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KE KIAʻĀINA

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STATE OF HAWAIʻI | KA MOKUʻĀINA O HAWAIʻI
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA ʻOIHANA LOIHELU A LAWELAWE LAULĀ
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December 26, 2024

VIA ELECTRONIC MAIL

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-Third State Legislature
State Capitol, Room 409
Honolulu, Hawaiʻi 96813

The Honorable Nadine K. Nakamura,
Speaker and Members of the
House of Representatives
Thirty-Third State Legislature
State Capitol, Room 431
Honolulu, Hawaiʻi 96813

Dear President Kouchi, Speaker Nakamura, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Office of Information Practices Annual Report for the period of July 1, 2023 through June 30, 2024, as required by Section 92F-42(7), Hawaii Revised Statutes. In accordance with Section 93-16, HRS, a copy of this report has been transmitted to the Legislative Reference Bureau and the report may be viewed electronically at: http://ags.hawaii.gov/reports/legislative-reports/.

Sincerely,

KEITH A. REGAN
Comptroller

Enclosure

bc: Governor's Office
Lieutenant Governor's Office
Legislative Reference Bureau
Legislative Auditor
Department of Budget and Finance

State of Hawai'i

OFFICE OF INFORMATION PRACTICES

Annual Report 2024

This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices from July 1, 2023 to June 30, 2024, in the administration of the public records law (the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes) and the open meetings law (the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes).

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INTRODUCTION

In 1988, the Legislature enacted the Uniform Information Practices Act (Modified) (UIPA), codified as chapter 92F, Hawaii Revised Statutes (HRS), to replace the State's then existing laws relating to public records and individual privacy, and to better address the balance between the public's interest in disclosure of government records and individual privacy interests in personal information maintained by government.

Under the UIPA, all government records are open to public inspection and copying unless an exception authorizes an agency to withhold the records from disclosure. The Legislature included the UIPA's purpose statement in section 92F-2, HRS:

> In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

The Legislature also recognized that "[t]he policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawai'i."

The Legislature instructed that the UIPA be applied and construed to:

(1) Promote the public interest in disclosure;
(2) Provide for accurate, relevant, timely, and complete government records;
(3) Enhance governmental accountability through a general policy of access to government records;
(4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
(5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.

The Legislature created the Office of Information Practices (OIP) to administer the UIPA, with jurisdiction over all state and county agencies. In 1998, OIP was given the additional responsibility of administering Hawai'i's Sunshine Law, part I of chapter 92, HRS, which had been administered by the Department of the Attorney General since the law's enactment in 1975.

The Sunshine Law opens up the governmental processes to public scrutiny and participation by requiring state and county boards to conduct their business as transparently as possible in meetings open to the public. Unless a specific statutory exception applies, the Sunshine Law requires discussions, deliberations, decisions, and actions of government boards to be conducted in an open meeting, with advance notice and the opportunity for the public to present testimony.

OIP seeks to promote government transparency while respecting people's privacy rights by fairly and reasonably administering the UIPA and Sunshine Law. As an independent, neutral agency, OIP provides uniform interpretation of both laws.

Additionally, following the enactment of the Open Data Law, Act 263, Session Laws of Hawaii (SLH) 2013 (codified at HRS § 27-44), OIP was charged with assisting the Office of Enterprise Technology Services (ETS) to implement Hawai'i's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the state.

Pursuant to sections 92F-42(7) and 92-1.5, HRS, this annual report to the Governor and the Legislature summarizes OIP's activities and findings regarding the UIPA and Sunshine Law for fiscal year (FY) 2024, which began on July 1, 2023 and ended on June 30, 2024. This annual report also details OIP's performance for FY 2024. Details and statistics for FY 2024 are found later in this report, along with OIP's goals, objectives and action plan for FY 2025-2030.

GOALS, OBJECTIVES AND ACTION PLAN

Pursuant to Act 100, SLH 1999, as amended by Act 154, SLH 2005, the State Office of Information Practices (OIP) presents its Goals, Objectives, and Action Plan for One, Two, and Five Years, including a report on its performance in meeting previously stated goals, objectives, and actions.

OIP's Mission Statement

"Ensuring open government while protecting individual privacy."

I. Goals

OIP's primary goal is to fairly and reasonably administer the UIPA and the Sunshine Law in order to achieve the common purpose of both laws that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government[al] agencies—shall be conducted as openly as possible.

With the passage of the Open Data Law, OIP also assists the Office of Enterprise Services (ETS) to implement Hawai'i's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the State.

II. Objectives and Policies

A. Legal Guidance and Assistance. Provide training and impartial assistance to members of the public and all state and county agencies to promote compliance with the UIPA and Sunshine Law.

1. Provide accessible training guides, audio/visual presentations, and other materials online at oip.hawaii.gov and supplement OIP's online training with customized training for state and county government entities.

2. Provide prompt informal advice and assistance to members of the public and government agencies through OIP's Attorney of the Day (AOD) service.

3. Adopt and revise administrative rules, as necessary.

B. Investigations and Dispute Resolution. Assist the public, conduct investigations, and provide a fair, neutral, and informal dispute resolution process as a free alternative to court actions filed under the UIPA and Sunshine Law, and resolve appeals under section 231-19.5(f), HRS, arising from the Department of Taxation's decisions concerning the disclosure of the text of written opinions.

1. Focus on reducing the age and number of OIP's backlog of formal cases.

C. Open Data. Assist ETS and encourage all state and county entities to increase government transparency and accountability by posting open data online, in accordance with the UIPA, Sunshine Law, and the State's Open Data Policy.

1. Post all of OIP's opinions, training materials, reports, and email communications at oip.hawaii.gov, which links to the state's open data portal at data.hawaii.gov.

2. Encourage state and county agencies to electronically post appropriate data sets onto data.hawaii.gov and to use the UIPA Record Request Log to record and report their record requests.

D. Records Report System (RRS). Maintain the RRS and assist agencies in filing reports for the RRS with OIP.

1. Promote the use of the RRS to identify and distinguish private or confidential records from those that are clearly public and could be posted as open data on government websites.

E. Legislation and Lawsuits. Monitor legislative measures and lawsuits involving the UIPA and Sunshine Law and provide impartial, objective information and assistance to the Legislature regarding legislative proposals.

1. Provide testimony, legislative proposals, reports, or legal intervention, as may be necessary, to uphold the requirements and common purpose of the UIPA and Sunshine Law.

III. Action Plan with Timetable

A. Legal Guidance and Assistance

2. Past Year Accomplishments

a. Pursuant to legislative approval and funding in the State's operating budget for fiscal biennium 2024-2025 to establish and fill two new permanent positions, OIP hired and trained two new staff members.

b. OIP received 1,766 total requests for assistance in FY 2024, 97% (1,710) of which were resolved in the same fiscal year, and 88% (1,551) were

informal requests typically resolved the same day through OIP's AOD service.

c. OIP resolved over 88.8% (191) of the 215 new formal cases filed in FY 2024 in the same year.

d. OIP wrote 20 formal and informal opinions.

e. OIP provided updates to its online training materials to reflect the new provisions of the Sunshine Law enacted in 2024.

3. Year 1 Action Plan

a. Expeditiously receive approval hire and train a new staff attorney to fill a vacancy.

b. Conduct a public hearing to obtain agency and public input on proposed amendments to OIP's administrative rules, including legally required renumbering, conditioned on the prior completion of the Attorney General's legal review of OIP's draft rules.

c. Assuming adoption, implement OIP's new administrative rules, including the creation of new training materials and a revised UIPA Record Request Log.

d. Continue to promptly provide informal guidance through OIP's AOD service, so that approximately 80% of requests for OIP's assistance can be timely answered or resolved within one workday, which promotes compliance with the law and helps to prevent disputes from escalating to formal complaints.

e. Continue to update OIP's online training materials to reflect statutory revisions and provide free and readily accessible guidance for government agencies and the public.

4. Year 2 Action Plan

a. Continue to promptly provide informal guidance through OIP's AOD service, so that approximately 80% of requests for OIP's assistance can be timely answered or resolved within one workday, which promotes compliance with the law and helps to prevent disputes from escalating to formal complaints.

b. Continue to update OIP's online training materials to reflect statutory revisions and provide free and readily accessible guidance for government agencies and the public.

5. Year 5 Action Plan

a. Evaluate recently implemented rules and determine whether additional rules or revisions are necessary.

b. Draft and prepare to adopt new research rules, records collection rules, and personal records rules, if needed.

c. Obtain sufficient funding and position authorizations to recruit, train, and retain legal and administrative personnel to ensure the long-term stability and productivity of OIP.

B. Investigations and Dispute Resolution

1. Past Year Accomplishments

a. OIP resolved 97% of the formal and informal requests for its services received in FY 2024 in the same year, and oftentimes the same day.

b. Of the 215 formal cases opened in FY 2024, 191 (88.8%) were resolved in the same fiscal year.

c. Of the 122 cases that remained pending at the end of FY 2024, 55 (55%) were opened in FY 2024 and 67 (45%) were opened in FY 2023 or earlier.

2. Year 1 Action Plan

a. Strive to resolve 70% of all formal cases opened in FY 2024.

b. Strive to resolve all formal cases filed before FY 2024 if they are not in litigation.

3. Year 2 Action Plan

a. Strive to resolve all formal cases filed before FY 2025, if they are not in litigation.

b. Train new positions and retain experienced OIP staff to keep up with the anticipated increases in OIP's workload while reducing the formal case backlog.

4. Year 5 Action Plan

a. Strive to resolve all formal cases within 18 months of filing if they are not in litigation.

b. Obtain sufficient funding and position authorizations to recruit, train, and retain legal and administrative personnel to ensure the long-term stability and productivity of OIP.

C. Open Data

1. Past Year Accomplishments

a. Prepared UIPA Record Request Log report

summarizing results for FY 2023 from 188 state and 85 county agencies.

b. Distributed 21 What's New articles and 2 reports to keep government personnel and the general public informed of open government issues, including proposed legislation.

c. Received 162,369 unique visits from Hawai'i to OIP's website and 226,771 website page views (excluding OIP's and home page hits).

d. Established a new position, hired, and trained OIP's Legal Assistant to assist with open data and other duties.

2. Year 1 Action Plan

a. Encourage and assist state and county agencies to electronically post open data, including the results of their Logs.

b. Complete data analysis and prepare reports of the Log results for FY 2024 from all state and county agencies.

c. Utilize Log data to develop and evaluate proposed OIP rules concerning the UIPA record request process and fees.

d. Post information on OIP's website at oip.hawaii.gov to provide transparency and obtain public input on the rule-making process.

3. Year 2 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on their results of state and county agencies' Logs.

b. Revise the UIPA Record Request Log and related training materials if new administrative rules are adopted.

4. Year 5 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on the results of state and county agencies' Logs.

D. <u>Records Report System</u>

1. Past Year Accomplishments

a. For FY 2024, State and county agencies reported 29,751 record titles on the RRS.

2. Year 1 Action Plan

a. Continue to train and advise state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or

confidential records, while promoting access to public data that may be disclosed.

3. Year 2 Action Plan

a. Continue to train and advise state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting access to public data that may be disclosed.

4. Year 5 Action Plan

a. Continue to train and advise state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting access to public data that may be disclosed.

E. Legislation and Lawsuits

1. Past Year Accomplishments

a. During the 2024 legislative session, reviewed and monitored 152 bills and resolutions and testified on 40 of them.

b. In FY 2024, OIP monitored 38 cases in litigation, of which 11 were new cases. Since 16 litigation files were closed, 24 cases remained pending at the end of FY 2024.

2. **Year 1 Action Plan**

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, open data, or OIP.

3. **Year 2 Action Plan**

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, open data, or OIP.

4. Year 5 Action Plan

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, or OIP.

F. Performance Measures

a. Customer Satisfaction Measure – Monitor evaluations submitted by participants after training or informational sessions as well as comments or complaints made to the office in general, and take appropriate action.

b. Program Standard Measure – Measure the number of formal cases and AOD inquiries received and resolved;

opinions issued; lawsuits monitored; legislative proposals monitored; unique visits to OIP's website; training materials added or revised; and public communications.

c. Cost Effectiveness Measure – Monitor the percentage of formal or informal requests for assistance resolved in the same year of the request and the number of formal cases pending at the end of each fiscal year.

Highlights of Fiscal Year 2024

BUDGET AND PERSONNEL

OIP reports its total allocation as the net amount that it was authorized to use of the legislatively appropriated amount, including any collective bargaining adjustments, minus administratively imposed budget restrictions. For FY 2024, OIP's total legislative appropriation was $1,234,122 and there were no collective bargaining increases. The total amount for administratively imposed restrictions in FY 2024 was $123,412. OIP's actual operational and personnel costs respectively totaled $1,046,230 and $22,594. See Figure 1, below, which shows OIP's budget fluctuations over the years, and Figure 2 on page 11 which sets forth OIP's budget over the years in dollar amounts.

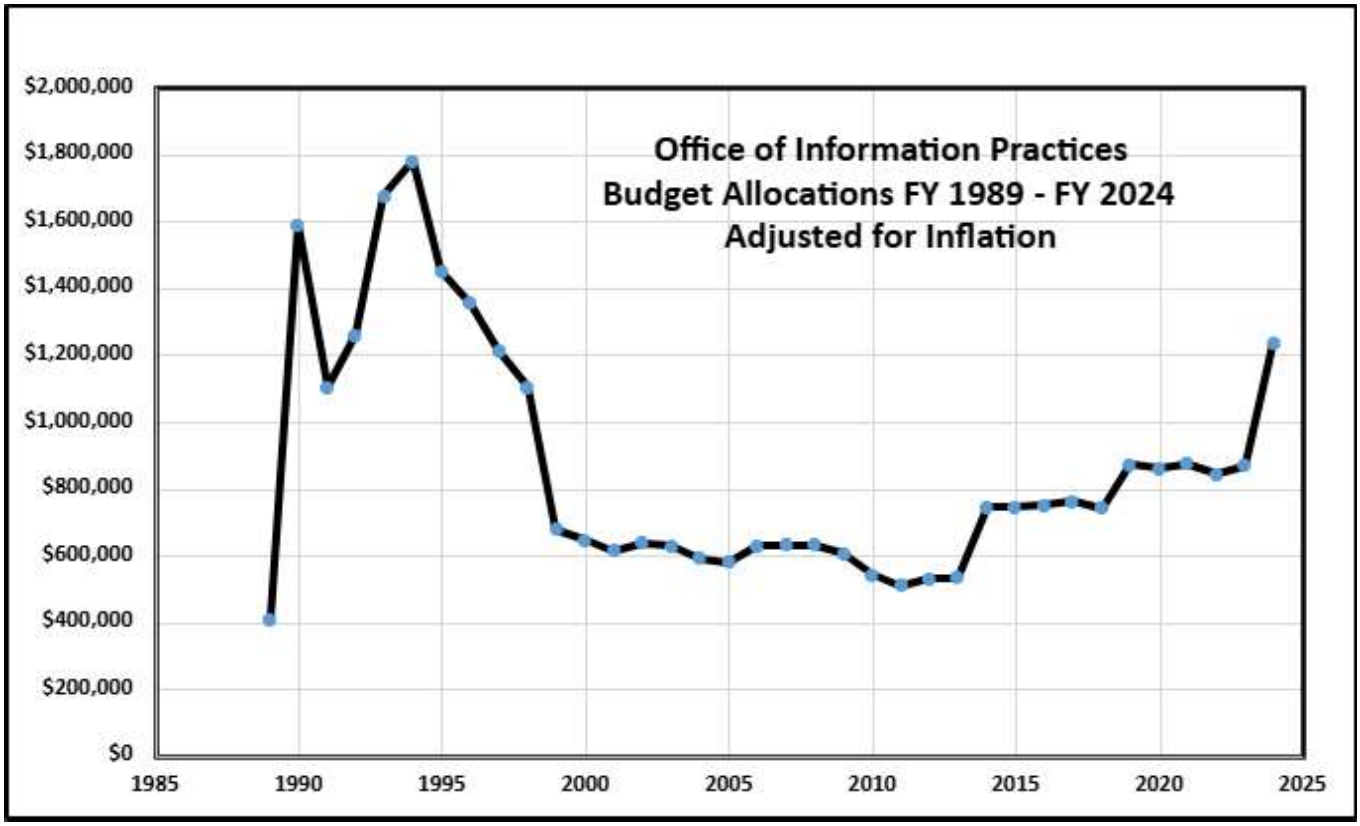


Figure 1

As in prior years, OIP was authorized 10.5 total full time equivalent (FTE) positions. OIP's Director retired as of March 31, 2024, which resulted in 1 vacancy. OIP's Supervising Staff Attorney was appointed Acting Director by Governor Josh Green, M.D., as of April 1, 2024, and this appointment became permanent on December 6, 2024. Thus, OIP has one vacant staff attorney position which it intends to fill as soon as possible in FY 2025.

Office of Information Practices
Budget FY 1989 to FY 2024
Figure 2

Fiscal Year	Approved Positions	Operational Costs	Personnel Costs	Total Allocation	Allocations Adjusted for Inflation*
FY 24	10.5	22,594	1,046,230	1,234,122	1,234,122
FY 23	8.5	25,678	788,323	826,448	868,907
FY 22	8.5	22,127	689,632	752,721	842,121
FY 21	8.5	17,861	628,032	725,995	872,974
FY 20	8.5	22,188	683,170	704,853	859,416
FY 19	8.5	27,496	652,926	697,987	872,206
FY 18	8.5	15,793	568,222	584,019	741,112
FY 17	8.5	21,340	556,886	578,226	760,611
FY 16	8.5	31,592	532,449	564,041	748,845
FY 15	8.5	44,468	507,762	552,990	744,254
FY 14	8.5	35,400	436,505	552,990	743,589
FY 13	7.5	18,606	372,328	390,934	533,977
FY 12	7.5	30,197	352,085	382,282	530,487
FY 11	7.5	38,067	274,136	357,158	510,121
FY 10	7.5	19,208	353,742	372,950	541,369
FY 09	7.5	27,443	379,117	406,560	605,652
FY 08	7.5	45,220	377,487	422,707	629,895
FY 07	7.5	32,686	374,008	406,694	631,973
FY 06	7	52,592	342,894	395,486	627,312
FY 05	7	40,966	309,249	350,215	577,643
FY 04	7	39,039	308,664	347,703	590,531
FY 03	8	38,179	323,823	362,002	626,659
FY 02	8	38,179	320,278	358,457	636,640
FY 01	8	38,179	302,735	340,914	612,399
FY 00	8	37,991	308,736	346,727	646,087
FY 99	8	45,768	308,736	354,504	678,671
FY 98	8	119,214	446,856	566,070	1,101,804
FY 97	11	154,424	458,882	613,306	1,212,503
FY 96	12	171,524	492,882	664,406	1,353,512
FY 95	15	171,524	520,020	692,544	1,449,319
FY 94	15	249,024	578,513	827,537	1,780,393
FY 93	15	248,934	510,060	758,994	1,674,151
FY 92	10	167,964	385,338	553,302	1,260,000
FY 91	10	169,685	302,080	471,765	1,102,444
FY 90	10	417,057	226,575	643,632	1,589,073
FY 89	4	70,000	86,000	156,000	405,187

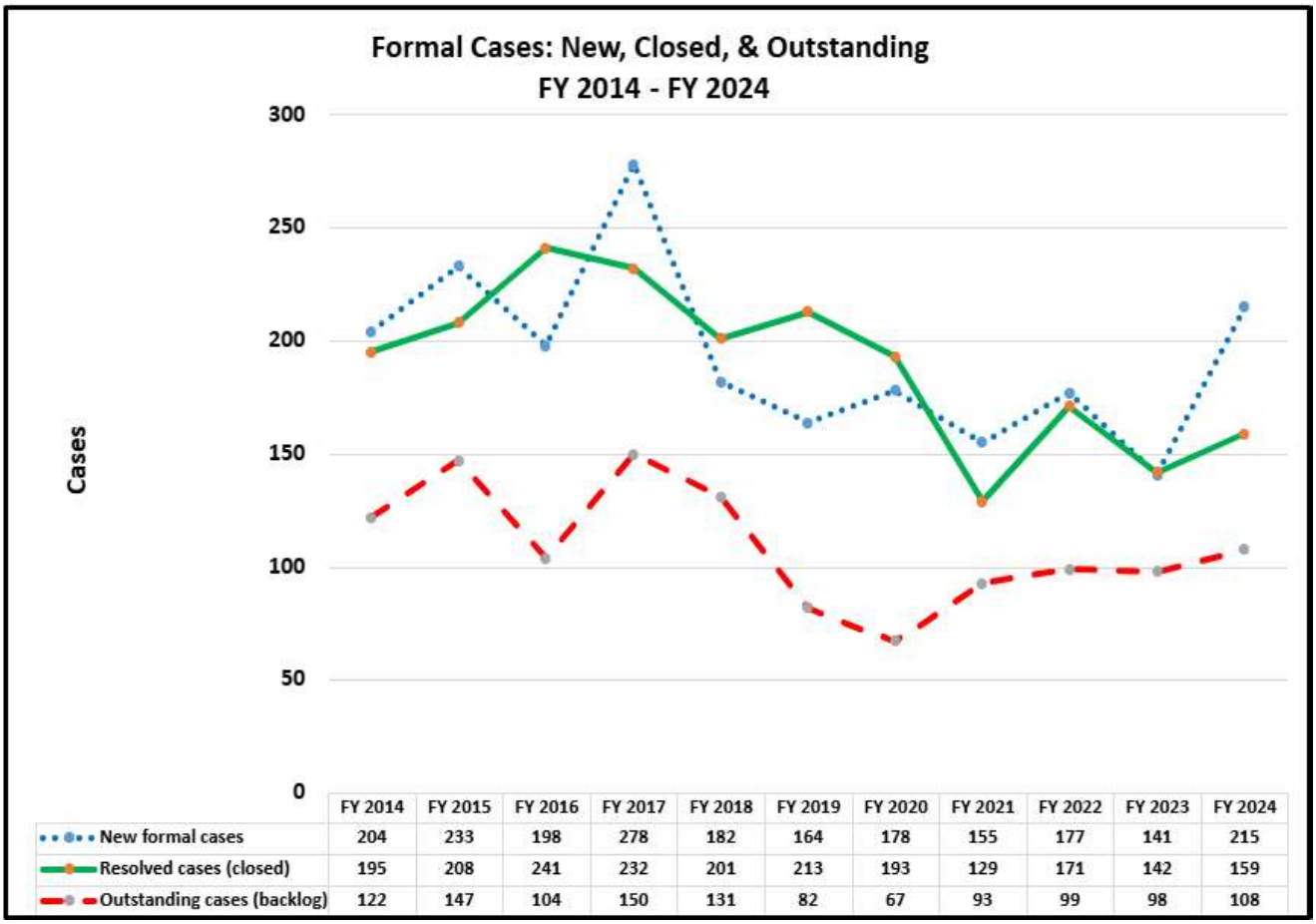
*Adjusted for inflation, using U.S. Bureau of Labor Statistics CPI Inflation Calculator.

LEGAL GUIDANCE, ASSISTANCE AND DISPUTE RESOLUTION

Overview & Statistics

OIP provides uniform and consistent advice and training on the UIPA and Sunshine Law. OIP also provides neutral dispute resolution as an informal alternative to the courts. The public and Hawai'i's state and county government agencies and boards seek OIP's services. Government inquiries come from the executive, legislative, and judicial branches of the state and counties, and include government employees as well as volunteer board members.

OIP quickly resolved 97% of the 1,766 formal and informal cases filed in FY 2024 within the same year. Of the 1,551 informal cases that constitute 87.8% of all new cases, OIP typically resolved them within 24 hours. OIP also resolved 191 of the 215 new formal cases filed in FY 2024 and issued 20 opinions. The number of formal cases pending at the end of FY 2024 hovered at 122 cases and consisted mainly of appeals.



	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
New formal cases	204	233	198	278	182	164	178	155	177	141	215
Resolved cases (closed)	195	208	241	232	201	213	193	129	171	142	159
Outstanding cases (backlog)	122	147	104	150	131	82	67	93	99	98	108

Figure 3

Formal Requests

Most of the formal cases are resolved through correspondence or voluntary compliance with OIP's informal advice and mediation efforts. Appeals and requests for opinions, however, are much more time-consuming, even when opinions are not written. OIP resolved 195 of 215 formal cases (90.6%) without an opinion in FY 2024, and it issued seven formal opinions and 13 informal opinions, for a total of 20 written opinions. Summaries of the opinions begin on page 18.

In FY 2024, OIP opened 215 formal cases, compared to 141 formal cases opened in FY 2023. OIP timely resolved 159 of the 215 FY 2024 new formal cases (73.9%) in the same year they were filed. OIP had a backlog of 122 formal pending cases at the end of FY 2024. See Figure 3 on page 12 which shows OIP's caseload over the past 10 years. Of the 122 formal case backlog at the end of FY 2024, 55 cases were filed earlier that year and 67 were filed in FY 2023 or earlier. Figure 4 below shows the different types of formal requests received in FY 2024. Formal requests are further explained below Figure 4.

Formal Requests - FY 2024
Figure 4

Type of Request	*Number of Requests*
UIPA Requests for Assistance	112
UIPA Requests for Advisory Opinions	2
UIPA Appeals	45
Sunshine Law Appeals	16
Sunshine Law Requests for Opinions	0
Correspondence	22
UIPA Record Requests	14
Reconsideration Requests	4
Total Formal Requests	215

UIPA Requests for Assistance

OIP may be asked by the public for assistance in obtaining a response from an agency to a record request. In FY 2024, OIP received 112 written requests for assistance (RFAs) concerning the UIPA. In these cases, OIP staff attorneys will generally contact the agency to determine the status of the request, provide the agency with guidance as to the proper response required, and in appropriate instances, attempt to facilitate disclosure of the records. After an agency response has been received, the case is closed. Most RFAs are closed within 12 months of filing. A requester that is dissatisfied with an agency's response may file a UIPA appeal or a lawsuit for access.

Requests for Advisory Opinions

A request for an opinion (RFO) does not involve a live case or controversy and may involve only one party, and thus, will result in an informal (memorandum) opinion that has no precedential value as to legal issues regarding the UIPA or Sunshine Law. In FY 2024, OIP received two requests for advisory UIPA or Sunshine Law opinions.

UIPA Appeals

Appeals to OIP concern live cases or controversies. Appeals may result in formal or informal opinions, but are sometimes resolved through OIP's informal mediation and the subsequent voluntary cooperation of the agencies in providing all or part of requested records. Unless expedited review is warranted or the case is being litigated, appeals and requests for opinions involving the UIPA or Sunshine Law are generally resolved on a "first in, first out" basis, with priority given to the oldest cases whenever practicable. In FY 2024, OIP received 45 appeals related to the UIPA.

Sunshine Law Appeals

In FY 2024, OIP received 16 Sunshine Law appeals. These cases typically involve a member of the public asking whether a board violated the Sunshine Law, but some also ask whether a board is subject to the Sunshine Law.

Correspondence

OIP responds to general inquiries, which may include simple legal questions, by correspondence (CORR). A CORR file informally provides advice or resolves issues and obviates the need to open an appeal or RFO. Rather than waiting for an opinion, an agency or requester may be satisfied with a shorter, more general analysis presented on OIP's letterhead. In FY 2024, OIP opened 22 CORR files, of which 9 related to the UIPA, 9 were for a Sunshine Law issue and the remainder involved miscellaneous issues.

UIPA Record Requests

The UIPA allows people to request records that are maintained by an agency, and OIP receives UIPA requests for its own records. OIP's administrative rules require that an agency respond to a record request within 10 business days. When extenuating circumstances are present, however, the response time may be 20 business days or longer, depending on whether incremental responses are warranted. In FY 2024, OIP received 14 UIPA record requests for records maintained by OIP.

Reconsideration of Opinions

OIP's rules allow a party to request, in writing, reconsideration of OIP's written formal or informal opinions within ten business days of issuance. Reconsideration may be granted if there is a change in the law or facts, or for other compelling circumstances. OIP received four requests for reconsideration in FY 2024.

Types of Opinions and Rulings Issued

OIP issues opinions that it designates as either formal or informal. Formal opinions concern actual controversies and address issues that are novel or controversial, require complex legal analysis, or are otherwise of broader interest to agencies and the public. Formal opinions are used by OIP as precedent

for its later opinions and are posted, in full and as summaries, on OIP's opinions page at oip.hawaii.gov. Summaries of the formal opinions for this fiscal year are also found on pages 18-23 of this report. OIP's website contains a searchable subject-matter index for the formal opinions.

Informal opinions, also known as memorandum opinions, are binding upon the parties involved but are considered advisory in other contexts and are not cited by OIP as legal precedents. The full text of informal opinions are not posted online by OIP, but are provided upon request. Summaries of informal opinions are on OIP's website and those issued in this fiscal year are also found in this report on pages 24-30. Informal opinions do not have precedential value as formal opinions do because they generally address issues that have already been more fully analyzed in formal opinions. Informal opinions may provide less detailed legal discussion, or their factual bases may limit their general applicability.

Both formal and informal opinions, however, are subject to judicial review on appeal. Since the 2012 statutory changes regarding appeals to OIP, the office ensures to write opinions that "speak for themselves" in order to avoid having to intervene and defend them in court later. Thus, OIP opinions require more attorney time to gather the facts and parties' positions; perform legal research; analyze the statutes, case law, and OIP's prior precedents; draft; and undergo internal reviews before final issuance.

In FY 2024, OIP issued 20 opinions, consisting of three formal UIPA opinions, seven informal UIPA opinions, and 13 informal Sunshine Law opinions. OIP closed 195 cases without opinions. See Figure 5 on page 16 for a breakdown of services provided by OIP over the past five years.

OIP Service Overview
FY 2020-2024
Figure 5

	2020	2021	2022	2023	2024
Total Requests for OIP's Services	1,168	874	1,633	1,416	1,766
Informal Requests (AODs)	990	719	1,456	1,275	1,551
Formal Requests Opened	178	155	177	141	215
Formal Requests Resolved	193	129	171	142	159
Formal Cases Pending	67	93	99	98	122
Live Training	6	0	0	0	4
Training Materials Added/Revised	11	1	19	13	21
Legislation Monitored	146	161	235	186	152
Lawsuits Monitored	45	45	39	40	38
Public Communications	26	30	30	33	21

Informal Requests
Attorney of the Day Service

The vast majority (88% in FY 2024) of all requests for OIP's services are informally handled through the Attorney of the Day (AOD) service. AOD service allows the public, agencies, and boards to receive general, nonbinding legal advice from an OIP staff attorney, usually on the same business day. The AOD service allows people to quickly get answers to their relatively simple questions without having to wait for more time-consuming resolution of complex issues often found in formal cases, especially appeals.

Through AOD calls, OIP is often alerted to trends and problems, and OIP can provide informal advice to prevent or correct them. The AOD service is also a free and quick way for members of the public to get the advice that they need on UIPA record requests or Sunshine Law questions, without having to engage their own lawyers.

Members of the public use the AOD service frequently to determine whether agencies are properly responding to UIPA record requests or if government boards are following the procedures required by the Sunshine Law. Agencies often use the AOD service for UIPA assistance, such as how to properly respond to requests or redact specific information under the UIPA's exceptions. Boards also use the AOD service to assist them in navigating Sunshine Law requirements.

Through AOD inquiries, OIP may be alerted to inadequate Sunshine Law notices and is able to take quick preventative or corrective action. For example, based on AOD inquiries, OIP has unfortunately had to advise boards to cancel improperly noticed meetings. In such cases, OIP makes suggestions to prepare a legally sufficient notice. OIP has even had boards call for advice during their meetings, with questions such as whether they can conduct an executive session closed to the public.

Through the AOD service, OIP has been able to quickly and informally inform people of their rights, inform agencies and boards of their responsibilities, avert or resolve disputes, and avoid having small issues escalate to appeals or other formal cases that necessarily take longer to resolve. Although AOD inquiries take a significant amount of the staff attorney's time, agencies usually conform to this general advice given informally, which thus prevents or quickly resolves many disputes that would otherwise lead to more labor-intensive formal cases.

In FY 2024, OIP received 569 AOD requests concerning the UIPA, 781 AOD requests concerning the Sunshine Law, and the remaining AOD requests were outside of OIP's jurisdiction. Informal AOD inquiries increased by 21.5% in FY 2024 from the prior year. Examples of AOD inquiries and OIP's informal responses start on page 31.

FORMAL OPINIONS

In FY 2024, OIP issued seven formal opinions, which are summarized below. The full text versions can be found at oip.hawaiii.gov. In the event of a conflict between the full text and the summary, the full text of an opinion controls. Five opinions related to the UIPA, while two concerned the Sunshine Law.

UIPA FORMAL OPINIONS:

Closed Investigation Finding and Conclusions

OIP Op. Ltr. No. F24-01

A Department of Transportation employee filed a workplace violence complaint against a coworker. After the investigation was concluded, the Employee sought a copy of the final findings and conclusions. DOT denied access to the records and Employee filed an OIP appeal.

OIP first concluded that significant portions of the Findings and Conclusions contain information about the Employee and are his personal record under Part III of the UIPA, which governs access by individuals to records about them. The Findings and Conclusions also contain information about other individuals, including the respondent to the complaint (Respondent), and are the joint personal records of Employee and others named therein under Part III. OIP Op. Ltr. No. F13-01. OIP found the Employee is entitled to copies of the portions of the Findings and Conclusions that are about him and are his personal record under Part III, including portions that are the joint personal record of him and others. DOT did not invoke any exemption to disclosure of personal records under section 92F-22, HRS, and OIP concluded that no Part III exemption applies to allow DOT to withhold any portion of Employee's personal record.

OIP next found that portions of the Findings and Conclusions are not Employee's personal record and must be considered government records under Part II of the UIPA. DOT argued that the frustration exception to disclosure of government records at section 92F-13(3), HRS, allowed it to withhold entire Findings and Conclusions. However, the frustration exception cannot be used to deny access to personal records under Part III. For the portions of the Findings and Conclusions that are not Employee's personal record and are subject to Part II, DOT failed to "articulate a real connection between disclosure of the particular record it is seeking to withhold and the likely frustration of a specific legitimate government function." Peer News LLC v. City and County of Honolulu, 143 Haw. 472, 487 (2018). As such, OIP concluded that DOT did not meet its burden in section 92F-15(c), HRS, to justify its denial of access to any part of the Findings and Conclusions under section 92F-13(3), HRS.

Finally, OIP concluded that limited information about the Respondent and about a separate complaint identified in the Findings and Conclusions may be withheld in order to avoid a clearly unwarranted invasion of personal privacy in accordance with Honolulu Civil Beat, Inc. v. Department of the Attorney General, 151 Hawai'i 74, 508 P.3d 1160 (2022), which concluded that an investigation into employee misconduct at a different agency must be disclosed, but that section 92F-13(1), HRS, allowed the agency to withhold certain information about others named in the investigation who were not the subjects of the investigation.

Evaluations of Fire Chief

OIP Op. Ltr. No. F24-04

The Hawai'i Fire Fighters Association requested the evaluations for the Honolulu Fire Chief for the years 2017, 2018, and 2019. The Honolulu Fire Commission denied access to both completed performance

evaluations for 2017 and 2018 and to preliminary evaluations completed by individual Commissioners, citing to the UIPA's privacy exception, section 92F-13(1), HRS, as its justification for doing so. The Commission granted access to an unscored evaluation form.

As part of the process for creating a Final Evaluation, each individual Commissioner completes an Individual Evaluation, and the Individual Evaluations are then compiled and adjusted based on the Commission's discussions. OIP applied the five non-exclusive factors used by OIP and the Hawai'i Supreme Court as a starting point in balancing the public interest in disclosure against the privacy interests of a government employee under the UIPA:

(1) the government employee's rank;
(2) the degree of wrongdoing and strength of evidence against the employee;
(3) whether there are other ways to obtain the information;
(4) whether the information sought sheds light on a government activity; and
(5) whether the information is related to job function, or is of a personal nature.

Considering the relevant factors together, OIP found that on balance, the public interest in disclosure outweighed the Fire Chief's privacy interest in the Final Evaluations. HRS § 92F-14(a) (2012). OIP therefore concluded that the UIPA's privacy exception did not authorize the Commission to withhold those evaluation). For the Individual Evaluations, however, OIP found that on balance, the public interest in disclosure did not outweigh the Fire Chief's privacy interest and therefore concluded that the Commission could therefore withhold them under the UIPA's privacy exception. HRS § 92F-13(1).

Emails Containing Attorney-Client Privileged Information

OIP Op. Ltr. No. F24-05

Requester made a request to the Hawai'i County Department of Finance (FIN-H) in 2019 for a copy of security camera video footage. FIN-H responded that the tape was no longer available. Requester appealed, and OIP issued U MEMO 21-01.

Requester thereafter made a record request to FIN-H in 2020 for a copy of "all County of Hawai'i email communications, with all parties, regarding my records request dated July 8, 2019 for video footage." FIN-H provided approximately 15 responsive emails, some with attachments and emails threads. FIN-H denied access to thirteen emails (Emails) that it contended consisted of attorney-client privileged communications. Requester appealed the partial denial of access to the Emails.

The Emails included portions that were government records under the UIPA's Part II, and portions that were personal records under the UIPA's Part III. OIP's precedents make clear that subsections 92F13(2), (3), and (4), HRS, allow agencies to withhold government records subject to the UIPA's Part II that contain attorney-client privileged communications. This opinion also makes clear that personal records subject to the UIPA's Part III that contain attorney-client privileged communications may be withheld under the exemption to disclosure of personal records at section 92F-22(5), HRS. This exemption allows agencies to withhold records required to be withheld from the individual to whom it pertains by statute or judicial decision, or authorized to be withheld by constitutional or statutory privilege. The attorney-client privilege is a statute and a statutory privilege. OIP found that the only portions of the responsive emails that do not contain attorney-client privileged communications are the tops of four email threads containing non-substantive header information and simply express gratitude. With the exception of this non-privileged material, OIP concluded that FIN-H was authorized to withhold the Emails, subject to Requester's payment of applicable fees and costs for processing heavily redacted emails.

Insurance Fraud Investigation Records

OIP Op. Ltr. No. F24-06

A record requester sought copies of documents related to an insurance case against him from the Department of Commerce and Consumer Affairs (DCCA). DCCA denied Requester's record request, asserting that the responsive records were part of an ongoing insurance fraud investigation.

For personal record requests, an agency that performs as a principal function an activity pertaining to the prevention, control, or reduction of crime may withhold from personal record requesters "information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation." HRS § 92F-22(1) (2012). Here, the Office of Information Practices (OIP) found that DCCA's Insurance Fraud Investigation Branch is such an agency. OIP further found that the responsive records were personal records of Requester and consist of information or reports compiled for the purpose of a criminal investigation. Therefore, OIP concluded that this exemption generally applied to the responsive records with the exception of correspondence to or from Requester.

An agency may also withhold "investigative reports and materials" in response to a personal record request while an investigation against the requester is still ongoing. HRS § 92F22(4). OIP found that the responsive records consisted of investigative reports and materials related to an ongoing investigation against Requester. Therefore, OIP concluded that this exemption also generally applies to the responsive records except for correspondence to or from Requester that was either submitted by Requester himself or previously provided to Requester. OIP concluded that the exemptions found in sections 92F22(1) and (4), HRS, do not apply to this correspondence.

An agency is also allowed to withhold records in response to a personal record request if such records are authorized to be withheld by statute. HRS § 92F-22(5). DCCA asserted that it was authorized to withhold the records by sections 431:2209 and 431:2-409(b), HRS, which authorize DCCA to withhold "complaints and investigation reports" and "working papers of examinations, complaints, and investigation reports" if the Insurance Commissioner deems doing so prudent. Based on *in camera* review, OIP found that some of the responsive records consisted of reports and working papers of reports, but that the correspondence to or from Requester did not fall under the categories listed in section 431:2209(e), HRS. Therefore, OIP concluded that sections 92F22(b) and 431:2-409(b), HRS, provide additional justifications for DCCA to withhold some of the requested records, but do not allow DCCA to withhold the correspondence between Requester and GEICO. OIP thus further concluded that since no exemption to personal record disclosure applies, DCCA must disclose copies of the correspondence to or from Requester.

Interview Materials and Information

OIP Op. Ltr. No. F24-07

Requester sought copies of records about his job interview from the Department of Budget and Finance (B&F). B&F granted in part and denied in part his request, and Requester appealed. OIP issued U MEMO 18-12 in 2018, concluding that B&F (1) properly withheld interview questions and interviewers' notes; (2) other applicants' names on B&F's selection report could be withheld; (3) the guidelines for recruitment process, introduction sheet, and interview ratings must be disclosed; and (4) position titles, position numbers, departments, and names of government employees who were on Requester's interview panel must be disclosed. Over two years after OIP issued U MEMO 18-12, Requester contacted B&F to obtain copies of these records. Requester also sent B&F a new October 2020 request, which B&F granted in part, and provided him with redacted responsive records. Requester submitted a December 2020 request for "[a]ll interviewing rating sheets for all applicants [not including himself] completed by all

interview panel members." B&F responded to the December 2020 request by informing Requester that it conducted a search for the records but was unable to locate them because they had been destroyed in accordance with its retention schedule. Requester appealed B&F's response to his October and December 2020 requests, which resulted in this appeal.

First, OIP found that B&F properly disclosed redacted copies of all records as directed by OIP in U MEMO 18-12. Next, although the records relating to Requester's December 2020 Request were destroyed prior to the issuance of U MEMO 18-12, OIP found that the destruction was not improper because at the time of destruction, the records were not the subject of a pending request. OIP also found that B&F properly maintained the requested records that were the subject of U MEMO 18-12 while it was pending, and that staff conducted a reasonable search for records.

Next, as to Requester's allegations that fees charged by B&F were too high, OIP found that, although B&F disclosed only six pages of redacted records, it's explanation that a "considerable amount of time" was spent reviewing the files because Requester sought the records over two years after the issuance of U MEMO 18-12, and a substantial period of time passed since his original 2014 request, was credible. Further, OIP found that B&F's time spent to search for, review, and segregate records subject to U MEMO 18-12 and the October 2020 request was not excessive.

Finally, OIP concluded that the itemization requirement in OIP's administrative rules is satisfied when an agency indicates what record request each portion of the bill pertains to and how much of the amount chargeable for each request is respectively due to search, review, and segregation time (with the amount of time indicated) or to other lawful fees (with an explanation of each type of cost such as postage or copy charges and a multiplier as appropriate). B&F met its obligations under section 2-71-19(d), HAR, by providing the information sought on how it calculated the review and segregation fees of $30 in the manner it did. OIP concluded that B&F met its obligation to "provide an itemized bill of fees assessed" to Requester under OIP's administrative rules.

SUNSHINE LAW FORMAL OPINIONS:

Maui County Council Members Appointed to Maui Metropolitan Planning Organization Policy Board

OIP Op. Ltr. No. F24-02

Requester asked whether the three Maui County Council (COUNCIL-M) members appointed to serve on the Maui Metropolitan Planning Organization Policy Board (MMPOPB) are required by section 92-2.5(e), HRS, to report their attendance and the matters discussed during the MMPOPB meeting to COUNCIL-M at its next duly noticed meeting.

OIP reviewed the legislative history of Chapter 279D, HRS, establishing metropolitan policy organizations (MPOs) and found that the Legislature intended to create a limited exception to the Sunshine Law to allow members of MPO boards to freely discuss issues within the authority of the MPO and any other board on which they serve. Because section 279D-9(b), HRS, provides that "[p]articipation by members of any other board in a meeting of a policy board shall be a permitted interaction as provided in section 92-2.5(i)," the discussions of MMPOPB members are "not meetings" under the Sunshine Law at section 92-2.5(i), HRS. A board that meets the requirements of one permitted interaction need not comply with the requirements of any other permitted interaction. Therefore, COUNCIL-M members need not report their attendance and the matters discussed during the MMPOPB meeting at COUNCIL-M's next meeting under section 92-2.5(e), HRS.

Sunshine Law Requirements for Notice, Testimony, Executive Sessions, and Voting, and Potential Remedies
OIP Op. Ltr. No. F24-03

An anonymous Requester asked OIP to decide whether the Agribusiness Development Corporation Board of Directors (Board) violated the Sunshine Law during its selection of a new executive director (ED). This opinion discusses several requirements of the Sunshine Law.

Notice: Sections 92-7 and 92-3.7(a), HRS, require that a notice be filed six days before a meeting; that it include the location of the meeting; and for remote meetings, the notice must list at least one physical location open to the public. The notice for the Board's meeting on August 8, 2023, clearly stated it was a remote meeting under section 92-3.7, HRS. The notice did not state that the executive session would be in person only, but during the meeting, the members were required to attend the executive session in person. OIP concluded that the meeting notice did not give proper notice that the "location" of the executive session would be only the listed in-person meeting location and Board members could not participate via remote link. This resulted in little, if any, harm to the public, as the public is not entitled to attend executive sessions. However, the Sunshine Law's protections apply to board members as well as the public, and a meeting notice also serves as notice to the members of a board. Because members were prevented from participating remotely in the executive session, OIP found that the improper notice of the in-person only executive session deprived Board members of the ability to attend and participate in the executive session in violation of section 92-3, HRS.

Testimony: The Sunshine Law requires that boards accept oral and written testimony on any agenda item, and it does not exclude executive session agenda items from that requirement. Prior to taking a vote to enter executive session during the public portions of the Board's meetings on August 8, September 21, and October 3, 2023, the Board allowed public testimony only on the decision to go into executive session, and not on the executive session agenda items themselves. OIP found that the Board denied the public's right to testify on the agenda items the Board discussed in executive session, and OIP concluded that the Board's denial violated section 92-3, HRS.

Executive Session Discussion and Votes on an Employee Hire: Section 92-5(a)(2), HRS, allows a board to enter an executive session to consider the hire of an officer or employee where consideration of matters affecting privacy will be involved. The Board relied on this executive session purpose when it met in executive session to interview the top two candidates for the ED position, to set the next ED's salary, to select a candidate to make an employment offer to, and to decide how to inform the public of its hiring decision. OIP found the Board met the Sunshine Law requirements to vote to enter an executive session in accordance with section 92-4(a), HRS, and that it had a valid reason to enter an executive session under section 92-5(a)(2), HRS, to interview candidates and then to discuss the selection and salary of the new ED. OIP found it could be reasonably anticipated that the executive session discussion of the candidates, including the salary discussion, involved consideration of matters affecting privacy. OIP therefore concluded the Board was properly in executive session for these discussions. However, the discussion on how to inform the public of the successful candidate's selection did not implicate any privacy interests and should have been in the public portion of the meeting.

OIP further concluded the Board was permitted by the Sunshine Law to vote in executive session on selection of the ED to avoid revealing the candidates' identities as both had privacy interests to be protected, and to protect the privacy interests of the selected candidate until such time as she accepted the employment offer. Holding this vote in a public meeting would have revealed the candidates' identities, which, at that time, carried privacy interests that allowed the Board to hold the executive session. However, the Board should have voted in the public portion of the meeting on selection of the

new ED's salary because the salary discussion focused primarily on budgetary considerations and not on qualifications of either candidate such that a privacy interest would have been implicated. Any vote on how to inform the public of the ED's selection also would not have implicated any privacy interest and should be taken during the public portion of a meeting.

Secret Votes Prohibited by Sunshine Law: Multiple provisions of the Sunshine Law require that votes be taken in a way that makes clear how each member voted. HRS §§ 92-3.7(b)(5); 92-4; 92-9(a)(3), (b)(3). The Board voted by secret ballot to select the ED during the executive session on August 8, 2023. Because the secret ballot did not identify how each member voted, the Board was unable to meet the requirements of section 92 9, HRS, to keep minutes for all meetings, including executive session meetings, that include a record by individual member of any votes taken. OIP concluded the Board's secret ballot vote to select the ED taken during its executive session on August 8, 2023, was in violation of the Sunshine Law.

Executive Session Summaries: Act 19, which was effective July 1, 2023, amended section 92-4, HRS, to require that any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held. Act 19 further specifies that the information reported should not be inconsistent with the purpose for which the executive meeting was convened, and a board may maintain confidentiality of information for as long as its disclosure would defeat the purpose of convening the executive meeting. The Act 19 report for the Board's executive session on August 8, 2023, did adequately describe what happened, including reporting that the board had decided to make an offer to a candidate. The Board's failure to specify which candidate it had decided to make an offer to was justifiable to protect the candidates' privacy, and thus avoid frustrating the purpose of the executive session, because the candidates had a privacy interest in the fact that they had applied for the ED position and at that point, the chosen candidate had not yet accepted the offer.

Remedies: The Sunshine Law does not provide a way for a board to undo a prior violation by its subsequent action, so a board cannot entirely "cure" a violation, but it can make efforts to mitigate public harm from past violations and to follow proper procedures in the future. While this appeal was pending, the Board publicly voted to ratify its earlier selection of the ED via secret ballot vote, which did mitigate the public harm from that and other violations. While OIP favorably views timely and appropriate mitigation efforts, only the courts can determine whether such actions make voiding a board's final action inappropriate or unnecessary, as only the courts have the power to void the final action of a board under section 92-11, HRS. A circuit court action under section 92-11, HRS, to void a final action of a board must be filed within 90 days of the final action to be challenged. The courts may provide additional remedies under section 92 12(b), HRS.

INFORMAL OPINIONS

FY 2024, OIP issued 13 informal opinions. Summaries of these informal opinions are provided below. In the event of a conflict between the full text and a summary, the full text of an opinion controls.

UIPA INFORMAL OPINIONS:

Investigation Report Concerning Requester
U Memo 24-01

A former Department of Transportation-Harbors Division (DOT-HARBORS) employee (Requester) sought access to a copy of an internal administrative investigation report (Report) about him from DOT-HARBORS. DOT-HARBORS denied the request based on sections 89-10.8 and 92F-22(4), HRS. Requester appealed the denial to OIP.

Although DOT-HARBORS initially denied the request, it voluntarily disclosed the Report before the arbitration proceedings between the parties to Requester's union representative as Requester's exclusive bargaining agent. DOT-HARBORS did not assert or otherwise indicate that the disclosure was pursuant to a subpoena or order issued by the arbitrator, or that the disclosure was intended only for the union and not Requester himself, or that it would be authorized by law to make such a distinction between Requester and his union representative. Therefore, OIP found that DOT-HARBORS voluntarily disclosed the Report to Requester's union representative who was acting on Requester's behalf.

By its voluntary disclosure of the Report, DOT-HARBORS waived the application of any potential UIPA Part II exceptions or Part III exemptions to disclosure. OIP concluded that DOT-HARBORS must disclose to Requester the Report it previously disclosed to Requester's union representative, including an unredacted copy of an enclosure of the Report.

Reasonable Search for Lease Successorship Document
U Memo 24-02

Requesters requested copies of the successorship document reflecting their two minor sons as the successors to the lease from the Department of Hawai'ian Home Lands (DHHL). DHHL denied the request on the basis that it did not maintain the records and stated that the requested record did not exist. Requesters appealed the denial to OIP.

When a requester contests an agency's response to a record request which states that no responsive records exist, OIP normally looks at whether the agency's search for responsive records was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one "reasonably calculated to uncover all relevant documents" and 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." Id. at 5 (citations omitted).

Based on the information provided by DHHL, OIP found that DHHL conducted a reasonable search for the Successorship Document in the locations where any responsive electronic records and physical files were mostly likely to have been found. OIP therefore concluded that DHHL's search for records was reasonable, and its response to Requesters' request was proper under the UIPA.

Reasonable Search for a Report
U Memo 24-03

Requester requested a copy of a report or document of findings by a Kauai County Planning Department (PLAN-K) employee regarding fencing at Lepeuli. PLAN-K responded to the request, stating that it was

unable to disclose the requested records because it does not maintain the records. Requester appealed the denial to OIP and asserted, "I do not believe them."

When a requester contests an agency's response to a record request stating that no responsive records exist, OIP normally looks at whether the agency's search for responsive records was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one "reasonably calculated to uncover all relevant documents" and 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." Id. at 5 (citations omitted).

Based on the information provided by PLAN-K, OIP found that appropriate staff conducted a reasonable search for records in the locations where any responsive records were most likely to have been found. OIP therefore concluded that PLAN-K's search for records was reasonable, and its response to Requester's request was proper under the UIPA.

Fire Inspection Records

U Memo 24-04

The Honolulu Fire Department (FIRE-HON) denied access to fire inspection reports and other records relating to a condominium building on the basis that they were part of an ongoing investigation, and in some cases asserted that it did not maintain the records. FIRE-HON eventually disclosed a later fire inspection report that included information from the earlier requested reports, but did not disclose the earlier reports themselves, and redacted most of the first names for fire inspectors and building representatives named in the report. Requester asked that this appeal focus on records from 2019 to 2020, which include fire inspections and other records.

Regarding the fire inspections, OIP found that even assuming for the sake of argument that a fire inspection could be considered an investigation, each such investigation was concluded at the time the fire inspector filled out the fire inspection report and provided a copy to the building representative, regardless of whether the report reflected a finding of satisfactory or unsatisfactory status. OIP further found that informing the public of a fire safety issue with a building whose representative has already been informed of the issue does not frustrate FIRE-HON's ability to conduct fire inspections, and does not frustrate any other legitimate government function of FIRE-HON. To the contrary, OIP finds that making such information public promotes FIRE-HON's legitimate function of eliminating fire hazards and ensuring public safety, by better informing the public as to where hazards exist. Moreover, fire inspection reports identify fire code violations, rather than investigating the cause of actual fires, and as such they are similar to building permit inspections required to be public under section 92F12(a)(11), HRS. OIP therefore concluded that the frustration exception did not justify FIRE-HON's denial of access to the fire inspection reports.

Regarding the partial redaction of names from records, although FIRE-HON did not provide any justification for withholding the names, OIP considered the possible applicability of the UIPA's privacy exception. OIP founds that the FIRE-HON inspectors and building representatives named in fire inspection reports do not have a significant privacy interest in their identities, and likewise do not have a significant privacy interest in the redacted portion of their first names. OIP therefore concluded that the names of fire inspectors and building representatives could not be redacted from fire inspection reports based on the UIPA's privacy exception, or any other UIPA exception.

Finally, OIP found that the other requested records were clearly government records subject to the UIPA and since FIRE-HON did not provide them for OIP's *in camera* review and did not explain in what way

they were part of an open investigation, FIRE-HON clearly failed to meet its burden to establish that those records were part of an open investigation. OIP therefore concluded that FIRE-HON was not justified under the UIPA in withholding those records.

Executive Session Minutes

U Memo 24-05

OIP concluded that the State Public Charter School Commission (PCSC) had followed the proper Sunshine Law procedures to go into executive session for discussions with its attorney regarding an agenda item and that minutes of this discussion were protected from disclosure under the confidentiality provision of section 92-9(b), HRS, "so long as their publication would defeat the lawful purpose of the executive meeting." OIP also concluded that this Sunshine Law confidentiality provision could be read in conjunction with the UIPA's frustration exception at section 92F-13(3), HRS, which allows the withholding of minutes whose publication would frustrate the purpose of an executive session. OIP found, however, that some portions of the minutes were so general and non-specific that disclosure would not frustrate the purpose of the executive session, and concluded that this nonsubstantive portion must be disclosed. OIP also found, *sua sponte*, that the executive session minutes did not convey a true reflection of the matters discussed at the meeting and the views of the participants and concluded that PCSC must create a new set of minutes for the executive sessions that includes omitted information, to the best of PCSC's ability.

No Further Search Required for Records Purged After Requester Abandoned His First Request

U Memo 24-06

In 2014, Requester appealed the Department of Corrections and Rehabilitation's (DCR) denial of his request to access records related to his employment application earlier that year. OIP issued a memorandum opinion dated June 28, 2021, which concluded that DCR should disclose nearly all of the records to Requester. On July 13, 2014, DCR sent a written notice to Requester informing him that he could access the records upon payment of copying costs. Requester failed to respond to DCR's notice for over two years.

When Requester contacted DCR in September 2020, he was informed that his record request was deemed abandoned pursuant to section 2-71-16(b), HAR, and that its personnel records from 2014 were destroyed pursuant to its file retention policy. Requester filed a second appeal to OIP, claiming that DCR should not have destroyed the records when his request was "pending" and that DCR should continue to search for the purged records.

After OIP discovered that it had inadvertently retained copies of Requester's employment related records that were previously sent by DCR for its *in camera* review in the first appeal, they were returned to DCR and disclosed to Requester. Despite receiving the records, Requester questioned whether DCR conducted a reasonable search and properly considered his request to have been abandoned, and should still continue to search for records that DCR had purged.

OIP found that DCR correctly considered Requester's record request to be abandoned after he waited over two years to respond to DCR's notice. OIP also found that DCR reasonably searched for the records when it looked for them in places where its personnel records were kept, and there is no need for DCR to continue searching for records that it claims were purged in 2019 in accordance with its retention

policy. Because there is no requirement under the UIPA for agencies to keep a record of how long records are maintained or when documents are destroyed, DCR's records retention policy is outside the scope of OIP's authority.

Video and Written Statements for Job Application and Police Recruitment Policies

U Memo 24-07

Requester sought access to a video recording and written statements relating to his 2019 employment application to POLICE-H, and POLICE-H recruitment policies and procedures on specified topics. POLICE-H notified Requester that it did not maintain the video recording and written statements, and denied access to the requested policies and procedures under the UIPA's exception for records whose disclosure would frustrate a legitimate government function, section 92F-13(3), HRS.

OIP found based on POLICE-H's explanation of its search for the recording and written statements that POLICE-H conducted a reasonable search for the written statements and had actual knowledge that no responsive recording was created. OIP therefore concluded that POLICE-H met its UIPA obligations when it notified Requester that it did not maintain those records.

OIP concluded that the requested Procedures Manual sections were not "[r]ules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency" under section 92F12(a)(1), HRS, and thus are not mandated to be public without application of the UIPA's exceptions. Nevertheless, OIP further concluded that the UIPA's frustration exception did not authorize POLICE-H to withhold the responsive Procedures Manual sections, so they must be disclosed. HRS § 92F-13(3) (2012).

Copy of Work ID and Administrative Leave Policies

U Memo 24-08

While Requester, a Hawai'i Paroling Authority (HPA) employee, was out on administrative leave, she sought access to a copy of her work ID card and HPA policies on administrative leave and on "cease and desist." HPA denied the request for the work ID card and stated that it had no policies on administrative leave. However, HPA provided an excerpt from the Bargaining Unit 3 contract relating to administrative leave as part of its response to this appeal.

OIP found that Requester's work identification card is clearly her "personal record" and thus concluded that her request was made under part III of the UIPA relating to personal record requests. OIP concluded that no exemption to personal record disclosure applied to Requester's work identification card, and that HPA was required to disclose it to her as a personal record under the UIPA.

OIP also found that HPA maintained the Bargaining Unit 3 contract and that it was responsive to the request. OIP concluded that no exception to disclosure applied to the Bargaining Unit 3 agreement and it therefore must be disclosed as a government record under the UIPA.

Reasonable Search for Visitor Sign-in Sheets

U Memo 24-09

Requester sought a copy of Hokulani Elementary School's visitor sign-in sheet for January 13, 2012. The Department of Education (DOE) denied the request on the basis that it no longer maintained the requested visitor sign-in sheet. Requester appealed DOE's denial to OIP.

When a requester contests an agency's response to a record request by stating that no responsive record exists, OIP will generally examine whether the agency's search for a responsive record was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one "reasonably calculated to uncover all relevant documents," and 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." Id. at 5 (citations omitted).

Based on information provided by DOE, OIP found that DOE conducted a reasonable search for the requested sign-in sheet in locations where the responsive record would likely to have been found. OIP found that the Hokulani custodian of records had actual knowledge that Hokulani did not maintain visitor sign-in sheets from previous school years in either physical or electronic form. OIP therefore concluded that DOE's response that it does not maintain the record was proper under section 2-71-14(c), Hawai'i Administrative Rules, and the UIPA.

Officer ID Photos

U Memo 24-10

Two media requesters sought the official department photographs of three Honolulu Police Department officers who had shot at a vehicle, killing one vehicle occupant and injuring another, and at the time of the request were facing criminal charges for the shooting. No mug shots had been taken, as the officers were permitted to appear by summons instead of being arrested.

The identification photographs were subject to the UIPA's general rule that government records are presumed public but may be withheld to the extent they fall within one of the exceptions set out in section 92F-13, HRS. HRS § 92F-11(a) (2012). Considering all the relevant factors, OIP found that in these specific circumstances the public interest in the identification photographs outweighed the officers' significant privacy interest in those photographs such that the UIPA's privacy exception did not apply, and concluded that the Honolulu Police Department must disclose the photographs to Requesters.

SUNSHINE LAW INFORMAL OPINIONS:

Sunshine Law informal opinions are written to resolve investigations and requests for advisory opinions. OIP wrote one informal opinion concerning the Sunshine Law in FY 2024, as summarized below.

Nexus Between Discussion and Agenda Item Discussion of Topic Not on Agenda

S Memo 24-01

A member of the public (Requester) asked whether the State Public Charter School Commission (PCSC) violated the Sunshine Law during its meeting on May 26, 2022 (2022 Meeting), by discussing and taking action on an investigation of Kamalani Academy, which Requester alleged was not a topic listed on the

agenda for the meeting. Requester also asked whether PCSC violated the Sunshine Law by moving to include an evaluation of the interim director's performance in an ongoing permitted interaction group's (PIG) investigation, when the PIG was originally tasked to make recommendations for the process to fill the director's position permanently.

Requester also asked for an investigation into whether PCSC violated the Sunshine Law during its meeting on July 13, 2023 (2023 Meeting), when one board member brought up a topic not listed in the agenda, and PCSC refused to discuss the topic because it was not listed in the agenda. Requester also asked whether PCSC violated the Sunshine Law by posting minutes for the 2023 Meeting that were allegedly not a true reflection of the matters discussed and the views of the participants.

When a dispute arises as to whether an item a board considered at a meeting, OIP considers whether there was a sufficient nexus between an item as listed on the agenda and the direction the discussion in a meeting takes, so as to ensure that the public has been provided reasonable notice to present meaningful testimony. Additionally, if the board had reason to believe that such an item might be raised at its meeting and did not list that item in the agenda, the item should not be discussed. OIP found that although the discussion of overall contract compliance was a natural consequence of discussing the agenda item, PCSC was aware prior to the meeting that it would have to discuss that topic and nonetheless did not list it on its agenda. OIP further found that the agenda item was specifically limited to only a portion of a contract to add a virtual program, and it did not notify the public that PCSC would be required to discuss its compliance with the contract as a whole. OIP concluded that PCSC's discussion of overall contract compliance did not fall within the agenda item and was thus in violation of the Sunshine Law.

The Sunshine Law allows a board to create a PIG to investigate an issue, which allows members of the PIG to discuss that issue outside of a meeting. However, the scope of the PIG's investigation must be set at the meeting the PIG is created, and the board cannot add issues to an existing PIG or discuss the issue until the PIG makes its report to the board. OIP found that evaluating the performance of the interim executive director was not within the scope of the PIG's authority to review and update the executive director job description. OIP thus concluded that PCSC's discussion of and vote to authorize the already-existing PIG to also evaluate the performance of the interim executive director meant that the PIG did not comply with the requirements of section 92-2.5(b)(1), Hawaii Revised Statutes, and, since its discussions were not covered by any other permitted interaction, PCSC violated the Sunshine Law.

The Sunshine Law also requires a board to post a meeting notice that includes an agenda containing a list of all topics the board will consider at the meeting, and therefore, boards are generally not permitted to discuss topics that are not listed on the agenda for a meeting. OIP found that there was no nexus between the topic of a recently passed nepotism law raised by a commissioner and any items listed on the agenda for the 2023 Meeting sufficient to make discussion of the nepotism law a natural consequence of the discussion of an agenda item. Instead, OIP found that the commissioner's statements were a communication to other board members of a topic not listed in the agenda for the 2023 Meeting. OIP further found that PCSC successfully prevented any discussion from taking place after the commissioner brought up the topic. Therefore, OIP concluded that although the commissioner risked violating the Sunshine Law, PCSC was able to successfully avoid a violation and prevented public harm by stopping discussion of a matter not on the agenda.

The Sunshine Law requires boards to post minutes of meetings that "give a true reflection of the matters discussed at a meeting and the views of the participants." OIP found that PCSC's minutes for the 2023 Meeting were not a true reflection of the matters discussed and the views of the participants because the 2023 Minutes did not specify who objected to the topic not listed on the agenda being raised and was somewhat misleading suggesting multiple commissioners objected, when only the Chair and a staff

member intervened to prevent further discussion. OIP therefore concluded that the minutes constitute a minor violation of the Sunshine Law and should be amended to reflect which members spoke.

Email Communication Between Board Members

S Memo 24-02

A requester asked for an opinion as to whether the City and County of Honolulu Neighborhood Commission Office (NCO) correctly concluded that Neighborhood Board 29 (NB29) did not violate the Sunshine Law through a member's email to the NCO that was copied to other members.

OIP agreed with the NCO's conclusion, and found that the NB29 member's email to the NCO, which was sent via blind copy to other NB29 members, did not involve NB29's board business. Because the email did not involve board business in the first place, the fact that it was sent via blind copy to the other NB29 members did not result in a discussion of board business outside a meeting in violation of the Sunshine Law. OIP therefore concluded that NB29 did not violate the Sunshine Law through the email.

Communication Outside of Meeting, Sufficiency of Notice

S Memo 24-03

A requester asked for an opinion as to whether Honolulu Authority for Rapid Transportation Board of Directors (HART) violated the Sunshine Law when three members communicated by email outside of a meeting. The requester also asked whether a meeting notice was sufficiently detailed.

OIP found HART violated the Sunshine Law when three members discussed board business by email outside of a noticed meeting in December 2020 and no permitted interaction at section 92-2.5, HRS, applied to authorize the discussion. However, an email communication between three members in January 2021 that forwarded factual information without comment did not amount to a discussion of HART business and did not violate the Sunshine Law.

HART's discussion of agenda item VII at its meeting on December 17, 2020, violated the Sunshine Law because the meeting notice did not contain a sufficiently detailed description of the matters to be considered by HART at the meeting to comply with the notice provisions in section 92-7, HRS.

Finally, emailed questions from two HART members to HART's attorney as to what could and could not be done under the Sunshine Law did not show an intent to evade the Sunshine Law's provisions on openness.

General Legal Guidance and Assistance

To expeditiously resolve most inquiries from agencies or the public, OIP provides informal, general guidance, usually on the same day, through its "Attorney of the Day" (AOD) service. AOD advice is not official policy or binding upon OIP, as the full facts may not be available, the other parties' positions are not provided, complete legal research will not be possible, and the case has not been fully considered by OIP. The following summaries are examples of the types of AOD advice provided by OIP attorneys in FY 2024.

UIPA GUIDANCE

Photocopying Charges for Record Requests

An agency asked what the per-page cost is that an agency can charge for photocopying records in response to a record request. OIP clarified that photocopying charges are not set forth in the UIPA. These charges, as well as postage and other costs, fall under the "other lawful fees" category in OIP's administrative rules. Section 92-21, HRS, authorizes agencies to charge a minimum of $.05/page for copying public records, and because this is a minimum charge, agencies can legally charge a higher per-page cost for photocopying if they have adopted a rule allowing a higher charge.

Timelines for Agencies to Respond to Record Requests

A county agency receives requests for copies of incident reports and personal and medical information in the reports must be redacted before they are disclosed. The agency asked what the timeline is for responding to requests for the incident reports. OIP explained That, for government record requests, the timing for disclosing responsive records is governed by OIP's administrative rules, specifically, section 2-71-13, Hawaii Administrative Rules (HAR). The timeline for producing a copy of a record depends on the record's contents. For example, if the record in its entirety can be made available, such as when no exception to disclosure in section 92F-13, HRS, applies, then the agency must disclose the record within 10 business days. HAR § 2-71-13(a)(2).

If information in a record may be withheld or redacted, then an agency should prepare a Notice to Requester (NTR) within 10 business days of the date it received the request and should provide the disclosable portions within 5 business days after providing the NTR, or if required, prepayment has been received. HAR § 2-71-13(b). If prepayment is required, the agency should disclose the record within 5 days after receiving prepayment. HAR § 2-71-13(b)(2).

Should an agency determine that "extenuating circumstances" exist under section 2-71-15, HAR, then the agency may provide the requester with written acknowledgement of the request within 10 business days of receipt of the request and should then provide a NTR within 20 business days from the date that the agency received the request. Thereafter, the agency shall disclose the requested record within 5 business days after the NTR was sent, or after receipt of prepayment. HAR § 2-71-13(c).

Estimating Fees When the Requested Information Must be Searched on Microfilm

An agency received a request for records that were only accessible on microfilm. Because the requester lived on another island and could not view the microfilm, the agency asked OIP whether the records should be printed from the microfilm and then mailed or emailed to the requester. OIP advised the agency that it should do its best to accommodate the request, and that the information on the microfilm should be either be printed or downloaded digitally. The agency was also advised that requests like this one may require some added search, review, and segregation time. OIP recommended that the agency inform the requester of the approximate amount of fees that will be incurred prior to processing the request, to allow the requester to modify or abandon the request.

Contact Information for Government Employees

An agency asked how to treat government employees' work email addresses and non-direct office phone numbers. OIP advised that direct government employee contact information (e.g. work-issued cell number, direct line, direct email) can be withheld under the "frustration" exception at section 92F-13(3), HRS, but (as with non-government business contact information) only if it hasn't already been made public. In many cases government employee email addresses can be found on the internet due to being included in testimony, an agenda, a publication, a report, or other record. Thus, it is a good idea to do a quick online search for an email address an agency intends to redact just to make sure it is not already public.

Disclosure of Records an Agency Maintains After Expiration of its Retention Period

An agency received a record request for vendor payment information from its electronic database going back almost 20 years. The agency's retention period for the information is six years, but in its database the agency has information going back 17 years. The agency asked OIP if it was limited to providing information based on its retention schedule or if it should provide the information it had in its database. OIP advised that the UIPA requires the agency to provide whatever records it maintains unless an exception to disclosure applies, which didn't appear to be the case. Records that an agency still has access to, even if they are eligible for destruction but haven't yet been destroyed, are records that the agency maintains. Thus, the information the agency provides should be based on all the records it still has, not just those that are still within the retention period set out in the agency's retention schedule.

Use of Personal Cell Phones and Digital Calendars

OIP received a request for general guidelines concerning the use of personal cell phones and digital calendars for government business, and was asked whether such use would subject the user's records to the UIPA. OIP generally advises that in reviewing whether or not a particular record, such as texts on a government employee's personal cell phone, needed to be disclosed in response to a record request, the agency should look at whether or not the record in question meets the definition of a "government record" under section 92F-3, HRS, since only government records need to be disclosed unless an exception applies. Section 92F-3, HRS, UIPA defines "government record" to mean "information maintained by an agency in written, auditory, visual, electronic, or other physical form." OIP has interpreted "maintained" to mean information physically possessed or administratively controlled by an agency. An agency has administrative control over a record when it has the right to gain access to the record. For example, when an agency contracts with a private company and has the right to review the records held by the company under the contract, those records would be considered government records, even if they are not physically in the agency's office. If the agency does not maintain the cell phone records of its employees, the records such as texts, are probably not government records, but the agency should be aware that any non-disclosure is subject to challenge if the requester brings a lawsuit for the records. If a government employee is using a government issued cell phone, the records on the phone are probably "government records" subject to the UIPA. In addition, if a government employee is using a personal cell phone for government business to evade being subject to the UIPA, the courts could find the records on the phone to be subject to the UIPA. OIP also advised that the above guidance has not yet been tested by the courts, and it is possible that the courts could disagree with OIP if a requester challenges an agency's denial in a lawsuit.

Repeated Identical Requests

OIP received a request for guidance on how to respond to a requester who made multiple identical requests for records from various agency divisions, abandoned many requests without paying any fees, and claimed not to have received a notice to requester even though it was sent to the same email address from which the request was received. OIP advised that if the requester is submitting repeated identical requests to the agency, and the requested information is not readily retrievable in the form in which it is requested (which the agency must verify), then the agency can deny the request and cite to section 92F-11(c), HRS. The agency is not required to prepare a compilation or summary of its records pursuant to section 92F-11(c), HRS. However, even if it may be time consuming to do so, the agency must respond to each new record request within the time frames provided under the UIPA, even if the request is identical to a previous one.

Record Requests from Another Agency

An agency received a record request from a police department for records that included personal information. The agency asked whether it would be able to release the responsive records unredacted and, if so, whether the agency needed to take any type of action to ensure the request was legitimately from the police department. Section 92F-19(a), HRS, contains a list of circumstances under which an agency may disclose records to another agency, even if the records may not otherwise be public under the UIPA. One of these circumstances is section 92F-19(a)(3), HRS, which allows disclosure to another agency if the disclosure is "for the purpose of a civil or criminal law enforcement activity authorized by the law" and pursuant to either a written request or a verbal request "made under exigent circumstances, by an officer or employee of the requesting agency whose identity has been verified, provided that such a request is promptly confirmed in writing." Another circumstance that may be applicable is section 92F-19(a)(4), HRS, which allows disclosure to a criminal law enforcement agency if the information is limited to an individual's name and other identifying particulars, including present and past places of employment. Therefore, the agency could share the records unredacted if the police department provided a written request, or if there are exigent circumstances and the identity of the officer requesting the records was verified, or if the information requested was limited to individual names and other identifying particulars. Additionally, section 92F-19(a)(1), HRS, allows sharing if the disclosure is "necessary for the performance of the requesting agency's duties" and is also either "compatible with the purpose for which the information was collected or obtained" or "consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided."

OIP noted that if the agency disclosed the records unredacted under sections 92F-19(a)(1), (3), or (4), HRS, then the agency should check that the request was, in fact, coming from the police department, but the UIPA does not list any specific actions that must be taken to verify that a request comes from a law enforcement agency. Under section 92F-19(b), HRS, an agency that receives government records under section 92F-19(a), HRS, is subject to the same restrictions on disclosure of the records as the originating agency, so if the agency would normally redact a record it provided to the police department under section 92F-19(a), HRS, then the police department would also be required to redact the record in the same way if it received a record request for that record.

Emails Are Not Confidential by Default

An agency asked whether OIP had any guidelines or requirements for the confidentiality notice employees of the agency add to their email signatures. OIP informed the agency that OIP does not have

any guidelines or requirements for confidentiality notices. Rather, the UIPA requires state and county agencies to disclose records they maintain, including emails, in response to record requests unless one of the specific exceptions or exemptions listed in sections 92F-13 and 22, HRS, applies to the specific record the agency wishes to withhold. An agency should not assume that all its emails are confidential by default; an agency is only permitted to withhold an email from a record request if the agency can cite a specific statutory authority that would allow it to withhold that email.

Record Retention Policies

A requester asked for the City and County of Honolulu's (City) rules for retaining emails. OIP explained that it does not have jurisdiction over other agencies' record retention policies or laws. Agencies sometimes adopt their own retention policies, which may vary by the agency, department, or office. OIP suggested that the requester inquire with his department's records management and retention policies, and the City Department of Budget and Fiscal Services, which is authorized to determine the care, custody, and disposition of county records under section 46-43(c), HRS.

UIPA is an Open Records Law, not a Privacy or Confidentiality Law

A member of the public explained that a police officer released non-public information about her minor child's medical emergency to the officer's own child, who then went to school and gossiped about her child's medical issues. OIP explained that the UIPA governs the public's right to access government records from a government entity upon request. It is an open record law, not a privacy or confidentiality law. Privacy and confidentiality questions sometimes arise in the context of a record request when an agency withholds access to information that would clearly result in an unwarranted invasion of personal privacy if disclosed, or pursuant to a confidentiality law or court order. For example, if a member of the public made a record request for a police report involving a minor's medical emergency, then the UIPA would likely allow the police department to withhold or redact a child's name and medical information pertaining to that child to avoid a clearly unwarranted invasion of personal privacy. However, the UIPA does not prohibit disclosure of that information like other federal and state confidentiality statutes would. OIP referred her to the police department's Standard of Conduct Office.

SUNSHINE LAW GUIDANCE

CEO's Waiver of Privacy and Request for Board to Hold its Discussion of Contract Renewal in an Open Meeting

Boards may decide to enter executive meetings when discussing personnel matters, however, the decision is discretionary and certain statutory requirements must be met. Civil Beat Law Center for the Public Interest v. City & County of Honolulu, 144 Haw. 466, 476-477 (2019). Specifically, section 92-5(a)(2), HRS, allows boards to hold an executive session "[t]o consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved." This section also states that "if the individual concerned requests an open meeting, an open meeting shall be held[.]"

A board planned to discuss whether to renew a CEO's contract. Before the meeting, the CEO requested that the board discuss the contract renewal in an open meeting, and waived any privacy interests that could have arisen during the board's discussion and deliberation. The board asked OIP whether it could

discuss the specific terms and conditions of the CEO's contract, such as salary and performance benchmarks, in an executive session under section 92-5(a)(3), HRS, which allows an executive session to be held "[t]o deliberate concerning the authority of persons designated by the board to conduct labor negotiations . . . or during the conduct of such negotiations." OIP advised that section 92-5(a)(3), HRS, was inapplicable and that instead, section 92-5(a)(2), HRS, applied. Because the CEO had explicitly waived any privacy interests in the board's discussion, and wanted the deliberations held in an open meeting, the board had no basis under the Sunshine Law to enter into an executive session which would have been otherwise allowable if personal privacy was a concern. In this instance, a discussion of the CEO's salary and performance benchmarks, if held in an executive session, had to be based on a theory that the discussion was so intrinsically intertwined with the board's evaluation of the CEO, that it could not be done without revealing matters that affected the CEO's individual privacy. However, the CEO's explicit waiver of personal privacy interests and the request that the evaluation be done in an open meeting required the discussion of the CEO's salary and contract terms to be held in an open meeting.

Meeting Disrupted by Zoom Bombing

During a remote board meeting, someone was zoom bombing the meeting with sexually explicit graphic images. The board's staff asked whether the board could continue to meet and allow public access via audio only. OIP advised that because section 92-3.7(b)(2), HRS, requires that during a remote meeting, a quorum of board members must be visible to the public, the board could not limit public access via audio, with no video. But since the board had two cameras, one for the board members and one for public testifiers, the board then asked whether the camera focused on board members could remain on, with the camera on testifiers turned off to prevent the public from seeing any unwelcomed images.

OIP agreed that at present, this proposed option would be a viable solution, but that effective January 2025, a new law will require testifiers at remote meetings to be visible to board members and other meeting participants if the testifiers request to be visible. OIP noted that the board could terminate anyone who attempts to Zoom bomb the meeting under section 92-3, HRS, which allows boards to remove "any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of a meeting."

Ho`oponopono by a Sunshine Law Board

A member of the public asked if a board can use ho`oponopono to resolve issues pending before it under current law, or if doing so would require an exception to the Sunshine Law. Ho`oponopono is generally referred to as a Hawai'ian method of conflict resolution which includes a meeting between adverse parties,
often with a mediator, to resolve issues or restore relationships. OIP advised that assuming the board interpreted the process of ho`oponopono to mean the board would discuss issues with stakeholders in a private setting, and would not hear public testimony, the Sunshine Law would not allow it under current law. The idea of working out contentious issues privately is contrary to the Sunshine Law's express purpose of conducting the formation and conduct of public policy as openly as possible.

Agenda Items Taken Out of Order

OIP received an inquiry from a member of the public about a board meeting that was noticed to take place on two consecutive dates, December 7 and 8. The individual was a resident of a neighbor island and was

planning to fly to Oahu with other community members to testify about a particular agenda item on the first day of the meeting, but found out from the board that it was planning to take agenda items out of order. The individual was concerned that the item she intended to testify about would not be discussed until the second day of the meeting, and asked (1) whether the board was required to give formal notice that it was changing the order for discussing agenda items, and (2) if it was legal for the board to take agenda items out of order. The individual stated that it was very difficult for neighbor island community members to testify, and that although the agenda stated that the meeting was expected to take two days, members of the public assumed the board would take items in alphabetical order the way it was listed on the agenda.

OIP advised that section 92-7(a), HRS, requires the agenda to list all of the items to be considered at the forthcoming meeting. OIP has read that to mean that the agenda must reasonably inform the public as to whether a particular issue will be considered, but not to imply an additional requirement that a board's discussion of the items strictly adhere to the order in which the agenda lists them.

OIP also advised that boards are allowed to continue items that could not be finished at a meeting to an announced time and place, so the board could continue the meeting to the next morning at the same physical location and with the same Zoom link even without having said it planned to do so on its agenda. Although not required to do, the board did state on page 2 of the agenda "Items highlighted in yellow are expected to be heard and decided by the end of the day on December 7, 2023." Thus, it appears that the agenda did provide notice that the board intended to discuss agenda items highlighted in yellow on December 7, leaving the remainder of the items (not highlighted in yellow) for discussion on December 8. OIP further advised that the board was not required under the Sunshine Law to give formal notice it was changing the order of the agenda, and that boards are not prohibited under the Sunshine Law from taking items out of order.

Adding to Agenda During a Meeting

A board chair asked OIP whether it is permissible under the Sunshine Law to add to the agenda during a meeting with a 2/3 vote. OIP advised that adding an item to the agenda is not permitted if (1) the item to be added is **of reasonably major importance and** (2) action on the item by the board **will affect a significant number of persons.** Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis. If the requirements above are met, boards may amend an agenda during a meeting to add items for consideration upon the affirmative vote of two-thirds of **all** board members to which the board is entitled, **which includes members not present at the meeting and vacant positions.** For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting. OIP noted that the voting requirement for amending an agenda is not the same as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership that is needed to go into an executive meeting.

Board Consideration of Proposed Legislation

A citizens' group drafted a resolution that it wanted to bring to a board to consider, stated that two board members had expressed willingness to look at the proposed resolution, and asked OIP how it could bring the proposed resolution to the board. OIP explained that members of a board are generally not allowed to discuss board business with other board members outside of a meeting unless one of the permitted interactions listed in section 92-2.5, HRS, applies. Because a proposed resolution would likely be considered board business, a discussion of the proposed resolution that involves more than one board

member must fall under a permitted interaction. Section 92-2.5(a), HRS, allows two members of a board to discuss board business outside of a meeting so long as no commitment to vote is made or sought. Therefore, exactly two members of a board may meet to discuss board business alone or with non-board members outside of a properly noticed meeting, so long as the board members do not make or seek a commitment to vote, and so long as the two members are not a quorum of the board. The limitation on making a commitment to vote allows discussion of the two board members' views and inclinations on an issue, but prohibits, for example, horse-trading of votes. OIP advised that rather than asking the board members invited to vote for the proposed resolution, it may be better to explain the proposed resolution and the group's reasons for wishing for its passage without asking the board members to commit to voting a certain way. And, the two board members invited would need to avoid meeting privately with any other members to discuss the proposed resolution to avoid serial communications. OIP also noted that the other permitted interactions listed in section 92-2.5, HRS, would likely not apply in this circumstance.

Agendas Must Provide Sufficient Description of All Items to be Discussed, Including Bills

OIP received a complaint from a member of the public concerning a board's agenda for an upcoming meeting. Specifically, the agenda item stated that the board would be discussing legislative bills related to the board during the current legislative session without describing the bills the board intended to discuss. Under section 92-7(a), HRS, the notice for a meeting must include an agenda that lists all of the items to be considered at the meeting. The agenda must be sufficiently detailed so as to give interested members of the public enough information to decide whether to participate in the meeting or submit testimony. A board can only discuss, deliberate, act on, or otherwise consider the matters that are on the agenda for a meeting. A board should consider the intended reader of its agenda as being a reasonably well-informed member of the general public rather than one of the board's regular attendees. OIP advised that a board cannot expect members of the public to read an external document, such as a legislative bill or a report or letter available at the board's office, in order to understand what a board plans to discuss at its meeting. Rather, the agenda must stand by itself in informing members of the public of what topics the board plans to consider. When describing bills in agenda items, OIP advises that a board identify not only the bill number, but also the title and a brief description of what the bill would do.

Written Summary of Recorded Minutes

Board staff were preparing a written summary for its recorded minutes for a meeting that involved hundreds of testifiers. Board counsel sought clarification about whether the written summary of recorded minutes must (1) summarize the position of every testifier; and (2) timestamp when every testifier testified on each agenda item. OIP explained that section 92-9(b), HRS, sets out what information should be included in a written summary, and it does not require a board to summarize or timestamp the position of every testifier. OIP has interpreted section 92-9(a), HRS, to require written minutes (not written summaries of recorded minutes) to sufficiently describe oral testimony and reflect the positions expressed by non-members. OIP Op. Ltr. No. 03-13 at 6-7. Likewise, OIP would interpret section 92-9(a), HRS, to require recorded minutes to include the positions of oral testifiers, but nothing in the Sunshine Law expressly requires a board's written summary accompanying a board's recorded minutes also describe views expressed in oral testimony at a meeting. Applying the rationale in OIP Opinion Letter No. F14-02 here, recorded minutes of an entire meeting are the truest reflection of the matters discussed at a meeting and the views of the participants because it is a complete recording of the actual meeting. Instead of a summary or general description, the recorded minutes "speak[s] for itself" and provide a complete accurate record of the meeting. Given the lack of an express statutory requirement for a written summary to include timestamps and a description of the positions taken by each testifier, and the accessibility of

recorded minutes as a government record, OIP advised that written summaries of recorded minutes do not need to summarize, or time stamp the position of every testifier.

Liability for Sunshine Law Violations

A board asked whether the board itself or an individual member would be in violation of the Sunshine Law if it was found that a board member violated the Sunshine Law. If a person files an appeal with OIP, it would usually be the board itself because the Sunshine Law allows any person to file an appeal with OIP regarding the actions of a board. In addition, the public may file a lawsuit "against a board" to require compliance with or to prevent a violation of the Sunshine Law. HRS § 92-12. Section 92-13, HRS, provides that "a person" who "willfully" violates the Sunshine Law can be found guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. OIP does not prosecute Sunshine Law violations.

Education, Open Data, and Communications

OIP's efforts in education, open data, and communications are important duties that help agencies, boards, and the public understand their rights and responsibilities under the UIPA and Sunshine Law and prevent violations from occurring in the first place.

To utilize its limited personnel resources more efficiently, and to reach a larger audience, OIP has emphasized since FY 2011 its online training. OIP's education efforts include making resources readily available via its website at oip.hawaii.gov. The UIPA and Sunshine Law statutes are timely updated and posted, along with OIP's administrative rules, opinions, reports, and important court opinions. In the first quarter of FY 2024, OIP updated its training materials to reflect the Sunshine Law amendments enacted during the 2023 legislative session.

OIP's Legislation page, launched in FY 2021, provides easy access to the legislative history behind the enactment and amendment of the UIPA, Sunshine Law, and tax statute providing for appeals to OIP from challenges regarding the disclosure of written tax opinions. The Legislation page is regularly updated to include significant proposed and adopted legislation concerning the UIPA, Sunshine Law, and OIP.

OIP's open data efforts ensure agencies report their annual record request data on their UIPA Record Request Log. The Log provides objective data that can be used to assess how well state and county government agencies are implementing Hawai'i's open records law. The Log results are compiled into the Master Log at data.hawaii.gov which OIP summarizes in a year-end Log report. The Log report and OIP's annual report are posted on the Reports page of OIP's website.

Throughout the year, OIP keeps government entities and the public informed of the open government news through timely What's New articles that are emailed as well as archived on OIP's website. In FY 2024, OIP sent out 21 What's New articles. To be added to OIP's What's New email list, please email a request to oip@hawaii.gov.

EDUCATION

OIP's education efforts include online training as well as customized presentations to assist government agencies and boards in understanding and complying with the UIPA and the Sunshine Law. OIP

conducted four in-person training presentations in FY 2024. OIP also updated its online training materials to reflect the Sunshine Law amendments enacted in 2024.

Online Training Materials, Model Forms, and Reports

OIP's online training materials, reports, and model forms help to inform the public and government agencies about the UIPA, Sunshine Law, and work of OIP. The online training has reduced the need for in-person basic training on the Sunshine Law and enabled OIP to instead develop additional or more specialized training materials that address common questions and boards' specific needs. The online training is also accessible to members of the public. All of OIP's training materials, forms, and reports are available online at oip.hawaii.gov, where they are updated by OIP as necessary. Some of OIP's publications are described below.

Sunshine Law Guides and Video

Open Meetings: Guide to the Sunshine Law for State and County Boards (Sunshine Law Guide) is intended as basic training to assist board members and their staff in understanding and navigating the Sunshine Law. OIP has also produced a Sunshine Law Guide specifically for neighborhood boards. The Sunshine Law 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.

OIP also produced a detailed Sunshine Law PowerPoint presentation with a voice-over and full written transcript, and other training materials. The online materials make the Sunshine Law basic training conveniently available 24/7 to board members and staff as well as the public and have freed OIP's staff to fulfill many other duties. In early FY 2024, OIP updated its Sunshine Law materials to incorporate revisions made to the law during the 2024 legislative session.

OIP has also created Quick Reviews and more specific guidance for Sunshine Law boards, which are posted on OIP's website and cover specific topics of interest, such as whom board members can talk to and when; meeting notice and minutes requirements; highlights of the remote meeting provisions; and how a Sunshine Law board can address legislative issues. In particular, the *Agenda Guidance for Sunshine Law Boards* discusses the requirements for the agendas for meetings.

UIPA Guides and Video

The Open Records: Guide to Hawai'i's Uniform Information Practices Act (UIPA Guide) explains Hawai'i's public records law and OIP's related administrative rules. The UIPA Guide navigates agencies through the process of responding to a record request, such as determining whether a record falls under the UIPA, providing the required response to the request, analyzing whether any exception to disclosure applies, and explaining how the agency may review and segregate the record. The UIPA Guide includes answers to frequently asked questions.

In addition to the UIPA Guide, a pamphlet entitled *Accessing Government Records Under Hawai'i's Open Records Law* 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; fees that can be charged for search, review, and segregation; and what options are available for an appeal to OIP if an agency should deny a request. OIP has produced a detailed PowerPoint presentation with voice-over and a full written transcript of its basic training on the UIPA.

Model Forms

OIP has created model forms for the convenience of agencies and the public. While use of these forms is not required, they help agencies and the public to remember the deadlines and to provide information that is required by the UIPA.

To assist members of the public in making UIPA record requests to agencies, OIP developed a *Request to Access a Government Record* form that provides all of the basic information an agency requires to respond to a request. To assist agencies in properly following the procedures set forth in OIP's rules for responding to record requests, OIP has forms for the *Notice to Requester* or, where extenuating circumstances are present, the *Acknowledgment to Requester*.

Members of the public may use the *Request for Assistance to the Office of Information Practices* form when their requests for government records have 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*.

OIP created a *Request for OIP's Concurrence for a Limited Meeting* form for the convenience of boards seeking OIP's concurrence to hold a limited meeting that will be closed to the public because the meeting location is dangerous to health or safety, or to conduct an on-site inspection because public attendance is not practicable. Before holding a limited 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.

A *Notice of Continuance of Meeting* form can be used when a convened meeting must be continued past its originally noticed date and time. A Quick Review provides more specific guidance and practice tips for meeting continuances.

All of these forms, and more, may be obtained online at oip.hawaii.gov.

OPEN DATA

Abbreviations used throughout this section:
Log - UIPA Record Request Log
Master Log - Master UIPA Record Request Log, posted semiannually and annually at data.hawaii.gov

To further its educational and open data objectives, and to evaluate how the UIPA is working in Hawai'i, OIP has been collecting information from state and county agencies through the UIPA Record Request Log. To have a common platform that could be used by all state and county agencies, OIP created the Log as an Excel spreadsheet in FY 2013. The Log helps agencies track the formal UIPA record requests that they receive as well as report to OIP when and how the requests were resolved and other objective data.

In FY 2024, OIP released a year-end report based on information posted by 188 state and 85 county agencies on the Master UIPA Record Request Year-End Log for FY 2023 at data.hawaii.gov. The collected data showed overall that the typical record request was granted in whole or in part and was completed in less than ten work days, and the typical requester paid nothing for fees and costs.

198 state agencies and 111 county agencies reported Log results in FY 2024. The log report was completed and is posted on OIP's website at oip.hawaii.gov.

OIP also participates on both the Open Data Council and the Access Hawai'i Committee to encourage online access to government services and the creation of electronic data sets that can make government information more readily accessible to the public.

OIP continues to demonstrate its commitment to the Open Data policy by making its statutes, opinions, rules, subject matter index, and training materials easily accessible on its website at oip.hawaii.gov for anyone to freely use. Since 2016, OIP has expanded access to its website by converting all of its previous formal opinions to, and providing new online materials in, a format accessible to people with disabilities.

Website Features

OIP's website at oip.hawaii.gov features the following sections, which may be accessed either through the menu found directly below the State's seal or through links in boxes located on the right of the home page (*What's New*, Laws/Rules/Opinions, Training, and Contact Us).

"What's New"
OIP's frequent *What's New* articles provide current news and important information regarding OIP and open government issues, including timely updates on relevant legislation. To be added to or removed from OIP's *What's New* email list, please email a request to oip@hawaii.gov.

"Laws/ Rules/ Opinions"
This section features these parts:

UIPA: the complete text of the UIPA, with quick links to each section.

Sunshine Law: the complete text of the Sunshine Law, with quick links to each section.

Rules: the full text of OIP's administrative rules; "Agency Procedures and Fees for Processing Government Record Requests;" a quick guide to the rules and OIP's impact statement for the rules; and "Administrative Appeal Procedures," with a guide to OIP's appeals rules and impact statement. Draft and proposed rules, and informational materials, are also posted in this section.

Formal Opinions: a chronological list of all OIP opinions with precedential value; a searchable subject index; a summary of each opinion; and the full text of each formal opinion.

Informal Opinions: summaries of OIP's informal opinion letters regarding the Sunshine Law or UIPA.

"Legislation"
This webpage, added in FY 2020, provides easy public access to important pending, recent, or proposed legislation, and to the four-volume "Report of the Governor's Committee on Public Records and Privacy," which was published in December 1987 and formed the basis for the adoption of the UIPA in 1988. OIP has also compiled on this webpage the legislative history relating to the enactment and amendment of the UIPA and Sunshine Law.

"Training"
The training link on the right side of the home page will take you to all of OIP's training materials, as categorized by the UIPA, Sunshine Law, and Appeals to OIP.

"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.

"Reports"
OIP's annual reports are available here, beginning with the annual report for FY 2000. In addition, this section links to special reports and to the UIPA Record Request Log Reports.

"Records Report System (RRS)"
This section has guides to the Records Report System for the public and for agencies, as well as links to the RRS online database.

"State Calendar and Related Links"
Here, you can link to Hawai'i's State Calendar showing the meeting agendas for all state agencies, and to the online calendar for each county. You can visit Hawai'i's open data site at data.hawaii.gov and see similar sites of cities, states, and other countries.

RECORDS REPORT SYSTEM

The UIPA requires each state and county agency to compile a public report describing the records it routinely uses or maintains and to file these reports with OIP. HRS § 92F-18(b). OIP developed the Records Report System (RRS), a computer database, to facilitate collection of this information from agencies and to serve as a repository for all agency public reports required by the UIPA. The actual records remain with the agency.

Public reports must be updated annually by the agencies. OIP makes these reports available for public inspection through the RRS database, which may be accessed by the public through OIP's website. The image above is shows the RRS page on OIP's website. As of the end of FY 2024, state and county agencies posted 28,391 record titles. See Figure 6 on page 43..

Since 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 at oip.hawaii.gov.

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.

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. OIP is not required to, and in most cases has not, reviewed the access classifications.

Records in the category "confidential/conditional access" are (1) accessible after the segregation of confidential information, or (2) accessible only to those persons, or under those conditions, described by specific statutes.

The RRS access classification helps to determine whether actual records held by agencies should be posted onto the internet. With the 2012 launch of the state's open data website at data.hawaii.gov and the new Data Task Force created in 2024, the RRS can be used to help determine which records contain confidential information and require special care in order to prevent the inadvertent posting of confidential information while making it easier to post open data. Note that the RRS only lists government records by their titles and describes their accessibility. The system does not contain the actual records, which remain with the agency. Accordingly, the record reports on the RRS contain no confidential information and are public in their entirety.

Records Report System

Status of Records Reported by Agencies: 2024 Update

Jurisdiction	**Number of Record Titles**
State Executive Agencies	19,357
Legislature	836
Judiciary	1645
City and County of Honolulu	3,910
County of Hawai'i	932
County of Kauai	1,069
County of Maui	642
Total Record Titles	**28,391**

Figure 6

Legislation Report

One of OIP's functions is to make recommendations for legislative changes to the UIPA and Sunshine Law. OIP may draft proposed bills and monitor or testify on legislation to clarify areas that have created confusion in application; to amend provisions that work counter to the legislative mandate of open government; or to provide for more efficient government as balanced against government openness and privacy concerns.

To foster uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA or Sunshine Law; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices. Since adoption of the State's Open Data policy in 2013, OIP has also tracked open data legislation.

Legislative work takes considerable time of OIP's staff and Director to process, monitor, respond to inquiries, prepare and present testimony during the four-month legislative session, and to prepare bills and respond to legislative requests during the interim. During the 2024 legislative session, OIP reviewed and monitored 152 bills and resolutions affecting government information practices and testified on 40 of these measures. In addition to the operating budget bill, OIP was most significantly impacted by the following legislation regarding the Sunshine Law:

Act 011 enacted HB1598, HD1, SD2, and amended the Sunshine Law's board packet provision. When a board distributes materials to the board members before a meeting for their use at the meeting, those materials (the board packet) must now be distributed and made available to the public at least two business days prior to the meeting. This two business day deadline replaces the 48 hour deadline that was formerly applicable to board packets. Act 011 also created an exception to this deadline for written public testimony, which can now be distributed to board members and the public at any time before a meeting without having to comply with the two business day deadline. Thus, written testimony can be sent out to members and made available to the public at any time before the meeting, but other materials cannot be distributed within the last two business days prior to the meeting. Act 011 also created two new requirements for providing public access to the board packet: (1) when a board notifies the people on its mailing list that a board packet is available, that notification must now include a list of the documents in the board packet, and (2) the board packet must now be posted on the board's website as soon as practicable.

Act 012 enacted HB1599, HD1, SD2, and takes effect on January 1, 2025. It requires a board holding a remote meeting to always give testifiers the option of a Zoom link or similar option for remote testimony. Boards have previously had the option to use a call-in number or similar non-video method for accepting remote public testimony, but starting on January 1 boards will have to provide a remote testimony option that allows testifiers to be seen by the board (although testifiers can still choose to go camera-off). The law also adds a specific statement that nothing in the Sunshine Law's remote meeting section "shall prohibit a board from removing or blocking any person who wilfully disrupts or compromises the conduct of a meeting."

Act 013 enacted HB1600, HD1, SD2, and requires boards to wait at least six business days between the meeting at which a permitted interaction group (PIG) makes its report, and the meeting at which the full board can discuss and act on the issues investigated and reported on by the PIG. The Sunshine Law, at subsection 92-2.5(b)(1), HRS, allows a government board to set up a PIG to work together outside the context of a board meeting to investigate an issue. This process requires three separate board meetings: the first to assign the PIG members and set the scope of their investigation and authority; the second to

hear the PIG's report without board discussion or decision (at which point the PIG is effectively dissolved); and the third for the full board to discuss and perhaps take action on the issue the PIG investigated. OIP has long interpreted this provision to require a board to provide sufficient time between the second and third meetings for the public to digest the PIG's report and then testify on it before the full board's discussion and possible action on the issue at the third meeting, and Act 013 codifies that interpretation and sets six business days as the specific minimum period that must elapse between the second and third meetings.

Act 160 enacted HB 1597, HD1, SD1, and aligns the court enforcement provisions of the Sunshine Law with those provided under Hawai'i's public records law – the UIPA. Specifically, Act 160 (1) clarifies that members of the public may sue a board or alleged board after receiving an adverse OIP decision, and that the decision will be reviewed by the court de novo; (2) establishes a two-year statute of limitations to bring actions and reaffirms a complainant's right to seek review by OIP first; (3) requires that only a member of the public may recover attorney's fees and costs if that person prevails in an open meetings lawsuit; (4) requires that persons suing for Sunshine Law violations notify OIP about the lawsuit so that it may decide whether to intervene; and (5) requires Sunshine Law lawsuits that seek to void a board's final action to be prioritized by the courts.

Act 166 enacted HB 2482, HD1, SD2, CD1, and replaces the requirement for the Lieutenant Governor or County Clerk to post meeting notices at a central location in a public building with a requirement to "ensure access" to those notices without specifying a method of doing so.

Litigation Report

Abbreviations used throughout this section:

Cir. Ct. – Circuit Court
ICA – Intermediate Court of Appeals

OIP monitors litigation that raises issues under the UIPA or the Sunshine Law or involves challenges to OIP's rulings.

Under the UIPA, a person may bring an action for relief in the circuit court 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.

Under the Sunshine Law, a person may file a suit in the circuit court seeking to require compliance with the law or prevent violations. A person filing suit must notify OIP at the time of filing. A suit seeking to void a board's "final action" must be commenced within 90 days of the action.

In FY 2024, OIP monitored 38 litigation cases, of which 14 were new. 16 litigation cases closed during the year, and 24 remained pending at the end of FY 2024.

Summaries are provided below of the new lawsuits monitored by OIP in FY 2024 as well as updates of selected cases that OIP continues to monitor. The UIPA cases, which are the majority, are discussed first, followed by those involving the Sunshine Law.

UIPA Litigation

Inmate's Request for Personal and Government Records
Lankford v. Bradley
1 CCV-24-0001093 (1st Cir. Ct.) (formerly 3CCV-22-0000204 (3rd Cir. Ct.))

Plaintiff is an inmate at Saguaro Correctional Center (SCC) in Eloy, Arizona, a private prison that houses a portion of Hawai'i's prison population pursuant to a contract with the Department of Corrections and Rehabilitation (DCR). SCC is managed by CoreCivic. Plaintiff's complaint filed on July 19, 2022 in the Third Circuit Court alleged that he has made repeated record requests to SCC, CoreCivic, DCR, and fifteen other individual defendants for personal and government information, including copies of Plaintiff's COVID-19 test results, his medical records, his personal telephone records, SCC's invoices with vendors that includes the prices of items sold in the commissary to inmates, SCC's contracts with vendors that sell items in the commissary, CoreCivic's policies, procedures, and practices, and tax records for SCC, written communications between SCC and the Arizona Department of Revenue, and information regarding the Transaction Privilege Tax (TPT) assessed on commissary items sold to inmates.

On April 30, 2024, DCR filed a motion to dismiss the complaint, and at a hearing held on July 15, 2024, the Court noted that Plaintiff's incarceration puts some difficulty on his ability to do certain things such as serving the defendants. During the hearing, the Court and the parties agreed that Plaintiff's complaint was filed in the wrong venue, and the Court denied DCR's motion to dismiss the complaint and treated it as a motion to change venue. On August 8, 2024, an order granting the motion to change venue to the First Circuit Court was issued; DCR filed its answer to Plaintiff's complaint on August 19, 2024.

Disciplinary and Investigative Records
Makai Ranch, LLC v. City and County of Honolulu
1:23-cv-00230-JAO-WRP (USDC)

Plaintiffs allege that they were given official assurances from the City and County of Honolulu and the Director of Planning and Permitting that a Special Management Area Permit (SMA Permit) was not needed to make improvements on their properties for agricultural use, but that through systematic delays, Defendants have prevented Plaintiffs from improving upon and using their property in violation of their constitutional rights to due process and equal protection, and have effected an unconstitutional regulatory taking of their property rights.

The complaint filed in USDC on May 26, 2023, seeking declaratory and injunctive relief includes a claim against the Department of Planning and Permitting (DPP) for violating the UIPA by wrongfully denying a request for: (1) records pertaining to misconduct by five DPP employees, (2) copies of permit applications that five named DPP employees had reviewed from January 1, 2017, to the present, (3) copies of communications between DPP and the FBI related to an investigation of five named DPP employees and one nonemployee architect, (4) copies of communications between DPP and a FBI special agent regarding the investigation, and (5) copies of records related to allegations of public corruption that had been disclosed to other record requesters.

On December 20, 2023, the USDC granted in part and denied in part Defendants' motion to dismiss the complaint; the Court denied the request to dismiss the claim for a violation of the UIPA. Plaintiffs' second amended complaint filed on June 26, 2024, includes allegations to support the claim for a UIPA violation, which Defendants denied in their answer filed on July 11, 2024. On September 25, 2024,

Plaintiffs filed a motion to compel production of records related to DPP's communications with the FBI and the FBI Special Agent. Defendants filed their response to the motion on November 1, 2024 and Plaintiffs filed their reply on November 14, 2024; to date, there has been no ruling on the motion. A non-jury trial has been set for August 25, 2025, at 9:00 a.m.

Records Related to the Maui Fire
Paul Aker v. County of Maui
2CCV-23-0000378 (2nd Cir. Ct.)

Plaintiffs submitted record requests to several Maui County agencies and one state agency seeking access to information related to the Lahaina/Lahainaluna Road fire that occurred on August 8, 2023. Plaintiffs filed a complaint on November 21, 2023, in the 2nd Circuit Court alleging violations of the UIPA by the Maui County Police Department, Fire Department, Emergency Management Agency, Mayor's Office, and the Hawai'i Emergency Management Agency. Plaintiffs allege that the agencies violated the UIPA by "almost failing to completely respond" to their record requests. Defendant Hawai'i Emergency Management Agency filed its answer to the complaint on January 9, 2024; Defendant County of Maui filed its answer on January 22, 2024. Defendant Hawai'i Emergency Management Agency filed a motion for summary judgment on September 30, 2024; Defendants County of Maui and Maui Emergency Management Agency filed a joint motion for summary judgment on October 3, 2024. The Court denied the defendants' motions on November 15, 2024.

Police Disciplinary Records
SHOPO v. City and County of Honolulu, Civ. No. 1CCV-20-0001512 (1st Cir. Ct.)
SHOPO v. County of Hawai'i, Civ. No. 2CCV-20-0000432 (3rd Cir. Ct.)
SHOPO v. County of Kauai, Civ. No. 5CCV-20-0000120 (5th Cir. Ct.)

Act 47 of 2020 amended the UIPA, among other things, to treat police officer disciplinary records the same as other public employees' disciplinary records. Under Act 47, police officer suspensions, which had previously been given special protection under the UIPA, became public information once final. SHOPO sued separately in the circuit courts of the four main counties to have Act 47 declared unconstitutional. The most active litigation has been the one filed against the City and County of Honolulu (City). In the Kauai and Hawai'i County cases, the parties stipulated to stay proceedings pending the outcome of SHOPO's appeal in the City and County of Honolulu litigation, discussed below. The Maui case was dismissed.

In November 2020, before the City had even answered the complaint, SHOPO sought a preliminary injunction preventing the disclosure of disciplinary records, including in response to a UIPA request by someone not party to the lawsuit. The court partially denied the injunction on December 15, 2020, and ordered SHOPO to follow the UIPA's mandates with respect to the pending request. The City answered the complaint on December 2, 2020, with the remainder of SHOPO's motion for injunction still pending, and the State of Hawai'i and Civil Beat Law Center (CBLC) sought and were granted leave to intervene in the litigation and filed their own answers in January and February 2021. Meanwhile, SHOPO again sought to prevent disclosure of the disciplinary records at issue through an "Objection" to their disclosure filed January 15, 2021, to which the defendant City and intervenor CBLC filed memoranda in opposition in February 2021. CBLC and the other intervenor, the State of Hawai'i, also filed oppositions to SHOPO's still-pending motion for a preliminary injunction, which had been only partially denied.

After hearing further argument, the First Circuit Court ultimately issued a full denial of SHOPO's

motion for a preliminary injunction on April 14, 2021. On August 27, 2021, the court ordered, and the parties stipulated, that the court's December 15 and April 14 rulings had concluded as a matter of law that Act 47 was constitutional and required the City's compliance, and that those rulings fully resolved SHOPO's claim. The court entered final judgment in favor of the defendants on September 30, 2021.

SHOPO appealed that final judgment on October 27, 2021. In the appeal, SHOPO dropped its argument that Act 47's amendment to the UIPA was unconstitutional, focusing instead on its argument that another provision of Act 47 requiring annual public reporting of officer suspensions to identify officers concerned was an unconstitutional invasion of privacy.

On February 8, 2024, the ICA issued a summary disposition order affirming the judgment below, and on March 11, 2024, the ICA entered its judgement on appeal affirming the judgment. SHOPO's litigation against the City is now concluded. However, the Kauai and Hawai'i County cases remain pending, with no substantive developments. Since those cases were stayed pending the outcome of the ICA appeal, which has now concluded by affirming the First Circuit Court's judgment in favor of the City, OIP anticipates that any further development in the Kauai and Hawai'i County cases will be in accordance with the ICA's decision. OIP will therefore discontinue reporting on this litigation unless there are unexpected substantive developments in the remaining active cases.

Kauai Planning Department Investigation Records
Pacific Resource Partnership v. County of Kauai Planning Department
Civ. No. 23-0000148 (5th Cir. Ct.)

In November 2023, Pacific Resource Partnership (Plaintiff) requested that the County of Kauai Planning Department (Department) provide it with investigation records concerning an investigation of a factory operated by Defendant HPM Building Supply. The Department denied the request due to its "ongoing investigation" and cited to the UIPA's frustration exception under 92F-13(3), HRS. Plaintiff filed a lawsuit in the Fifth Circuit Court on January 12, 2024, alleging a violation of the UIPA and other laws. The case was terminated in March 2024, so OIP will discontinue reporting about this case.

Successorship Records
Kealoha v. Department of Hawai'ian Homelands
Civ. No. 24-0000634 (Koolaupoko Drc. Ct.)

On January 12, 2024, Grace Kealoha and Daniel Arias (Plaintiffs) filed a lawsuit in the District Court of the First Circuit, seeking judgment in the amount of $10,000. Plaintiffs, *pro se,* allege that Defendant was ordered by OIP on September 15, 2020, December 22, 2020, and September 30, 2021, to provide Plaintiff with a copy of "Designation of Successorship" and Defendant DHHL violated their rights under the UIPA. OIP notes that it did not order Defendant to disclose any successorship records to Plaintiffs. The case remains pending.

Department of Public Safety Data Dictionaries
Civil Beat Law Center for the Public Interest, Inc. v. Department of Public Safety
Civ. No. 23-0000943 (1st Cir. Ct.)

On April 27, 2023, Civil Beat Law Center for the Public Interest, Inc. (Plaintiff) requested that the Department of Public Safety (Defendant) provide it with "data dictionaries" for two of Defendant's databases—OffenderTrak and the Intake Services Center Division's customized, in-house developed

system (ISCD System), stating that it sought "information sufficient to identify the types of data" stored in the databases and not the data itself. Defendant denied the request in its entirety, based on the UIPA's "frustration of a legitimate government function" exception under section 92F-13(3), HRS, and asserted a security risk if the data dictionaries were disclosed and that the Offendertrak computer program is a proprietary computer program bought from a private vendor and containing proprietary intellectual property. Defendant informed Plaintiff that Motorola Solutions owns all intellectual property rights, patents, trademarks, copyrights, and trade secret rights of the OffenderTrak software, which prohibits Defendant from disclosing the requested information without the permission of Motorola Solutions. Plaintiff filed a lawsuit in the First Circuit Court on July 20, 2023. A Stipulation for Dismissal with Prejudice of All Claims and Parties was filed on November 9, 2023, so OIP will discontinue reporting about this case.

Hawai'i County Department of Public Works Engineering Files
Rohr v. County of Hawai'i Board of Appeals
Civ. No. 20-0000080 (3rd Cir. Ct.)

On October 25, 2019, Claudia Rohr (Plaintiff) filed a General Petition for Appeal of Decision by Public Works Director (Petition) with the County of Hawai'i Board of Appeals (Board). After a hearing on January 10, 2020, the Board dismissed the Petition for lack of jurisdiction on January 13, 2020. Plaintiff, *pro* se, filed a Notice of Appeal of the Board's decision in the Third Circuit Court on February 19, 2020. In Count 3 of her lawsuit, Plaintiff alleges that Defendant County of Hawai'i Department of Public Works violated the UIPA by withholding disclosure of certain engineering files despite Plaintiff's formal request. The case remains pending.

Excessive Fee Estimate for Records
North Shore Law Offices LLLC v. State of Hawai'i Department of Human Services
1CCV-24-0000333 (1ST Cir. Ct.)

North Shore Law Offices LLLC (Plaintiff) submitted a record request to the Department of Human Services (DHS) seeking six categories of records over a twelve-year period related to procurement documents and communications regarding DHS's hiring of hearing officers in contested case hearings, all documents, communications, and payments between DHS and a particular hearing officer, the number of contested hearings a particular person served as a hearing officer, and the number of sustained appeals in favor of the petitioner by a particular hearing officer. DHS denied two categories of Plaintiff's request under section 92F-11(c), HRS, because those requests required DHS to create a summary or compilation of records that were not "readily retrievable." DHS informed Plaintiff that the remaining four categories would be granted in part and denied in part, upon prepayment of $5,415.00 or 50 percent of the total estimated fees of $10,830.00 for its search, review, and segregation of the responsive records, not including the actual costs for copies and postage. To complete the request, DHS estimated it needed 54 hours to search for the records and 516 hours to review and segregate the records. At request of Plaintiff, OIP asked DHS to provide Plaintiff an itemized bill of all fees and cost assessed for this request on February 13, 2024, and March 6, 2024. On March 11, 2024, DHS responded with an itemized bill for the estimate fees and costs. Plaintiff thereafter filed a lawsuit in circuit court seeking full disclosure of the responsive records and alleging that DHS did not make a good faith estimate of the fees and costs associated with fulfilling the request. Plaintiff asserted that the fee estimate was done in bad faith to avoid its disclosure obligations under the UIPA and deny access to the requested records by demanding an exorbitant amount of money before processing the request. DHS denied any wrongdoing and asserted,

among other things, that its non-disclosures were justified. The parties have stayed litigation proceedings for resolution discussions.

UIPA Requests by a Witness After Discovery Cutoff Deadline
Scarlet Honolulu, Inc. and Walter Enriques d/b/a Gray Island Guide v. Honolulu Liquor Commission
Civil No.: 1:21-cv-457-DKW-KJM

Walter Enriques (Plaintiff), the owner of Scarlet nightclub, filed a federal lawsuit against Honolulu Liquor Commission (Commission) alleging the Commission harassed and discriminated against its LGBTQ establishment and employees with unfounded inspections and violations. The Gay Island Guide, an online magazine, joined the lawsuit. After the discovery cut off deadline, a non-party witness for Plaintiff submitted UIPA record requests to the Commission. The Commission denied the witness' request for records because the discovery cut-off deadline set forth in the Rule 16 Scheduling Order had passed. On April 15, 2024, Plaintiff filed a Motion for Court to Affirm Public Record Access under UIPA and Compel Defendants Response to Public Records Request. On May 21, 2024, the court denied Plaintiff's motion as untimely. The court added that Plaintiff's misreading of Sierra Club v. City & of Honolulu, 2008 WL 4922329 (D. Haw. Nov. 18, 2008), borders on a Rule 11 violation and cannot be read to support Plaintiff's proposition that the discovery cutoff and discovery motions cutoffs are immaterial when considering a motion to compel responses to UIPA requests. Instead, Sierra Club reinforces the notion that public access to government records under UIPA is maintained irrespective of any ongoing litigation or discovery deadlines. The court further opined that nothing in Sierra Club supports the complete disregard of the Rule 16 Scheduling Order. On October 8, 2024, the parties entered a settlement agreement, which is pending approval by the City and County of Honolulu (City). The court continues to hold conferences to monitor the City's approval of the settlement.

Sunshine Law Litigation

Executive Session Discussions on Hiring
Public First Law Center v. Defender Council, et al.
Civ. No. 1CCV-24-0000050 (1st Cir. Ct.)

Section 92-5(a)(2), HRS, allows a board to enter an executive session to consider the hire of an officer or employee where consideration of matters affecting privacy will be involved. Prior to the filing of this ligation, OIP issued OIP Opinion Letter No. F24-03 (Opinion F24-03). Opinion F24-03 found, among other things, that the Agribusiness Development Corporation (ADC) Board of Directors (Board) had a valid reason to enter an executive session under section 92-5(a)(2), HRS, to interview candidates and then to discuss the selection and salary of the new executive director (ED). OIP found it could be reasonably anticipated that the executive session discussion of the candidates and salary involved consideration of matters affecting privacy, and concluded the Board was properly in executive session for these discussions. OIP further concluded the Board was permitted to vote in executive session on selection of the ED because holding the vote in a public meeting would have revealed the candidates' identities, which, at that time, carried privacy interests that allowed the Board to hold the executive session.

The Public First Law Center (PFLC) thereafter filed a complaint against the Board, the Defender Council (Council); and against State Public Defender (Public Defender) Jon Ikenaga (Ikenaga), who was appointed by the Council. PFLC alleged that the Council and the Board violated the Sunshine Law on numerous occasions during their respective searches for a new Public Defender and a new ED.

PFLC asked the court to declare that the Council violated the Sunshine Law by: (1) meeting in executive session to discuss and decide the general process for hiring the Public Defender; (2) conducting candidate interviews, post-interview discussions, and candidate selection deliberations in executive session; (3) failing to keep sufficient public and executive minutes; (4) failing to take testimony and limiting testimony to the beginning of meetings; and (5) failing to timely post minutes. PFLC asked for a court order compelling the Council (1) to disclose executive session minutes and recordings; (2) to maintain audio recordings of all public meetings and publish the recordings online within forty days of the meeting for a period of four years; and (3) to maintain audio recordings of all executive session meetings for a period of four years. PFLC further asked for an order voiding the Council's selection of Ikenaga as Public Defender.

PFLC also asked the court to declare that the Board violated the Sunshine Law by: (1) forming 3-member committees to evaluate the ED's annual performance; (2) evaluating the ED's performance for two fiscal years entirely in executive session; (3) deliberating on the Hiring Permitted Interaction Group's (Hiring PIG) recommendations, interviewing candidates, evaluating candidate qualifications and fitness, discussing the ED's salary, and selecting the next ED entirely in executive session; (4) failing to dissolve the Hiring PIG after it presented its report; and (5) deliberating and engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the Board. PFLC asked the court to compel the Board (1) to disclose executive session minutes and recordings; and (2) to disclose the complete findings and recommendations of the Hiring PIG.

PFLC further asked that the court declare that Opinion F24-03 is palpably erroneous to the extent it held that the Board properly conducted an executive session. PFLC asked the court to order the Council and ADC to participate in annual Sunshine Law training. On November 25, 2024, the circuit court granted in-part and denied in-part PFLC's two motions for partial summary judgment (one regarding the Council and one regarding the Board). Trial is scheduled for June 23, 2025.

Special Management Area Use Permit
Rohr v. Windward Planning Commission of the County of Hawai'i
Civ. No. 23-0000433 (3rd Cir. Ct.)

On December 18, 2023, Claudia Rohr (Plaintiff) filed an Amended Complaint against the Hawai'i County Windward Planning Commission (Commission) and Planning Department (Department). Plaintiff, pro se, alleged that (1) the Commission took final action on an application for Special Management Area Use Permit (SMA permit) at a public meeting on September 1, 2023, without a proper public notice pursuant to section 92-7(a), HRS; and (2) the Department's recommendation in favor of the SMA permit was made without the benefit of public testimony at the September 1 meeting because the "misinformation" in the agenda "misdirected" the public as to the location of the property being considered, and confused the public so that no one testified. Plaintiff sought, among other relief, court orders to (1) void the Commission's final action on the SMA permit, and (2) declare the SMA permit void. On March 27, 2024, Defendants filed a Motion to Dismiss the Amended Complaint on the basis that the SMA permit had been revoked by the Commission on February 1, 2024, and that the Court lacks subject matter jurisdiction over Plaintiff's claims for relief which are now moot. The Court granted Defendants' Motion to Dismiss without prejudice on April 26, 2024, due to lack of jurisdiction. On May 15, 2024, the Court entered Final Judgment in favor of Defendants and against Plaintiff on all claims, so OIP will discontinue reporting about this case.

Board of Land and Natural Resources' Reassignment of Water Commission Deputy Director
Keahi, et al. v. Chang, et al.
CAAP-24-0000163; 1CCV-23-0001078

Kekai Keahi and Jennifer Kamaho'i Mather (Complainants) alleged that the Board of Land and Natural Resources violated the Sunshine Law by reassigning the Water Commission Deputy Director (Water Deputy) who delayed permission to allow the use of stream water to fight the Lahaina wildfire. Complainants alleged that reassigning the Water Deputy outside of a meeting violated the Sunshine Law. The circuit court entered an order granting Defendants' motion to dismiss and denying Complainants' motion for summary judgment entered on December 8, 2023. On March 13, 2024, Complainants filed a Notice of Appeal with the ICA, appealing the dismissal of the case. Complainants' opening brief in the appeal was filed on May 10, 2024. Defendants' answering brief was filed July 19, 2024. Complainant's reply brief was filed August 5, 2024. This case remains pending.

Working Group Created by Governor's Emergency Proclamation Regarding Housing Shortage
Leonard Nakoa III, et al. v. Nani Medeiros, et al.
CAAP-24-0000401; CAAP-24-0000576; SP No. 2CSP-23-0000046.

Plaintiffs filed a Petition for Writ of Quo Warranto asserting that the working group created by the Governor's emergency proclamation regarding the housing shortage is unlawful. On March 15, 2024, the circuit court entered an order granting Defendants' motion to dismiss the petition and denying Petitioners' motion for summary judgment and granting leave to file a motion for leave to amend amended petition entered March 15, 2024. Plaintiffs filed an amended complaint on March 19, 2024. On April 10, 2024, Defendants filed a motion to dismiss the amended complaint. On April 29, 2024, Plaintiffs filed a motion for summary judgment. After oral argument on May 17, 2024, the circuit court granted the Defendants' motion to dismiss and denied the Plaintiffs' motion for summary judgment. The order granting Defendant's motion to dismiss and denying Plaintiffs' motion for summary judgment was entered on June 3, 2024. Plaintiffs filed a notice of appeal with the ICA on June 4, 2024. Plaintiffs filed their opening brief on August 6, 2024. After Plaintiffs filed their appeal, Defendants filed for taxation of costs, which was denied on the grounds that Plaintiffs had filed an appeal in this case. On August 28, 2024, Defendants filed a notice of appeal with the ICA for the denial of the taxation of costs. On August 28, 2024, Defendants filed a motion to consolidate the two appeals. This case remains pending.

Accidental Disclosure of Information
HGEA v. Dept. of Public Safety
CAAP-22-0000506; 1CCV-21-1304

An employee of PSD accidentally sent an email via "cc" instead of "bcc" to approximately two hundred sixty PSD employees on an email regarding compliance with the Governor's Emergency Proclamation on the COVID-19 pandemic issued on August 5, 2021 (Emergency Proclamation). On October 25, 2021, the Hawai'i Government Employees' Association (HGEA) filed suit, claiming this was an invasion of privacy that violated the UIPA. On November 23, 2021, PSD filed a motion to dismiss. On November 29, 2021, PSD filed an amended motion to dismiss, arguing that the email did not contain medical information of employees, the email was sent to employees regardless of vaccination status, and that HGEA lacked standing and neither the UIPA nor the Emergency Proclamation provided a private right of action to bring suit for the disclosure of records. On March 31, 2022, the circuit court granted the Amended Motion to Dismiss. On October 19, 2022, HGEA filed a notice of appeal with the ICA. On January 26, 2023, HGEA filed its opening brief. On March 31, 2023, PSD filed its answering brief. On

April 24, 2023, HGEA filed its reply brief. On September 19, 2024, the Public First Law Center moved to file an Amicus Curiae Brief, and this case remains pending.

Insufficient Notice of Rule Changes
Committee for Responsible Liquor Control and Madge Schaefer v. Liquor Control Commission, Director of the Department of Liquor Control and the County of Maui.
Civ. No. 17-1-000185(1) (2nd Cir. Ct.); CAAP-17-0000805

The Committee for Responsible Liquor Control and Madge Schaefer (Plaintiffs) filed a complaint alleging that the Maui County Liquor Control Commission's (Commission) February 8, 2017, notice and agenda did not meet the notice requirements under section 92-7, HRS, or rule change requirements under Hawai'i Administrative Procedures Act, chapter 91, HRS, to allow the Commission to discuss or vote on proposed changes to its administrative rules. Plaintiffs asked the circuit court to void the Commission's February 8, 2021, amendments to the rules. After this lawsuit was filed on May 5, 2017, the Commission held a Sunshine Law meeting on July 12, 2017, and voted to repeal three of its February 8, 2017, amendments to its administrative rules that eliminated the 11 p.m. to 6 a.m. blackout period for alcohol retail sales, removed the cap on of 12 hostess bars, and allowed for home delivery of alcoholic beverages in Maui County. The circuit court issued a final judgment on October 17, 2017, dismissing the case with prejudice pursuant to its Order Denying Plaintiffs' Motion for Summary Judgment and Granting Defendants' Motion for Judgment on the Pleadings. Plaintiffs appealed to the ICA on November 2, 2017. On April 22, 2024, the ICA issued a summary disposition order vacating the circuit court's final judgment and remanded the case to the circuit court for further proceedings. The ICA concluded that (1) Plaintiff's challenge to "all the improperly adopted rule changes" at the Commission's February 8, 2017, meeting was not moot; (2) the Commission's meeting notice published on January 6, 2017, did not satisfy the notice requirements, section 92-7, HRS, because "it neither included an agenda nor was it filed with the county clerk[;]" (3) the Commission's agenda published on February 1, 2017, did not satisfy the notice requirements under section 92-7, HRS, because it failed to provide a "statement of when and where the proposed rules may be reviewed in person and on the Internet as provided in section 91-2.6[,]" HRS. The ICA remanded the case for the circuit court to address the validity of these rule amendments. On August 8, 2024, the parties stipulated to a dismissal of all claims with prejudice, so OIP will discontinue reporting about this case.

RULES

OIP's current rules, set forth in chapters 71 and 73 of Title 2 of the Hawai'i Administrative Rules, concern agency procedures for processing a request for access to a government record, the fees an agency may charge for processing a record request, the procedures for appealing a denial of a record request to OIP, and the procedures for filing an administrative complaint regarding a board's failure to comply with the Sunshine Law.

Because OIP was transferred for administrative purposes to the Department of Accounting and General Services (DAGS), OIP must renumber its administrative rules to fall within DAGS's system. For the most part, OIP will simply renumber its rules for appeals that are made to OIP, which were adopted on December 31, 2012. Housekeeping and other changes are being proposed for OIP's rules to process UIPA record requests, which were adopted in 1988. Adoption of new administrative rules will be one of OIP's priorities after conclusion of the 2025 Legislative session. After new rules are implemented, OIP will prepare updated training materials, including a new, simpler UIPA Record Request Log.

OIP has not yet adopted rules that set forth "uniform standards for the records collection practices of agencies" or "uniform standards for disclosure of records for research purposes" as required by section 92F-42(14) and (15), HRS.

CONCLUSION

OIP will continue to administer the UIPA and Sunshine Law by providing legal guidance and assistance regarding these laws and the state's Open Data policy to agencies and the public, and to monitor legislation and litigation that raises issues under the UIPA or the Sunshine Law. OIP will continue to strive to resolve its formal case backlog and amend its existing administrative rules. OIP would like to thank state and county agencies and boards for their cooperation in these matters.