

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. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§92F-A Tracking system. (a) Each agency shall
5 establish:

6 (1) A system to assign an individualized tracking number
7 for each request received that will take longer than
8 ten business days to process and provide to each
9 person making a request the tracking number assigned
10 to the request; and

11 (2) A telephone or internet service that provides
12 information about the status of a request to the
13 person making the request using the assigned tracking
14 number, including:

15 (A) The date on which the agency originally received
16 the request; and



1 (B) An estimated date on which the agency will
2 complete action on the request.

3 §92F-B Information practices officers. Each agency shall
4 designate an information practices officer, who shall have the
5 following responsibilities with regard to this chapter:

6 (1) Overseeing and monitoring the agency's efficient and
7 appropriate compliance;

8 (2) Appropriately informing the head of the agency of the
9 agency's performance; and

10 (3) Recommending to the head of the agency adjustments to
11 agency practices, policies, personnel, and funding
12 that may be necessary to improve its implementation of
13 this chapter."

14 SECTION 2. Section 92F-15, Hawaii Revised Statutes, is
15 amended by amending subsection (d) to read as follows:

16 "(d) If the complainant substantially prevails in an
17 action brought under this section, the court shall assess
18 against the agency reasonable attorney's fees and all other
19 expenses reasonably incurred in the litigation. For purposes of
20 this subsection, a complainant has substantially prevailed if
21 the complainant has obtained relief through either:



- 1 (1) A judicial order or an enforceable written agreement
- 2 or consent decree; or
- 3 (2) A voluntary or unilateral change in position by the
- 4 agency, if the complainant's claim is not
- 5 insubstantial."

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

8 "§92F-42 Powers and duties of the office of information
9 practices. The director of the office of information practices:

- 10 (1) [~~Shall, upon~~] Upon request, shall review and rule on
- 11 an agency denial of access to information or records,
- 12 or an agency's granting of access; provided that any
- 13 review by the office of information practices shall
- 14 not be a contested case under chapter 91 and shall be
- 15 optional and without prejudice to rights of judicial
- 16 enforcement available under this chapter;
- 17 (2) Upon request by an agency, shall provide and make
- 18 public advisory guidelines, opinions, or other
- 19 information concerning that agency's functions and
- 20 responsibilities;
- 21 (3) Upon request by any person, may provide advisory
- 22 opinions or other information regarding that person's



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



1 (11) Shall inform the public of the following rights of an
2 individual and the procedures for exercising them:

3 (A) The right of access to records pertaining to the
4 individual;

5 (B) The right to obtain a copy of records pertaining
6 to the individual;

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

9 (D) The right to be informed of the uses and
10 disclosures of records pertaining to the
11 individual;

12 (E) The right to correct or amend records pertaining
13 to the individual; and

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

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

18 (A) Agency procedures for processing records
19 requests;

20 (B) A direct appeal from the division maintaining the
21 record; and

22 (C) Time limits for action by agencies;



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

6 (A) Fees shall be limited to reasonable standard
7 charges for document search, review, and
8 segregation, when records are requested for
9 commercial use;

10 (B) Fees shall not be charged for searching,
11 reviewing, or segregating disclosable records
12 when the request is made by an educational or
13 noncommercial scientific institution, whose
14 purpose is scholarly or scientific research, or
15 by a representative of the news media; and

16 (C) For any request not described in subparagraphs
17 (A) or (B), fees shall be limited to reasonable
18 standard charges for the document search.

19 As used in this section, "representative of the news
20 media" means any person or entity that gathers
21 information of potential interest to a segment of the
22 public, uses its editorial skills to turn the raw



1 materials into a distinct work, and distributes that
2 work to an audience, and includes but is not limited
3 to representatives of television or radio stations
4 broadcasting to the public at large, publishes or
5 periodicals who make their products available for
6 purchase, subscription, or free distribution,
7 alternative media such as electronically disseminated
8 newspapers, and freelance journalists who can
9 demonstrate a solid basis for expecting publication
10 through an entity.

11 (14) May impose sanctions for an agency's failure to comply
12 with the provisions of this chapter and rules adopted
13 by this office, including but not limited to
14 prohibiting an agency from assessing search, review,
15 and segregation fees if the agency fails to comply
16 with any time limits imposed by this chapter or rules
17 adopted by this office.

18 ~~[-(14)]~~ (15) Shall adopt rules which set forth uniform
19 standards for the records collection practices of
20 agencies;



1 ~~[(15)]~~ (16) Shall adopt rules that set forth uniform
2 standards for disclosure of records for research
3 purposes;

4 ~~[(16)]~~ (17) Shall have standing to appear in cases where the
5 provisions of this chapter are called into question;

6 ~~[(17)]~~ (18) Shall adopt, amend, or repeal rules pursuant to
7 chapter 91 necessary for the purposes of this chapter;
8 and

9 ~~[(18)]~~ (19) Shall take action to oversee compliance with
10 part I of chapter 92 by all state and county boards
11 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 4. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections of this Act.

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



Report Title:

Information Practices Act

Description:

Establishes a tracking system for requests made under the Uniform Information Practices Act (Modified). Requires agencies to designate an officer to oversee implementation and compliance with the Uniform Information Practices Act. Allows complainants to recover reasonable attorney's fees and other expenses when they substantially prevail on actions for violations of the Act. Amends fee provision to specify when fees shall be charged for document search, review, and segregation.

