

Office of Information Practices

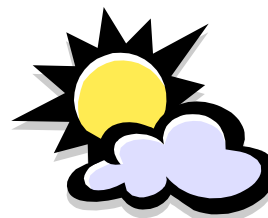
State of Hawaii

Annual Report 2008



This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices in the administration of the public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes, and the open meetings law, part I of chapter 92, Hawaii Revised Statutes, from July 1, 2007, to June 30, 2008.

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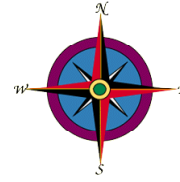
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Director's Message



In ascertaining the “spirit” of the State’s Open Meetings (“Sunshine”) law, the Hawaii Intermediate Court of Appeals (“ICA”) recently reminded us of the law’s policy and intent. The ICA affirmed that, “It is the policy of our state that ‘the formation and conduct of public policy—the discussions, deliberations, decisions, and actions of governmental agencies—shall be conducted as *openly as possible*.’” *Right to Know Committee v. City Council*, 117 Haw. 1, 12 (2007), citing HRS §92-1.

That legislative declaration of policy and intent made it clear that in a democracy, *the people* are vested with the ultimate decision-making power, and that government agencies exist *to aid* the people in the formation and conduct of public policy.

The Legislature thus declared that (1) the intent of the Sunshine Law is to protect the people’s right to know, (2) requirements for open meetings are to be construed liberally, and (3) exceptions to open meeting requirements are to be strictly construed against closed meetings.

However, as the ICA also noted, “[t]he open meetings requirement is not unlimited.” Exceptions to the open meetings requirement include certain permitted interactions among board members, limited meetings which may be held outside of public view, and other matters which embody privileged communications or matters of privacy. *See, e.g.,* HRS §§92-2.5, 92-3.1, 92-5. These exceptions were included in the law to allow for the efficiency

of our government process and to safeguard individual rights.

The Office of Information Practices (“OIP”) must address the many competing and sometimes conflicting interests of openness and efficiency in its administration of both the Sunshine Law and the Uniform Information Practices Act (“UIPA”), the State’s public records law. An inherent challenge in the administration of any open government law is achieving a workable balance between public access to information and government efficiency. This past year saw some legislative changes which affected the Sunshine Law, and which illustrated the evolving legal process to achieve this workable balance.

*Ensuring open
government while
protecting your privacy*



One example pertains to neighborhood boards. OIP cited in prior annual reports that “non-traditional” boards,

such as neighborhood boards, may require more flexibility in order to meet their mandated functions. One of the main functions of a neighborhood board is to receive input from the community.

Act 153 (2008) added an exception to the Sunshine Law which allows neighborhood boards increased flexibility to receive input from community members. While boards are generally constrained from receiving testimony or other information in the absence of a quorum of all of its members, Act 153 allows less than a quorum of neighborhood board members to receive input on a particular issue. This aspect of the Act remedies the

frequent problem of having to cancel board meetings in the absence of a quorum and allows for public input. However, such input is allowed on the conditions that (1) no decision be made at the time the information is received, and (2) present board members report any information received at a later board meeting.



The intent of Act 153 is to achieve a workable balance between increasing the efficiency of a government board while safeguarding the public's right to be informed. OIP continues its efforts to work with the legislature to fine-tune our open government laws with this same intent.

One of OIP's priorities this past year has been to decrease its longstanding backlog of pending requests for written advisory opinions. OIP elected to address more cases by way of informal (unpublished) opinions, and by written and verbal correspondence as opposed to formal published opinions. OIP has been successful in increasing the number of case dispositions despite having to devote significant staff effort to pending appellate litigation in the past fiscal year.

OIP continues to strive to decrease the backlog of advisory opinion requests, while continuing to provide timely legal assistance and guidance to the public, the legislature, and all state and county government boards and agencies; resolution of Sunshine Law complaints and UIPA appeals; and training on the Sunshine Law and UIPA for government agencies and boards, as well as performing its other duties and functions touched on in this report.

Paul T. Tsukiyama
Director



Executive Summary



The Office of Information Practices (“OIP”) was created by the legislature of the State of Hawaii (the “Legislature”) in 1988 to administer Hawaii’s new public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”), which took effect on July 1, 1989. The UIPA applies to all state and county agencies with the exception of the judiciary in the performance of its nonadministrative functions.

Under the UIPA, all government records are public and must be made available for inspection and copying unless an exception provided for in the UIPA authorizes an agency to withhold the records from disclosure. Recognizing that “[t]he policy of conducting governmental business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in . . . the Constitution of the State of Hawaii[,]” the Legislature created one exception to disclosure that balances an individual’s privacy interest against the public’s right to open government.

In 1998, OIP was given the additional responsibility of administering the open meetings law, part I of chapter 92, HRS (the “Sunshine Law”). The Sunshine Law requires state and county boards to conduct their business as openly as possible in order to open up the governmental processes to public scrutiny and participation.

The law thus requires that, unless a specific statutory exception is provided, the discussions, deliberations, decisions and actions of government boards must be conducted in a meeting open to the public, with public notice and with the opportunity for the public to present testimony.

Administration: Guidance and Rulings

Each year, OIP receives numerous requests for assistance from members of the public, government employees, and government officials and board members.

In FY 2008, OIP received 918 requests for assistance, including requests for general advice and guidance regarding application of and compliance with the UIPA and Sunshine Law; requests for assistance in obtaining records from government agencies; requests for investigations of actions and policies of agencies and boards for violations of the Sunshine Law, the UIPA, or OIP’s administrative rules; requests for advisory opinions regarding the rights of individuals or the functions and responsibilities of agencies and boards under the UIPA and the Sunshine Law; and requests for training.

A majority of the requests for assistance are handled through OIP’s Attorney of the Day (“AOD”) service. Over the past nine years, OIP has received a total of 6,995 requests through its AOD service. In FY 2008, OIP received 779 AOD requests.

The AOD service allows the public, agencies and boards to receive general legal advice from an OIP staff attorney, usually within that same day. AOD requests are received by telephone, facsimile, e-mail, or in person.

Members of the public use the service frequently to determine whether agencies are properly responding to record requests or to determine if government boards are following the procedures required by the Sunshine Law.

Agencies often use the service to assist them in responding to record requests, such as when addressing issues such as whether the agency has the discretion to redact information based upon privacy concerns. Boards also frequently

use the service to assist them in navigating Sunshine Law requirements.

Administration: Other Duties

One of OIP's functions is to make recommendations for legislative change to the UIPA and Sunshine Law to clarify areas that have created confusion in application or to amend provisions that work counter to the legislative mandate of open government. OIP also provides assistance to government agencies, government boards, elected officials and the public in the drafting of proposed bills.

To provide for uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices.

This past legislative session, OIP introduced one piece of legislation as part of the Governor's legislative package that was passed into law. That law amends the Sunshine Law to allow for a limited closed meeting where public attendance is not practicable, subject to certain conditions to safeguard the public's right to know. OIP also testified on and monitored 152 other pieces of legislation.

OIP also monitors litigation in the courts that involve issues concerning the UIPA or the Sunshine Law and may intervene in those cases involving the UIPA. In FY 2008, OIP tracked three new lawsuits and continued to monitor or participate in seven ongoing cases involving UIPA or Sunshine Law issues. OIP was actively involved in defending one lawsuit against OIP by the County of Kauai.

OIP is directed by statute to receive and make publicly available reports of records that are maintained by state and county agencies. These reports are maintained on the Records Report System ("RRS"), which was converted from a Wang computer-based

system to an Internet-based system in FY 2003. Since FY 2004, OIP has assisted agencies in updating their records reports and has made public access to the RRS available through its website.

OIP also developed new materials to facilitate data entry by the agencies and a guide to be used by both the public and agencies to locate records, to retrieve information, and to generate reports from the RRS. All of these materials are posted on OIP's website for easy access by agencies and the public. To date, state and county agencies have reported over 29,000 records on the RRS.

Education

OIP's publications and website play a vital role in the agency's ongoing efforts to inform the public and government agencies about the UIPA, the Sunshine Law, and the work of OIP.

In FY 2008, OIP continued its traditional print publications, including the monthly *OpenLine* newsletter, *Office of Information Practices Annual Report 2007*, a guide to the Sunshine Law entitled *Open Meetings*, and the guide book *Hawaii's Open Records Law*, intended primarily to give the non-lawyer agency official an overall understanding of the UIPA and a step-by-step application of the law. OIP's publications are available on OIP's website.

Each year, OIP makes presentations and provides training on the UIPA and the Sunshine Law. OIP conducts this outreach effort as part of its mission to inform the public of its rights and to assist government agencies in understanding and complying with the UIPA and the Sunshine Law.

OIP conducted 21 training workshops in FY 2008. These trainings included various workshops for the general public, board members, and various state agencies.



Budget



OIP's largest budget year was FY 1994, when the annual budget was \$827,537, funding a staff of 15 positions. In FY 1998, the Legislature sharply reduced OIP's budget and eliminated three positions. From FY 1999 to FY 2005, OIP's annual budget was approximately \$350,000 per year. For fiscal years 2006 through 2008, OIP's budget has been approximately \$400,000.

During FY 2008, OIP had personnel costs of \$387,487 and operational costs of \$35,220 for a total allocation of \$422,707. See **Figure 2** on page 10.

time staff attorneys, two part-time staff attorneys, and three staff members.

However, due to the transition between directors and a vacant full-time position for most of FY 2008, OIP essentially functioned with only one full-time staff attorney and two part-time attorneys.

OIP continues to look at ways to best utilize its limited resources to provide effective and timely assistance to the public and to government agencies and boards.

In FY 2008, OIP functioned with 7.5 filled positions. This included the director, two full-



ANNUAL
BUDGET

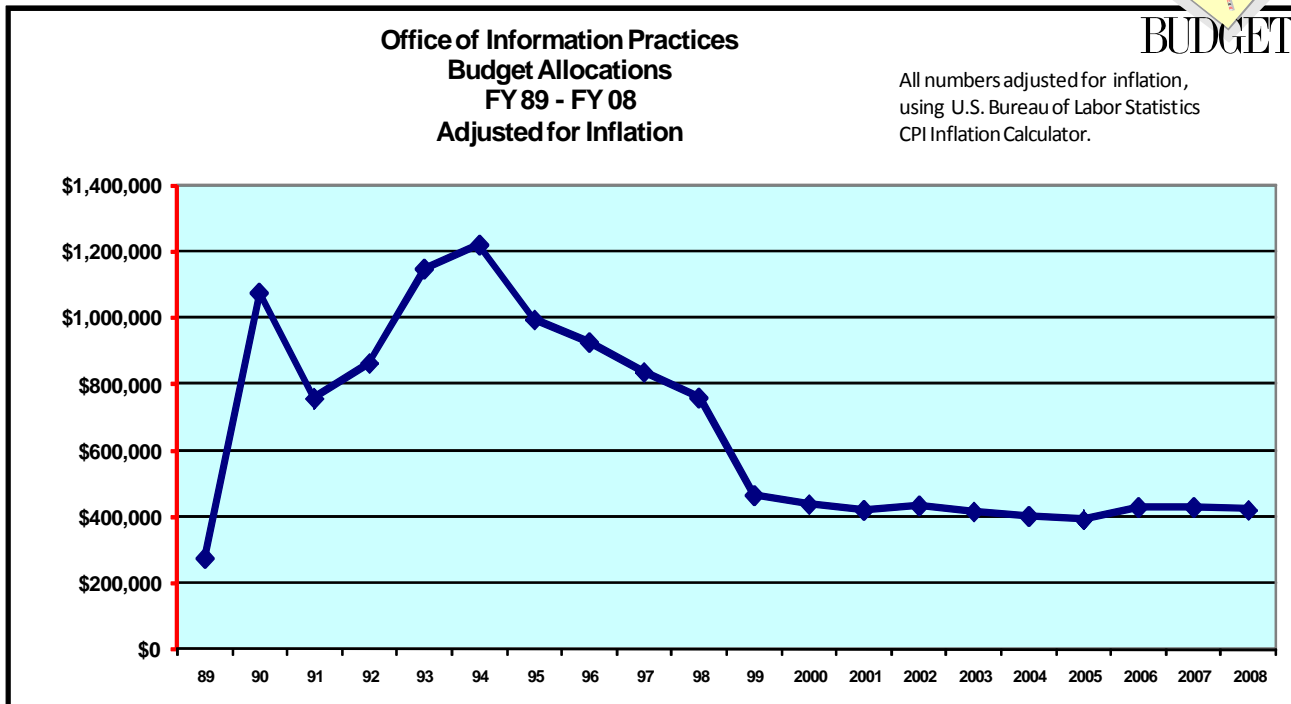


Figure 1



**Office of Information Practices
Budget FY 1989 to FY 2008**

Fiscal Year	Operational Costs	Personnel Costs	Allocations	Allocations Adjusted for Inflation	Approved Positions
FY 08	35,220	*387,487	422,707	422,707	8
FY 07	35,220	360,266	395,486	429,135	8
FY 06	35,220	312,483	347,703	429,194	8
FY 05	35,220	314,995	350,215	392,325	8
FY 04	35,220	312,483	347,703	402,707	8
FY 03	38,179	312,483	350,662	416,950	8
FY 02	38,179	320,278	358,457	435,932	8
FY 01	38,179	302,735	340,914	421,152	8
FY 00	37,991	308,736	346,727	440,522	8
FY 99	45,768	308,736	354,504	465,542	8
FY 98	119,214	446,856	566,070	759,794	8
FY 97	154,424	458,882	613,306	836,018	11
FY 96	171,524	492,882	664,406	926,454	12
FY 95	171,524	520,020	692,544	994,205	15
FY 94	249,024	578,513	827,537	1,221,666	15
FY 93	248,934	510,060	758,994	1,149,169	15
FY 92	167,964	385,338	553,302	862,815	10
FY 91	169,685	302,080	471,765	757,813	10
FY 90	417,057	226,575	643,632	1,072,396	10
FY 89	70,000	86,000	156,000	275,243	4

* 1% budget restriction (or \$4,115)

Figure 2

HIGHLIGHTS OF FISCAL YEAR 2008



Administration

Guidance and Rulings

Overview

Each year, OIP receives numerous requests for assistance from members of the public, government employees, and government officials and board members.

In FY 2008, OIP received 918 requests for assistance, including requests for general advice and guidance regarding application of and compliance with the UIPA and Sunshine Law; requests for assistance in obtaining records from government agencies; requests for investigations of actions and policies of agencies and boards for violations of the Sunshine Law, the UIPA, or OIP's administrative rules; requests for advisory opinions regarding the rights of individuals or the functions and responsibilities of agencies and boards under the UIPA and the Sunshine Law; and requests for training.

Attorney of the Day Service – Timely Legal Advice

A majority of the requests for assistance are handled through OIP's Attorney of the Day ("AOD") service. Over the past nine years, OIP has received a total of 6,995 requests through its AOD service. See **Figure 3**.

The AOD service allows the public, agencies and boards to receive general legal advice from an OIP staff attorney, usually within that same day. AOD requests are received by telephone, facsimile, e-mail, or in person.

Members of the public use the service frequently to determine whether agencies are properly responding to record requests or to determine if government boards are following the procedures required by the Sunshine Law.

Agencies often use the service to assist them in responding to record requests, such as when addressing issues such as whether the agency has the discretion to redact information based upon privacy concerns. Boards also frequently use the service to assist them in navigating Sunshine Law requirements.



AOD Requests			
Fiscal Year	Total	Public	Government Agencies
FY 08	779	255	524
FY 07	772	201	571
FY 06	720	222	498
FY 05	711	269	442
FY 04	824	320	504
FY 03	808	371	437
FY 02	696	306	390
FY 01	830	469	361
FY 00	874	424	450

Figure 3

In FY 2008, OIP received 779 inquiries through its AOD service. Of the 779 AOD inquiries received in FY 2008, 255 requests (33%) came from the public and 524 (67%) came from government boards and agencies. See **Figure 4**.

Of the 255 public requests, 125, or two-thirds, came from private individuals, 30 from media, 28 from private attorneys, 10 from businesses, 9 from public interest groups—and 7 from other sources. See **Figure 5** and **Figure 6**.

AOD Requests from the Public FY 2008

Types of Callers	Number of Inquiries
Private Individual	169
Media	32
Private Attorney	28
Business	10
Public Interest Group	9
Other	7
TOTAL	255

Figure 5

Telephone Requests Fiscal Year 2008

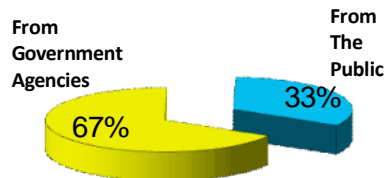


Figure 4

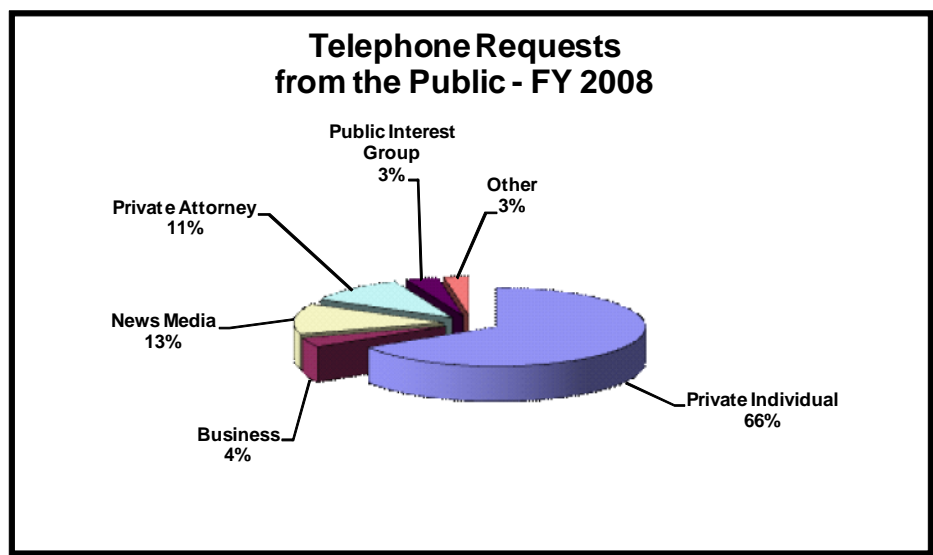


Figure 6

State Agencies

In FY 2008, OIP received a total of 344 AOD inquiries about specific state agencies. Almost half of these requests concerned five state agencies: the Department of Health (47), the Department of Commerce and Consumer Affairs (38), the Department of Education (32), the Department of Land and Natural

Resources (31), and the Department of Accounting and General Services (21).

OIP received 9 inquiries concerning the legislative branch and 7 inquiries concerning the judicial branch. These numbers reflect calls both from the public and from the agencies themselves. See **Figure 7** below.

Calls to OIP About State Government Agencies FY 2008



Executive Branch Department	Requests
Health	47
Commerce and Consumer Affairs	38
Education (including Public Libraries)	32
Land and Natural Resources	31
Accounting and General Services	21
Business, Economic Development, and Tourism	20
Human Services	20
Transportation	19
Attorney General	16
University of Hawaii System	16
Public Safety	14
Lieutenant Governor (including OIP)	13
Agriculture	11
Labor and Industrial Relations	10
Governor	7
Human Resources Development	4
Tax	2
Hawaiian Home Lands	2
Budget and Finance	2
Defense	1
TOTAL EXECUTIVE	326
TOTAL LEGISLATURE	9
TOTAL JUDICIARY	7
Office of Hawaiian Affairs	2
TOTAL STATE AGENCIES	344

Figure 7

County Agencies

In FY 2008, OIP received 158 AOD inquiries regarding county agencies and boards. Seventy-five of these inquiries concerned agencies in the City and County of Honolulu. Of these, the largest number of inquiries (26) concerned the Neighborhood Commission and Neighborhood Boards.

OIP received 83 inquiries regarding neighbor island agencies and boards: Hawaii County (35), Kauai County (30), and Maui County (18). See **Figures 8-11**.



Calls to OIP About City and County of Honolulu Government Agencies - FY 2008

Department	Requests
Neighborhood Commission/Neighborhood Boards	26
Police	12
City Council	7
Board of Water Supply	5
Community Services	4
Office of the Mayor	4
Parks and Recreation	4
City Ethics Commission	2
Environmental Services	2
Medical Examiner	2
Corporation Counsel	1
Design and Construction	1
Emergency Services	1
Human Resources	1
Liquor Commission	1
Planning and Permitting	1
Transportation Services	1
TOTAL	75

Figure 8



**Calls to OIP About
Hawaii County
Government Agencies - FY 2008**

Department	Requests
County Council	16
Police	8
Planning	4
Parks & Recreation	2
Public Works	2
Corporation Counsel	1
Prosecuting Attorney	1
Water Supply	1
TOTAL	35

Figure 9



**Calls to OIP About
Kauai County
Government Agencies - FY 2008**

Department	Requests
County Council	16
Police	6
Office of the Mayor	3
Water	2
Community Assistance	1
County Attorney	1
Finance	1
TOTAL	30

Figure 10

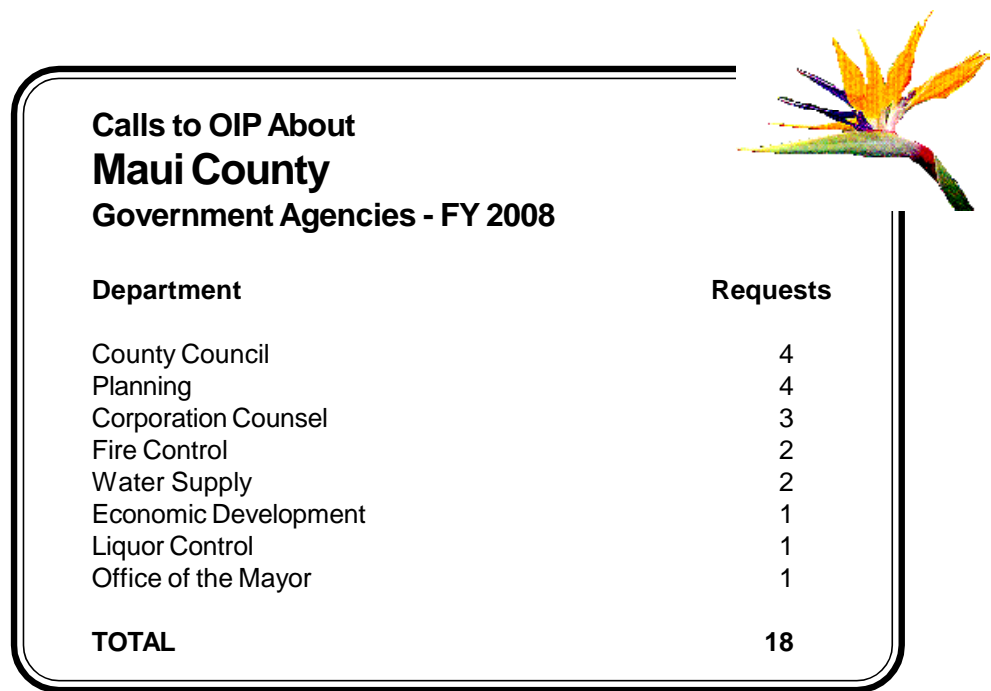



Figure 11

Formal Requests

Requests for Assistance

OIP is sometimes asked by a member of the public for help in obtaining a response from an agency to a record request. In FY 2008, OIP received 46 such requests for assistance from the public.

OIP staff attorneys will in these cases generally contact the agency to determine the status of the request, direct and instruct the agency as to the proper response required, and in some instances, will attempt to facilitate disclosure of the records.



<i>Type of Request</i>	<i>Number of Requests</i>
Request for Assistance	46
Request for Advisory Opinion	23
UIPA Appeals	31
Sunshine Law Complaints	18
Training	21
Total Formal Requests	139

Figure 12

Requests for Legal Opinions

Upon request, OIP provides written advisory opinions on issues under the UIPA and the Sunshine Law. In FY 2008, OIP received 23 requests for advisory opinions. See **Figure 12**.

Requests for Rulings

OIP also provides rulings on Sunshine Law complaints and UIPA appeals. In FY 2008, OIP received 18 Sunshine Law complaints and 31 UIPA appeals.

Types of Opinions and Rulings Issued

In responding to requests for advisory opinions, Sunshine Law complaints, and UIPA appeals, OIP issues opinions that it designates as either formal or informal opinions. Formal opinions are “published” and distributed to government agencies and other persons or entities requesting copies. They are also made available on OIP’s website. Formal opinions address issues that are novel or controversial, that require complex legal analysis, or that involve specific records. Formal opinion letters are distributed to:

- State and county agencies and boards
- WestLaw
- Michie, for annotation of the Hawaii Revised Statutes
- Persons or entities on OIP’s mailing list

These formal opinions are also available on OIP’s website at www.hawaii.gov/oip. OIP publishes summaries of the formal opinions in OIP’s monthly newsletter, *OpenLine*, and on OIP’s website. The website also contains an index for the formal opinions and provides for word searches. Summaries of the formal opinions issued in FY 2008 are found in this report beginning on page 35.

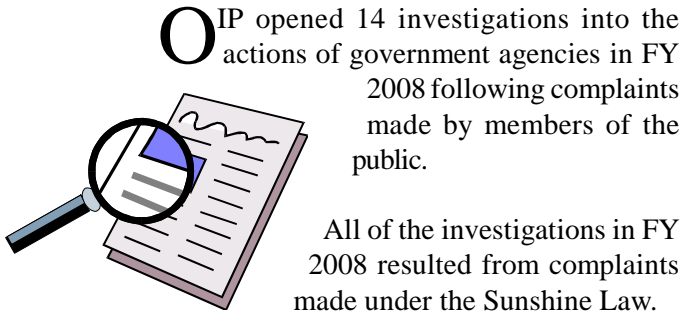
Informal opinions, or memorandum opinions, are public records, but are not circulated. These opinions are deemed to be of more limited guidance because they address issues that have already been more fully addressed in formal opinions, or because their factual basis limits their general applicability. These opinions generally provide less detailed legal discussion.

In an effort to provide more timely responses, OIP is now also issuing summary dispositions in those cases where it believes appropriate. These dispositions contain even more abbreviated legal discussion.

Memorandum opinions are sent to the parties involved and are maintained as public records at OIP. Summaries of some of the memorandum opinions issued in FY 2008 are found in this report beginning on page 20.



Investigations



OIP opened 14 investigations into the actions of government agencies in FY 2008 following complaints made by members of the public.

All of the investigations in FY 2008 resulted from complaints made under the Sunshine Law.

Executive Session

A requester asked whether the Charter School Review Panel violated the Sunshine Law by holding an executive session at its meeting of June 27, 2007, that did not fall into one of the permissible purposes listed in section 92-5, HRS. The Charter School Review Panel did not argue that the executive session was proper and, in fact, it later invalidated it.

OIP concluded that the executive session was not proper under the Sunshine Law, but noted that the Panel attempted to remedy the improper executive session by invalidating it on its own initiative.

Private Informational Briefing

A requester asked whether members of the County Council, County of Hawaii, violated the Sunshine Law by participating in a private informational briefing organized for them by Hawaii County Mayor Harry Kim for the purpose of providing the members with current information on the status of the then recent lava flow in the Puna district.

The briefing was given by Hawaii Volcanoes Observatory Scientist in Charge James Kauahikaua on August 22, 2007, with all nine Councilmembers attending. The briefing was limited to information about the output, direction, and flow of the lava at that time, and whether there was imminent danger to life and property. At the time of the briefing no danger to life or property was imminent and it was not possible to predict when, if ever, the flow might impact populated areas.

OIP concluded that because the question of emergency funding to deal with the lava flow was not before the council or reasonably likely to arise before the Council at the time of the lava flow briefing, that question was not official board business of the Council at that time, so the discussion of the lava flow itself was likewise not official board business of the Council. The briefing on the lava flow was therefore a “chance meeting” in terms of the Sunshine Law, and did not violate the Sunshine Law.

Agenda Items

A requester asked whether the Honolulu Police Commission’s agenda for its meeting of August 15, 2007, violated the Sunshine Law by failing to list items with adequate specificity.

OIP found that the agenda items did not specify the subjects to be discussed at the meeting with enough detail to provide the public with reasonable notice of what the Commission would consider, so the Commission’s discussion based on that agenda violated the Sunshine Law.

Deliberation on a Settlement Agreement

A requester asked whether the Kauai County Council violated the Sunshine Law by deliberating on a settlement agreement. The agenda listed the subject matter as a proposed settlement in a specified litigation but did not indicate that the settlement had already been approved by the court.

OIP concluded that although the settlement was listed as “proposed,” the notice made clear that the settlement in the identified litigation was to be deliberated by the Council. OIP therefore found that the Council’s decision to go into executive session to consult with its counsel and deliberate regarding the settlement in the identified litigation was in compliance with the Sunshine Law’s requirements.

Neighborhood Board

A requester asked whether the Acting Chair of Neighborhood Board Number 34 violated the Sunshine Law by: (1) holding a secret meeting of several board members at his house, (2) restricting all testimony on an agenda item to 15 minutes total, and (3) sending an e-mail discussing board business to several board members.

OIP found that no violation of the Sunshine Law occurred because (1) no secret meeting took place, (2) the proposed time limit on testimony was rescinded and was never imposed at a meeting, and (3) the e-mail in question addressed the placement and scope of an item on the agenda, which is an administrative issue within the chair’s prerogative and thus is not “board business” whose discussion is restricted by the Sunshine Law.

City Council Hiring of Legislative Liaison

A Council member requested an opinion on the legality under the Sunshine Law of a Council Chair e-mail to all Council members regarding the retention of a personal service contractor. Specifically, the member questioned whether the retention of a legislative liaison was official council business under the applicable Council rule and the Sunshine Law that must be decided by the Council at a public meeting.

OIP stated that the question raised required interpretation of the Council’s own rules. OIP believed that interpretation and application of the Council rule to the retention of a legislative liaison should be determined in this instance by Corporation Counsel.

OIP opined that if Corporation Counsel found the Council rule applicable, then OIP believed that the matter must be decided at a noticed meeting. However, even in the event that the matter was determined to be council business, OIP would not find that the Chair’s e-mail violated the Sunshine Law because that e-mail did not seek concurrence of the council members, but rather simply announced the retention of the legislative liaison.



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Executive Session

Private Informational Briefing

Agenda Items

Deliberation on a Settlement Agreement

Neighborhood Board

City Council Hiring of Legislative Liaison

Sufficiency of Agenda for Kauai Planning Commission Meetings

NELHA Board Actions and Sufficiency of Minutes

Neighborhood Board Member Requested Attachments to Board Meetings

HCDCH Sufficiency of Minutes

ATDC Sufficiency of Minutes

Discussions Prior to Formation of Mass Transit Panel

Council Latitude in Receipt of Public Testimony

Voting on an Issue Not Listed on the Agenda

Sufficiency of Agenda for Kauai Planning Commission Meetings

A requester asked for an investigation into whether the Kauai Planning Commission's agendas for several meetings provided sufficient notice under the Sunshine Law for the Commission's discussions and actions taken relating to an application to amend a Special Management Area Use permit and variance application.

OIP concluded that the agendas provided sufficient notice under the Sunshine Law to allow the Commission to discuss and decide the matters concerning the Application, including the hearing of motions for reconsideration of the Commission's action. Based upon its review, OIP found that the Agendas listed the Application with sufficient detail to allow a member of the public to reasonably understand that the Commission intended to consider amendments to the Application, as well as reconsideration of the Commission's approval of the Application, and to decide whether to attend and to participate.

NELHA Board Actions and Sufficiency of Minutes

An association of business owners leasing space from NELHA raised various issues regarding actions taken by NELHA. Two of the multiple issues presented raised issues for investigation under the Sunshine Law.

First, the requesters questioned NELHA's actions taken to increase seawater rates when this issue had not been on a meeting agenda, had not been the subject of a public discussion, had not been voted on by the board, and may have been privately decided by the board. OIP investigated and concluded that no violation occurred because the yearly rate is set according to a policy that had been previously adopted by the NELHA board, which policy was reaffirmed by the board at

a meeting in 2005. Thus, the board was not required to and did not approve the yearly rate set.

Second, requesters questioned the sufficiency of certain board meeting minutes, stating that they conveyed no information. Based upon its review, OIP was unable to determine the nature of the complaint. OIP noted that the Sunshine Law does not require a full transcript of the meeting. Rather, it requires that the minutes "give a true reflection of the matters discussed at the meeting and the views of the participants." Accordingly, OIP informed requesters that if they believed the minutes were deficient under any of the requirements set out by statute, they should file a more specific complaint.

Neighborhood Board Member Requested Attachments to Board Minutes

A neighborhood board member complained that the Neighborhood Commission Office ("NCO") refused, based upon NCO policy, to include in the board's meeting minutes a one page memorandum that the member asked be included in the minutes at the meeting.

OIP advised the Commission that section 92-9(a)(4) of the Sunshine Law required that meeting minutes "shall include . . . '[a]ny other information that any member of the board requests be included or reflected in the minutes.'" The Commission subsequently included the requested material in the minutes.

HCDCH Sufficiency of Minutes

A neighborhood board member complained that the Neighborhood Commission Office ("NCO") refused, based upon NCO policy, to include in the board's meeting minutes a one page memorandum that the member asked be included in the minutes at the meeting.

Requester questioned the sufficiency of minutes for an executive meeting of the Board of the Housing and Community Development Corporation of Hawaii (“HCDCH”) concerning the only two substantive agenda items considered during the one hour meeting.

Based upon its in camera review, OIP concluded that the minutes did not comply with the requirements of section 92-9, HRS, because they failed to provide sufficient detail of what occurred, i.e. the substance of all matters proposed, discussed, or decided. The minutes reflected almost no detail regarding what was discussed and no information regarding any proposals or any views of the participants. Even if no proposals were made or views stated, OIP found that the minutes, on their face, failed to meet the minimum level of sufficiency under the Sunshine Law. For example, the minutes for one item reflected less than what is generally required to be included on the agenda for the executive meeting, i.e., identification of the specific litigation discussed.

ATDC Sufficiency of Minutes

A requester questioned the board of the Aloha Tower Development Corporation’s (the “Board”): (1) failure to attach to its minutes the Chief Executive Officer Reports referenced in the minutes; and (2) reflection in its minutes of only what the Chief Executive Officer (“CEO”) chose to highlight from those reports at the Board’s meetings.

OIP reviewed minutes referenced as examples by the requester. Because OIP had no transcript or other recording of the meetings to review, OIP made no factual findings as to the sufficiency of the minutes, but rather opined more generally on what legally must be included in the minutes regarding the CEO’s report to the board.

OIP advised that the Sunshine Law does not generally require that records distributed to

board members or records that are discussed or referenced at the meeting be included in the board’s minutes. The statute does specifically state that the minutes shall include information that a board member requests be included in the minutes. Accordingly, unless a board member requests that the Executive Officer Report be included in the Minutes, the Board need not do so.

Further, OIP found that the Aloha Tower Development Corporation minutes referenced in requester’s letter were sufficient to the extent that they only reflected the matters that the CEO chose to discuss at those meetings. The statute requires that the minutes be a true reflection of the substance of all matters proposed, discussed, or decided at the meeting. Thus, with respect to the CEO’s Report, the Sunshine Law only required that the minutes reflect those matters in the report that were actually discussed at the meeting.

Discussions Prior to Formation of Mass Transit Panel

Requester asked for an investigation into whether discussions of processes for decision-making and of selection of a fifth member and chair by the other four members of the City Mass Transit Technical Expert Panel (the “Transit Panel”), created by resolution of the Honolulu City Council (the “Council”), violated the Sunshine Law and rendered the Transit Panel’s subsequent discussion and decisions voidable.

Corporation Counsel provided an account of the Transit Panel’s actions by quoting from the Executive Summary of Honolulu High-Capacity Transit Corridor Project Independent Technology Section Panel Report dated February 22, 2008 (the “Report”). The Report provided a full and detailed account of the actions of the Transit Panel, specifying and describing each of the two noticed meetings of the members as well as the members’ actions outside of the meeting.

Corporation Counsel also confirmed that the four initial members engaged in two teleconferences “in which they discussed and decided upon the selection of the fifth member, and engaged in only general discussions of the ‘parameters and substantive deliberative benchmarks for how they would discharge official actions.’” Further, Corporation Counsel verified that the chair was selected by the initial four members during one of these teleconferences. OIP understood that no other teleconferences were held by these four members and that no teleconferences were held by all the final five members.

Based upon these facts, OIP concluded that the initial four members’ discussion of “parameters and substantive deliberative benchmarks for how they would discharge official actions” as well as their selection of the Panel’s fifth member and chair were not in violation of the Sunshine Law because they occurred prior to the actual formation of the Transit Panel. Until the fifth member was selected by the other four members and accepted the position as a member, there was no “board” authorized to decide the public policy issue the Transit Panel was charged with under the Resolution. Accordingly, the actions taken by the initial four members, which included the selection of the Chair, did not violate the Sunshine Law.

Although this also meant that these members could have discussed the subject matter of the Transit Panel prior to formation of the full panel without technically violating the Sunshine Law, doing so would have been inconsistent with the spirit of the law and OIP commended the members for not privately discussing the substance of the issues with which the Transit Panel was charged. Further, OIP believed that, because the Transit Panel was given no direction as to the need for or process to select a chair, that discretionary action taken by the four initial members prior to formation of the Transit Panel was not inconsistent with the spirit of the law.

Council Latitude in Receipt of Public Testimony

OIP investigated whether the Kauai County Council violated the Sunshine Law at its May 10, 2006 meeting by allowing attorneys for James Pflueger to testify regarding facts and issues related to the Ka Loko Reservoir Dam breach in March 2006 (the “Testimony”). Specifically, Requester questioned the Council’s receipt of the Testimony under an agenda item listed as the Committee of the Whole Report regarding the Administration’s status report on the debris removal and clean-up at the Wailapa Stream area that was made necessary by the dam breach.

Although a board can require that testimony be related to an agenda item (as long as the board interprets the agenda item broadly), the board need not do so. This is because the Sunshine Law does not prohibit a board from allowing the public to testify or comment on matters that are *not* on the meeting agenda. If a board does allow a member of the public wide latitude in testifying on an agenda item, however, the board must generally afford that same latitude to all testifiers. Further, if the public testifies or comments on a matter relating to a board’s official business, the board must be careful not to discuss that matter if it is not on the meeting agenda.

OIP found that the Council’s receipt of the Testimony did not violate the Sunshine Law. OIP further found the receipt proper because the Council regulated Testimony in the same manner that it did members of the public who testified at a prior meeting on a related agenda item.

Voting on an Issue Not Listed on the Agenda

A member of the public requested an investigation of whether the Hawaii Public Housing Authority (“HPHA”) violated the Sunshine Law by voting on an issue not listed on its April 10, 2008, agenda. The agenda merely stated that “[a]ll public testimony on any agenda item” would be taken at one time during the meeting. The heading of this item on the agenda was “Public Testimony.” The board voted to limit all public testimony to three minutes, with one additional minute if needed to finish testimony.

OIP previously stated that an agenda must be “sufficiently detailed so as to provide the public with reasonable notice of what the board intended to consider.” *OIP Op. Ltr. No. 03-22* at 6. Since the HPHA agenda gave no indication of any time limits on testimony, then or in the future, OIP found that the agenda inadequately noticed the board action. To cure the violation OIP recommended that the Board rescind its vote of April 10, 2008.

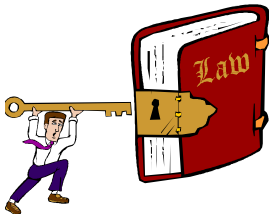


Appeals

Cell Phone Records

OIP was asked whether an agency was justified under the UIPA in redacting phone numbers representing personal calls, and partially redacting phone numbers representing

work-related calls to home phone numbers or direct lines, when providing requested copies of cell phone billing records for an agency employee's government-provided cell phone.



OIP concluded that a phone number alone, without the identity of the person at the other end, carried a minimal privacy interest. Given the heightened public interest in the phone records in the specific circumstances at hand, OIP found that the public interest in the personal call numbers listed in the cellular phone bills outweighed the privacy interests of both the employee and the other parties to the employee's personal cell phone calls, such that the portion of the bills reflecting personal calls must be released.

OIP further concluded that the agency was justified in redacting three digits of each non-published phone number for work-related calls under the UIPA's frustration exception. *[Appeal 07-16]*

Request for Records from a Closed Investigation

A requester appealed an agency's denial of a request for records from a closed investigation file regarding the requester's complaint.

OIP concluded that the requested records were personal records of Requester, so part III of the UIPA, covering personal record requests, applied to the request. With the exception of identity of an individual who had provided a written advisory opinion, which fell under part III's confidential source exemption, OIP found that the requested records must be disclosed to the requester.

[Appeal 08-27]

Record of Long Distance Phone Call

Requester sought a determination on whether the Honolulu Police Department ("HPD") properly denied his request under part II of the UIPA for a record memorializing the date and duration of a long distance telephone call purportedly made by an HPD Detective on a certain date to a witness (the "Telephone Record").

After several inquiries by OIP and actions taken by HPD to search for the requested information in various divisions, OIP concluded that HPD had conducted a reasonable search for any record responsive to the request made and properly informed Requester that it did not maintain such a record.

In reviewing an agency denial based upon its inability to find any record responsive to a request, OIP looks to whether the search performed was "reasonably calculated to uncover all relevant documents." "An agency must make 'a good faith effort to conduct a search for the requested records, using

methods which can be reasonably expected to produce the information requested.”
[Appeal 07-26]

Court Records

A member of the public sought a determination on whether the Judiciary properly denied his UIPA request for information that identified: (1) the author(s) of the Summary Disposition Order in *Jou v. Schmidt and AIG Hawaii Insurance Co.*, Supreme Court No. 226877 (May 18, 2006) (the “Order”); (2) the Hawaii Supreme Court justice(s) assigned to the *Jou* case; and (3) the identity of all individuals other than the justices who were used by the Court to research any matter relating to the case.

OIP found that the Judiciary’s records containing the requested information related directly to the Court’s exercise of its judicial functions because the records sought were: (1) official court records for the *Jou* appeal before the Court identifying the assigned justices, and (2) internal records that directly relate to the adjudication of the appeal, which includes preparation of those official court records. As such, OIP found that the records were “nonadministrative” court records.

OIP had previously opined that nonadministrative records of the courts, generally, are those records that relate to the courts’ functions that, by their nature, are “judicial,” as opposed to ministerial, particularly those that “relate to the adjudication of a legal matter before the tribunal.” Accordingly, OIP concluded that the records requested were not subject to the UIPA’s disclosure requirements.
[Appeal 07-23]

Extensive Redactions of Contract in Response to Record Request

A competitor for a contract with the Hawaii Health Systems Corporation (HHSC) requested a copy of contracts between HHSC and its competitor who won the contract. HHSC provided a redacted contract but the redactions were significant and extensive. The scope of services, pricing, and equipment lists were excluded from the redacted copy. The agency seeking to redact information carries the burden to justify the withholding of information.

HHSC argued that its legislation had a specific statute which prevented the disclosure of the information. While true that there was such a statute, the statute nonetheless requires that the “disclosure ... would raise the cost of procurement or give a manifestly unfair advantage to any competitor or to any person . . . seeking to do business with a regional system board, the corporation, or any of its facilities.” H.R.S. §323F-6(2).

Although given the opportunity to explain the connection between the contract contents and how its disclosure would “raise the cost of procurement or give a manifestly unfair advantage,” the HHSC only made conclusory statements. No link between the redacted material and the statute was ever explained.

OIP concluded that HHSC had not carried its burden and must disclose the contract.
[Appeal 08-26]



Legal Assistance and Guidance



The following summaries exemplify the type of legal assistance provided by OIP's staff attorneys through the Attorney of

the Day service, through memorandum opinions, and through formal opinion letters. Summaries of the formal opinions begin on page 35.



in
this
section . . .

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Withholding an Agency's Bank Account Number

Sending a Board's Meeting Notices by E-mail

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Police Records

E-mail Correspondence About Requester

Two-Member Discussion Permitted Under Sunshine Law

Comments and Recommendations Provided to the Governor About Legislation

[and more]

Records of Private Companies Who Contract With a Government Agency

A private company contracting to provide services to a government agency received a request for records related to the services being provided. The company inquired whether it was required to follow the UIPA.

OIP advised that a private company providing services by contract was unlikely to be considered an agency subject to the UIPA, although it was possible that the records in question would be considered records of the government agency for which the company provided services if the agency had a contractual right to obtain them. In that case, the company itself would have no UIPA obligation to respond directly to the requester, but the requester could make the request directly to the government agency.

Changing the Location of a Board Meeting

A board anticipated its upcoming meeting would draw too many people for the room listed on the notice, and wanted to change the location. The board asked whether it could do so with a vote or announcement at the time of the meeting, and whether it must also post a notice of new location, state a purpose, or otherwise notify the public ahead of time.

OIP advised that the board could continue its meeting to an announced reasonable time and place. Thus, its chair could call the meeting to order, announce that the meeting would recess and reconvene a half hour later at the new location, and then recess. As a courtesy, the board could also post information about the new location or otherwise try to notify the public ahead of time, but those actions would not be required by law.

Nonmembers on a Board's Investigative Group

A caller asked whether a board's investigative permitted interaction group formed under section 92-2.5(b)(1) could include nonmembers of the board. OIP advised that an investigative permitted interaction group could include nonmembers.

Withholding an Agency's Bank Account Number

A caller asked whether there was a basis under the UIPA to withhold an agency's bank account number. OIP advised that the frustration exception would likely apply to an active bank account number, given the risk of identity theft from giving it out.

Sending a Board's Meeting Notices by E-mail

A member of a board's staff was asked by a member of the public on the board's mailing list to send the board's meeting notices out by e-mail instead of postal mail. The staff member asked whether a board is required to send its meeting notices by e-mail on request.

OIP advised that the Sunshine Law was enacted before e-mail was in common use and thus only requires boards to postal mail its notices and agendas to members of the

public so requesting. Although it would be a good practice to make an e-mail version of the board's notice and agenda mailing list if there is demand for it, the Sunshine Law doesn't currently require doing so.

Listing "Public Testimony" on an Agenda

A caller asked whether an agenda that didn't list "public testimony" violated the Sunshine Law.

OIP advised that because the Sunshine Law requires a board to accept public testimony on all agenda items, the fact that the board would hear public testimony was implicit in the agenda and need not be listed separately for every item. However, if the board was failing to call for public testimony when members of the public were in attendance that might be an issue of concern under the Sunshine Law.

Making Floor Amendments During a Council Meeting

A caller asked whether a notice listing a bill and the bill's subject matter allowed a county council to make floor amendments during its meeting.

OIP advised that assuming that the bill's subject matter was not changed by the amendments and that the council's own procedural requirements allowed for floor amendments such that the public was reasonably on notice of that possibility, then a notice listing a bill's number and subject matter would allow for floor amendments.

Public Comment on Items Not on an Agenda

Several members of a board with a “resident concerns” segment on its agenda (i.e., allowing public comment on items not on the agenda) wanted to temporarily “vacate” their positions as board members to speak to items not on the agenda during the “resident concerns” segment. OIP was asked whether such an action was proper.

OIP advised that board members could not “vacate” their positions in order to speak to items not on the board’s agenda. If a board chooses to take public comment on issues that are not on the agenda, board members must refrain from discussing or acting on those issues to the extent the issues are board business.

New Board Chair Meeting with Previous Chair

A board staff member asked whether, when a board changed its officers, the new chair and vice chair could meet with the previous chair and vice chair to discuss procedural issues.

OIP advised that so long as the procedural issues were not board business – in other words, not on the board’s agenda or reasonably likely to come on the board’s agenda in the foreseeable future – then the Sunshine Law would not limit their discussion. For example, “The chair usually comes up with a rough agenda and gives it to the staff to fill in the details and type it up” would not be board business for most boards, because that procedure would not be something that most boards ever took up for discussion or decision as a board.

Approval of Subcommittee Minutes by the Main Board

A board subcommittee met infrequently, so the main board was approving the subcommittee’s minutes. A board member questioned whether that procedure was correct.

OIP advised that the Sunshine Law doesn’t require board approval of minutes, but does require that they be accurate and contain at a minimum the information specified in section 92-9. For Sunshine Law purposes, so long as minutes meet that standard of accuracy and completeness, it doesn’t matter whether they were never approved, approved by the subcommittee, or approved by the main board.

Board Hearings Subject to Contested Case Requirements

A caller asked whether, when a board holds hearings subject to contested case requirements as the greater part of its meeting, section 92-6 exempts the entire meeting from the Sunshine Law.

OIP advised that since 92-6 exempts a board from the Sunshine Law when performing an adjudicatory function, a meeting that is entirely devoted to a contested case hearing need not be noticed and conducted under the Sunshine Law. A meeting mixing adjudicatory functions and other business would be subject to the Sunshine Law for everything except the adjudicatory portion.

Employee's Records Requested by a Union

A union requested an employee's records under section 89-16.5, which allows a union representative access subject to listed conditions. A caller asked whether disclosure to the union representative would be subject to the exemptions listed in part III of the UIPA, or whether section 92F-12(b) would mean that disclosure must be made without exception.

OIP advised that because section 89-16.5 would be considered an authorization to see the records under section 92F-12(b), disclosure would be made notwithstanding any provisions to the contrary, so no exceptions or exemptions would apply to the information authorized to be disclosed by section 89-16.5.

Disclosure of County Lessees' Gross Sales Figures

U RFO-P 07-27

A requester asked whether a county councilmember's public disclosure of county lessees' gross sales figures violated the UIPA.

OIP concluded that the public disclosure of gross revenue information taken from general excise tax returns was not a disclosure of "confidential information explicitly described by specific confidentiality statutes," and thus was not a misdemeanor under the UIPA. However, the information was confidential business information falling within the UIPA's frustration exception to disclosure, so the council could have chosen to deny access to the information in response to a UIPA request for it.

Student Congress Not Subject to Sunshine Law

S RFO-P 08-7

A requester asked whether the Student Congress of the University of Hawaii's Kapiolani Community College was a board subject to the Sunshine Law.

OIP found that the Student Congress was not directly created by constitution, statute, rule, or executive order, nor was it created pursuant to a specific statutory authorization. Because the Student Congress did not meet that element of the Sunshine Law definition, it was not a board subject to the Sunshine Law.

Settlement Amounts and Litigation Expenses

The County of Kauai had denied a request from the Garden Island Newspapers for a list of court cases filed by or against the County and the costs incurred by the County in those cases. The County denied access to the list of cases because a list can be obtained from the Judiciary.

OIP opined that the County cannot deny access to the list on the basis that the records are available from another agency because each agency must make government records accessible and cannot merely refer requests to another agency.

OIP also opined that the legal costs paid in the County's cases may not be withheld except for information that would reveal attorney-client privileged communications or information protected by the work-product doctrine. Amounts paid by the County to settle its cases may only be withheld when disclosure would give a manifestly unfair advantage to other parties such as those in ongoing litigation with the County in closely related lawsuits. (Decision 08-4)

Police Records

An individual requested the Hilo Police Department (HPD) for access to records relating to a traffic citation issued to him by the HPD. HPD denied him access because he was contesting the traffic citation in district court and could request access to the records through discovery in the court case.

OIP opined that the Requester's status as a defendant and his ability to seek access to records through discovery is irrelevant to the Requester's right of access to records under the UIPA. The UIPA exception in section 92F-13(2), HRS, allows HPD to withhold access to records only if the records fall within any of the judicially recognized privileges such as attorney-client privilege or the work-product doctrine. (Decision 08-3)

E-mail Correspondence About Requester

An individual who receives services from the Department of Human Services (DHS) requested copies of the print-outs of e-mail correspondence that DHS maintained in its files about him. DHS asserted that the correspondence may be withheld under the "frustration of a legitimate government function" exception provided in section 92F-13(3), HRS.

However, the exceptions listed in section 92F-13, HRS, only apply to requests for public access to government records under Part II of the UIPA, and not to individuals' requests for personal records. Part III of the UIPA sets forth the only exemptions that may apply to personal records requests, but DHS had not shown that any of the Part III exemptions applies to this individual's personal records request. (Decision 08-5)

Two-Member Discussion Permitted Under Sunshine Law

A neighborhood board member wanted to discuss a matter of board business with another member but was anticipating that the discussion may lead to a commitment to vote. He questioned whether the Sunshine Law would allow this discussion with a fellow board member.

OIP explained that the Sunshine Law allows two board members to discuss official board business so long as the two members do not constitute a quorum of the board and no commitment to vote is made or sought. Since he anticipates that the discussion may lead to a commitment to vote, he should refrain from engaging in this discussion with his fellow board member.

Comments and Recommendations Provided to the Governor About Legislation

A caller questioned whether the Governor must disclose comments and recommendations that she receives from either State agencies or the public about legislation pending her approval.

The comments from the public must be open for public inspection but certain information such as home addresses may be redacted because of privacy. The comments and recommendations from State agencies to the Governor are not required to be disclosed under the UIPA's "frustration" exception. The comments and recommendations constitute inter-agency memoranda that are deliberative and predecisional in nature and their disclosure would frustrate the Governor's process of reviewing legislation for her approval.

Disclosure of Employee Discipline to Other Employees

A State employee had been discharged for allegedly stealing funds, but, in arbitration, the discharge was reversed because the arbitrator found the evidence to be insufficient. Although the UIPA allows agencies to keep confidential employee discipline information confidential unless the discipline resulted in a suspension or discharge, can the division manager disclose to other employees of the division the arbitrator's finding reversing the discharge in order to explain the employee's return to his position?

OIP explained that the UIPA does not govern intra-agency disclosure of information. So long as information is disclosed to employees having an "official need to know" the information, the intra-agency disclosure does not constitute a public disclosure under the UIPA.

Ending Time of Meetings

A board questioned whether the Sunshine Law requires it to state on its agenda the time when its meeting will end. The board was concerned that a stated ending time may be misleading if the meeting ends earlier or later than stated.

OIP informed the board that the Sunshine Law does not require the board to state an ending time on the agenda and agreed that it would be appropriate to omit the ending time on the agenda since the public may rely on a stated ending time when the actual ending time may differ.

Superferry Task Force's Meeting While Riding the Superferry

The Superferry Task Force had previously toured the Superferry, while it was docked, as part of its meeting open to the public. The Task Force wanted to hold another meeting on the Superferry but, this time, while the Superferry traveled to another island. However, in order for the public to attend this meeting, the public would be required to pay the fare to ride the Superferry during this trip.

OIP informed the Task Force that the Sunshine Law does not allow it to hold a meeting in which the public would be required to pay a fee in order to attend the meeting. The required fee is an obstruction to the public's right to attend the meeting.

Posting of an Agenda in a Government Building Closed at Night

A caller complained that a board had posted its agenda in a building that is secured and inaccessible to the public at night. Thus, the public did not have access to the notice 24 hours a day.

OIP informed the caller that the Sunshine Law does not require that an agenda must be accessible to the public 24/7. The Sunshine Law only identifies the locations at which a board must post or file its agenda.

Executive Meeting Meetings – Continuing Privacy Interests

U RFO-G 06-3

The Hawaii County Corporation Counsel sought an opinion on whether the Hawaii County Police Commission could redact, prior to public disclosure, information in the minutes of an executive meeting that would identify individuals who had offered comments regarding candidates for Chief of Police position to individual commissioners, who then related those comments at the meeting.

The Commission convened the executive meeting pursuant to section 92-5(a)(2) of the Sunshine Law, to consider candidates for Chief of Police. That section allows a board to hold a meeting closed to the public to consider, among other things, the hire of an officer or employee “where consideration of matters affecting privacy will be involved[.]”

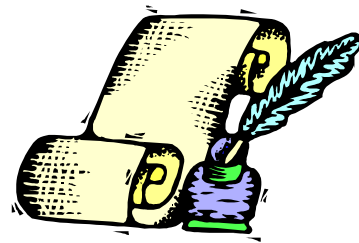
For executive meetings properly held under an executive meeting purpose provided by the Sunshine Law, the minutes for those meetings “may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.” Thus, when a request is made for the minutes of an executive meeting, the agency may withhold the minutes or information in those minutes under the UIPA’s “frustration” exception to the extent disclosure would frustrate the purpose for closing the meeting to the public in the first place, and under the UIPA’s “other law” exception to the extent that section 92-9(b), HRS, allows withholding of the Minutes.

When a record request is made for the minutes of an executive meeting held pursuant to section 92-5(a)(2) to protect an individual’s privacy, a board must determine at that time whether disclosure of information in the minutes would still be an unwarranted invasion of the individual’s privacy. For unsuccessful candidates, the privacy interests related to their applications initially protected by holding the executive meeting remain unchanged after the hiring of the successful candidate. OIP thus advised that the Commission should generally continue to protect information relating to the unsuccessful candidates’ applications because disclosure would defeat the December 9 executive meeting’s purpose to protecting their privacy. However, information that had been made public would no longer be protected on privacy grounds and should not be redacted.

Accordingly, if the unsuccessful candidates’ identities had not been made public, the Commission could redact the candidates’ names and other individually identifiable information. If they had been identified, then their names could not be withheld, but individually identifiable information could be redacted, including the third party comments about the candidates related by individual commissioners. OIP further advised that the information in which the successful candidate retained a privacy interest could also be redacted.



OIP Formal Opinion Summaries



The following summarizes the formal opinion letters issued in FY 2008. As noted earlier, in order to increase its case dispositions, OIP has increasingly opted to dispose of cases through informal memorandum opinions and other methods.

These summaries should be used only as a broad reference guide. To fully understand an opinion, it is necessary to read the full text of the opinion. Summaries and the full text of all opinions are available at www.hawaii.gov/oip.

Applications for Permits to Enter Marine Reserve

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

OIP opined that the Applications must generally be disclosed upon request, but DLNR may withhold certain limited information. First, under the UIPA's privacy exception, DLNR may withhold personal information, such as personal contact information and social security numbers, which sheds no light on an application's

consideration by its board (BLNR). Unless and until DLNR submits an Application to BLNR for approval at a meeting, DLNR may also withhold from an Application before requested disclosure: medical history information, personal financial information, and personal details relating to proposed cultural activities.

Once BLNR gives public notice on its agenda that it will be considering an Application at a public meeting, these types of information must be disclosed to the extent that they are relevant to BLNR's consideration of the Application and, thus, will likely be discussed at its public meeting.

DLNR may also withhold information that it finds to be confidential commercial or financial information or proprietary information because such information is exempt from public disclosure under the UIPA's "frustration of a legitimate government function" exception. In addition, under the "frustration" exception, DLNR is also not required to disclose recommendations and comments DLNR receives from staff and outside experts as well as its recommendations to BLNR that are predecisional and deliberative in nature, unless BLNR waives this exemption by publicly disclosing these records, or specifically referring to or incorporating them in its decision. [*OIP Op. Ltr. No. 07-11, September 25, 2007*]

Council Member Participation at Committee Meetings When Not Assigned to the Committee

The Maui County Council requested an opinion from OIP regarding whether council members may attend and participate in a meeting of a committee of the council when they are not assigned as committee members (“Non-members”).

OIP opined that the Sunshine Law does not permit Non-members to participate in a committee meeting because the resulting discussion of Council business among the various council members, consisting of both committee members and Non-members, constitutes a meeting of the Council that does not conform to the requirements of the Sunshine Law.

The Sunshine Law requires board members to discuss matters involving board business in a properly noticed meeting of their board absent an applicable exception.

When a board forms a committee, the committee and its members must independently comply with the Sunshine Law’s open meeting requirements apart from the parent board.

Where Non-members attend and participate in a committee meeting, the combined attendance of committee members and Non-members must be viewed as a discussion by them as members of the parent board — i.e., the Council — of parent board business, which may not occur outside of a properly noticed Council meeting. [*OIP Op. Ltr. No. 08-01, March 14, 2008*]



Sunshine Law Report

OIP was given responsibility for administration of the Sunshine Law in 1998. Since that time, OIP has seen a large increase in the number of requests. The annual number of requests has topped 300 for each of the past three years. See **Figure 13**.

Of the 779 AOD requests made in FY 2008, 322 involved the Sunshine Law and its application. OIP also opened 30 case files in response to written requests for opinions (12 requests) or investigations (18 requests) regarding the Sunshine Law. See **Figure 14**.

The rise in requests in recent years appears to be due in large part to a heightened awareness by both the public and government boards of the Sunshine Law's requirements as well as more diligent efforts by boards to comply with those requirements, both of which result in greater use of OIP as a resource.



Sunshine Law Inquiries

<i>Fiscal Year</i>	<i>AOD Inquiries</i>	<i>Formal Requests</i>	<i>Total</i>
2008	322	30	352
2007	281	51	332
2006	271	52	323
2005	185	38	223
2004	209	17	226
2003	149	28	177
2002	84	8	92
2001	61	15	76
2000	57	10	67

Figure 14

OIP continues to provide an annual training to newly appointed board and commission members and their staff, as well as providing other training sessions throughout the year. See page 52 for a list of the sessions provided in FY 2008.



Sunshine Law Inquiries

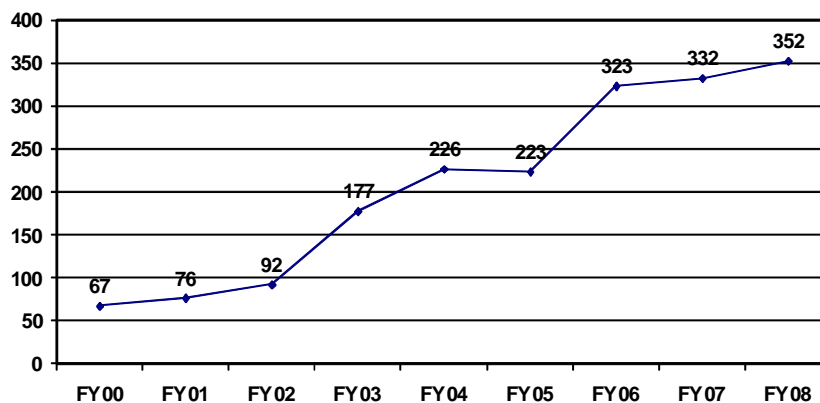


Figure 13

Other Duties

Legislation Report

One of OIP's functions is to make recommendations for legislative change to the UIPA and Sunshine Law to clarify areas that have created confusion in application or to amend provisions that work counter to the legislative mandate of open government. OIP also provides assistance to government agencies,



government boards, elected officials and the public in the drafting of proposed bills.

To provide for uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices.

This past legislative session, OIP offered testimony on and monitored 152 pieces of legislation.

OIP itself introduced the following piece of legislation as part of the Governor's legislative package. On April 18, 2008, Governor Lingle signed into law Act 20, amending the Sunshine Law's "limited meeting" provision.

Board Meeting Where Public Attendance Is Not Practicable (Act 20)

Prior to amendment, the Sunshine Law allowed limited closed meetings where a board determined it necessary to meet at a location that would be dangerous to the health or safety of an attending public, and if the state attorney general concurred.

Act 20 amends HRS section 92-3.1 to allow a limited closed meeting for a second purpose and also transfers responsibilities under that section from the Attorney General to the OIP Director.

As amended, the law now also allows a limited closed meeting if a board determines it necessary to conduct an on-site inspection if public attendance is not practicable and the OIP Director concurs.

For the convenience of boards, OIP has created a form, "Request for the Office of Information Practices' Concurrence for a Limited Meeting," that is available on OIP's website.

This amendment will enable boards to make better-informed decisions by allowing all members to attend on-site inspections where boards determine it necessary to view a location where public attendance cannot be reasonably accommodated, such as an open-ocean fish farming site or an irrigation system viewed from a location that is difficult to access.

To hold a limited meeting due to impracticability, a board must:

- ▶ Specify the reasons for its determination that the on-site inspection is necessary and that public attendance is impracticable;
- ▶ Vote by two-thirds of all board members to adopt those reasons; and
- ▶ Obtain the OIP Director's concurrence.

In addition, the board must:

- ▶ Provide proper notice of the limited meeting;
- ▶ Comply with the minutes requirements;

- ▶ Make no decisions at the limited meeting; and
- ▶ Videotape the meeting and make the videotape available at the next open meeting, unless the video requirement is waived by the OIP Director;

The video requirements are meant to ensure that the public has access to the information the board obtained during the limited meeting and can see what the board saw during its on-site inspection.

Thus, the OIP Director will waive the video requirement only to the extent that conditions make it dangerous or impracticable to take the video.

OIP also closely monitored and offered testimony on the following piece of legislation.

Special Sunshine Exceptions for Neighborhood Boards (Act 153)

On June 9, 2008, Governor Lingle signed into law Act 153, which creates special exceptions to the Sunshine Law for neighborhood boards. Note: These exceptions do **not** apply to other boards subject to the Sunshine Law.

▶ Issues Raised in Public Comments

Under the new law, a neighborhood board that hears public comments during its meeting can discuss an issue raised even where that issue is not part of its agenda for that meeting. The neighborhood board must hold off on making any decision on the issue until a subsequent meeting where the issue is on the agenda.

All other boards that choose to hear public comments on issues that are not on the agenda for its meeting must be careful not to discuss those issues.

▶ Noticed Meetings That Don't Make Quorum

Under the new law, members of a neighborhood board who show up for a noticed meet-

ing can receive testimony and presentations even if the meeting is canceled for lack of quorum. The law requires that they report on the information received at the next meeting.

▶ Attending Community Meetings and Seminars

The new law allows less than a quorum of members of a neighborhood board to attend a community meeting, seminar, or similar event where board business will be discussed, and to discuss that board business as part of their participation in the event so long as they don't make or seek a commitment on how they will vote.

The event cannot have been specifically arranged for or directed at the neighborhood board members, and the members in attendance must report on what was discussed at the next neighborhood board meeting.

▶ Discussing Unanticipated Events at a Scheduled Meeting

The new law allows a neighborhood board to discuss and act on an "unanticipated event" that occurs less than six days before a scheduled meeting without having to take special steps to add it to the agenda or to call an emergency meeting. However, the new provision is limited to situations where "timely action on the matter is necessary for public health, welfare, and safety."

The Sunshine Law generally allows boards to call an "emergency meeting" if the board finds an imminent peril to the public health, safety, or welfare, or if an unanticipated event requires a board to act within less than the six days required to notice the meeting, but requires various steps to be taken to do so. See Haw. Rev. Stat. §92-8.



Litigation Report

OIP monitors litigation that raises issues under both the UIPA and the Sunshine Law.



Under the UIPA, a person may bring an action for relief in the circuit courts if an agency denies access to records or fails to comply with the provisions of the UIPA governing personal records. A person filing suit must notify OIP at the time of filing.

OIP has standing to appear in an action in which the provisions of the UIPA have been called into question.

The following summarizes cases that OIP was a party to or monitored in FY 2008.

Serial One-on-One Communication

In *Right to Know Committee, et al., v. City Council, City and county of Honolulu, et al.*, Civ. No. 05-1-1760-10 EEH (Circuit Court of the First Circuit), various nonprofit organizations (the “plaintiffs”) challenged the Council’s position that the Sunshine Law’s permitted interactions may be used serially.

“Permitted interactions” are those instances in which board members may interact outside of an open meeting about official board business for the purposes and under the conditions set forth in the statute. *See* Haw. Rev. Stat. §92-2.5.

The case specifically concerned the permitted interaction that allows two members to discuss board business between themselves as long as no commitment to vote is made or sought (the “two-member permitted interaction”).

Prior to the lawsuit, OIP had issued an advisory opinion rejecting the Honolulu City Council’s (the “Council”) position that a member could use this permitted interaction to discuss Council business with one member, and then use it repeatedly to discuss the same Council business with other members in a series of one-on-one discussions outside of a meeting. *See* OIP Op. Ltr. No. 05-15.

OIP concluded that this serial use violates the Sunshine Law because it circumvents the law’s open meeting requirement and is contrary to the law’s underlying policy and intent.

The Intermediate Court of Appeals (the “ICA”) agreed with this conclusion and recognized that deference should be given to OIP’s advisory opinions issued under the Sunshine Law.

The ICA generally deferred to OIP’s opinion and confirmed the lower court’s conclusion that the quorum of the members’ serial use of the two-member permitted interaction had violated the Sunshine Law.

The ICA emphasized that when this permitted interaction was used in this manner, “the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated.”

The ICA also awarded plaintiffs their attorney’s fees in full because the issues litigated were intertwined making it difficult to separate the fees and because the plaintiffs substantially won.

In ruling on the fees issue, the ICA noted its “great public import” given the Sunshine Law’s intent to encourage citizens to pursue claims of Sunshine Law violations. *Right to Know Comm. v. City Council, City & County of Honolulu*, 175 P.2d 111 (Haw. Ct. App. 2007).

The court’s decision is important because it recognized that (1) the two-member permitted interaction cannot be used serially by a majority of the members; (2) attorneys fees should be awarded viewing the issues raised cumulatively; (3) where a board amends its rules to “cure” a violation, the public may still seek a court’s ruling where a challenged act or practice is likely to reoccur; and (4) OIP’s Sunshine Law advisory opinions are accorded deference by the court.

This case will not affect future OIP opinions on the serial use of the two-member permitted interaction because it upheld OIP’s conclusion in Opinion Letter Number 05-15.

However, OIP will use this case as guidance and support when opining on the serial use of other permitted interactions where the same reasoning applies, i.e., where serial use would circumvent the Sunshine Law.



**in
this
section . . .**

Serial One-on-One Communication

Status of Cable Access Providers

Access to Council Minutes

Access to Police Records

*Return of Documents in Clean Water
Enforcement Action*

Akaku: Access to Attorney General Opinion

Kauai County’s Executive Committee Minutes

Request for Engineering Reports

Akaku: Sharing Confidential Information

Kanahele, et. al. v. Maui County Council

Status of Cable Access Providers

In *Olelo v. OIP*, 173 P.3d 484 (Haw. 2007), the Hawaii Supreme Court ruled on whether Olelo: The Corporation for Community Television (“Olelo”), which among other things administers the public, educational and governmental access channels (“PEGs”), falls within the definition of “agency” under the UIPA.

In determining whether a private entity falls within the UIPA’s broadly worded definition of “agency,” OIP had found a “totality of circumstances” test to be consistent with the UIPA’s policy and legislative history.

Examining the totality of factors, OIP found indicia of indirect state ownership, management and control of Olelo in its performance of a government function, namely the administration of the PEGs on behalf of the State. OIP thus concluded that Olelo was “owned, operated, or managed by or on behalf of this State” and therefore an “agency” for UIPA purposes. *See* OIP Op. Ltr. No. 02-08.

The court disagreed, ruling that Olelo is not an “agency” under the plain language of the statute and the lower court’s conclusion that it does not perform a government function.

Olelo sought a court ruling on whether it is an “agency” under the UIPA. The court found that Olelo is not state “owned, operated or managed,” pointing to, among other things, its nonprofit corporate form, its title to property not purchased with PEG fees, its day-to-day management of its operations with non-state employees, and the State’s lack of direct and full control over Olelo’s activities or business affairs.

The court also found that Olelo is not “owned, operated, or managed . . . on behalf of” the State because it is not substituting for the State in performing a governmental function.

The court’s decision instructs that:

(1) for a private entity to be considered an “agency” the facts must show that (a) the State directly owns all of the entity’s assets or exercises day-to-day control; *or* (b) the entity is substituting for the State in performing what is clearly, or directly stated to be, a governmental function;

(2) court will rule on threshold issues of UIPA applicability, such as what is an “agency” or “government record”; and

(3) court will give deference to OIP opinions on matters the UIPA gives OIP the discretion to determine (matters within OIP’s area of expertise), such as application of the UIPA’s exceptions to disclosure or an agency’s compliance with the UIPA’s disclosure requirements.

In accordance with the court’s ruling, OIP will not find a private entity to be an “agency” under the UIPA *unless* it (1) is clearly and fully owned or directly run by the State; *or* (2) performs what is indisputably a traditional government function, such as where a government service is directly privatized. Few entities will likely meet this strict definition.

Access to Council Minutes

Kauai County, et al. v. Office of Information Practices, et al., Civ. No. 05-1-0088 (Circuit Court of the Fifth Circuit). In 2005, the County of Kauai and the Kauai County Council filed a lawsuit against OIP seeking declaratory relief to invalidate OIP’s decision that portions of the minutes of a Council executive meeting must be disclosed.

OIP previously found that the majority of the matters actually considered by the Council during the meeting did not fall within the executive meeting purpose cited on the Council’s agenda (or any other executive meeting purpose). For that reason, OIP determined that those portions of the minutes must be disclosed.

By this suit, plaintiffs sought judicial review of OIP’s ruling to disclose the minutes. OIP contends that the court does not have jurisdiction to hear this case because the UIPA does not provide government agencies the right to bring suit to challenge a ruling by OIP that a record must be disclosed under the UIPA.

The lower court concluded that access to the ES-177 minutes is governed by the Sunshine

Law, not the UIPA. Under the Sunshine Law, the court concluded that “the privileged portions of ES-177 minutes were so intertwined with the other portions that redaction would be impractical” and accordingly that the minutes shall not be disclosed.

OIP appealed the lower court’s decision. That appeal is pending.

Access to Police Records

Michael Harris v. DOE Dog Owner et al., Civ. No. 07-1-0353-02 (First Circuit Court). In this suit, one of the claims raised by Plaintiff was against the City and County of Honolulu, the Honolulu Police Department (“HPD”) and Boise Correa, as chief of HPD, for failure to provide access under the UIPA to an unredacted copy of a police report concerning Plaintiff as the victim of an alleged dog attack. The parties entered into a stipulation to dismiss all claims involving these defendants.

Return of Documents in Clean Water Enforcement Action

State of Hawaii v. Earthjustice, et al., Civ. No. 03-1-1203-06 (Circuit Court of the First Circuit). In this case, the Department of Health, Clean Water Branch (“DOH”) obtained six boxes of documents from a private landowner and associated entities in connection with an enforcement action on Kauai for violations of clean water laws.

DOH asserted, *inter alia*, that it inadvertently allowed Earthjustice to inspect and copy certain confidential documents protected from disclosure by state and federal law. DOH sought the return or destruction of the copies made by Earthjustice.

Earthjustice filed a motion seeking to retain and use the documents, including select tax returns and return information, in related proceedings involving the parties.

Final judgment has been entered. Pursuant to conditions in the court’s order, documents that were privileged and confidential would be returned to the State, Earthjustice would be allowed to retain and use all other documents.

Akaku: Access to Attorney General Opinion [Civ. No. 07-1-02780]

Akaku, operator of Maui’s public, education and government (“PEG”) television channels, brought suit to obtain a copy of an opinion letter by the Office of the Attorney General (the “AG”) to the Department of Commerce and Consumer Affairs regarding whether DCCA was required to comply with the State Procurement Code in awarding contracts to PEG operators.

The circuit court has opined that the letter written fell within section 28-3, HRS, as an opinion on a question of law requested by the head of the DCCA and was a matter of significance to the public. The court further concluded that the DCCA had disclosed a significant part of the opinion thereby waiving the attorney-client privilege as to “communications on the same subject matter.”

The court thereafter ordered that defendants provide the court with a copy of the letter for the court’s *in camera* review so that it could determine what information if any could be redacted because it was protected by the attorney-client privilege or should be kept confidential to avoid the frustration of a legitimate government function.

After reviewing the Attorney General's opinion *in camera*, the court released the opinion to the parties in open court on November 18, 2008. The court suggested that counsel for the parties work to stipulate on the plaintiff's request for attorneys' fees and costs.

Kauai County Council's Executive Meeting Minutes

Chuan, et al. v. County of Kauai, et al., Civ. No. 05-1-0168 (Circuit Court of the Fifth Circuit). Members of the public filed suit against Kauai County, the Kauai County Council and Kauai County Council members over disclosure of the Council's executive meeting minutes for a three and a half year period. This case is awaiting trial.

Request for Engineering Reports

Nuuanu Valley Association v. City and County of Honolulu, Supreme Court No. 28599, appeal from Civ. No. 06-1-0501.

This litigation stemmed from a request for engineering reports submitted to the Honolulu Department of Planning and Permitting ("DPP"). Although the reports accepted by DPP were made public, DPP returned the unaccepted reports with comments to the applicant, and did not retain a copy. The requester appealed from a circuit court judgment in favor of DPP.

On October 24, 2008, the Hawaii Supreme Court issued an opinion upholding the circuit court's judgment. The Court, while noting the UIPA's broad definition of a government record, found that DPP did not have a duty to retain possession or control of the rejected engineering reports. Because DPP did not have such a duty, and had not retained possession or control of the rejected engineering reports, the court concluded that the rejected engineering reports were not "governmental records" of DPP. Therefore, DPP's denial of access to the reports on that basis was proper under the UIPA.

Akaku: Sharing Confidential Information

Maui Community Television v. Fujioka, et al., Civ. No. 07-1-01279 (Circuit Court of the Second Circuit). Akaku filed suit against the State alleging violations of the UIPA. Specifically, Akaku has alleged that the DCCA violated the UIPA by improperly sharing confidential information concerning Akaku with the State Procurement Office and by disclosing that information to the public.

Kanahele, et al., v. Maui County Council

Kanahele, et al. v. Maui County Council, Civ. No. 08-1-0115 (Circuit Court of the Second Circuit). Plaintiff brought suit against the Maui County Council and Maui County to void certain Council actions, alleging that those actions were taken in violation of the Sunshine Law's notice and meeting provisions. The court has issued a preliminary injunction on County actions related to the Honua'ula housing development project.



Records Report System Report



The UIPA requires each state and county agency to “compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices.” Haw. Rev. Stat. §92F-18(b) (1993).

These public reports are filed with OIP and must be reviewed and updated annually by the agencies. OIP is directed to make these reports available for public inspection.

The Records Report System

OIP developed the Records Report System (“RRS”), a computer database, to facilitate collection of information from agencies and to serve as a repository for all agency public reports.

From 1994, when the first record report was added to the system, up to June 30, 2008, state and county agencies have reported 29,785 records. See **Figure 15**.



Records Report System

Status of Records Reported by Agencies: 2008 Update

Jurisdiction	Number of Records
State Executive Agencies	20,840
Legislature	836
Judiciary	1,645
City and County of Honolulu	3,909
County of Hawaii	947
County of Kauai	930
County of Maui	678
Total Records	29,785*

* In addition to these completed records, there are 177 records on the system still being edited by agencies and accessible only to those agencies.

Figure 15

RRS on the Internet

The RRS was first developed as a Wang computer-based system. In 2003, the RRS was transferred to the Internet, creating a system accessible to both government agencies and the public.

Beginning in October 2004, the RRS has been accessible on the Internet through OIP's website. Agencies may access the system directly to enter and update their records data. Agencies and the public may access the system to view the data and to create various reports. A guide on how to retrieve information and how to create reports is also available on OIP's website.



Key Information: What's Public

The RRS requires agencies to enter, among other things, public access classifications for their records and to designate the agency official having control over each record. When a government agency receives a request for a record, it can use the RRS to make an initial determination as to public access to the record.

The RRS only lists government records and information and describes their accessibility. The system does not contain the actual records. Accordingly, the record reports contain no confidential information and are public in their entirety.



State executive agencies have reported 51% of their records as accessible to the public in their entirety; 18% as unconditionally confidential, with no public access permitted; and 26% in the category "confidential/conditional access." Another 5% are reported as undetermined. See **Figure 16**. In most cases, OIP has not reviewed the access classifications.

Records in the category "confidential/conditional access" are accessible after the segregation of confidential information, or accessible only to those persons, or under those conditions, described by specific statutes.

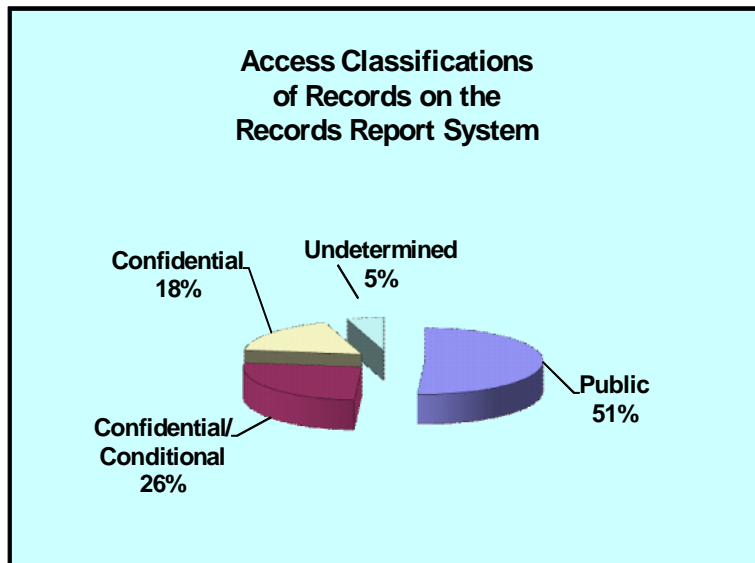


Figure 16

Education

Publications and Web Site



OIP's publications and website play a vital role in the agency's ongoing efforts to inform the public and government agencies about the UIPA, the Sunshine Law, and the work of OIP.

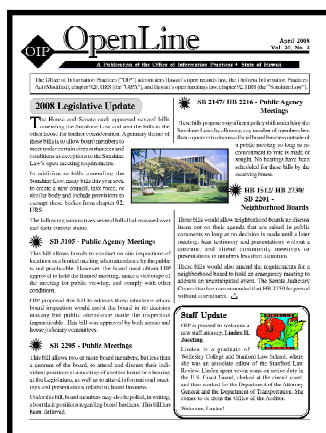
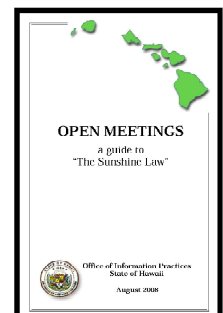
In FY 2008, OIP continued its traditional print publications, including the monthly *OpenLine* newsletter, *Office of Information Practices Annual Report 2007*, a guide to the Sunshine Law entitled *Open Meetings*, and the guide book *Hawaii's Open Records Law*, intended primarily to give the non-lawyer agency official an overall understanding of the UIPA and a step-by-step application of the law. OIP's publications are available on OIP's website.

Current and past issues of *OpenLine* are also available on OIP's website. Issues in FY 2008 included summaries of recently published OIP opinions, information about OIP's legislative proposals, UIPA and Sunshine Law pointers and guidelines, a report on recent court cases under the UIPA and Sunshine Law, and other issues relevant to OIP's mission.

Sunshine Law Guide

Open Meetings, a 64-page guide to the Sunshine Law, is intended primarily to assist board members in understanding and navigating the Sunshine Law.

The guide uses a question and answer format to provide general information about the law and covers such topics as meeting requirements, permitted interactions, notice and agenda requirements, minutes, and the role of OIP.



OpenLine

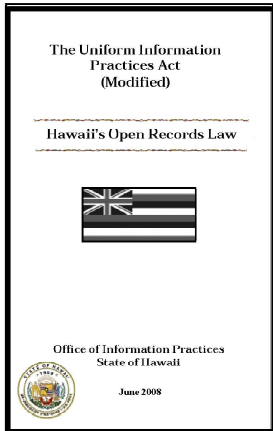
The *OpenLine* newsletter, which originated in March 1989, has always played a major role in OIP's educational efforts. The newsletter is sent to all state and county agencies, including boards and commissions, and libraries throughout the state, as well as all other persons requesting the newsletter.

This past year, OIP distributed over 3,500 copies of each issue of the *OpenLine* and also provided e-mail notification to those who prefer receiving the publication in electronic form.

UIPA Guide

Hawaii's Open Records Law is a 44-page guide to the Uniform Information Practices Act and OIP's administrative rules.

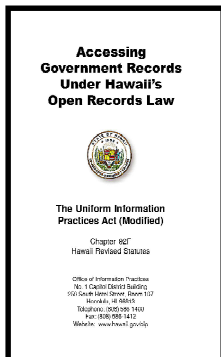
The guide directs agencies through the process of responding to a record request, including determining whether the record falls under the UIPA, providing the required response to the request, analyzing whether any of the exceptions to disclosure apply, and suggesting how the agency review and segregate the record. The guide also includes answers to a number of frequently asked questions.



Accessing Government Records Under Hawaii's Open Records Law

This three-fold pamphlet is intended to provide the public with basic information about the UIPA. It explains how to make a record request, the amount of time an agency has to respond to that request, what types of records or information can be withheld and any fees that can be charged for search, review, and segregation.

The pamphlet also discusses what options are available for appeal if an agency should deny a request.



Model Forms

OIP has created model forms for use by agencies and the public.

To assist members of the public in making a records request to an agency that provides all of the basic information the agency requires to respond to the request, OIP provides a **“Request to Access a Government Record”** form. To follow the procedures set forth in OIP's rules for responding to record requests, agencies may use OIP's model form **“Notice to Requester”** or, where extenuating circumstances are present, the **“Acknowledgment to Requester”** form.

Members of the public may use the **“Request for Assistance to the Office of Information Practices”** form when their request for government records has been denied by an agency or to request other assistance from OIP.

To assist agencies in complying with the Sunshine Law, OIP provides a **“Public Meeting Notice Checklist.”**

Related to Act 20, OIP has created **“Request for OIP's Concurrence for a Limited Meeting”** for the convenience of boards seeking OIP's concurrence to hold a limited meeting. Act 20 amends the limited meetings provision (§92-3.1) to allow closed meeting where public attendance is not practicable. In order to hold such a meeting, a board must, among other things, obtain the concurrence of OIP's director that it is necessary to hold the meeting at a location where public attendance is not practicable.

All of these forms may be obtained online at www.hawaii.gov/oip.

OIP Website

OIP's website has become an important means of disseminating information. The site plays a major role in educating and informing government agencies and citizens about access to state and county government records and meetings. In FY 2008 a counter was installed on the site and has recorded more than 50,000 hits.

Visitors to the site can access, among other things, the following information and materials:

- The UIPA and the Sunshine Law statutes
- OIP's administrative rules

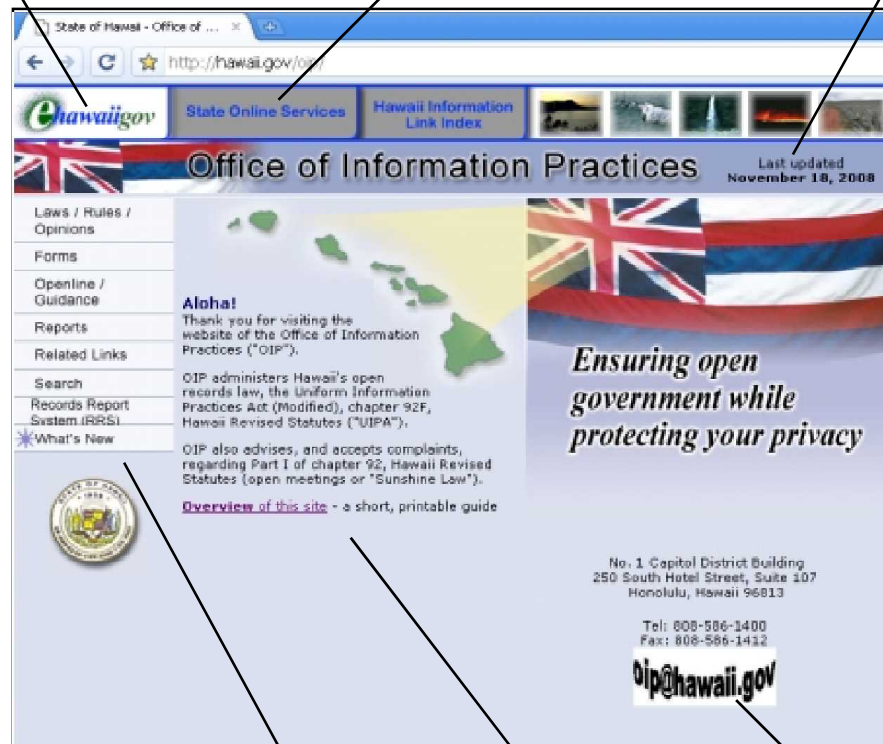
- OpenLine newsletters
- OIP's recent annual reports
- Model forms created by OIP
- OIP's formal opinion letters
- Formal opinion letter summaries
- Formal opinion letter subject index
- General guidance for commonly asked questions

OIP's website also serves as a gateway to websites on public records, privacy, and informational practices in Hawaii, other states, and the international community.

link to the State home page: State government agencies and information about Hawaii

link to the State's many online services

find out when the site was last updated



main menu: link to laws, rules, opinions, forms, guidance, reports

overview of the site - a short guide

contact information

Features

OIP's website features the following sections that may be accessed through a menu located on the left margin.

“Laws/ Rules/ Opinions”

This section features three parts:

➤ *Laws*: the complete text of the UIPA and the Sunshine Law, with quick links to each section. With an Internet browser, a user can perform a key word search of the law.

➤ *Rules*: the full text of OIP's administrative rules (“Agency Procedures and Fees for Processing Government Record Requests”), along with a quick guide to the rules and OIP's impact statement for the rules.

➤ *Opinions*: a chronological list of all OIP opinion letters, an updated subject index, a summary of each letter, and the full text of each letter.

“Forms”

Visitors can view and print the model forms created by OIP to facilitate access under and compliance with the UIPA and the Sunshine Law.

“OpenLine/ Guidance”

The monthly *OpenLine* newsletter is available online. Back issues, beginning with the November 1997 newsletter, are archived here and easily accessed. Online guidance includes answers to frequently asked questions from government agencies and boards and from members of the public.

“Reports”

OIP's annual reports are available here for viewing and printing, beginning with the annual report for FY 2000. Other reports available include reports to the Legislature on the

commercial use of personal information and on medical privacy. Viewers may also read about, and link to, the Records Report System.

“Related Links”

To expand your search, visit the growing page of links to related sites concerning freedom of information and privacy protection.

“Search”

Convenient search engine to search OIP's website. Enter your search terms, phrases, OIP opinion letter number or subject matter in the box provided. A listing of relevant hits will display along with the date the page or document was modified as well as a brief description of the material.

“Records Report System (RRS)”

Shortcut link to the Records Report System online database.

“What's New”

Lists current events and happenings at OIP.





Each year, OIP makes presentations and provides training on the UIPA and the Sunshine Law. OIP conducts this outreach effort as part of its mission to inform the public of its rights and to assist government agencies in understanding and complying with the UIPA and the Sunshine Law.

OIP conducted 21 training workshops in FY 2008. These trainings included various workshops for the general public, board members, and various state agencies. The following is a listing of the workshops and training sessions OIP conducted during FY 2008.

UIPA Training

OIP provided training sessions on the UIPA for the following agencies and groups:

- 7/31/07 Hawaii State Bar Association, Government Attorney Section
- 9/28/07 Hawaii County: Annual Municipal Attorneys Conference (Kona)
- 10/24/07 Maui Corporation Counsel (two sessions)
- 4/30/08 Kauai County: All Boards and Commission Members (two sessions)

Sunshine Training

OIP provided training sessions on the Sunshine Law for the following agencies and groups:

- 7/2/07 Department of Land and Natural Resources: Patsy T. Mink Commission
- 7/24/07 Attorney General: Tobacco Trust Fund Advisory Board
- 8/6/07 Department of Education: Charter School Review Panel
- 8/13/07 Department of Accounting and General Services: Building Code Council
- 9/7/07 Department of Accounting and General Services: Access Hawaii Committee
- 9/25/07 Department of Health: Hawaii Advisory Commission on Drug Abuse and Controlled Substances
- 9/28/07 Hawaii County: Annual Municipal Attorneys Conference (Kona)
- 10/3/07 Hawaii Broadband Task Force (via Legislative Auditor's Office)
- 10/9/07 Department of Land and Natural Resources: Kona Soil & Water Conservation District Board/Kona

- 2/20/08 Department of Land and
Natural Resources: Molokai
Island Burial Council
- 3/7/08 Department of Business,
Economic Development and
Tourism: Marine and Coastal
Zone Advocacy Council
(MACZAC)
- 4/18/08 Kauai County: All Boards
and Commission Members
(two sessions)
- 5/22/08 Department of Education:
Charter School Review
Panel
- 6/18/08 Department of Land and
Natural Resources: Hawaii
Assn Conservation District
(Kona Soil and Water
Conservation District Board)
- 6/30/08 Department of Health: Hawaii
Statewide Health Coordinating
Council (State Health Plan and
Development Agency)

