

# H.B. NO. 2402

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## A BILL FOR AN ACT

RELATING TO THE OFFICE OF INFORMATION PRACTICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1.   Section 92F-15.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§92F-15.5   Alternative method to appeal a denial of**  
4 **access.**   (a)   When an agency denies a person access to a  
5 government record, the person may appeal the denial to the  
6 office of information practices in accordance with rules adopted  
7 pursuant to section 92F-42(12).   A decision to appeal to the  
8 office of information practices for review of the agency denial  
9 shall not prejudice the person's right to appeal to the circuit  
10 court after a decision is made by the office of information  
11 practices.

12           (b)   If the decision is to disclose, the office of  
13 information practices shall notify the person and the agency,  
14 and the agency shall make the record available.   If the denial  
15 of access is upheld, in whole or in part, the office of  
16 information practices shall, in writing, notify the person of  
17 the decision, the reasons for the decision, and the right to  
18 bring a judicial action under section 92F-15(a).

1        (c) The office of information practices may apply to the  
2 circuit court for a judgment to enforce the provisions of the  
3 decision made pursuant to this section."

4        SECTION 2. Section 92F-27.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "**§92F-27.5 Alternative method to appeal a denial of**  
7 **access.** (a) When an agency denies an individual access to that  
8 individual's personal record, the individual may appeal the  
9 denial to the office of information practices in accordance with  
10 rules adopted pursuant to section 92F-42(12). A decision to  
11 appeal to the office of information practices for review of the  
12 agency denial shall not prejudice the individual's right to  
13 appeal to the circuit court after a decision is made by the  
14 office of information practices.

15        (b) If the decision is to disclose, the office of  
16 information practices shall notify the individual and the  
17 agency, and the agency shall make the record available. If the  
18 denial of access is upheld, in whole or in part, the office of  
19 information practices shall, in writing, notify the individual  
20 of the decision, the reasons for the decision, and the right to  
21 bring a judicial action under section 92F-27.

1        (c) The office of information practices may apply to the  
2 circuit court for a judgment to enforce the provisions of the  
3 decision made pursuant to this section."

4        SECTION 3. Section 92F-42, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "**§92F-42 Powers and duties of the office of information**  
7 **practices.** The director of the office of information practices:

8        (1) Shall, upon request, review and rule on an agency  
9        denial of access to information or records, or an  
10        agency's granting of access; provided that any review  
11        by the office of information practices shall not be a  
12        contested case under chapter 91 and shall be optional  
13        and without prejudice to rights of judicial  
14        enforcement available under this chapter;

15        (2) Upon request by an agency, shall provide and make  
16        public advisory guidelines, opinions, or other  
17        information concerning that agency's functions and  
18        responsibilities;

19        (3) Upon request by any person, may provide advisory  
20        opinions or other information regarding that person's  
21        rights and the functions and responsibilities of  
22        agencies under this chapter;

- 1           (4) May conduct inquiries regarding compliance by an  
2                   agency and investigate possible violations by any  
3                   agency;
- 4           (5) May examine the records of any agency for the purpose  
5                   of paragraph (4) and seek to enforce that power in the  
6                   courts of this State;
- 7           (6) May recommend disciplinary action to appropriate  
8                   officers of an agency;
- 9           (7) Shall report annually to the governor and the state  
10                   legislature on the activities and findings of the  
11                   office of information practices, including  
12                   recommendations for legislative changes;
- 13           (8) Shall receive complaints from and actively solicit the  
14                   comments of the public regarding the implementation of  
15                   this chapter;
- 16           (9) Shall review the official acts, records, policies, and  
17                   procedures of each agency;
- 18           (10) Shall assist agencies in complying with the provisions  
19                   of this chapter;
- 20           (11) Shall inform the public of the following rights of an  
21                   individual and the procedures for exercising them:

1 (A) The right of access to records pertaining to the  
2 individual;

3 (B) The right to obtain a copy of records pertaining  
4 to the individual;

5 (C) The right to know the purposes for which records  
6 pertaining to the individual are kept;

7 (D) The right to be informed of the uses and  
8 disclosures of records pertaining to the  
9 individual;

10 (E) The right to correct or amend records pertaining  
11 to the individual; and

12 (F) The individual's right to place a statement in a  
13 record pertaining to that individual;

14 (12) Shall adopt rules that set forth an administrative  
15 appeals structure which provides for:

16 (A) Agency procedures for processing records  
17 requests;

18 (B) A direct appeal from the division maintaining the  
19 record; and

20 (C) Time limits for action by agencies;

21 (13) Shall adopt rules that set forth the fees and other  
22 charges that may be imposed for searching, reviewing,

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1 or segregating disclosable records, as well as to  
2 provide for a waiver of fees when the public interest  
3 would be served;

4 (14) Shall adopt rules which set forth uniform standards  
5 for the records collection practices of agencies;

6 (15) Shall adopt rules that set forth uniform standards for  
7 disclosure of records for research purposes;

8 (16) Shall have standing to appear in cases where the  
9 provisions of this chapter are called into question;

10 (17) May commence a suit in circuit court to enforce a  
11 decision made pursuant to this part;

12 [~~(17)~~] (18) Shall adopt, amend, or repeal rules pursuant to  
13 chapter 91 necessary for the purposes of this chapter;  
14 and

15 [~~(18)~~] (19) Shall take action to oversee compliance with  
16 part I of chapter 92 by all state and county boards  
17 [~~including:~~

18 ~~(A) Receiving and resolving complaints;~~

19 ~~(B) Advising all government boards and the public~~  
20 ~~about compliance with chapter 92; and~~

21 ~~(C) Reporting each year to the legislature on all~~  
22 ~~complaints received pursuant to section 92 1.5.]~~



JUSTIFICATION SHEET

DEPARTMENT: OFFICE OF THE LIEUTENANT GOVERNOR,  
OFFICE OF INFORMATION PRACTICES

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF  
INFORMATION PRACTICES.

PURPOSE: To authorize OIP to file an action in the  
circuit courts to compel an agency's compliance  
with a decision by OIP rendered in accordance  
with sections 92F-15.5 and 92F-27.5, Hawaii  
Revised Statutes (HRS).

MEANS: Amend sections 92F-15.5, 92F-27.5, and 92F-42,  
HRS.

JUSTIFICATION: Sections 92F-15.5 and 92F-27.5, HRS, expressly  
grant a person denied access to a government  
record the right to appeal the denial to OIP  
and explicitly state that if the decision is to  
disclose, "the agency **shall** make the record  
available." (Emphasis added).

The statute presently does not contain a  
mechanism to compel compliance by a government  
agency with a decision by OIP rendered under  
sections 92F-15.5 and 92F-27.5, HRS. In other  
words, notwithstanding OIP's determination that  
a record must be disclosed, an agency can  
simply ignore OIP's decision and neither OIP  
nor any other party, including the Attorney  
General and the record requester, is authorized  
to file an action to compel compliance with  
OIP's decision. This bill would allow OIP to  
compel compliance with its decision through an  
action filed in the circuit court.

Impact on the public: This bill will benefit  
the public by ensuring expediency and  
uniformity in gaining access to government  
records.

Impact on the department and other agencies:  
An agency will not be able to purposely ignore  
a decision by OIP that a record or portions  
thereof must be disclosed.



GENERAL FUND: None.

OTHER FUNDS: Unknown amount of expenses incurred by OIP when filing suit in circuit court to enforce its decisions.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: All state and county agencies.

EFFECTIVE DATE: Upon approval.