

**"CHAPTER 92F
UNIFORM INFORMATION PRACTICES ACT (MODIFIED)**

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Note

Advisory opinions and guidelines interpreting this chapter are contained in the Uniform Information Practices Act Reference Manual as published by the office of information practices.

Personal information protection requirements. L Sp 2008, c 10, §§7 to 15.

Cross References

Access Hawaii Committee (management of State's internet portal), see chapter 27G.

Access/legislative information service, see chapter 21D.

Destruction of personal information records, see chapter 487R.

Information privacy and security council; personal information security, see §§487N-5 to 7.

Personal information policy and oversight responsibilities for government agencies, see §487J-5.

Personal information protection, see chapter 487J.

Privacy of consumer financial information, see §§431:3A-101 to 504.

Retail merchant club card requirements, see chapter 487D.

Security breach of personal information, see chapter 487N.

Uniform electronic transactions act, see chapter 489E.

Law Journals and Reviews

2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices. 36 UH L. Rev. 271 (2014).

Case Notes

Chapter did not require defendant to disclose development proposals. 74 H. 365, 846 P.2d 882.

Chapter applies prospectively, requiring disclosure of records maintained by state agencies regardless of when the records came into existence. 83 H. 378, 927 P.2d 386.

Chapter not a "conflicting statute on the same subject matter" as chapter 89, within the meaning of §89-19, and thus is not preempted by chapter 89 or any collective bargaining agreement negotiated under it. 83 H. 378, 927 P.2d 386.

Confidentiality provision in police union's collective bargaining agreement with city unenforceable where provision prevents police department from performing its duties under this chapter. 83 H. 378, 927 P.2d 386.

Where trial court determined that any unaccepted engineering reports were returned to the developer and there was a lack of evidence suggesting that the city planning and permitting department "maintained" any reports or copies of the reports that were unaccepted by the department, trial court properly determined that, pursuant to this chapter, the reports submitted to the department in connection with the developer's subdivision application did not constitute "government records" prior to their acceptance by the department. 119 H. 90, 194 P.3d 531.

As judicial financial disclosure statements are judicial records, created and governed by rule 15 of the rules of the supreme court, promulgated by the court pursuant to its inherent and constitutional judicial authority to regulate judges, and the authority to promulgate rules and keep records with regard to judicial qualification and discipline matters (1) fall within the scope of the court's power to adjudicate, and (2) is inherently intertwined with such adjudicative power, the rules and records are not subject to this chapter or review by the office of information practices. 121 H. 179, 215 P.3d 411.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92 and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in chapter 92, such as an exception enumerated in §92-5, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

"PART I. GENERAL PROVISIONS AND DEFINITIONS

[§92F-1] Short title. This chapter shall be known and may be cited as the Uniform Information Practices Act (Modified). [L 1988, c 262, pt of §1]

" **[§92F-2] Purposes; rules of construction.** In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible.

The policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of article I of the constitution of the state of Hawaii.

This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
- (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy. [L 1988, c 262, pt of §1]

Law Journals and Reviews

2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices. 36 UH L. Rev. 271 (2014).

" **[\$92F-3] General definitions.** Unless the context otherwise requires, in this chapter:

"Agency" means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

"Individual" means a natural person.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items

that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. [L 1988, c 262, pt of §1]

Case Notes

Nonprofit corporation was not an "agency" within the meaning of this section where because: (1) it was the sole title owner of its equipment and the lessee of its offices and facilities, it was not "owned" by the State; (2) the State did not manage its day-to-day operations and its employees were not state employees, it was not "operated" by the State; (3) the State did not control, direct, or exercise skill or judgment over corporation's activities or business affairs, it was not "managed" by the State; and (4) corporation's activities were not a required function of any government agency, it did not perform a government function "on behalf of" the State. 116 H. 337, 173 P.3d 484.

Where trial court determined that any unaccepted engineering reports were returned to the developer and there was a lack of evidence suggesting that the city planning and permitting department "maintained" any reports or copies of the reports that were unaccepted by the department, trial court properly determined that, pursuant to this chapter, the reports submitted to the department in connection with the developer's subdivision application did not constitute "government records" prior to their acceptance by the department. 119 H. 90, 194 P.3d 531.

" **§92F-4 Funding, services, and other federal assistance.** Where compliance with any provision of this chapter would cause an agency to lose or be denied funding, services, or other assistance from the federal government, compliance with that provision shall be waived but only to the extent necessary to protect eligibility for federal funding, services, or other assistance. [L 1992, c 118, §1]

"PART II. FREEDOM OF INFORMATION

§92F-11 Affirmative agency disclosure responsibilities.

(a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

(c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions. [L 1988, c 262, pt of §1; am L 2010, c 100, §§1, 3]

Note

Repeal and reenactment of subsection (b) on July 1, 2014. L 2010, c 100, §3.

Case Notes

Chapter 92F applies prospectively, requiring disclosure of records maintained by state agencies regardless of when the records came into existence. 83 H. 378, 927 P.2d 386.

Where trial court determined that any unaccepted engineering reports were returned to the developer and there was a lack of evidence suggesting that the city planning and permitting department "maintained" any reports or copies of the reports that were unaccepted by the department, trial court properly determined that, pursuant to this chapter, the reports submitted to the department in connection with the developer's subdivision application did not constitute "government records" prior to their acceptance by the department. 119 H. 90, 194 P.3d 531.

Mentioned: 74 H. 365, 846 P.2d 882.

" **§92F-12 Disclosure required.** (a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section 92F-13(1);

- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts except social security numbers and home addresses;
- (10) Regarding contract hires and consultants employed by agencies:
 - (A) The contract itself, the amount of compensation;
 - (B) The duration of the contract; and
 - (C) The objectives of the contract, except social security numbers and home addresses;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-639, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees

- involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and
 - (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.
- (b) Any provision to the contrary notwithstanding, each agency shall also disclose:
- (1) Any government record, if the requesting person has the prior written consent of all individuals to whom the record refers;
 - (2) Government records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access;
 - (3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;
 - (4) Government records requested pursuant to an order of a court;
 - (5) Government records pursuant to a subpoena from either house of the state legislature; and
 - (6) Information from the motor vehicle registration files, provided that the person requesting such files shall have a legitimate reason as determined by rules. [L 1988, c 262, pt of §1; am L 1989, c 160, §3; am L 1991, c 167, §1; am L 1992, c 185, §1; am L 1996, c 89, §8; am L 2000, c 253, §150; am L 2004, c 92, §3; am L 2005, c 85, §1; am L 2007, c 14, §1; am L 2012, c 133, §5]

Case Notes

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapters 92 and 92F applied; if the meeting met an exception to the open meeting requirements put forth in this chapter 92, such as an exception enumerated in §92-5, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and this section. 120 H. 34 (App.), 200 P.3d 403.

Where plaintiff's asserted reason for wanting to inspect President Obama's birth records was so that plaintiff could verify whether the President was a natural born citizen and thus

eligible to serve as president, and while plaintiff may have had a strong desire to personally verify President Obama's eligibility, such desire did not constitute "compelling circumstances affecting the health or safety of any individual" within the meaning of subsection (b)(3); thus, plaintiff failed to state a claim for relief based on subsection (b)(3). 125 H. 104 (App.), 253 P.3d 665.

" **§92F-13 Government records; exceptions to general rule.**

This part shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature. [L 1988, c 262, pt of §1; am L 1993, c 250, §1]

Cross References

Auditor's working papers, see §23-9.5.

Case Notes

Because plaintiff did not claim that the police department's reliance on this section and §92F-22 was improper or unwarranted, the police department was entitled to withhold documents under the sections. 937 F. Supp. 2d 1220 (2013).

Development proposals were government records that, by their nature, must be kept confidential in order to avoid frustration

of a legitimate government function within meaning of paragraph (3). 74 H. 365, 846 P.2d 882.

" **§92F-14 Significant privacy interest; examples.** (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
- (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:
 - (A) Information disclosed under section 92F-12(a)(14); and
 - (B) The following information related to employment misconduct that results in an employee's suspension or discharge:
 - (i) The name of the employee;
 - (ii) The nature of the employment related misconduct;
 - (iii) The agency's summary of the allegations of misconduct;
 - (iv) Findings of fact and conclusions of law; and
 - (v) The disciplinary action taken by the agency;when the following has occurred: the highest nonjudicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the

- decision; provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;
- (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
 - (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
 - (7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:
 - (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
 - (B) Information on the current place of employment and required insurance coverages of licensees; and
 - (C) The record of complaints including all dispositions;
 - (8) Information comprising a personal recommendation or evaluation;
 - (9) Social security numbers; and
 - (10) Information that if disclosed would create a substantial and demonstrable risk of physical harm to an individual. [L 1988, c 262, pt of §1; am L 1993, c 191, §1; am L 1995, c 242, §1; am L 2004, c 92, §4; am L 2014, c 121, §2; am L 2015, c 140, §1]

Attorney General Opinions

Board of education members may disclose reasons they voted as they did in executive session resulting in appointment of education superintendent; they cannot disclose information discussed in executive session if information is of the type listed in subsection (b) without first determining to what extent disclosure is in public interest. Att. Gen. Op. 94-1.

Law Journals and Reviews

Driving into the Sunset: A Proposal for Mandatory Reporting to the DMV by Physicians Treating Unsafe Elderly Drivers. 25 UH L. Rev. 59.

Case Notes

Information that must be disclosed pursuant to clause (b)(4)(B) regarding a public employee's employment-related misconduct and resulting discipline not "highly personal and intimate information" and thus not within scope of Hawaii's constitutional right to privacy. 83 H. 378, 927 P.2d 386.

" **§92F-15 Judicial enforcement.** (a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.

(b) In an action to compel disclosure, the circuit court shall hear the matter de novo; provided that if the action to compel disclosure is brought because an agency has not made a record available as required by section 92F-15.5(b) after the office of information practices has made a decision to disclose the record and the agency has not appealed that decision within the time period provided by 92F-43, the decision of the office of information practices shall not be subject to challenge by the agency in the action to compel disclosure. Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that in an action to compel disclosure brought by an aggrieved person after the office of information practices upheld the agency's denial of access to the person as provided in section 92F-15.5(b), the opinion or ruling upholding the agency's denial of access shall be reviewed de novo. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) The agency has the burden of proof to establish justification for nondisclosure.

(d) If the complainant prevails in an action brought under this section, the court shall assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.

(e) The circuit court in the judicial circuit in which the request for the record is made, where the requested record is maintained, or where the agency's headquarters are located shall have jurisdiction over an action brought under this section.

(f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. [L 1988, c 262, pt of §1; am L 1989, c 192, §3; am L 2012, c 176, §4]

Law Journals and Reviews

2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices. 36 UH L. Rev. 271 (2014).

Case Notes

"Denial of access" in subsection (a) synonymous with "withholding of access"; access is withheld by agency's non-response, claim that request is not specific enough, imposition of unauthorized or excessive fees as condition of access, or claim it does not have records sought. 83 H. 378, 927 P.2d 386.

Plaintiff was "person aggrieved" and had standing under this section where plaintiff requested access to government records and access to requested records was withheld. 83 H. 378, 927 P.2d 386.

" **[\$92F-15.3] Notice to the office of information practices.** When filing a civil action that is under, related to, or is affected by this chapter, a person shall notify the office of information practices in writing at the time of the filing. The office of information practices may intervene in the action. [L 1998, c 82, §1]

" **§92F-15.5 Alternative method to appeal a denial of access.** (a) When an agency denies a person access to a government record, the person may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the person's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the person and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a). [L 1989, c 192, §1]

" **[\$92F-16] Immunity from liability.** Anyone participating in good faith in the disclosure or nondisclosure of a government record shall be immune from any liability, civil or criminal,

that might otherwise be incurred, imposed or result from such acts or omissions. [L 1988, c 262, pt of §1]

" **[§92F-17] Criminal penalties.** (a) An officer or employee of an agency who intentionally discloses or provides a copy of a government record, or any confidential information explicitly described by specific confidentiality statutes, to any person or agency with actual knowledge that disclosure is prohibited, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided for by law.

(b) A person who intentionally gains access to or obtains a copy of a government record by false pretense, bribery, or theft, with actual knowledge that access is prohibited, or who intentionally obtains any confidential information by false pretense, bribery, or theft, with actual knowledge that it is prohibited [by] a confidentiality statute, shall be guilty of a misdemeanor. [L 1988, c 262, pt of §1]

" **§92F-18 Agency implementation.** (a) Each agency shall:

- (1) Issue instructions and guidelines necessary to effectuate this chapter; and
- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.

(b) Each agency shall compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices on or before December 31, 1994. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by:
 - (A) Another agency; or
 - (B) A person other than an agency;

- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
- (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
- (11) The agency procedures whereby an individual may request access to records; and
- (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection. [L 1988, c 262, pt of §1; am L 1989, c 192, §4; am L 1991, c 167, §2; am L 1992, c 118, §2; am L 1993, c 57, §1]

" **§92F-19 Limitations on disclosure of government records to other agencies.** (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- (1) Necessary for the performance of the requesting agency's duties and functions and is also:
 - (A) Compatible with the purpose for which the information was collected or obtained; or
 - (B) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (2) To the state archives for the purposes of historical preservation, administrative maintenance, or destruction;
- (3) To another agency, another state, or the federal government, or foreign law enforcement agency or authority, if the disclosure is:
 - (A) For the purpose of a civil or criminal law enforcement activity authorized by law; and
 - (B) Pursuant to:
 - (i) A written agreement or written request, or
 - (ii) A verbal request, made under exigent circumstances, by an officer or employee of the requesting agency whose identity has been verified, provided that such request is promptly confirmed in writing;

- (4) To a criminal law enforcement agency of this State, another state, or the federal government, or a foreign criminal law enforcement agency or authority, if the information is limited to an individual's name and other identifying particulars, including present and past places of employment;
 - (5) To a foreign government pursuant to an executive agreement, compact, treaty, or statute;
 - (6) To the legislature, or a county council, or any committee or subcommittee thereof;
 - (7) Pursuant to an order of a court of competent jurisdiction;
 - (8) To authorized officials of another agency, another state, or the federal government for the purpose of auditing or monitoring an agency program that receives federal, state, or county funding;
 - (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions;
 - (10) To the department of human resources development, county personnel agencies, or line agency personnel offices for the performance of their respective duties and functions, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety, workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or
 - (11) Otherwise subject to disclosure under this chapter.
- (b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency. [L 1988, c 262, pt of §1; am L 1993, c 250, §2; am L 1994, c 56, §21]

"PART III. DISCLOSURE OF PERSONAL RECORDS

Note

Part heading amended by L 1989, c 192, §5.

[\$92F-21] Individual's access to own personal record.
Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably

intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1988, c 262, pt of §1]

" **§92F-21.5 REPEALED.** L 1990, c 250, §4.

" **§92F-22 Exemptions and limitations on individual access.**

An agency is not required by this part to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
 - (A) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or
 - (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1988, c 262, pt of §1; am L 1993, c 250, §3]

Because plaintiff did not claim that the police department's reliance on this section and §92F-13 was improper or unwarranted, the police department was entitled to withhold documents under the sections. 937 F. Supp. 2d 1220 (2013).

" **§92F-23 Access to personal record; initial procedure.**

Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of receipt of the request by the agency unless the personal record requested is exempted under section 92F-22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1988, c 262, pt of §1; am L 2000, c 254, §1]

" **[§92F-24] Right to correct personal record; initial procedure.** (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1988, c 262, pt of §1]

" **§92F-25 Correction and amendment; review procedures.** (a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow correction or amendment of a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow correction or amendment of a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and

- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1988, c 262, pt of §1; am L 1989, c 192, §6]

" **§92F-26 Rules.** The office of information practices shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part, which the agencies shall adopt, insofar as practicable, in order to ensure uniformity among state and county agencies. [L 1988, c 262, pt of §1; am L 1989, c 192, §7]

" **§92F-27 Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

(b) Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that the opinion or ruling upholding the agency's denial of access to the aggrieved person shall be reviewed de novo. The circuit court may examine the record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(d) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall an individual complainant entitled to recovery receive less than the sum of \$1,000; and
- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(e) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(f) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal

record is situated. No action shall be brought later than two years after notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices. [L 1988, c 262, pt of §1; am L 1989, c 192, §8; am L 2012, c 176, §5]

Cross References

Vexatious litigants, see chapter 634J.

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" **§92F-27.5 Alternative method to appeal a denial of access.**

(a) When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27. [L 1989, c 192, §2]

" **[§92F-28] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law.** Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or

- (2) Where any statute, administrative rules, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1988, c 262, pt of §1]

"PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES

Note

Transfer of rights, powers, duties, etc. relating to the office of information practices from the office of the lieutenant governor to the department of accounting and general services. L 2015, c 92, §§6 to 9.

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§92F-41 Office of information practices; established. (a) There is established an office of information practices within the department of accounting and general services for administrative purposes; provided that:

- (1) Any quasi-judicial functions of the office of information practices shall not be subject to the approval, review, or control of the comptroller; and
- (2) The comptroller shall not have the power to supervise or control the office of information practices in the exercise of its functions, duties, and powers under section 92F-42.

(b) The governor shall appoint a director of the office of information practices to be its chief executive officer and who shall be exempt from chapter 76.

(c) All powers and duties of the office of information practices are vested in the director and may be delegated to any other officer or employee of the office.

(d) The director may employ any other personnel that are necessary, including attorneys and clerical staff. The office of information practices shall follow and be subject to all applicable personnel laws. All personnel of the office of information practices shall be employed without regard to chapter 76.

(e) The office of information practices shall make direct communications with the governor and legislature. [L 1988, c

262, pt of §1; am L 1989, c 192, §9; am L 1998, c 137, §4; am L 2000, c 253, §150; am L 2015, c 92, §4]

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

- (1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;
- (2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;
- (3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;
- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraphs (4) and (18) and seek to enforce that power in the courts of this State;
- (6) May recommend disciplinary action to appropriate officers of an agency;
- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;
- (9) Shall review the official acts, records, policies, and procedures of each agency;
- (10) Shall assist agencies in complying with the provisions of this chapter;
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
 - (A) The right of access to records pertaining to the individual;
 - (B) The right to obtain a copy of records pertaining to the individual;

- (C) The right to know the purposes for which records pertaining to the individual are kept;
 - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
 - (E) The right to correct or amend records pertaining to the individual; and
 - (F) The individual's right to place a statement in a record pertaining to that individual;
- (12) Shall adopt rules that set forth an administrative appeals structure which provides for:
- (A) Agency procedures for processing records requests;
 - (B) A direct appeal from the division maintaining the record; and
 - (C) Time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of fees when the public interest would be served;
- (14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies;
- (15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;
- (16) Shall have standing to appear in cases where the provisions of this chapter or part I of chapter 92 are called into question;
- (17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter; and
- (18) Shall take action to oversee compliance with part I of chapter 92 by all state and county boards including:
- (A) Receiving and resolving complaints;
 - (B) Advising all government boards and the public about compliance with chapter 92; and
 - (C) Reporting each year to the legislature on all complaints received pursuant to section 92-1.5. [L 1988, c 262, pt of §1; am L 1989, c 192, §10; am L 1998, c 137, §5; am L 2015, c 92, §5]

" **[§92F-43] Agency appeal of a decision by the office of information practices.** (a) An agency may not appeal a decision by the office of information practices made under this chapter or part I of chapter 92, except as provided in this section. Within thirty days of the date of the decision, an agency may

seek judicial review of a final decision rendered by the office of information practices under this chapter or part I of chapter 92, by filing a complaint to initiate a special proceeding in the circuit court of the judicial circuit in the State where:

- (1) The request for access to a record was made;
- (2) The act the office determined was prohibited under part I of chapter 92 occurred; or
- (3) The agency's principal place of business is located.

(b) The agency shall give notice of the complaint to the office of information practices and the person who requested the decision for which the agency seeks judicial review by serving a copy of the complaint on each; provided that the office of information practices and the person who requested the decision shall not be required to participate in the proceeding; and provided further that the court shall proceed to review the decision pursuant to the rules applicable to a special proceeding, upon the expiration of time that an answer to the complaint would otherwise need to be filed under the rules of court by the office of information practices or the person upon whom the complaint was served. The office of information practices or the person who requested the decision may intervene in the proceeding.

(c) Within thirty days of service of the complaint, the office of information practices shall file a certified copy of the record that it compiled to make its decision in the circuit court and mail a copy of the index to that record to the appealing agency. The circuit court's review shall be limited to the record that was before the office of information practices when it rendered the decision, unless the circuit court finds that extraordinary circumstances justify discovery and admission of additional evidence. The circuit court shall uphold a decision of the office of information practices, unless the circuit court concludes that the decision was palpably erroneous. [L 2012, c 176, §1]

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