

JAN 23 2009

A BILL FOR AN ACT

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



1 the decision, the reasons for the decision, and the right to
2 bring a judicial action under section 92F-15(a).

3 (c) Any agency that does not comply with a decision of the
4 office of information practices under subsection (b) may be
5 fined \$ _____ by the office of information practices for
6 each violation in accordance with rules adopted pursuant to
7 section 92F-42(19)."

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

10 **"§92F-42 Powers and duties of the office of information**
11 **practices.** The director of the office of information practices:

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

19 (2) Upon request by an agency, shall provide and make
20 public advisory guidelines, opinions, or other
21 information concerning that agency's functions and
22 responsibilities;



- 1 (3) Upon request by any person, may provide advisory
2 opinions or other information regarding that person's
3 rights and the functions and responsibilities of
4 agencies under this chapter;
- 5 (4) May conduct inquiries regarding compliance by an
6 agency and investigate possible violations by any
7 agency;
- 8 (5) May examine the records of any agency for the purpose
9 of paragraph (4) and seek to enforce that power in the
10 courts of this State;
- 11 (6) May recommend disciplinary action to appropriate
12 officers of an agency;
- 13 (7) Shall report annually to the governor and the state
14 legislature on the activities and findings of the
15 office of information practices, including
16 recommendations for legislative changes;
- 17 (8) Shall receive complaints from and actively solicit the
18 comments of the public regarding the implementation of
19 this chapter;
- 20 (9) Shall review the official acts, records, policies, and
21 procedures of each agency;



- 1 (10) Shall assist agencies in complying with [~~the~~
2 ~~provisions of~~] this chapter;
- 3 (11) Shall inform the public of the following rights of an
4 individual and the procedures for exercising them:
 - 5 (A) The right of access to records pertaining to the
6 individual;
 - 7 (B) The right to obtain a copy of records pertaining
8 to the individual;
 - 9 (C) The right to know the purposes for which records
10 pertaining to the individual are kept;
 - 11 (D) The right to be informed of the uses and
12 disclosures of records pertaining to the
13 individual;
 - 14 (E) The right to correct or amend records pertaining
15 to the individual; and
 - 16 (F) The individual's right to place a statement in a
17 record pertaining to that individual;
- 18 (12) Shall adopt rules that set forth an administrative
19 appeals structure which provides for:
 - 20 (A) Agency procedures for processing records
21 requests;



1 (B) A direct appeal from the division maintaining the
2 record; and

3 (C) Time limits for action by agencies;

4 (13) Shall adopt rules that set forth the fees and other
5 charges that may be imposed for searching, reviewing,
6 or segregating disclosable records, as well as to
7 provide for a waiver of fees when the public interest
8 would be served;

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

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

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

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

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

20 (A) Receiving and resolving complaints;

21 (B) Advising all government boards and the public
22 about compliance with chapter 92; and



1 (C) Reporting each year to the legislature on all
 2 complaints received pursuant to section
 3 92-1.5[-]; and

4 (19) Shall adopt rules that set forth uniform standards for
 5 issuing fines against agencies failing to comply with
 6 the office of information practices' decisions under
 7 section 92F-15.5(b)."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY:

Ann Meranda Ke

Richard D
Rosely de Pol
J. L. G. R.
Gary L. Hoan

A

Michelle N. Sudani
S. S. I.

Will Gyro

Frederick
Gab. M.

Clarence R. Resniko
Erzanne Chun Oakland



Report Title:

Office of Information Practices; Authority to Assess Fines

Description:

Authorizes the office of information practices to fine any agency that does not comply with a decision; requires the office to adopt rules that set uniform standards for issuing fines.

