

JAN 27 2010

A BILL FOR AN ACT

RELATING TO INFORMATION PRACTICES.

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

1 SECTION 1. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§92F-A Abuse of process. (a) An agency may request that
5 the office of information practices declare that a person is a
6 vexatious requester.

7 (b) The office of information practices may declare that a
8 person is a vexatious requester if it determines that the person
9 has established a pattern of conduct that amounts to an abuse of
10 a process set forth under this chapter. When the person has
11 been working in concert with another person to make requests,
12 including making identical requests, both persons' requests may
13 be considered as part of the person's pattern of conduct. The
14 office of information practices shall consider whether a
15 person's pattern of conduct includes the following factors;
16 provided that no one factor alone shall be sufficient to find an
17 abuse of a process set forth under this chapter:



- 1 (1) The large quantity or broad scope of requests by the
2 person;
- 3 (2) Splitting requests to avoid or minimize fees;
- 4 (3) Duplicative or repetitive requests made for the same
5 action, where the agency has already responded to the
6 request;
- 7 (4) Requests for records submitted for a purpose other
8 than obtaining access to the records, including
9 nuisance value or harassment;
- 10 (5) Institution of proceedings under this chapter,
11 including appealing requests or submitting complaints
12 or investigation requests, without a reasonable
13 ground, or to accomplish an objective unrelated to the
14 purpose of the proceedings;
- 15 (6) Abandonment of requests when the fee is not waived,
16 and the request is for a purpose other than obtaining
17 access to the records; or
- 18 (7) Requests that only marginally promote the public
19 interest in disclosure under this chapter, including
20 requests focused on an agency's handling of the
21 requester's own requests or correspondence.



1 (c) The burden to establish that a person is a vexatious
2 requester shall be on the agency seeking to have the person
3 declared a vexatious requester. The office of information
4 practices shall not declare that a person is a vexatious
5 requester without first providing the person with notice and an
6 opportunity to respond to the agency's claims; provided that
7 this section shall not require a contested case hearing.

8 (d) The office of information practices may restrict a
9 vexatious requester's exercise of the rights set forth in this
10 chapter; provided that the person may request the ombudsman to
11 review any restriction to ensure that it is narrowly tailored to
12 the vexatious requester's abusive pattern of conduct. The
13 ombudsman shall have the authority to affirm, modify, or
14 overturn any restriction based on that person's request. Any
15 designation of a person as a vexatious requester shall not last
16 for a duration beyond two years from the date of the
17 determination by the office of information practices."

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

20 "**§92F-42 Powers and duties of the office of information**
21 **practices.** The director of the office of information practices:



- 1 (1) Shall, upon request, review and rule on an agency
2 denial of access to information or records, or an
3 agency's granting of access; provided that any review
4 by the office of information practices shall not be a
5 contested case under chapter 91 and shall be optional
6 and without prejudice to rights of judicial
7 enforcement available under this chapter;
- 8 (2) Upon request by an agency, shall provide and make
9 public advisory guidelines, opinions, or other
10 information concerning that agency's functions and
11 responsibilities;
- 12 (3) Upon request by any person, may provide advisory
13 opinions or other information regarding that person's
14 rights and the functions and responsibilities of
15 agencies under this chapter;
- 16 (4) May conduct inquiries regarding compliance by an
17 agency and investigate possible violations by any
18 agency;
- 19 (5) May examine the records of any agency for the purpose
20 of paragraph (4) and seek to enforce that power in the
21 courts of this State;



- 1 (6) May recommend disciplinary action to appropriate
- 2 officers of an agency;
- 3 (7) Shall report annually to the governor and the state
- 4 legislature on the activities and findings of the
- 5 office of information practices, including
- 6 recommendations for legislative changes;
- 7 (8) Shall receive complaints from and actively solicit the
- 8 comments of the public regarding the implementation of
- 9 this chapter;
- 10 (9) Shall review the official acts, records, policies, and
- 11 procedures of each agency;
- 12 (10) Shall assist agencies in complying with the provisions
- 13 of this chapter~~[7]~~, including responding to the
- 14 request of an agency that a person be declared a
- 15 vexatious requester, pursuant to section 92F-A;
- 16 (11) Shall inform the public of the following rights of an
- 17 individual and the procedures for exercising them:
- 18 (A) The right of access to records pertaining to the
- 19 individual;
- 20 (B) The right to obtain a copy of records pertaining
- 21 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 92-1.5."

17 SECTION 3. Section 96-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§96-5 Jurisdiction.** The ombudsman has jurisdiction to
20 investigate the administrative acts of agencies, and may review
21 vexatious requester restrictions imposed by the office of
22 information practices pursuant to section 92F-A, and the

1 ombudsman may exercise the ombudsman's powers without regard to
2 the finality of any administrative act."

3 SECTION 4. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: Will Eyo
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Report Title:

Information Practices; Vexatious Requests

Description:

Enacts an abuse of process law for vexatious requesters of public records.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

