

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE LIEUTENANT GOVERNOR**  
**OFFICE OF INFORMATION PRACTICES**

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PAUL T. TSUKIYAMA  
DIRECTOR

**THE HOUSE OF REPRESENTATIVES**  
**Committee on Finance**

**INFORMATIONAL BRIEFING TESTIMONY FOR**  
**OFFICE OF INFORMATION PRACTICES**  
**Program ID LTG105IA**  
**(Office of the Lieutenant Governor)**

Date: January 14, 2009  
Time: 1:30pm  
Place: State Capitol, Room 308

Chair Oshiro, Vice-Chair Lee, and members of the House Committee on Finance, my name is Paul Tsukiyama, director of the Office of Information Practices ("OIP").

**NARRATIVE**

OIP's FY2010-11 budget reduction request was made in compliance with the 10%-20% mandatory deduction for state agencies. The request has resulted in a reduction of OIP's operating budget in the amount of \$4,492, which equates to a 42% reduction from OIP's FY08 other current operating expense appropriation (20). OIP plans to address this reduction by restricting all travel and office training, cancelling trade publication and legal reference material subscriptions, cancelling membership in Council on Governmental Ethics Laws (COGEL) organization, limiting the number of educational and guidance publications provided in hard copy, reducing mailing costs and other office related expenses as needed.

A reduction in OIP's measures and activities resulted in large part to understaffing during much of FY2008. OIP has a total of 7.5 authorized positions, which includes the director, four staff attorneys, and three staff members. In FY2008, one vacant full-time staff attorney position was filled in the third quarter of the fiscal year (or 4.5 months). Another staff attorney's hours was reduced to .75 FTE while another full-time staff attorney served as the interim director and only full-time staff attorney for approximately five months. The director position was filled approximately halfway into the fiscal year. To address budget reductions, hours for one staff position were

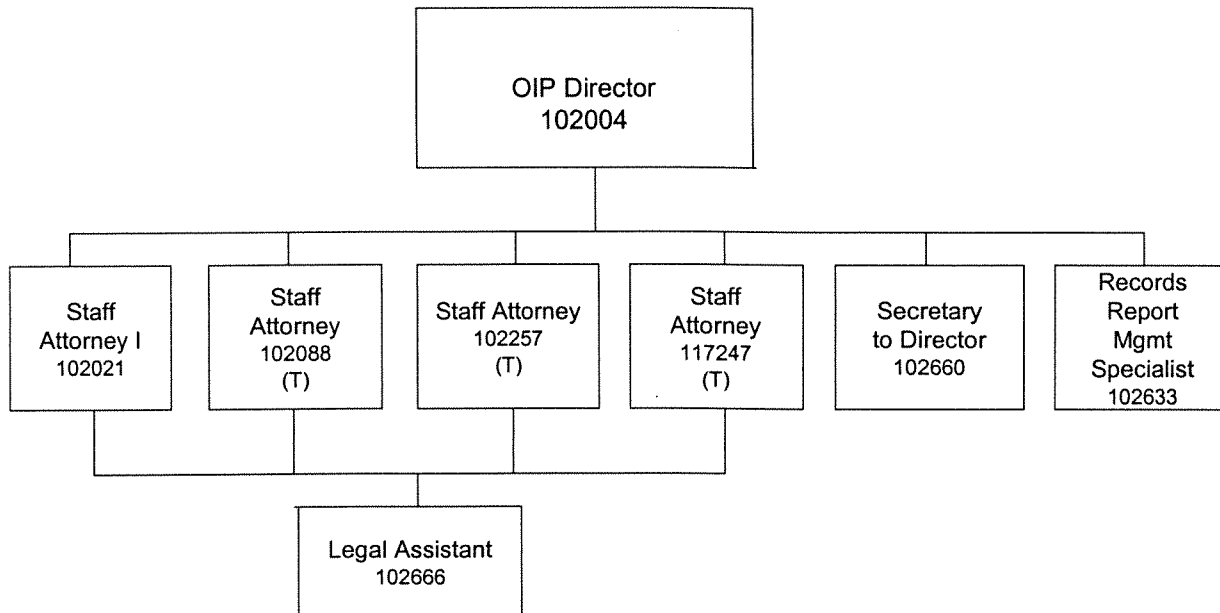
reduced. In FY2008, OIP was also actively involved in defending a lawsuit against OIP brought by the County of Kauai and significant staff resources were directed towards this end.

To address further reductions in its budget, OIP has reduced its employee costs by reducing hours for one attorney position and also further reduced its operational costs. This reduction will make it more difficult for OIP to achieve its objectives, although OIP continues its efforts to streamline procedures and to implement other methods to improve performance, such as the issuance of more informal opinions and summary dispositions. OIP has also identified the need to adjust its measures of effectiveness over the next four years to account for reduced staffing and other third party factors that affect its ability to meet those measures.

#### MISSION STATEMENT

OIP's mission is to protect the public's interest by ensuring, to the extent reasonably possible, that the governmental processes are open to public scrutiny and participation, that the public has access to government records, that government boards conduct their business in meetings open to the public unless permitted by statute to do otherwise, that government is accountable to individuals in the collection, use and dissemination of information about them, and that individuals' privacy interests are protected where disclosure would constitute a clearly unwarranted invasion of privacy; to assist the public in obtaining records; to resolve complaints and issues relating to the public's access to records and meetings; to assist government agencies and boards in complying with the public records and open meeting laws.

OIP ORGANIZATIONAL CHART AS OF FY2009



Also see Worksheet 1 attached hereto.

PROGRAM FUNCTIONS

List of functions performed by program:

Priority 1

Protection of the public's right to access government records and individuals' privacy rights in compliance with the Uniform Information Practices Act (Modified), Hawaii's public records law.

A. Description of Function. Protect the public's right to access records maintained by government agencies and individuals' privacy interests through: (1) reviewing and ruling on appeals from an agency's denial of access; (2) rendering advisory opinions concerning the public's right to access records; (3) assisting the public in obtaining responses to record requests where an agency fails to respond to a request as required under the UIPA and associated administrative rules; (4) providing general guidance concerning access issues; and (5) offering workshops and other educational training to agency personnel and the public.

This function is critical to protecting the public's right to know and the legislative intent that the governmental processes be as open as possible while protecting individuals' privacy rights.

B. Performance Measures.

- % of appeals from denial of access resolved within 30 days
- % of advisory opinions rendered within 45 days
- % of assistance to enforce agency compliance with response requirements completed within 30 days
- % of general inquiries (AOD) responded to within 1 day
- # of training presentations to agencies/boards
- # of public informational presentations

C. Statutory Reference: Chapter 92F, HRS

Priority 2

Oversee compliance by government boards to the Sunshine Law's express intent that the formation and conduct of public policy be conducted as openly as possible and that the public be able to participate in their meetings to the greatest extent possible.

A. Description of Function. Oversee government boards' compliance with open meeting requirements through: (1) rendering advisory opinions concerning the public's right to participate in meetings of government boards; (2) investigating allegations concerning a board's noncompliance with the requirements of the Sunshine Law; (3) providing general guidance concerning open meetings issues; and (4) offering workshops and other educational training to board members, board staff and the public.

This function is critical to ensuring that government boards conduct their business as openly as possible and to protect the public's right to participate in the meetings of government boards.

B. Performance Measures.

- % of advisory opinions rendered within 45 days
- % of Sunshine Law investigations completed within 30 days
- % of general inquiries (AOD) responded to within 1 day
- % of new board members receiving Sunshine Law training
- # of training presentations to agencies/boards
- # of public informational presentations

C. Statutory Reference. Part I, Chapter 92, HRS

Priority 3

Assist agencies with meeting their annual statutory obligations to maintain their reports under section 92F-18.

A. Description of Function. The Records Report System (RRS) was developed in 1993 to comply with a legislative mandate [Haw. Rev. Stat. § 92F-18(b)]. That part of the UIPA, requires State and county government agencies to make a public report describing the records they maintain. OIP's Records Report System database facilitates collection of information from agencies and serves as a repository for all agency public reports under the UIPA. The RRS specialist conducts ongoing workshops and other educational training to agency personnel.

B. Performance Measures.

- % of Agencies complying with record reporting system
- # RRS Reports Inputted/Received

C. Statutory Reference. HRS § 92-F-18(b) (1993)

LISTING OF MAJOR ACTIVITIES FOR OIP

Major Activity or Activities Performed

- 1 Write legal opinions resulting from requests received by OIP; investigations arising from Sunshine Law complaints; and appeals resulting from Agency's denial of record(s)
- 2 Assist public with requests for assistance in obtaining a government record
- 3 Assist agencies in responding to requests for records
- 4 Assist boards with compliance issues under the Sunshine Law
- 5 Provide OIP training on the UIPA and/or Sunshine Law
- 6 Monitor/testify on proposed legislation impacting the UIPA; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices
- 7 Review and approve requests for Concurrence by Boards to hold limited meetings
- 8 Preparation of legal briefs on lawsuits against OIP
- 9 Monitor litigation cases involving UIPA and Sunshine Law issues
- 10 RRS Report System management and data collection
- 11 Produce publications and guidance memoranda

Personal Services and Other Current Expenses allocation for OIP is attached hereto and referenced as Worksheet 1.

BIENNIUM BUDGET REDUCTIONS

Reductions to program proposed in the biennium budget. Below is a description of the approved budget reduction that will affect OIP's other current expense category (20) for the FY2010-11 biennium budget. These items have resulted in net a decrease to OIP's base budget pursuant to Act 158, Session Laws of Hawaii 2008.

<u>Expense Reduction Description</u>	<u>Amount</u>
1. Office Supplies	\$238
2. Registration (re Training)	\$970
3. Dues and Subscriptions	\$250
4. Postage Costs	\$150
5. Telephone and Telegraph	\$150
6. Printing and Binding	\$491
7. Advertising	\$100
8. Rental of Office Equipment	\$600
9. Office Furniture & Equipment (Repair/Maintenance)	\$300
10. Misc Current Expenses	\$743
11. Misc Expenses – Legal Reference Material	<u>\$500</u>
TOTAL REDUCTION:	\$4,492

Impact as a Result of FY2010-11 Reduction. In compliance with the Governor's final funding decision of the 10%-20% mandatory deduction in FY2010-11, OIP will be required to further reduce its other current expense category (20) from \$24,816 to \$20,324, or by \$4,492. The reductions in FY2009 and FY2010-11 equate a decrease of approximately 42% from OIP's FY2008's other current expense category (20). OIP will address this additional reduction in operating costs by restricting all travel and office training expenses, reducing office equipment, cancelling trade publication and legal reference material subscriptions, cancelling membership in the Council on Governmental Ethics Laws (COGEL) organization, limiting the number of educational and guidance publications provided in hard copy, reducing mailing costs and restricting other office related expenses. OIP chose to reduce operating costs because OIP had already reduced staffing levels as a result of FY2009 restrictions that were carried forward as budget reductions for FY2010-11, which already hampers its ability to provide its primary services. OIP chose to reduce the specific costs listed because they do not impact the essential services provided or because alternative methods of providing those services may be implemented, such as providing opinions or educational materials in electronic form rather than in hard copy sent by regular mail. No public input was received concerning the impact of these reductions.

## BIENNIUM BUDGET ADDITIONS

Additions to program proposed in the Biennium Budget. None.

## RESTRICTIONS

FY2009 Restriction: 16,044 (4%). During the 2008 legislative session, the Legislature removed \$10,404 from OIP's budget for FY2009. An additional 4% restriction, or \$16,044, has been restricted from OIP's FY2009 budget, for a combined total of \$26,448. We have reduced staffing levels and operational costs to meet these restrictions.

FY 2010-11 Reduction: \$20,536. The total reduction in FY2010-11 is \$20,536, which includes the \$16,044 (4%) restriction in FY2009 that will be carried forward as a reduction and the Tier 3 reduction of \$4,492 under Executive Memorandum 08-10.

## OTHER SOURCES OF REVENUE

Revenue generating possibilities for program. There are no other revenue sources. OIP is funded entirely from general funds.

## OPERATIONAL BUDGET FOR LTG105IA

### I. INTRODUCTION

#### A. Summary of Program Objectives.

To implement and oversee compliance with the UIPA and the Sunshine Law in accordance with its powers and duties set forth in sections 92F-42, HRS, and 92-1.5, HRS.

#### B. Description of Program Objectives.

1. Provide guidance and assistance to the public and government entities through its "Attorney of the Day" service and through the issuance of written advisory opinions.

2. Provide education and guidance through the publication of advisory opinions, educational materials, and newsletter.

3. Provide education through training workshops for government agency employees and officials and government board members.

4. Receive and resolve complaints regarding alleged violations of the Sunshine Law.

5. Accept and rule on appeals made by members of the public from agency denials of access to government records.

6. Monitor litigation raising issues under the UIPA or Sunshine law with possible intervention in those cases concerning the UIPA.

7. Make recommendations for, assist with drafting of and providing comment regarding legislation concerning government information practices, public access to government records and meetings, and the privacy rights of individuals.

8. Administer "Records Report System" and assist agencies with meeting their annual statutory obligations to maintain their reports under section 92F-18.

## II. PROGRAM PERFORMANCE RESULTS

A. Measure of Effectiveness	Direction of Success (increase/ decrease)	FY07	FY08	FY09	FY10
		<u>Result</u>	<u>Result</u>	<u>Plan</u>	<u>Plan</u>
1. % of Appeals from Denial of Access Resolved w/in 30 Days		23	29	70	70
2. % of Advisory Opinions Rendered w/in 45 Days		49	17	75	75
3. % of Sunshine Law Investigations completed w/in 30 Days		52	21	80	80
4. % of Assistance to Enforce Agency Compliance w/Response Requirements Completed w/in 30 Days		42	45	80	80
5. % of General Inquiries (AOD) Responded to w/in 1 Day		98	98	95	95
6. % of New Board Members Receiving Sunshine Law Training		60	0	60	60
7. % of Agencies Complying w/Record Reporting System		83	83	30	30
8. No. of Openline Newsletters and Guidance Memoranda		5	9	12	12
9. No. of Training Presentations to Agencies/Boards		33	21	35	35
10. No. of Public Informational Presentations		2	1	4	4



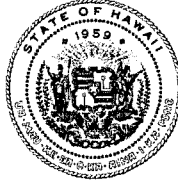
B. Discuss how LTG105IA's measures of effectiveness relate to the program's mission and program objective. These measures are intended to measure OIP's effectiveness in the primary areas that directly relate to OIP's mission and program objectives to provide to the public and governmental entities, legal assistance and uniform legal guidance in response to all requests made, education regarding rights and responsibilities under the state's public records law and open meetings law, adjudication of appeals of denials of access to records, investigation of complaints filed by the public under both laws, and general guidance regarding legislation affecting both laws.

C. Effect of performance measures on program activities. The measures are intended to provide data that can be used to identify priorities and need to reevaluate processes, to reallocate staff resources, and to evaluate effectiveness of instituted procedures.

D. Modifications to program's performance measures. None

#### CAPITAL IMPROVEMENT PROGRAM (CIP BUDGET)

There are no requests being made for CIP projects by OIP at this time.



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WORKSHEET 1

Organizational Chart

PERSONAL SERVICES/OTHER CURRENT EXPENSES

Dollar Amounts by MOF:

Office of Information Practices (LTG 105IA)	<u>FY09</u> (P)	<u>FY09</u> (T)	<u>FY09 \$\$\$</u>	<u>FY10</u> (P)	<u>FY10</u> (T)	<u>FY10 \$\$\$</u>	<u>MOF</u>
Personal Services	5.00	2.50	376,287	5.00	2.50	411,145	General Fund
						<u>FY10 \$\$\$</u>	
Other Current Expenses						20,324	General Fund
Less GOV Budget Reduction for FY2010-11						-4,492	General Fund
						<b>TOTAL:</b> 426,977	General Fund

Department-Wide Summary Information (by MOF)

Fiscal Year (FY) 2009					
Act 158/08 Appropriation (a)	Restriction (b)	Emergency Request (c)	Total FY09 (a)+(b)+(c)	MOF	
401,103	(16,044)	-	385,059	A	
401,103	(16,044)	-	385,059	Total	

Fiscal Year (FY) 2010					
Act 158/08 Appropriation (d)	Collective Bargaining (e)	Reduction (f)	Additions (g)	Total FY10 (d)+(e)+(f)+(g)	MOF
401,103	30,366	(4,492)		426,977	A
401,103	30,366	(4,492)	-	426,977	Total

Fiscal Year (FY) 2011					
Act 158/08 Appropriation (h)	Collective Bargaining (i)	Reduction (j)	Additions (k)	Total FY11 (h)+(i)+(j)+(k)	MOF
401,103	30,066	(4,492)		426,677	
401,103	30,066	(4,492)	-	426,677	Total

Please indicate restrictions and reductions as negative numbers, using brackets ( )

Attachment 2

FY09 Proposed Emergency Requests

Program ID	Description of Emergency Request	FTE	\$\$\$	MOF
LTG105	None			

Attachment 3  
Program ID Totals

<u>Prog ID</u>	<u>Title</u>	<u>Pos 10</u>	<u>\$\$\$ 10</u>	<u>Pos 11</u>	<u>\$\$\$ 11</u>	<u>MOF</u>
LTG105IA	Enforcement of Information Practices	7.50	406,653	7.50	406,653	A

Attachment 4  
Budget Decisions

Priority	Prog ID/Org	Description	MOF	Dept FY10		Dept FY11		B&F FY10		B&F FY11		Gov FY10		Gov FY11	
				FTE(T)	\$\$\$	FTE(P)	FTE(T)	\$\$\$	\$\$\$	FTE(P)	FTE(T)	\$\$\$	\$\$\$	FTE(P)	FTE(T)
1	LTG1051A	Reduction in Personal Services Category (10)	A		75,729		75,729								
2	LTG1051A	Reduction in Other Current Expense Category (20)	A		4,492		4,492		4,492		4,492		4,492		4,492

Attachment 5

All Positions Vacant as of 12/1/08

<u>Date of Vacancy</u>	<u>Position Title</u>	<u>Position Number</u>	<u>Exempt (Y/N)</u>	<u>Budgeted Amount</u>	<u>Actual Salary Last Paid</u>	<u>MOF</u>	<u>Prog ID</u>	<u>Authority to Hire (Y/N)</u>
	No Vacancies							

Attachment 6

Federal Fund Expenditures Exceeding Ceiling for FY08 and FY09 to date

<u>Prog.ID</u>	<u>Appropriation</u> <u>Ceiling</u>	<u>Ceiling Increase</u>	<u>Date of</u> <u>Transfer</u>	<u>Reason for Exceeding Ceiling</u>	<u>Recurring</u> <u>(Y/N)</u>	<u>GF Impact</u> <u>(Y/N)</u>
LTG1051A	None		None			



Attachment 7  
 List of Transfers for FY08 and FY09 to date

<u>From Prog ID</u>	<u>To Prog ID</u>	<u>Amount Transferred</u>	<u>Date of Transfer</u>	<u>Reason for Transfer</u>	<u>Recurring (Y/N)</u>
LTG1051A	--	None			

Attachment 8  
CIP Summary

<u>Priority</u>	<u>Project Title</u>	<u>FY10 \$\$\$</u>	<u>FY11 \$\$\$</u>	<u>MOF</u>
None				