

JAN 19 2007

A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1 SECTION 1. The legislature finds that government agency
2 compliance with the Uniform Information Practices Act, chapter
3 92F, Hawaii Revised Statutes (open records law), is essential to
4 the credibility of state and county agencies and improves their
5 accountability to the public it serves.

6 Currently, many agencies have not organized their
7 operations to routinely accommodate records requests from
8 citizens, as required by law. The legislature finds that an
9 administrative fine would encourage agencies and employees to
10 respond to records requests in accordance with the open records
11 law.

12 The purpose of this Act is to authorize the office of
13 information practices to issue an administrative fine of \$50
14 against an agency for each violation of the Uniform Information
15 Practices Act.

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



1 "§92F-15.5 Alternative method to appeal a denial of
2 access[-]; agency fines. (a) When an agency denies a person
3 access to a government record, the person may appeal the denial
4 to the office of information practices in accordance with rules
5 adopted pursuant to section 92F-42(12). A decision to appeal to
6 the office of information practices for review of the agency
7 denial shall not prejudice the person's right to appeal to the
8 circuit court after a decision is made by the office of
9 information practices.

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

17 (c) Any agency that does not comply with a decision of the
18 office of information practices under subsection (b) may be
19 fined \$50 by the office of information practices for each
20 violation in accordance with rules adopted pursuant to section
21 92F-42(19)."



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

3 **"§92F-42 Powers and duties of the office of information**
4 **practices.** The director of the office of information practices:

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

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

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

20 (4) May conduct inquiries regarding compliance by an
21 agency and investigate possible violations by any
22 agency;



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



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

3 (D) The right to be informed of the uses and
4 disclosures of records pertaining to the
5 individual;

6 (E) The right to correct or amend records pertaining
7 to the individual; and

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

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

12 (A) Agency procedures for processing records
13 requests;

14 (B) A direct appeal from the division maintaining the
15 record; and

16 (C) Time limits for action by agencies;

17 (13) Shall adopt rules that set forth the fees and other
18 charges that may be imposed for searching, reviewing,
19 or segregating disclosable records, as well as to
20 provide for a waiver of fees when the public interest
21 would be served;



- 1 (14) Shall adopt rules which set forth uniform standards
2 for the records collection practices of agencies;
- 3 (15) Shall adopt rules that set forth uniform standards for
4 disclosure of records for research purposes;
- 5 (16) Shall have standing to appear in cases where the
6 provisions of this chapter are called into question;
- 7 (17) Shall adopt, amend, or repeal rules pursuant to
8 chapter 91 necessary for the purposes of this chapter;
9 [and]
- 10 (18) Shall take action to oversee compliance with part I of
11 chapter 92 by all state and county boards including:
12 (A) Receiving and resolving complaints;
13 (B) Advising all government boards and the public
14 about compliance with chapter 92; and
15 (C) Reporting each year to the legislature on all
16 complaints received pursuant to section 92-
17 1.5 [-]; and
- 18 (19) Shall adopt rules that set forth uniform standards for
19 issuing fines against agencies failing to comply with
20 the office of information practices' opinions under
21 section 92F-15.5(b) ."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4

INTRODUCED BY: *Yedhooji*



Report Title:

Office of Information Practices; Administrative Fines

Description:

Authorizes the office of information practices to issue administrative fines against state or county agencies for non-compliance of the Uniform Information Practices Act (open records law).

