2001**

Department	Requests
Police	14
Mayor	2
Research and Development	2
Civil Defense	1
Corporation Counsel	1
Finance	1
Fire	1
Parks and Recreation	1
Prosecuting Attorney	1
Unspecified	1
TOTAL	25

Table 6

**Public Calls to the OIP About
Kauai County
Government Agencies - FY 2001**



Department	Requests
Police	3
County Attorney	2
County Council	1
Finance	1
Planning	1
TOTAL	8

Table 7

**Public Calls to the OIP About
Maui County
Government Agencies - FY 2001**



Department	Requests
County Council	13
Corporation Council	2
Liquor Control	1
Personnel Services	1
Police	1
Water Supply	1
Unspecified	1
TOTAL	20

Table 8

Written Requests

About a third of the requests for assistance come to the OIP in written format. Again, depending upon the nature of the question, the staff attorneys will respond with an opinion.

Informal opinion letters are sent to the parties, and maintained as public records at the OIP's office. Formal published opinion letters are distributed to:


- Holders of the UIPA Reference Manual,
- WestLaw,
- Michie, for annotation in the Hawaii Revised Statutes, and
- The Hawaii State Bar Association, for posting online at the HSBA website.

A link to the opinions posted on the HSBA web site is also available through the OIP's site at www.state.hi.us/oip.

Summaries of some of the informal opinion letters are found beginning at page 20. Summaries of the formal opinion letters appear in the OIP's monthly newsletter, *Openline*, and in this report on page 31.

In FY 2001, the OIP received 415 written requests for assistance. Please see **Table 9** for the breakdown on the various types of written requests.

Also in FY 2001, the OIP opened eight investigations: five investigations of Sunshine Law violations, and three concerning the UIPA. The OIP is also tracking three new litigation cases: one related to the Sunshine Law, and two to the UIPA.



<i>Type of Request</i>	<i>Number of Requests</i>
Legislative	224
Correspondence	63
Request for Assistance	51
Request for Opinion	21
UIPA	17
Investigation	11
Litigation	7
Administrative Matters	21
Total Written Requests	415

Table 9

Sunshine Report

During FY 2001, the OIP received 61 telephone inquiries regarding the Sunshine Law and its application in specific circumstances. These inquiries jumped 7% above the total in FY 2000. In addition, the OIP opened 15 case files in response to written requests for assistance. This represents a 50% increase from FY 2000. See **Table 10** on this page.

Since the law's passage in 1998, the OIP has seen steady increases each year in the number of requests related to the Sunshine Law. In FY 1999 there were 51 telephone requests and 5 written requests for assistance. The numbers increased in FY 2000 to 57 telephone requests and 10 written requests.

The continued rise in requests for assistance indicates that while the public has increased its awareness of the Law and its requirements, government has failed to keep pace, thus prompting an increased demand for the OIP's assistance. To help government understand the complexities of the Sunshine Law, the OIP continues to provide annual training to various board and commission members.



Sunshine Law Inquiries

<i>Fiscal Year</i>	<i>Telephone Inquiries</i>	<i>Written Inquiries</i>
2001	61	15
2000	57	10
1999	51	5

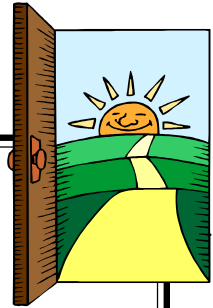


Table 10

Case Summaries and Opinion Letters

The following are summaries of legal advice and guidance provided by the OIP staff attorneys by way of the Attorney of the

Day service, informal opinion letters, or formal published opinion letters.



During the past five years, from FY 1997 through FY 2001, the OIP received a large number of requests for assistance and opened an average of 374 new cases per

year. The OIP opened 277 new cases in FY 1997, 343 in FY 1998, 456 in FY 1999, 403 in FY 2000, and 391 in FY 2001.

The OIP worked steadily in the past five years to answer many of these informal and formal requests for assistance. In FY 2001, the OIP staff reviewed and closed 417 pending assignments.

Audio Tape Recordings of District Court Trials

A member of the public sought the OIP's assistance in obtaining audio tape recordings of district court trials. The UIPA governs all State and county agencies, but not the nonadministrative functions of the courts. Haw. Rev. Stat. § 92F-3 (1993). The UIPA, therefore, governs only records that pertain to administrative functions of the courts.

The OIP concluded that audio tapes of trials are not part of the administrative functions of the courts. The OIP has no jurisdiction to advise on the public nature of the audio tapes, and referred the requester to the Office of the Administrative Director of the Courts for further assistance on the public nature of nonadministrative records of the courts.

Limited Meetings Under the Sunshine Law

A county council wanted to conduct a meeting on Kaho'olawe, and wanted to invoke the limited meeting provision in section 92-3.1, Hawaii Revised Statutes. This provision of law allows a board or commission that is subject to the Sunshine Law to conduct a meeting that is not open to the public because the board or commission has determined that the location of the meeting is dangerous to health or safety. This section also requires that the Attorney General concur with this determination.

As the OIP has jurisdiction over the Sunshine Law, the council's attorney asked whether the OIP must also be consulted. On this matter, the OIP advised it will defer to the Department of the Attorney General because the Attorney General has specific statutory discretion to concur with the determination for the limited meeting.

Government Records Online

A county department advised that its administration was instituting a policy to put all public records online. A neighborhood board complained about this policy. The OIP advised that there is nothing illegal about putting records that are entirely public up on the Internet. The OIP's concern, however, is that having lots of different types of information available online could allow someone to

profile others and to compile information about others using information collected elsewhere. These profiles could then be used to commit crimes, steal identities, and invade privacy.

The OIP recommends that government agencies intending to post information online consider the impact of posting online public record information and how it could be used along with other information already in the public arena.

Use of Information Compatible with the Reason for Which it Was Collected

A high-ranking government official wanted a list of the names of government employees, and their months and days of birth, in order to send out birthday cards. An agency maintaining this information asked whether disclosure was proper.

The OIP advised that under section 92F-19, Hawaii Revised Statutes, when one agency shares information with another, the receiving agency's expected use of that information should be compatible with the purpose for which it was collected. The OIP was not convinced that sending birthday cards was an expected use of employee birth dates, and suggested instead that cards be sent out to commemorate anniversaries of service, since dates of employment of government employees are public.

Vexatious Requesters

A member of the public made a record request to an agency. The agency advised that it would be responding within ten business days in accordance with the OIP's administrative rules. The requester thereafter called and

emailed several times each day to ask for the same record. The agency felt it was being harassed and asked the OIP whether this could be considered a vexatious request, and whether it had to respond to each subsequent request for the same record when it had not yet had a chance to address the first request. A vexatious request is one that is not bona fide, but is done to annoy or embarrass.

The OIP advised that the agency should determine whether the requester was indeed making multiple requests for the same record, or was contacting the agency to check on the status of the original request. Other jurisdictions have addressed the issue. The OIP has not yet been asked to opine on what constitutes a vexatious requester under the UIPA.

Police Records of Suicide

An insurance company called to ask whether police records of a person's attempted suicide, and later successful suicide, would be public. The caller also wanted to know who would make the final decision as to whether the records were public.

The OIP advised the caller that government records are generally public unless an exception applies. In the case of police records of a suicide, members of the suicide victim's family may claim a privacy interest in the records. Additionally, a law enforcement agency may claim that the exception for frustration of a legitimate government function applies if disclosure of the records interferes with an ongoing law enforcement investigation.

The OIP advised the caller to first make a formal request for the records. If an agency denies a request or fails to respond, the requester can either contact the OIP for assistance, or go to court seeking access to the records (and notify the OIP of the lawsuit).

Confidential Information on Affordable Housing Screening Forms

A county agency called to inquire whether a form containing the names, home addresses, and financial information of people applying for affordable housing can be disclosed upon public request. The caller also asked whether it would be correct to say on the form that the information will be held confidential unless required to be disclosed by law or by court order.

Based on OIP Opinion Letter Number 94-4 and Number 92-11, the OIP advised the caller that home addresses and financial information should be withheld because their disclosure would be a clearly unwarranted invasion of privacy. Information in which a person has a significant privacy interest should not be disclosed unless the public interest in the information outweighs the privacy interest. Section 92F-14(b)(3), Hawaii Revised Statutes, protects names in this instance. It is correct to say on the form that information will be held confidential unless required to be disclosed by law or by court order.

Personnel Files for a Candidate for Public Office

A county agency was asked by a newspaper for the personnel files of a terminated employee who was subject to an ongoing disciplinary proceeding. Section 92F-14(b)(4), Hawaii Revised Statutes, states that an employee has a significant privacy interest in information related to ongoing disciplinary proceedings. Nonetheless, the newspaper argued that the public interest outweighed the employee's privacy interest because the employee was a candidate for public elective office.

The OIP advised the caller that the fact that the employee was a candidate for office did not make the public interest in the employee's personnel file so great as to outweigh the employee's significant privacy interest in the information. The agency should disclose the information permitted by section 92F-14(b)(4)(B), Hawaii Revised Statutes, only after the conclusion of the disciplinary proceeding.

Requests for 911 Call Transcripts

A county agency asked whether a transcript of a 911 emergency call should be disclosed to a public requester, with personal information redacted. The call in question related to an ongoing law enforcement investigation and a potential criminal proceeding. In the event of a criminal proceeding, the call transcript might be prejudicial to the accused.

The OIP advised that parts of the 911 call could fall under the exception for frustration of a legitimate government function, section 92F-13(3), Hawaii Revised Statutes. OIP Opinion Letter Number 95-21 and Number 98-5 set out general rules for when information can be withheld under the frustration of a legitimate government function exception based on its potential interference with a law enforcement investigation or with an accused's right to a fair trial.

The OIP also advised the caller that it could withhold information, such as personal information about witnesses, if disclosure of that information would be a clearly unwarranted invasion of privacy.

Information about Former Employee Requested by Prospective Employer

A county agency receives many requests from prospective employers for information on former employees. Some of the information is mandated to be public under section 92F-12(a)(14), Hawaii Revised Statutes, but other information would not normally be disclosed: for instance, whether the agency would re-employ the former employee.

The agency wanted to know when it could disclose private information about a former employee to the employee's prospective new employer. The agency also wanted to know what it could tell the prospective employers to explain why the agency could not provide information as freely as a private sector employer might.

The OIP advised the agency that section 92F-12(b)(1), Hawaii Revised Statutes, allows an agency to disclose private information about an employee with the employee's written consent. Absent written consent, the agency should not disclose information the disclosure of which would be a clearly unwarranted invasion of personal privacy, such as medical and financial information.

Agency Expense for Converting Records to Electronic Form

A state agency was considering putting records of its decisions into electronic form, to be stored on a computer disk. The records were already publicly available in paper form. The agency intended to make the electronic copies of the records available to the public on computer disks. However, the agency's primary reason for converting the records to electronic form would be for the agency's own convenience. The agency asked the OIP whether its charges to the public for electronic

copies of the record could include a charge for the agency's cost of converting the records to electronic form.

The OIP advised the agency that if the agency chose to maintain its records in electronic form, then it should not seek to pass on to requesters the cost of maintaining the records in that form. The agency may charge fees for staff time for search, review, and segregation of a record under section 2-71-31, Hawaii Administrative Rules.

In addition to charges for search, review, and segregation, an agency may charge copy fees and other lawful fees. Section 92-21, Hawaii Revised Statutes, which the OIP does not have jurisdiction to interpret, sets copy fees for paper copies and for geographical information system digital data. That statute does not address copies of other electronic records.

In the absence of statutory guidance, the OIP recommended that the agency charge its actual cost of copying a record maintained in electronic form.

Newsletter Sent to Employees' Home Addresses

A state agency wanted to send a newsletter to employees at their home addresses. Because the agency knew that employees' home addresses are typically considered private and should not be publicly disclosed, the agency was concerned that it would violate the UIPA by sending the newsletter to employees at home.

The OIP advised the agency that although employees' home addresses would typically be withheld from public disclosure under the unwarranted invasion of personal privacy exception, the agency's own use of its employees' addresses to carry out a

legitimate function is not a public disclosure. Distributing an employee newsletter is a legitimate agency function. The agency can send its newsletter to employees at their home addresses.

Dealing With a Broad Request

A state agency received a request for everything the requester had ever sent the agency, every response the agency had ever made to the requester, and correspondence between the agency and other agencies. Responding to such a broad request would require the agency to search all its correspondence files. The agency asked the requester to clarify his request by specifying the time periods he was interested in. The requester declined to do so, explaining that the reason for his request was that he did not know when he might have corresponded with the agency.

The agency then asked the OIP what its next step should be: should it deny the request based on the requester's failure to clarify, or should it estimate the very large fee for the staff time required to perform the broad search and send the requester a bill for prepayment of half that fee before starting to search?

The OIP advised the agency that if a requester is unwilling or unable to clarify a request, the agency's next step depends upon whether it is possible to search for the records as requested. Where it is possible to do the search, even though the search would be broad, ***the agency should not simply deny the request***. Instead, the agency should calculate its estimated fees for the staff time required to search for, review, and segregate the requested records (less the \$30 waiver to which a requester is entitled). The agency may require prepayment of half those fees.

It thus becomes the requester's choice whether to pay those fees, narrow the request, or even to abandon the request. The choice, however, should remain with the requester, and not with the agency.

Background Checks for Military Recruits

A county law enforcement agency receives many requests from private investigators for police reports, arrest records, and other law enforcement records regarding military recruits. The private investigators conduct background checks under contract to the federal Department of Defense (DOD).

A federal statute, 5 U.S.C. § 9101, requires state and county criminal justice agencies to give criminal history information to the DOD, among others, for background checks on persons being considered for access to classified information or for positions involving national security.

The county agency asked the OIP whether it was required to provide this information, some of which would otherwise be non-public, regarding military recruits. The agency also asked whether it could charge fees for providing the information.

The federal statute requires that the DOD obtain a written consent from everyone whose background is to be checked. The DOD confirmed to the OIP that it contracts background checks to private investigators. The DOD requires the private investigators to show their credentials when conducting background checks, and to provide copies of the consents if requested.

Therefore, the OIP advised the county agency to require the private investigators conducting DOD background checks to show their credentials and, for each background check,

the subject's written consent. When an agency has a person's written consent to release private information, then the UIPA requires the agency to release the information.

Under the UIPA, the purpose of a request does not matter, so whether the military recruits are likely to handle classified information is irrelevant.

The OIP advised the county agency that it could charge the fees permitted by the OIP's rules under the UIPA. However, because the federal statute requires that fees charged for federal background checks be no more than would be charged to a state or county non-law enforcement agency for the same information, the county agency should not charge higher fees than it charges to state or county non-law enforcement agencies.

Board Interviewing by Telephone

A board subject to the Sunshine Law wanted to interview a contractor on the mainland. The board asked whether the Sunshine Law required that the interview be done by videoconference, or whether it could be done by telephone conference.

The OIP recommended conducting the interview by videoconference as a good practice, because it would be easier for the board members and the public to see and hear who was talking. The OIP advised, however, that interviewing a contractor by telephone conference would not violate the Sunshine Law.

Section 92-3.5, Hawaii Revised Statutes, which permits open meetings by videoconference, requires that all participating board members, and all members of the public attending the meeting, have audiovisual interaction from any videoconference location.

The focus, therefore, is on ensuring (1) the effective "presence" of all board members in attendance, and (2) effective public access from any videoconference location. This carries out two basic Sunshine Law requirements for a valid meeting: (1) the presence of a quorum of board members, and (2) public access to the meeting.

The Sunshine Law does not bar a board from hearing from another person, not a board member, by telephone during a non-videoconference meeting. The presence (or not) of a remote third person does not affect the validity of the meeting.

Similarly, a board could accept written testimony, or play an audiotape recording, from someone not present. The videoconference statute does not change that ability for a videoconference meeting. The statute requires an audiovisual connection for board members and for members of the public attending at any of the videoconference locations specified in the notice of the meeting, but it does not bar the board from soliciting testimony or otherwise speaking by speakerphone to a non-board member at a non-videoconference location.

Property Tax Records

A requester sought the OIP's opinion as to whether property tax records were public. The UIPA sets forth a list of records, or categories of records, which must be made available for inspection and copying as a matter of law. Haw. Rev. Stat. § 92F-12 (1993). The list contains land ownership records and real property tax information. Haw. Rev. Stat. § 92F-12(a)(5)(1993).

It is clear from the plain language of the statute, and the legislative history of the UIPA, that the Legislature intended ownership records, including real property tax information, to be accessible to the public.

In addition, the OIP reaffirmed its previous finding, that records enumerated in section 92F-12(a), Hawaii Revised Statutes, must be disclosed in their entirety without segregation of any information in which individuals may have a privacy interest. OIP Op. Ltr. No. 89-8 (Nov. 20, 1989).

Job Classification Audit Reports

A director of a county department asked the OIP's opinion regarding the disclosure of a job classification audit report ("Report") to the employee whose position was subject to the audit.

After reviewing the Report *in camera*, the OIP determined that it was a personal record. A personal record is defined at section 92F-3, Hawaii Revised Statutes, in part as any item, collection, or grouping of information about an individual. As requests for personal records are governed by part III of the UIPA, the OIP asked the agency whether it claimed any of the exemptions to the disclosure of personal records, as set forth in section 92F-22, Hawaii Revised Statutes.

The OIP concluded that unless the Report fell within one of the exemptions to disclosure, the Report (a personal record of the employee whose position was the subject of the audit) should be disclosed by the agency to the requesting employee.

Teacher Credentials

A principal of a state elementary school received a request from a parent for records that reflect a particular teacher's education and certification background. The principal asked the OIP's opinion on whether this type of information regarding the teacher must be disclosed upon request.

The UIPA sets forth a list of records, or categories of records, which must be made available for inspection as a matter of law. Haw. Rev. Stat. § 92F-12 (1993). Section 92F-12(a)(14), Hawaii Revised Statutes, specifically makes public the education, training background, and previous work experience of present or former officers or employees of an agency.

The OIP concluded that the information the parent requested fell within section 92F-12(a)(14), Hawaii Revised Statutes, and therefore the UIPA mandates disclosure of the requested records.

Requests for Copies of "Unofficial" Records

A member of the public requested the OIP's assistance in obtaining government records maintained in an outlying district office of a county agency. The county agency maintained that the district office records were incomplete and often were just copies of the official record maintained at the agency's main office.

According to Agency Procedures and Fees for Processing Government Record Requests, section 2-71-18(a), Hawaii Administrative Rules, "[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" [emphasis added]. In OIP Opinion Letter Number 94-29 the term "maintain" is defined to include information possessed or controlled *in any way* by an agency.

The OIP concluded that the outlying district office should make available to the public for inspection and copying, the government records it maintains, subject to the exemptions and exceptions of the UIPA.

The OIP also noted in this case that it is within the discretion of an agency to determine who within the agency makes the decisions as to what items of information should be withheld or disclosed.

Disclosure Subject to Computer Programming Fee

A non-profit agency requested OIP assistance when a government agency quoted the requester a sizable fee for the hiring of a programmer to produce an ad hoc report that reflected the information sought by the requester.

According to Agency Procedures and Fees for Processing Government Record Requests, section 2-71-31(a)(3), Hawaii Administrative Rules, an agency may charge the “actual rate of charge, based upon time expenditure, that is charged to the agency by a person other than the agency for services to assist the agency in the search for the records.”

As the OIP’s administrative rules allow for such fees to be charged, the requester was informed of other options that might be less costly.

Disclosure of Minutes From Executive Meetings

A member of the news media wanted to know if Hawaii’s Sunshine Law allowed a county council to meet in executive session to consider the hiring of a person, and whether the minutes of the executive session would be public.

According to section 92-5(a)(2), Hawaii Revised Statutes, a board is permitted to hold a meeting closed to the public when considering the hire, evaluation, dismissal, or discipline of an employee. However, if the

individual concerned requests an open meeting, a meeting must be held that is open to the public. Haw. Rev. Stat. § 92-5(a)(2) (Supp. 2000).

Finally, while a board must take minutes during an executive session, the minutes produced from that session may be withheld for as long as their publication would defeat the lawful purpose of the executive session, **but no longer**. Haw. Rev. Stat. § 92-9(b) (1993).

Meeting with the Mayor of Honolulu

The OIP received a request to investigate, for possible Sunshine Law violations, a meeting allegedly held between four Neighborhood Commissioners and the Honorable Mayor Jeremy Harris. The OIP continues its investigation into these allegations.

Improper Meeting Notice

The OIP was asked to determine whether a meeting called by the Department of Transportation’s (“DOT”) Airport Division was subject to the notice requirement of section 92-7, Hawaii Revised Statutes, of the Sunshine Law.

The OIP asked the DOT’s Airport Division what notice it provided prior to holding the meeting. The DOT Airport Division provided the OIP with documentation supporting its position that the body calling the meeting was not a board subject to Sunshine notice requirements.

The OIP was in the process of analyzing the documentation to determine whether the Airport Division body that called the meeting was a board subject to Sunshine notice requirements, when the requester decided to pursue this matter in court. As the requester chose an alternate route to pursue his claim, the OIP has closed this file. The OIP will monitor the litigation of this case.

Reconvening of Recessed Meetings Under the Sunshine Law

A county corporation counsel asked the OIP for its interpretation of the Sunshine Law regarding meetings that a board recesses and then reconvenes.

The Sunshine Law is silent as to how a meeting may be continued, and only provides that “[i]tems of reasonably major importance not decided on at a regularly scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.” Haw. Rev. Stat. § 92-7 (Supp. 2000).

The OIP routinely advises boards subject to the Sunshine Law that: (1) they need not publish notice for continued meetings; (2) continued meetings should discuss only agenda items from the original meeting; and (3) the time, place, and location of the continued meeting should be clearly stated at the original meeting prior to its adjournment.

The OIP also noted that a board generally should not continue a meeting if the continuation would reduce public participation in a controversial matter.

Meeting Minutes

The OIP received a request for assistance from a member of the public to obtain copies of all minutes for the Felix Operations Management Team (“OMT”) meetings and executive session meetings for a specified period of time.

The OIP contacted the Felix Inter-Departmental Coordinator at the Attorney General’s Office to inquire into the disclosure of meeting minutes. The Felix Coordinator disclosed the meeting minutes and confirmed in writing that the OMT held no executive session meetings during the time period requested by the member of the public.

Permitted Interactions of Members

A director of a Hawaii non-profit organization requested the OIP’s assistance in determining whether a particular Hawaii Tourism Authority (“HTA”) meeting violated section 92-2.5, Hawaii Revised Statutes. The director of the non-profit organization also requested assistance in obtaining minutes, agendas, and other records from the HTA meeting that allegedly violated the Sunshine Law.

While the HTA provided all of the documentation requested by the non-profit director, it maintains that the meeting held was merely a committee meeting allowed as a permitted interaction of members under section 92-2.5, Hawaii Revised Statutes. The OIP is currently reviewing the HTA’s position to determine whether the HTA violated the Sunshine Law.

Closed Door Meeting

A non-profit corporation asked the OIP to investigate alleged violations of the Sunshine Law by the Maui County Board of Water Supply. The non-profit corporation, however, informed the OIP at the time of its request that the corporation had already initiated a lawsuit on this matter.

Therefore, the OIP will monitor the litigation until its resolution. Once the court resolves the issues before it, the OIP may then investigate matters not heard by the court or that remain unresolved at the conclusion of the litigation.

County Council Hosting Legislature

The OIP received a request from a county council for guidance on whether a reception for State legislators, hosted by the county council and the mayor, is subject to the Sunshine Law.

The OIP advised that the reception did not appear to be a meeting requiring compliance with the Sunshine Law because the intent was to discuss matters over which only the Legislature had jurisdiction and not the county council.

The OIP warned the council, however, that members should take great care not to discuss matters over which the council has any supervision, control, jurisdiction, or advisory power. The OIP also recommended that the reception be open to the public and the media.

University of Hawaii Board of Regents Minutes

A member of the public asked the OIP for assistance in obtaining minutes from the University of Hawaii Board of Regents meetings and the board's committee meetings since February 2000, in which the salary of the University of Hawaii ("UH") President was discussed.

The OIP contacted UH's general counsel, and all minutes that were responsive to the record request were thereafter disclosed.

Identification of Testifiers before County Council

The OIP received a request from a county corporation counsel for assistance in determining whether a county council may require that individuals identify themselves in their written and oral testimony before the council.

The OIP was also asked to determine whether section 92-3, Hawaii Revised Statutes, permits a county council to refuse to accept anonymous oral or written testimony. The OIP has not yet completed its review of the issues.

Potential Use of the Executive Session by a Board

A county corporation counsel asked the OIP for an opinion on whether section 92-5, Hawaii Revised Statutes, permits a board to receive, consider, and investigate charges brought by the public against an employee in a closed session.

Section 92-5(a)(2), Hawaii Revised Statutes, generally provides that a board may hold a meeting closed to the public to consider dismissal or discipline of an officer or employee, or charges brought against the officer or employee, where consideration of matters affecting privacy will be involved. The OIP has not completed its review of the issues.

Board Determination I

The OIP received a request from a member of the public to determine whether the Hawaii High School Athletic Association is a State agency and therefore subject to the Sunshine Law and the UIPA. The OIP has not yet completed its review of the issues.

Board Determination II

The OIP received a request from a member of the State Senate to determine whether the Maui Interscholastic League (“MIL”) is subject to the Sunshine Law. The Superintendent of the Department of Education has responded to the OIP’s request for information about the MIL. The OIP has not yet completed its review of the issues.

Board Determination III

The OIP received a request from a member of the public to determine whether the Hawaii Firearms Control Commission is subject to the Sunshine Law. The OIP closed this file after numerous attempts to contact the requester failed.

OIP Opinions 2000-2001

OIP Opinion Letter No. 00-03 **Historic Preservation Records** **Public**

A requester made several requests for records of the Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”), over the course of several months. SHPD provided some records, and indicated that others were not maintained. At least 27 written requests for records, however, were not responded to in accordance with the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”) and OIP administrative rules.

The OIP attempted several times to elicit information from SHPD on the reasons for its nondisclosure. Finally, the OIP opined that since no information was presented to show that any of the information requested was not public, SHPD should allow the requester to make an appointment to come in and view the requested information, and if asked, SHPD should provide the requester with copies of the requested records.

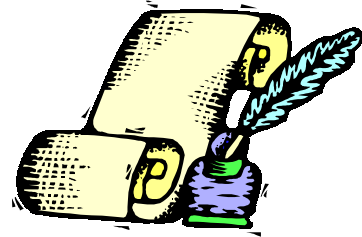
[OIP Op. Ltr. No. 00-03, Oct. 31, 2000]

OIP Opinion Letter No. 01-01 **Sunshine Law Applied to** **Neighborhood Vision Teams**

In Opinion Letter Number 01-01, the OIP construed an ambiguity in the Sunshine Law liberally to carry out the Sunshine Law’s purpose of ensuring that government

processes remain open to the public. The Sunshine Law, or open meetings law, is found in part I of chapter 92, Hawaii Revised Statutes.

The OIP concluded that the neighborhood Vision Teams, created by the Mayor for the City and County of Honolulu, could be considered “boards” covered by the Sunshine Law, and as such should provide public notice and keep minutes of their meetings.



However, given the peculiar nature of membership in a Vision Team, participants are Vision Team “members” only when they are actually attending a Vision Team meeting. For this reason, when outside of the Vision Team meetings, Vision Team members are not required to restrict their interactions or otherwise act as board members.

The OIP also concluded that Neighborhood Board members, who are elected and are clearly subject to the Sunshine Law, are permissibly restricted in their ability to attend and participate in Vision Team meetings where official business of the Neighborhood Board is discussed.

To resolve concerns about the inability of Neighborhood Board members to participate in Vision Team meetings and thus gather information about issues of concern to the Neighborhood Boards, the OIP

recommended that the Neighborhood Boards jointly notice their meetings with the relevant Vision Team meetings.

The OIP opined that if a Vision Team meeting is not noticed as a Neighborhood Board meeting, and official Neighborhood Board business is discussed there, two or more members of a particular Neighborhood Board may attend the meeting only through a “permitted interaction” provided by the Sunshine Law.

Specifically, the Neighborhood Board members should be assigned pursuant to section 92-2.5(b)(1) and (2), Hawaii Revised Statutes, and only a number fewer than the number of members that constitutes a quorum of the Neighborhood Board may attend.

The OIP recommended that if two or more Neighborhood Board members attend a Vision Team meeting in their individual capacities (i.e., they have not been “assigned,” and the meeting was not noticed as a Neighborhood Board meeting) and matters are raised that are pending or are likely to come before their board, they should, as a matter of caution, excuse themselves from the meeting, or at least refrain from commenting.

[OIP Op. Ltr. No. 01-01, April 9, 2001]

an ordinance to make records confidential would be effective only to the extent that it was consistent with the UIPA.

Records that fall within the categories of public records set forth in section 92F-12, Hawaii Revised Statutes, including “real property tax information,” must be disclosed without exception. Records that are not within the categories subject to mandatory public disclosure are presumed to be public, but may be shown to fall within an exception to public disclosure under section 92F-13, Hawaii Revised Statutes.

Should an agency believe that a record not subject to mandatory disclosure falls within an exception to disclosure, the agency has the legal responsibility to justify non-disclosure of those records.

[OIP Op. Ltr. No. 01-02, April 12, 2001]



OIP Opinion Letter No. 01-02 **Real Property Tax Information** **Made Confidential By Ordinance**

In Opinion Letter Number 01-02, the OIP addressed a proposed bill for an ordinance to make certain tax assessment records of the City and County of Honolulu confidential. Ordinances that make records confidential are not recognized under the legislative policy established by the UIPA. Thus,

Investigations

The OIP often receives requests to investigate certain agencies. Some of the requests for investigations are subsequently withdrawn by the requester. However, where the OIP determines that there appears to be merit to the allegations, the OIP will continue the investigation.

One investigation resulted in the issuance of a formal opinion letter. See OIP Opinion Letter Number 00-03 in the OIP Opinions section of this report. Here are summaries of a few of the complaints received.

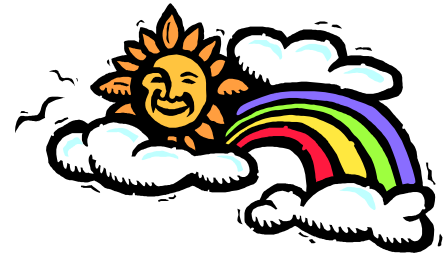
State Foundation on Culture and the Arts

On July 26, 2000, the OIP received an anonymous written complaint that the chair of the State Foundation on Culture and the Arts (“SFCA”) violated chapter 92 of the Hawaii Revised Statutes. The complaint alleged that no notice was given of the meeting convened by the chair with some of the commissioners for the sole purpose of deciding “how they were going to select the next SFCA Executive Director.” The complaint alleged that other commissioners did not know about this meeting, nor was a notice filed with the Lt. Governor’s office in accordance with law.

In response to the OIP’s request for information on the allegations, the Chair admitted in writing that there had been a meeting on July 11, 2000, that had not been properly noticed. The Chair stated, “Accordingly, the commission considered the July 11 meeting and any decisions deriving therefrom to be void, and the matter of the recruitment

process to be used in the search for the executive director was discussed at numerous subsequent commission meetings, all of which had been properly noticed.”

Given the Chair’s response that the meeting had not been properly noticed, and that matters discussed at that meeting were considered void, the OIP strongly advised the SFCA commission to establish policies and procedures to help it comply with the law and invited the commission to consult with the OIP.



Office of Hawaiian Affairs

A Trustee of the Office of Hawaiian Affairs (“OHA”) requested minutes of meetings held two months earlier. The Chair responded that due to lack of staffing, the minutes had not been transcribed but would be provided once they were ready for review and approval by the Board of Trustees.

Based upon the Chair’s letter, the OIP advised OHA in writing that OHA could not delay disclosure of the minutes of its meetings, whether it was in draft form or approved form, because of staffing shortages. The requirements of part I, chapter 92, Hawaii Revised Statutes, require minutes to be publicly available in 30 days.

Public Safety Department

On January 5, 2000, the OIP opened an investigation into the high rate of complaints about the Public Safety Department's ("PSD") failure to respond to requests for information.

The OIP worked closely with department personnel to ensure that personnel were assigned to work with public records requests and to respond in a timely manner. By October 17, 2000, the OIP believed that PSD had assigned personnel to deal with the requests and those personnel were actually responding to requests for information in a timely manner. These efforts by PSD are commended.



Administrative Rules

Collection of Personal Information

The Department of the Attorney General has completed its formal review of the OIP's proposed rules on the collection of personal information by State agencies. The OIP is reviewing the Attorney General's comments and preparing the rules for circulation to other agencies. Public hearing of the proposed rules would then follow as the next step in the rule approval process.

Appeals Rules

The OIP is completing its internal review of its redrafted proposed administrative rules and impact statement regarding appeals to the OIP under the UIPA.

Correction and Amendment of Personal Records

The OIP continues to work on its proposed administrative rules and impact statement regarding individuals' access to, and right to correction and amendment of, their personal records.

Research Records

The OIP is required to adopt uniform rules for the disclosure of government records for research purposes. At present, the OIP is identifying policy considerations that relate to the issues involving access to government records for research purposes.

For example, providing access to government records for research purposes raises questions regarding the balance to be achieved between two considerations: on one hand, the protection of private information, trade secrets, and information that would not usually be disclosed; and, on the other hand, public access to records for research purposes, access to the research data, and the advancement of knowledge.



After the OIP has identified the policy considerations, it intends to prepare rules regarding the use of government records to create research data, and public access to government-created research data.

Protected Health Information

The OIP reported last year that it was preparing to circulate proposed rules setting forth administrative, physical, and technical safeguards for protected health information, which would have implemented the requirements in chapter 323C, Hawaii Revised Statutes. As chapter 323C was repealed in 2001, the OIP has not taken (and will not take) any further action on these proposed rules.



Litigation Report



Any person who requests a government record and is denied access has two courses of action, as stated in chapter 92F, Hawaii Revised Statutes. The person may appeal to the OIP for assistance, or may bring suit in the circuit courts to compel disclosure of the record. The OIP has standing to appear in any action in which the provisions of the UIPA have been called into question.

The OIP tracks litigation in order to monitor the issues and concerns under the UIPA that are not resolved through the OIP. Due to limited resources, the OIP reviews and assesses each case to determine whether to intervene actively, or simply to assist as needed. Following are the cases that the OIP has been monitoring during FY 2001.

Redaction of DHS Fair Hearing Decisions

In **Foytik v. State of Hawaii Department of Human Services**, Civ. No. 00-1-2059 (1st Cir. Haw., filed June 30, 2000), S.C. No. 24052, the plaintiff challenged the redaction by the Department of Human Services (DHS) of some information from its fair hearing decisions.

DHS had first requested, and obtained, an advisory opinion from the OIP (OIP Op. Ltr. No. 00-02) as to what information DHS could redact. DHS then provided access to redacted

versions of the decisions. The plaintiff alleged in his suit that DHS was not entitled under the UIPA to redact any information, and alternatively, that DHS had redacted more than the OIP's advisory opinion would allow.

The plaintiff's suit was dismissed as moot by the circuit court, apparently on the grounds that the plaintiff had already been provided with redacted versions of the decisions. However, the circuit court failed to decide the plaintiff's claim that the redaction was improper. The plaintiff appealed the circuit court decision.

The OIP filed an *amicus curiae* brief in the appeal, arguing that a requester can challenge the redaction of information from a record as a denial of access to part of the record. The OIP continues to monitor the ongoing appeal.

Denial of Access to Employee Information

In **Monte M. Boyd v. State of Hawaii Department of Public Safety**, Civ. No. 01-1-000525 (1st Cir. Haw., filed February 16, 2001), the plaintiff alleged that the Department of Public Safety denied his request for records giving the name of each officer assigned to a particular correctional facility unit.

Section 92F-12(a)(14), Hawaii Revised Statutes, provides that among other information, a government employee's name and "department, division, branch, office, section, unit, and island of employment" are required to be public.

The plaintiff's request to proceed *in forma pauperis* was denied by the court, and the plaintiff has not yet paid his court filing fees. The OIP continues to monitor the case.

Sunshine Law and UH President's Salary

The Hawaii Society of Professional Journalists and a University of Hawaii student filed suit claiming that the University of Hawaii Board of Regents violated the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes, in **Hawaii Society of Professional Journalists v. University of Hawaii**, Civ. No. 01-1-1262-04 (1st Cir. Haw., filed April 20, 2001).

The Board of Regents decided the salary for the University of Hawaii's new president in a closed executive session, with the stated reason for the closed session being to consider matters relating to appointments and evaluation of employees. The plaintiffs contend that the salary for the position of university president is not a matter relating to a particular individual's appointment as president, and therefore should not have been deliberated in a closed executive session.

The plaintiffs filed a motion for a temporary restraining order seeking to void the decision by the Board of Regents on the president's salary, and to stay further action regarding the president's salary until the Board gave public notice and held a public meeting on the matter under the Sunshine Law. The court denied the plaintiffs' motion on June 8, 2001. In the particular circumstances of this case, the court found that the terms and conditions of employment were an essential part of the decision to hire, which justified discussion of the salary in an executive session.

Although the court found that an unresolved issue of fact remained as to whether the Board went into executive session without an adequate vote, the court held that the potential violation of the Sunshine Law did not support the plaintiffs' requested injunctive relief. The OIP will continue to monitor the ongoing litigation.

Right to Privacy

The OIP continues to monitor two appeals awaiting decision by the Hawaii Supreme Court. Both appeals involve the same issue: 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).

After the end of this fiscal year, on November 21, 2001, the Hawaii Supreme Court published its decision in a related case, **State v. Bani**, No. 22196. The appellant in **Bani** had also challenged the publication of registration information on privacy grounds. The Court invalidated the publication of the information on due process grounds, and therefore did not reach the privacy issue. The OIP will report on the **Bani** opinion and its aftermath in the OIP's next Annual Report.

Failure to Respond and Denial of Access

Last year, the OIP reported that a single plaintiff, claiming that various agencies had violated the UIPA, had 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 00-1-000035 (3d Cir. Haw.)

The suits alleged that agencies failed to respond to the plaintiff's requests to access or correct his personal records within the statutory time period, or 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 knowingly or intentionally violate a provision under part III of the UIPA.

Most of the suits that remained ongoing at the beginning of this fiscal year were resolved during the course of the year. In the consolidated Civil Numbers 99-173, 99-174, and 99-246, the court entered judgment after trial in favor of the plaintiff, awarding him \$1,000 and his costs. In Civil Number 99-412, the court entered judgment after trial in favor of the State of Hawaii.

The plaintiff had appealed from a judgment against him in Civil Number 99-154, but Civil Number 00-1-000035 was dismissed without prejudice under Rule 12(q) of the Rules of the Circuit Courts of the State of Hawaii, for failure to prosecute the case.

A notice of proposed dismissal under Rule 12(q) was also filed in Civil Number 99-231; however, more than a year after the notice of proposed dismissal was filed, the court still had not entered an order of dismissal. The OIP continues to monitor Civil Number 99-231 as well as Civil Number 99-297, in which nothing has been filed in the past year.

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), the plaintiff filed an Application for an Order Allowing Inspection of Records Concerning the Expenditure of Public Funds. The 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.

On March 20, 2000, the court granted the plaintiff's Application for an Order Allowing Inspection of Records.

AlohaCare intervened in the action after the court granted the plaintiff's application. AlohaCare then filed a Motion for Summary Judgment on October 5, 2000, seeking an order denying the plaintiff the Med-Quest records she sought. Med-Quest entered into a settlement agreement with the plaintiff on December 22, 2000. The settlement agreement provides, in part, that the State shall take no position in future proceedings relating to the plaintiff's claims in this case.

In accord with the settlement agreement the State withdrew its support of AlohaCare's Motion for Summary Judgment. AlohaCare's Motion was denied by the court on May 15, 2001. Thus, the earlier court order granting the plaintiff's Application for an Order Allowing Inspection of Records remains standing. The OIP continues to monitor the case.



Legislation

The OIP is required to review legislation and make recommendations to the Legislature. 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 2001 Legislative Session

In 2001, the OIP reviewed and monitored over 200 legislative initiatives as they progressed through the Legislature. All of the bills tracked by the OIP in 2001 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 2001 legislative session. Highlights of the OIP's efforts in this regard are also discussed in the following sections.

Disclosing Medical Information for Law Enforcement Purposes (SB 805)

The OIP monitored SB 805 because it dealt with sharing medical information. The bill, which became Act 162, effective May 25, 2001, allows the Department of Public Safety, Narcotics Enforcement Division, to disclose private medical information to pharmacists for purposes of investigating violations of controlled substances law.



Public Employee Health Benefits Trust Fund Subject to Sunshine (SB 1044)

This bill became Act 88, which establishes a single health benefits delivery system for State and county employees, retirees, and their dependents, known as the Hawaii Employer-Union Health Benefits Trust Fund ("Trust Fund").

The OIP testified in opposition to early versions of this bill that contained provisions allowing the board of trustees of the Trust Fund to hold meetings with less notice than is required by the "Sunshine Law" as set forth at chapter 92, Hawaii Revised Statutes. The Legislature agreed with the OIP and amended the bill so that the notice requirements for Trust Fund board meetings were, at a minimum, the same as those set forth at section 92-7, Hawaii Revised Statutes.

No Sunshine on Insurance Company Material (SB 1068)

This bill became Act 216, effective July 1, 2001. Act 216 conforms Hawaii's licensing laws with the requirements of the federal Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act ("GLBA").

The GLBA establishes November 12, 2002, as the date when a majority of the states must have in place producer licensing laws which are either uniform, or reciprocal to each other. Failure to do this would trigger the creation and implementation of the National Association of Registered Agents and Brokers ("NARAB") federal licensing authority. This would remove direct agent and broker licensing from the states and place it under federal supervision until NARAB is dissolved by Congress.

The OIP did not have a concern with the substance of this bill, but did testify against the provision in section 431-115(e)(1), which states that any documents, materials, or other information in the control or possession of the Hawaii insurance commissioner that is furnished by an insurer, producer, or an agent of either, or that is obtained by the commissioner or his employees, is confidential and not subject to the UIPA.

The OIP testified that this provision kept too much information away from public view, and that the current language of section 92F-13, Hawaii Revised Statutes, is sufficient to protect the information at issue. However, the Department of Commerce and Consumer Affairs, Insurance Division, testified to the Legislature that this language is needed to stop the federal government from taking away the State's ability to regulate in this area.

Protecting Medical Information (SB 1119)

This bill became Act 124, effective May 18, 2001. Act 124 allows for electronic record keeping by drug dispensers and electronic transmittal of prescriptions from practitioners to dispensers.

This act contains a provision in section 328-(a)(4) requiring that the prescription information processing system provide for adequate confidentiality safeguards provided by any applicable federal or state law. The OIP monitored this bill to ensure that there continued to be adequate safeguards to protect medical information.

Privacy of Health Care Information (HB 201)

Act 244 became effective June 30, 2001. Act 244 repeals Act 87 (chapter 323C, Hawaii Revised Statutes), relating to the privacy of health care information, and repeals related acts. Act 87, signed into law June 23, 1999, was aimed at protecting the privacy of patient records. In August 2000, a special session of the Legislature postponed the effective date of chapter 323C, Hawaii Revised Statutes, from July 1, 2000, to July 1, 2001. In the 21st Legislature, several bills were introduced to repeal the privacy law.

The OIP testified that the Legislature should not repeal the law but instead amend it to cover areas of medical privacy that the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") did not.

The federal medical privacy rules adopted by the Department of Health and Human Services under HIPAA became effective April 14, 2001, although most providers and insurers have until April 14, 2003, to be compliant.

Mental Health Disclosures and Firearms (HB 1211)

Act 252 became effective June 19, 2001. The act establishes provisions relating to disclosure of mental health information when requested for firearms permit and registration purposes.

Act 252 mandates that a health care provider or public health authority disclose mental health information to the appropriate county chief of police, provided that the information shall be used only for the purpose of evaluating the individual's fitness to acquire or own a firearm, and the individual has signed a waiver permitting such release.

Insurance (SB 1550)

Act 220, which became effective June 2, 2001, adds a new article to chapter 431, Hawaii Revised Statutes, governing the treatment of financial information about individuals by all insurers.

The OIP testified that the bill actually limited a customer's rights to control his or her financial information. The OIP opposed this bill because it allows financial information to be freely disclosed to "affiliates" without telling customers how the "affiliates" will use the information, and because it caused dual compliance problems for certain entities.

Escrow Depositories (SB 1060)

Act 184 became effective May 29, 2001. Act 184 requires information contained in any applications or record to be made available to the public unless that information may be withheld from public disclosure by the Commissioner of Financial Institutions under the UIPA.

The OIP testified in opposition to this bill as it was originally drafted, because the bill would have allowed the Commissioner to decide which records could be withheld from public disclosure without reference to chapter 92F, Hawaii Revised Statutes. The OIP supported the final version of this bill.

Hate Crimes (SB 951)

Act 240, which became effective June 13, 2001, requires the Department of the Attorney General to be responsible for the collection, storage, dissemination, and analysis of all hate crimes data.

The OIP opposed this bill because the definition of hate crimes data was vague and could lead to the collection of highly inflammatory data that might be inappropriate for purposes of keeping statistics or reporting.

Child Care (SB 1110)

Most of the provisions in Act 201 became effective May 31, 2001, and the remaining provisions effective July 1, 2001. Act 201 requires that child abuse record checks be performed for all licensed child care providers and staff. It also requires the Department of Human Services to disclose verified conviction criminal history and child abuse information on employees to their employers.



Budget

The OIP's annual budget continued its decline. During Fiscal Year 2001, the OIP operated with a \$5,813 decrease in funding from the previous year. Although the agency's operational costs increased slightly, its personnel costs decreased. This decline continues the trend begun with the Fiscal Year 1995 budget.



The OIP's largest budget year was Fiscal Year 1994, when the annual budget was \$827,537, with a staff of 15 positions (10 permanent and 5 temporary). The OIP's

budget was most deeply affected in 1998, when the Legislature decreased the agency's overall budget by \$216,766 and eliminated three of eight permanent positions.

Today, the OIP is functioning with 8 positions (5 permanent and 3 temporary). The OIP's staffing is currently a director, three staff attorneys, and three other staff members. Although there is an additional staff attorney position, the OIP does not have the funds to fill this position. The OIP continues to look for ways to cut its operational costs while increasing the productivity of its employees.



ANNUAL BUDGET

Office of Information Practices
Budget FY 1989 to 2002

Fiscal Year	Operational Costs	Personnel Costs	Allocations	Permanent Positions	Temporary Positions
FY 02	38,179	320,278	358,457	5	3
FY 01	38,179	302,735	340,914	5	3
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 11

Publications and Web Site

The OIP's publications play a vital role in the agency's ongoing efforts to inform the public and government agencies about the UIPA, the open meetings law, and the work of the OIP. In Fiscal Year 2001, the OIP continued its traditional print publications, including the monthly *Openline* newsletter and the *Office of Information Practices Annual Report 2000*.

In addition, the OIP continued to expand the web site that it launched on the Internet in April 1998. Visitors to the site have increased greatly each year. The most recent increase shows a 62% jump in the number of hits for FY 2001, compared to the previous year.

Openline

The *Openline* newsletter, which dates back to March 1989, has always played a major role in the OIP's educational efforts. This past year, the OIP distributed over 5,000 copies of each issue of the *Openline* newsletter throughout Hawaii and the United States, as well as internationally. In Hawaii, the newsletter goes out to all State and county agencies, including boards and commissions, and also to members of the public, the news media, the private sector, and libraries throughout the state.

Current and past issues of the *Openline* are also available at the OIP's web site. Recent articles have covered such topics as access to personal records, bills in the Legislature affecting information practices, the history of Hawaii's medical records privacy law, using the OIP's model forms, and fielding record requests.



OpenLine

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, study the agency's most recent annual report, look at the administrative rules, print the model forms "Request to Access a Government Record" and "Notice to Requester," link to the OIP's formal opinion letters, browse the subject index for the 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.

Visitor Boom: Increased Use of the Site

From its inception, the OIP site has received a substantial number of Internet visits, but the number jumped dramatically once again in FY 2001, increasing by 62% over the previous year.

There were 168,384 “hits” (requests for web site files) in FY 2001, compared to the 103,464 requests in the prior fiscal year. The monthly average was 14,032 requests, up from 8,622 requests per month in FY 2000. The site received an average of 463 requests per day in FY 2001, compared to the year before, when the daily average was 288 requests.

Most visits were directed at the home page, the Rules, UIPA and Sunshine Law, opinions, *Openline*, links, and the Medical Privacy 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 to government. 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.

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 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 publishing formal opinion letters since 1989. The site includes a link to the full text of these opinion letters, which total over 200 letters. The OIP added a subject index for the opinion letters in 2001.

“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.

“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 first 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 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. These forms are entitled “Request to Access a Government Record” and “Notice to Requester.”

The second rules section contains the text of the first draft of the OIP’s proposed appeals rules. 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.

“Annual Report”

Beginning with the annual report for FY 2000, the OIP’s annual reports are now available online for viewing and printing.

“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.

Hawaii’s Internet Portal

The OIP site is linked to Hawaii’s Internet portal, **www.ehawaii.gov**, 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, initial business filings, tax licenses, filing of taxes, insurance licensee search, and freshwater game fishing application. The eHawaiiGov index provides a link to the OIP under the heading “Public Records and Privacy.”

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**.





Each year, the OIP makes presentations and provides training to groups on information practices and the Sunshine Law. This outreach effort is done as part of the OIP's effort to inform the public of its rights and to assist government agencies in complying with the law.

Following the substantial budget cutback and staff reduction at the beginning of FY 1999, the OIP reduced its formal educational program and refocused much of its educational and training efforts on the OIP web site. For more information about this resource, please see the section beginning at page 41.

This past fiscal year, the OIP again participated in the ***Council on Governmental Ethics and Laws*** conference which deals with the issues of freedom of information and privacy concerns.

The OIP gave its annual presentation on information practices and the Sunshine Law to new members of the ***State's Boards and Commissions***. It is critical to train newly appointed members in the laws that most directly affect the operations of a board or commission.

Based on a suggestion by a member of the Big Island community and a frequent requester of records and attendee of open meetings, the OIP provided a training session on the Sunshine Law to the ***University of Hawaii Board of Regents***.

The OIP staff attorneys have found that these training sessions offer participants the ability to discuss the policy concerns they have, and to ask questions and get answers right away. These sessions are a critically important way of keeping our government open.

As a result of the OIP's expertise in disclosure of information with significant privacy interests, the Director was asked to make numerous presentations to local and national audiences on the issues of privacy and data security. The Director has spoken to the following groups:

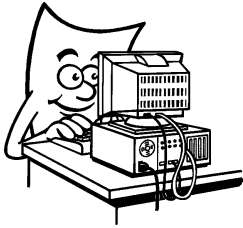
- *Hawaii Society for Clinical Laboratory Science and Clinical Laboratory Management Association's* Joint Meeting
- *Society of Research Administrators – Hawaii Chapter* addressing their concern with the impact of privacy laws on research

- *Hawaii Medical Group Management Association's Annual Conference on medical privacy*
- *Kalihi Business Association on privacy laws*
- *American Organization of Nurse Executives*
- *Waimanalo Health Center*
- *Chartered Property and Casualty Underwriter Society*
- *Hawaii Medical Group Management Association on compliance with medical privacy*
- *Society for Human Resource Management on the impact of medical privacy*
- *Hawaii Business Health Council*
- *Hawaii Health Care Professional Council Hawaii Health Information Corporation Board of Directors*
- the staff of the *University of Hawaii nursing and medical schools* on the impact of privacy laws and residency programs.

The Director also participated in a half-day program on medical privacy presented by the *Pacific Law Institute in Hawaii* and a three-day conference, entitled the *HIPAA Summit West*, on state medical privacy laws.



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.

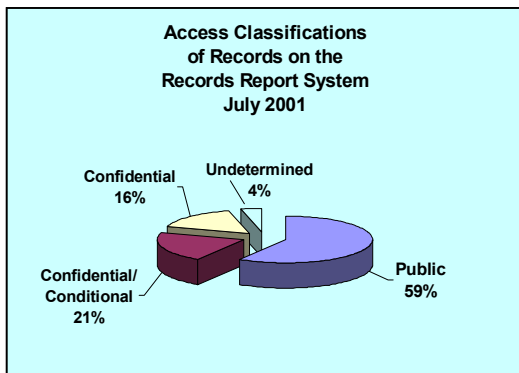


Chart 2

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, 2001). Each “set” of records is generally a record title, and may be a form or other record. For a summary see **Table 12** on page 49.

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% 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**). 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% are accessible to the public in their entirety. Another 21% 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% 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% of the total records).

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



Records Report System**Status of Records Reported by Agencies:
2001 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, 2001**.

Table 12