

JAN 25 2006

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;

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- 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 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

SB. NO. 2365

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.

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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.