

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 8, 2018, 3:15 p.m.  
State Capitol, Conference Room 224

Re: Testimony on S.B. No. 3092  
Relating to Open Government

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports the intent of this bill for faster resolution of OIP’s formal cases, but **requires long-term, dedicated funding to retain OIP’s existing personnel and to hire, train, and equip additional personnel** to carry out the statutory requirements being imposed by the proposal, as well as **sufficient time to train** new personnel. OIP opposes setting a statutory deadline without providing the necessary long-term, dedicated funding and training time.

OIP already has its own goal to resolve all formal cases within **12 months of filing, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.** (See Year 5 Action Plan on page 14 of the attached excerpt from OIP’s FY 2017 Annual Report.) OIP hopes to achieve this goal by FY 2022, depending on whether it has the funding to retain its existing personnel, hire and train additional personnel and does not experience a substantial increase in the number and complexity of new cases filed with OIP each year.

**To achieve OIP's goal or the proposed statutory mandate of resolving all cases within six months, decades of underfunding OIP must first be reversed.** (See Figures 2 and 3 of attached excerpt from OIP's FY 2017 Annual Report.) OIP was created 29 years ago in 1988 to administer the Uniform Information Practices Act (UIPA). At its height in FY 1994, OIP had 15 authorized positions and an allocated budget of \$827,537, which is the inflation-adjusted equivalent of \$1,374,543 today. See Figure 3 in the attached excerpt from OIP's FY 2017 Annual Report. Five years later, in FY 1999, OIP was given the additional responsibility of administering the Sunshine Law, which essentially doubled its work, but OIP had been slashed to only 8 positions and its budget was cut to \$354,505, which is the inflation-adjusted equivalent of \$523,064 today. In FY 2010-11, OIP personnel were subject to furloughs and supplemental leave without pay. It was not until FY 2014 that OIP was authorized an additional attorney position. **Currently, OIP has 8.5 FTE authorized positions and a legislative appropriation of \$576,855, which is \$304,473 less in unadjusted dollars and only 42% of what it had on an inflation-adjusted basis in FY 1994. In short, OIP has been doing double the work with half the resources that it had 24 years ago.**

**Despite its minimal resources, OIP's productivity has increased in recent years,** as seen by the solid green line in the attached Chart 1 showing the number of formal cases that were new, closed, and outstanding from FY 2011 through FY 2017. (See attached Chart 1 of OIP new, closed, and outstanding formal cases.) The blue dotted line shows the number of new formal cases that were filed each year, which has substantially increased in 5 out of 7 years and with an average increase of 17% year over year since 2011. Comparing FY

2011 to FY 2017, OIP has seen a 168% increase in new cases filed annually. Although OIP had a brief respite in FY 2016 when the number of new cases filed went down to 198 from 233 the year before, OIP saw a 40.4 % increase in new cases (+80 cases) in FY 2017, when a record 278 cases were filed.

Even with the 40.4% increase in new cases, OIP was able to resolve 232 formal cases in FY 2017, just 9 cases shy of the record 241 formal cases that it resolved in FY 2016. Except for the 9 less cases resolved in FY 2017 and 7 less cases in FY 2012, **OIP has been increasing the number of formal cases that it resolves each year since FY 2011. Notably, OIP's productivity increased after it was authorized an additional attorney position beginning in FY 2014.**

Nevertheless, **OIP's "backlog" continues to grow, albeit at a slower rate, because the number of new cases filed each year continues to grow, a factor that OIP does not control.** As you can see in Chart 1, the red dashed line representing OIP's outstanding cases closely tracks the blue dotted line showing the number of new cases filed each year. Except for a slight drop in FY 2012 and a substantial drop in FY 2016, both the red dashed line and blue dotted line have shown almost parallel progressions higher. The gap between them began widening from FY 2013 as OIP's productivity (shown as the solid green line) began increasing with the addition of one attorney, so that the red dotted line for outstanding cases did not rise as fast as the blue dotted line for new case filings. But even with the addition of one attorney, **new case filings increased an average of 20% annually for the three years from FY 2013 to 2015, dropped 15% in FY 2016, and increased 40.4% in FY 2017.** While the 15% decrease in new case filings in FY 2016 allowed OIP to lower its backlog to 104 outstanding

cases, **the 40.4% increase in new case filings in FY 2017 led to a 44% increase in OIP's backlog, particularly as OIP received 48 new cases in the last two months alone.** Notably, of the 278 new formal cases filed in FY 2017, 32% (89 cases) were filed by one couple (42 cases) and 3 individuals (25, 13, and 9 cases each).

OIP will never have zero cases outstanding. If the 278 cases filed in FY 2017 had been evenly distributed throughout the year, there would have been over 23 cases filed each month for a total of **139** cases per six-month period. **OIP actually resolved 193 FY 2017 cases and ended the year with 85 pending formal cases from FY 2017, which is 54 less than the average number of cases it should have under the proposed mandate.**

As for the age of its pending formal cases, OIP had no formal cases outstanding at the end of FY 2017 that were filed before FY 2015. This is a considerable improvement since FY 2011 when OIP's oldest outstanding case was 12 years old. While OIP has been deeply involved with drafting rules for the first part of FY 2018, which left it with less time to work on formal cases, OIP is still striving to resolve all FY 2015 cases this year, so that the age of its cases do not exceed 2 years old. **Until there is a substantial drop in new case filings or increase in attorneys, OIP does not foresee being able to reduce the age of its backlog to six months or less.**

Please keep in mind that **most of the "backlog" consists of appeals and requests for opinions, which are typically resolved in opinions that necessarily take much longer to resolve than other cases.** With the 2012 amendments to the UIPA and adoption of new administrative rules for appeals to OIP, OIP is well aware that its decisions may have precedential value and could be

appealed to the courts. Some of what OIP called its opinions in the past were not held to the higher standards that OIP has now, which makes comparisons to years prior to 2012 difficult. As far as comparisons to other states, OIP has found that other states' open records decisions are not generally comparable to the formal and memorandum opinions OIP issues for its formal cases; instead, other states' decisions are often very brief and more comparable to OIP's correspondence and emails providing informal advice as part of the Attorney of the Day (AOD) service, which OIP does not classify as opinions. OIP's formal and memorandum opinions now undergo careful investigation, research, drafting, and review to be able to pass judicial scrutiny and not require OIP to intervene in appeals to the courts, and thus take much more time to resolve than other types of services that OIP provides.

**A focus on opinions and formal cases, however, ignores all the other work that OIP must do and its timeliness in resolving 93% of cases in the same year that they were filed.** (See attached Chart 2 showing formal and informal cases new and pending.) Formal cases actually constituted only 22.5% of the 1,234 total requests for OIP's services received in FY 2017, and of this number, nearly 70% (193 cases) of formal cases were resolved in the same year that they were filed. Moreover, OIP received 956 informal requests for services in FY 2017, which constitute 77.5% of total requests for services; although OIP considers these requests informal, the level of analysis and advice OIP offers through these requests is comparable to the "formal" advisory opinions offered by states such as New York. OIP's informal requests are typically resolved by OIP the same day through the Attorney of the Day (AOD) service, which helps to educate people and to proactively prevent or quickly resolve disputes. In summary, **in FY 2017, OIP resolved over 93% (1,049 of 1,234) of total formal and informal requests in the same year**

they were filed, and about 77% (956 of 1,234) the same day they were filed.

The formal and informal requests for OIP's services come from state, county and independent agencies, the media, organizations, and the general public, and do not include OIP's other work, such as creating and revising **training materials**; conducting **live training**; monitoring and testifying on **legislation**; monitoring **lawsuits** regarding the UIPA, Sunshine Law, or OIP; keeping the public, boards, and agencies informed via **communications** like What's New emails and media interviews; drafting and explaining new **administrative rules**; and initiating **special projects** on its own. (See Figure 1 on page 6 in attached excerpt from OIP's FY 17 Annual Report.) FY 2018 is proving to be an especially challenging year for OIP because of the tremendous work required to revise OIP's administrative rules to fall within the numbering system for the Department of Accounting and General Services (to which it is now administratively attached) and to develop new and revised administrative rules for personal record requests, manifestly excessive interference with agency duties, and other UIPA procedures and fees. OIP has already held in person, online, and on television statewide informational briefings on draft rules to obtain public and agency input, and is waiting for the Attorney General's office to complete its legal review before OIP can make revisions, publish a hearing notice, and hold a public hearing on the proposed rules. After the hearing and if new rules are adopted, OIP must create new training materials, including a revised UIPA Record Request Log, and intends to conduct statewide training to educate the state and county government agencies about the new rules.<sup>1</sup>

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<sup>1</sup> OIP is aware of criticism by the Civil Beat Law Center for the Public Interest (CBLI), which released a report during the 2017 session entitled, "Breaking Down Hawaii's Broken System for Resolving Public Access Disputes." While OIP appreciated the

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(continued from fn 1 on page 6)

report's support for OIP's salary parity efforts, it disagreed with most of the remainder of the report's conclusions and recommendations, which were based on inaccurate assumptions, metrics that excluded a number of relevant factors, its writer's particular perspective as an advocate and legal advisor for a media outlet, and a lack of understanding as to how and why OIP has actually conducted its business over time. [OIP's detailed response and the report](#) can be found on the Annual Reports page of OIP's website at [oip.hawaii.gov](http://oip.hawaii.gov).

OIP has been informed that a second report by CBLC is forthcoming, which relies upon the same faulty methodology, biases, inaccurate assumptions, and misleading comparisons. The second report compares the number of OIP opinions to other states' decisions, but fails to point out that other states' decisions are typically very brief (1-2 pages), do not provide the detailed factual and legal analyses found in OIP opinions, and are instead comparable to OIP's correspondence and emails informally responding to AOD inquiries. Additionally, OIP has prevented or resolved many disputes through oral advice and informal mediation rendered as part of its AOD service, but the CBLC report did not consider AOD cases, which numbered 956 in FY 17 and are typically resolved within 24 hours by OIP.

Finally, while CBLC's second report points to the statistics of other states, it does not inform readers of the different state laws or rules that provide controls over case filings and allow for case dismissals. For example, Connecticut has statutory provisions automatically denying certain appeals not decided by its Freedom of Information Commission within 60 days and allowing the Commission to impose a civil penalty of not less than \$20 or more than \$1,000 for frivolous appeals taken "without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken[.]" Connecticut's Commission may also obtain an injunction prohibiting a "person from bringing any further appeal to the commission which would perpetuate an injustice or would constitute an abuse of the commission's administrative process." If an appeal is brought after such injunction has been ordered, the "agency may seek further injunctive and equitable relief, damages, attorney's fees and costs, as the court may order." The Connecticut Freedom of Information Act may be viewed at <http://www.ct.gov/foi/cwp/view.asp?a=4161&Q=488540&foiNav=1>.

Iowa's administrative rules allow its board to "[d]ismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board's jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court." Iowa Admin. Code 497—2.1(23); <https://www.legis.iowa.gov/docs/aco/agency/497.pdf>.

Indiana Code 5-14-5-11 gives the Public Access Counselor broad discretion to "determine the form of a formal complaint filed." Citing to this law, the instructions for filing a complaint state that formal complaints and requests for informal inquiries may be rejected "for being misleading, confusing, illegible or for containing superfluous exposition." <http://iga.in.gov/legislative/laws/2017/ic/titles/005#5-14-5-11>; [http://www.in.gov/pac/files/Instructions\\_for\\_Filing\\_a\\_Formal\\_Complaint.pdf](http://www.in.gov/pac/files/Instructions_for_Filing_a_Formal_Complaint.pdf).

This bill, however, ignores all other work that OIP does and would statutorily mandate that starting on July 1, 2018, OIP must resolve all complaints within six months of the filing. **The six-month mandate is unrealistic without a long-term, dedicated funding source that would provide OIP with the personnel and funds needed to resolve new cases whose number, complexity, and litigation is beyond OIP's control.**

**OIP cannot do its work without its experienced and dedicated staff** who help provide neutral and free dispute resolution to all state, county, and independent agencies and boards, as well as the general public, and **OIP's first priority is to retain its existing staff.** As the single statewide agency administering the UIPA and Sunshine Law, OIP provides uniform advice and training to other government and private sector attorneys, government employees, board volunteers and the general public. OIP's Director and attorneys have been licensed to practice law for an average of 25 years, and have 3 to 23 years of experience at OIP itself. OIP's administrative staff also have special expertise, and one has been with OIP for over 21 years. OIP's personnel provide institutional memory dating back to when OIP, through the UIPA, was being created by the Legislature in 1988.

**OIP, however, is now at a tipping point in retaining its 8.5 FTE personnel,** comprised of one Director, five attorneys, and 2.5 FTE administrative staff. Over the past few years, OIP has lost five attorneys and staff in large part due to its substandard salaries in comparison to those at other government agencies that would gladly hire OIP's experts.

Consequently, this session, **the Governor has submitted a supplemental budget request for \$115,000 for AGS 105 to help provide**



**salary parity for OIP's personnel, which we hope that this Committee will strongly support.** Without these additional funds, OIP risks losing experienced personnel and institutional memory, which would erode its ability to resolve cases in a timely manner.

**In order to meet the much shorter six-month case resolution deadline proposed by this bill, OIP would need even more personnel, equipment, and additional funding over and above this year's \$115,000 supplemental budget request. And even with additional funding, there needs to be a dedicated source of funding to ensure that OIP will continue to have the resources it needs to fulfill the proposed statutory mandate for the coming decades.** Without a dedicated funding source, appropriations could be reduced and necessary increases may not be made in future years, despite the ravages of inflation or increases in the number, complexity, or frivolousness of new case filings.

**OIP would also need time to hire, train, and equip the new employees needed** to meet the proposed six-month deadline. With new employees, OIP's productivity may initially decrease, because experienced employees will have less time to work on their own cases while training inexperienced employees. **Consequently, the bill's effective date for the mandate should be delayed three years, while the appropriations and personnel authorizations must remain effective July 1, 2018.**

**If additional resources are not provided and this bill is passed, then there are potential unintended consequences and suggestions for changes to consider:**

1. **OIP's training and many other functions may have to be curtailed**, which could have the **net effect of lowering agency compliance** with the open government laws **and increasing the number of new cases filed due to more disputes**.

2. Without additional personnel resources or the time to train them, **the quality of OIP's opinions may be vastly lowered** to simple, conclusory "you win, you lose" decisions lacking factual or legal reasoning, **which could be more readily challenged in the courts, lead to greater strain on judicial resources, longer delays, and greater expense and less certainty for complainants**.

3. If the standard for written opinions is lowered, then **OIP's AOD written and oral advice should be considered and counted as informal opinions**, similar to other states.

4. For OIP to resolve its cases faster, **additional resources should be provided to other government agencies, so that they can timely respond to OIP's investigations**.

5. Like Massachusetts, **OIP may have to reject the filing of complaints and close a file without any decision if complete information is not submitted at the time of filing**.

6. Like Minnesota, **OIP may have to deny additional opportunities to supplement requests for appeal once they have been filed**.

7. To be able to resolve cases quickly for Hawaii's citizens, legislative action would be needed to **eliminate or restrict cases that are filed by nonresidents.**<sup>2</sup>

8. Like many other states, OIP will need to **control frivolous appeals or multiple requests made by a repeat requesters, so that** a few people cannot monopolize OIP's services and delay resolution of cases filed by others.

9. OIP may have to **start charging for its opinions.** Minnesota charges \$200 if requesters want an opinion, and its opinions may be only two pages long.

10. Because OIP has no control over the time that a court would take to resolve a case in litigation, OIP will need new rules allowing it to **dismiss appeals that are affected by pending litigation,** rather than putting them on hold until the litigation is concluded to address any remaining issues within its jurisdiction.

In conclusion, a statutory mandate will not produce faster resolution of UIPA and Sunshine Law disputes unless OIP is provided with the additional personnel, equipment, dedicated funding, and time needed to retain experienced employees, preserve OIP's institutional memory, and train new employees to be able to resolve disputes within six months of filing. **Whether or not this bill is passed, what OIP really needs first is to retain its existing staff by**

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<sup>2</sup> In *McBurney v. Young*, 569 U.S. 221, 133 S.Ct. 1709, 185 L.Ed.2d 758 (2013), the U.S. Supreme Court upheld Virginia's Freedom of Information Act granting access to public records to only Virginia citizens. The Court concluded that the restrictions on nonresidents did not violate the U.S. Constitution because the right to obtain information was not a fundamental right and Virginia's law did not constitute an impermissible regulation of interstate commerce.

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**providing them with salary parity as proposed in the Governor's supplemental budget request for \$115,000 for AGS 105.**

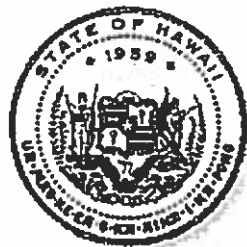
Thank you for considering OIP's concerns.

# Office of Information Practices

State of Hawaii

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## Annual Report 2017



**This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices from July 1, 2016, to June 30, 2017, in the administration of the public records law (the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes) and the open meetings law (the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes).**

# Executive Summary



The mission statement of Hawaii's Office of Information Practices (OIP) is "ensuring open government while protecting individual privacy." More specifically, OIP seeks to promote government transparency while respecting people's privacy rights by fairly and reasonably administering the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), which provides open access to government records, and the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes ("HRS"), which provides open access to public meetings.

Additionally, following the enactment of Act 263, SLH 2013 (see HRS § 27-44), OIP was charged with assisting the state Office of Information Management and Technology (now known as the Office of Enterprise Technology Services, or "ETS") to implement Hawaii's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the state.

Besides providing relevant background information, this

annual report details OIP's performance for fiscal year 2017, which began on July 1, 2016, and ended on June 30, 2017.

	2012	2013	2014	2015	2016	2017
<b>Total Requests for OIP's Services</b>	1,075	1,227	1,227	1,307	1,162	1,234
<b>Informal Requests (AODs)</b>	940	1,050	1,050	1,074	964	956
<b>Formal Requests Opened</b>	135	177	177	233	198	278
<b>Formal Requests Resolved</b>	143	142	142	208	241	232
<b>Live Training</b>	25	16	16	11	11	9
<b>Training Materials Added/Revised</b>	14	19	19	12	12	4
<b>Legislation Monitored</b>	267	134	134	101	175	108
<b>Lawsuits Monitored</b>	4	7	7	39	28	40
<b>Public Communications</b>	48	30	30	33	30	24
<b>Rules Adopted</b>	0	0	1	0	0	0
<b>Special - Projects</b>	-	14	14	15	8	2

Figure 1

OIP's jurisdiction extends over state, county, and independent agencies and boards in all branches of government, including the Governor, Lt. Governor, Judiciary, Legislature, University of Hawaii (UH), Office of Hawaiian Affairs (OHA), and all County Councils. OIP serves the attorneys, staff, and volunteers for all government agencies and boards, as well as the general public, by providing training and legal guidance regarding the UIPA and Sunshine Law, and assistance in obtaining access to public records and meetings. As a neutral decision maker, OIP resolves UIPA and Sunshine Law disputes through a free and informal process that is not a contested case or judicial proceeding. OIP's decisions may be appealed to the courts and are also enforceable by the courts.

With 8.5 full-time equivalent (FTE) positions, which includes five staff attorneys, OIP performs a variety of services. See **Figure 1**. In addition to resolving formal cases through opinions or correspondence, OIP provides informal, same-day advice over the telephone, via mail or email, or in person through its Attorney of the Day (AOD) service. OIP prepares extensive training materials and presents in-person as well as online training programs, including continuing legal education programs for attorneys. During the legislative session, OIP monitors more than a hundred bills and resolutions and provides testimony and proposals on legislation impacting open government issues. OIP also monitors lawsuits that involve the UIPA or Sunshine Law. OIP proactively undertakes special projects, such as the UIPA Record Request Log, and must occasionally review and revise its administrative rules. Throughout the year, OIP shares UIPA, Sunshine Law, and Open Data updates and information with interested groups and members of the public, state and county government agencies, board members and staff, and the media.

Additional details and statistics are found later in this annual report, along with OIP's goals, objectives and action plan. This Executive Summary provides an overview, as follows.

## Budget and Personnel

OIP's budget allocation is the net amount that it was authorized to use of the legislatively appropriated amount, minus administratively imposed budget restrictions. In FY 2017, OIP's total allocation was \$575,984, up from \$564,041 in FY 2016. See **Figure 3** on page 18. OIP's allocation in FY 2017 for personnel costs was \$553,660 and for operational costs was \$22,324. See **Figure 3** on page 17.

## Legal Guidance, Assistance, and Dispute Resolution

One of OIP's core functions is responding to requests for assistance from members of the public, government employees, and board members and staff seeking OIP's guidance regarding the application of and compliance with the UIPA, Sunshine Law, and the State's Open Data policy. Requests may also be made for OIP's assistance in obtaining records from government agencies under the UIPA: appeals to OIP may be filed following agencies' denial of access to records; and OIP's advisory opinions are sought regarding the rights of individuals or the functions and responsibilities of agencies and boards under the UIPA and the Sunshine Law.

In FY 2017, OIP received 278 formal and 956 informal requests for assistance for a total of 1,234 requests, which is a 6.2% increase from 1,162 requests in FY 2016. See **Figure 1** on page 6. As will be described further, this 6.2% increase masks a record-setting 40.4% increase in the number of formal cases opened in FY 2017. Despite these increases, OIP still resolved 93% of all formal and informal requests for assistance received in FY 2017 in the same fiscal year.

Over 77% (956) of the total requests for OIP's services are informal requests that are typically responded to within the same day through the Attorney of the Day (AOD) service. Over 61% of AOD inquiries in FY 2017 (586) came from

state and county agencies and boards seeking guidance to ensure compliance with the UIPA and Sunshine Law, while the balance (370) came from the general public. Although AOD inquiries take a significant amount of the staff attorneys' time, agencies usually conform to this general advice given informally, which thus prevents or quickly resolves many disputes that would otherwise lead to more labor-intensive formal cases.

Many situations, however, are not amenable to quick resolution through informal advice and OIP must instead open formal cases, which require more time to investigate, research, review, and resolve. In FY 2017, OIP opened 278 formal cases—80 more than in FY 2016—which was a 40.4% increase from the prior year and double the average 20% annual increases in formal cases that OIP had experienced from FY 2013 through 2015. In the last two months of FY 2017 alone, OIP opened 48 new formal cases.

Despite the huge increase in formal cases, OIP was able to close 232 cases in FY 2017, which is only 9 less than the record it set last year. See Figure 1 on page 6. Unfortunately, however, as a direct result of the 40.4% increase in new cases, and with 48 of them filed in the last two months of the fiscal year, OIP's backlog increased to 150 formal cases pending at the end of FY 2017. In contrast, OIP's backlog at the end of FY 2016 had been reduced to 104 pending cases because the 15% decrease in new formal cases that year had allowed OIP to resolve over 16% more cases. As the statistics show, OIP's backlog directly correlates with the number of new cases filed each year. See Figure 4 on page 19.

OIP continues to receive a disproportionately large number of formal cases filed by a small number of persons, which seriously impacts its ability to timely resolve all other cases. One couple accounted for 15.1% (42 cases) of all formal requests filed in FY 2017; one individual accounted for 9% (25 cases); and another individual filed 4.7% (13 cases). These top 3 requesters filed 80 of 278 formal cases, or 29%.

While OIP cannot control the number of cases filed by repeat requesters, it has taken

administrative measures to equitably provide its services to all requesters and not just a few. For example, if OIP has resolved two or more cases from the same requester within the preceding 12 months, then other requesters' later-filed cases may be worked on before completing the repeat requesters' remaining cases. OIP will also cluster cases involving similar issues and resolve them at the same time. And, OIP may take cases out of order if they can be readily resolved.

Even with the sizeable increases in new cases, OIP still managed to keep to two years the age of the oldest pending cases that are not in litigation, so there was nothing older than FY 2015 cases at the end of FY 2017. This is a substantial improvement since FY 2011 when the oldest case was 12 years old. Additionally, nearly 70% (193 of 278) of the formal cases opened in FY 2017 were resolved in the same year. When AODs are considered, OIP resolved over 93% (1,049 of 1,234) of its FY 2017 formal and informal requests for assistance in the same year they were filed, and 77% (956 of 1,234) within the same day they were filed.

Most of the formal cases are resolved through correspondence or voluntary compliance with OIP's informal advice. Appeals and requests for opinions, however, often require more time-consuming written decisions that may be subjected to judicial review. In FY 2017, OIP issued four formal opinions and eleven informal opinions, for a total of 15 opinions. Summaries of the opinions are found beginning on page 30.

In FY 2018, OIP's main priority will be the adoption of new administrative rules and training of agencies on them, as will be further discussed on pages 10-11. Because of the extensive work required for rulemaking, OIP anticipates that it will not be able to significantly reduce its formal case backlog in FY 2018, particularly for cases involving appeals and requests for opinions. Through its AOD service, however, OIP will still provide same-day informal advice for most of the requests for assistance that it expects to receive in FY 2018.



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## Education, Open Data, and Communications

OIP relies heavily upon its website to cost-effectively provide free and readily available training and general advice on the UIPA and Sunshine Law to agencies, boards, and members of the public. In FY 2017, OIP had a total of 72 training materials and forms and 4 new reports on its website. Because basic training, forms, reports, and other educational materials are now conveniently available online, OIP has been able to produce more specialized in-person training workshops as well as accredited continuing legal education (CLE) seminars. In FY 2017, OIP conducted nine in-person training sessions on the UIPA and/or Sunshine Law.

As part of its educational and open data efforts, OIP developed the UIPA Record Request Log (“Log”) in 2012. By FY 2015, all state, county, and independent agencies—including the Governor’s Office, Lt. Governor’s Office, Judiciary, Legislature, University of Hawaii, and Office of Hawaiian Affairs—used the Log to track record requests and ensure compliance with the UIPA.

The Log provides OIP and the public with easily accessible information and accountability as to how many UIPA record requests are being made, how they are being resolved, how long they take to be completed, and how much they are costing the government and requesters. Besides helping agencies to keep track of record requests and costs, the Log provides detailed instructions and training materials that educate agency personnel on how to timely and properly fulfill UIPA requests, and the Log collects important open data information showing how agencies are complying with the UIPA. The Log process also helps to educate the agencies on how they can use the State’s open data portal at [data.hawaii.gov](http://data.hawaii.gov) to upload their own information to the internet to make it more readily accessible to the public.

Each year, OIP prepares year-end reports summarizing the data from state, county, and independent agencies that is consolidated on the

Master Log. The Master Log is posted at [data.hawaii.gov](http://data.hawaii.gov) and OIP’s reports summarizing all agencies’ year-end data are posted on its UIPA reports page at [oip.hawaii.gov](http://oip.hawaii.gov).

In addition to promoting open data via the Log, OIP participates on both the Open Data Council and the Access Hawaii Committee to encourage the creation of electronic data sets that can make government information more readily accessible to the public.

OIP continues to demonstrate its commitment to the open data policy by making its statutes, opinions, rules, subject matter index, and training materials easily accessible on its website at [oip.hawaii.gov](http://oip.hawaii.gov) for anyone to freely use. In FY 2016, OIP expanded access to its website by converting all of its previous formal opinions to, and providing new online materials in, a format accessible to people with disabilities.

OIP also communicates with the open government community primarily through What’s New articles informing readers of OIP’s latest training materials, legislation, and open government issues. In FY 2017, 22 What’s New articles were emailed to government agencies, media representatives, community organizations, and members of the public, and past articles are posted in the What’s New archive on OIP’s website at [oip.hawaii.gov](http://oip.hawaii.gov). OIP’s director also participated in one televised interview and one online interview in FY 2017 to inform the public about OIP’s duties and services.

By using and improving its technological resources to cost-effectively communicate and expand its educational efforts, OIP has been able to more efficiently leverage the time and knowledge of its small staff and to effectively make OIP’s training and advice freely and readily available 24/7 to all members of the public, and not just to government employees or board members.

## Records Report System

OIP's Records Report System (RRS) is a computer database that collects from all state and county agencies information describing the records that they routinely use or maintain. While the actual records remain with the agency and are not filed with OIP, all agencies must annually report to OIP the titles of their records and whether the records are accessible to the public or must be kept confidential in whole or in part. By the end of FY 2017, state and county agencies reported 29,893 record titles, of which 51% were described as being accessible to the public in their entirety.

The list of all agencies' record titles and their accessibility can be found on OIP's website at [oip.hawaii.gov/records-reports-system-rrs](http://oip.hawaii.gov/records-reports-system-rrs).

## Legislation

OIP serves as a one-stop resource for government agencies in matters relating to the UIPA and Sunshine Law. OIP often provides comments on these laws and makes recommendations for legislative changes to amend or clarify areas that have created confusion in application or counteract the legislative mandate of open government. During the 2017 legislative session, OIP reviewed and monitored 108 bills and resolutions affecting government information practices, and testified on 26 of these measures. See **Figure 1** on page 6.

In FY 2017, OIP was instrumental in obtaining passage of House Bill 165, H.D. 1, S.D. 2, C.D. 1, which was signed into law by Governor David Ige as Act 64, SLH 2017. After years of disagreement, OIP was able to obtain consensus on the final bill from key stakeholders. Among other things, Act 64 revises the Sunshine Law to include provisions requiring board packets to be made available to the public, meeting notices to be filed online and sent by agencies to requesters via electronic mail, and meeting minutes to

be posted online. As an alternative to written minutes, Act 64 law also allows meetings to be recorded, so long as a written summary including the location of motions and votes on the recording is also provided. To give agencies time to implement the new law, the effective date was delayed until July 1, 2018. OIP has prepared training materials to inform agencies of this new law.

The Legislature also passed Senate Bill 572, SD 1, HD 1, CD 1, which was signed into law as Act 165, SLH 2017, by Governor Ige on July 11, 2017, and was effective upon approval. Like all other agencies covered by the UIPA, OIP has long had the authority to adopt rules that will protect its own records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of OIP's other lawful responsibilities and functions. For uniformity and consistency, Act 165 extends the rules that OIP may adopt to all other agencies covered by the UIPA.

## Rules

Now that OIP has completed its transfer for administrative purposes to the Department of Accounting and General Services (DAGS), OIP must renumber its administrative rules to fall within DAGS's numbering system. For the most part, OIP will simply renumber its rules for appeals that are made to OIP, which were adopted on December 31, 2012. More substantive changes are being proposed, however, for OIP's rules to process UIPA record requests, which were adopted in 1998.

In anticipation of updating its 1998 rules, OIP has been collecting objective data from state and county agencies through the UIPA Record Request Log for several years. In September 2017, OIP presented draft rules and explanatory materials on its website, at statewide informational briefings, and through 'Olelo broadcasts. After receiving public comments on the drafts, OIP revised its draft rules and will be proposing new rules for public hearing in FY 2018.

Adoption of new administrative rules will be OIP's main priority in FY 2018. Related to this is the preparation of new training materials and a new UIPA Record Request Log in order to educate all government agencies before the rules go into effect. While much of the rulemaking process is beyond OIP's control, OIP hopes to accomplish all of this during the first half of 2018, so that agencies can be trained and begin using a revised Log before any new rules go into effect.

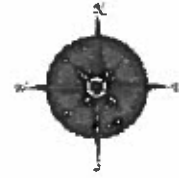
## Litigation

OIP monitors litigation in the courts that raise issues under the UIPA or the Sunshine Law or that challenge OIP's decisions, and may intervene in those cases. A person filing a civil action relating to the UIPA is required to notify OIP in writing at the time of filing. See **Figure 1** on page 6. Summaries of cases are provided in the Litigation section of this report.

Although litigation cases are not counted in the total number of cases seeking OIP's services, they nevertheless take staff time to process and monitor. In FY 2017, OIP monitored 40 cases in litigation, of which 11 were new cases that OIP began monitoring. Of the 40 cases monitored in FY 2017, 34 were UIPA cases (10 of which were filed by inmates) and 6 were Sunshine Law cases.



# Goals, Objectives, and Action Plan



Pursuant to Act 100, SLH 1999, as amended by Act 154, SLH 2005, OIP presents its Goals, Objectives, and Action Plan for One, Two, and Five Years, including a report on its performance in meeting previously stated goals, objectives, and actions.

## OIP's Mission Statement

"Ensuring open government while protecting individual privacy."

## I. Goals

The primary goal of the Office of Information Practices (OIP) is to fairly and reasonably construe and apply the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), and the Sunshine Law, Part I of chapter 92, HRS, in order to achieve the common purpose of both laws, which is as follows:

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[al] agencies—shall be conducted as openly as possible.

With the passage of Act 263, SLH 2013 (see HRS § 27-44), OIP has adopted another goal

to assist the Office of Enterprise Technology Services (ETS) to properly implement Hawaii's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the state.

## II. Objectives and Policies

**A. Legal Guidance and Assistance.** Provide training and assistance to members of the public and all state and county agencies to promote compliance with the UIPA and Sunshine Law.

1. Provide accessible training guides, audio/visual presentations, and other materials online at [oip.hawaii.gov](http://oip.hawaii.gov) and supplement OIP's online training with customized live training for state and county government entities.

2. Provide prompt informal advice and assistance to members of the public and government agencies through OIP's Attorney of the Day (AOD) service.

3. Adopt and revise administrative rules, as necessary.

**B. Investigations and Dispute Resolution.** Assist the general public, conduct investigations, and provide a fair, neutral, and informal dispute resolution process as

a free alternative to court actions filed under the UIPA and Sunshine Law, and resolve appeals under section 231-19.5(f), HRS, arising from the Department of Taxation's decisions concerning the disclosure of the text of written opinions.

1. Focus on reducing the age and number of OIP's backlog of formal cases in a manner that is fair to all requesters.

**C. Open Data.** Assist ETS and encourage all state and county entities to increase government transparency and accountability by posting open data online, in accordance with the UIPA, Sunshine Law, and the State's Open Data Policy.

1. Post all of OIP's opinions, training materials, reports, and What's New communications at [oip.hawaii.gov](http://oip.hawaii.gov), which links to the State's open data portal at [data.hawaii.gov](http://data.hawaii.gov).
2. Encourage state agencies to electronically post appropriate data sets onto [data.hawaii.gov](http://data.hawaii.gov) and to use the UIPA Record Request Log to record and report their record requests.

**D. Records Report System.** Maintain the Records Report System (RRS) and assist agencies in filing reports for the RRS with OIP.

1. Promote the use of the RRS to identify and distinguish private or confidential records from those that are clearly public and could be posted as open data on government websites.

**E. Legislation and Lawsuits.** Monitor legislative measures and lawsuits involving the UIPA and Sunshine Law.

1. Provide testimony or legal intervention, as may be necessary, to uphold the common purpose of the UIPA and Sunshine Law.

### III. Action Plan with Timetable

#### A. Legal Guidance and Assistance

##### 1. Past Year Accomplishments

- a. Received 1,234 total requests for assistance in FY 2017, of which 956 (77%) were informal requests typically resolved the same day through OIP's AOD service.
- b. Conducted nine live training sessions for state and county agencies and boards.
- c. Added or updated four training materials to OIP's website.
- d. Prepared all new documents and presentations on OIP's website to be accessible to disabled persons.

##### 2. Year 1 Action Plan

- a. OIP's top priority for FY 2018 will be to adopt new and revised administrative rules. Although much of the rulemaking process is beyond OIP's control, OIP will strive to conduct informational briefings and a public hearing to obtain agency and public input on OIP's new administrative rules and revisions to its existing rules, obtain all necessary approvals, prepare training for agencies on the new rules, and revise OIP's forms and training materials, including the UIPA Record Request Log, before the end of FY 2018.
- b. Maintain current efforts to promptly provide general legal guidance through OIP's AOD service, so that approximately 80% of all requests for OIP's assistance can be resolved by the next work day.

**3. Year 2 Action Plan**

- a. Implement OIP's new administrative rules.
- b. Update and improve OIP's on-line training materials, as may be necessary.

**4. Year 5 Action Plan**

- a. Evaluate recently implemented rules and determine whether additional rules or revisions are necessary.

**B. Investigations and Dispute Resolution**

**1. Past Year Accomplishments**

- a. OIP received a total of 1,234 formal and informal requests for assistance in FY 2017, and OIP resolved 93% of them in the same year, with most of them resolved the same day.
- b. Of the 278 formal cases opened in FY 2017, 193 (69.4%) were resolved in the same fiscal year.
- c. Despite the 40.4% increase in the number of new formal cases filed in FY 2017 (278) compared to the year before (198), OIP was able to resolve 232 formal cases and all cases filed before FY 2015.
- d. Of the 150 cases that remained pending at the end of FY 2017, 85 (57%) were opened in FY 2017, 33 (22%) were opened in FY 2016, and 32 (21%) were opened in FY 2015.

**2. Year 1 Action Plan**

- a. Strive to resolve all formal cases filed before July 1, 2016, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

**3. Year 2 Action Plan**

- a. Strive to resolve all formal cases filed before July 1, 2017, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

**4. Year 5 Action Plan**

- a. Strive to resolve all formal cases within 12 months of filing, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

**C. Open Data**

**1. Past Year Accomplishments**

- a. Prepared reports of the UIPA Record Request Log summarizing results for FY 2017 from 191 state and 74 county agencies, including the Governor's Office, Lt. Governor's Office, Judiciary, Legislature, University of Hawaii, and Office of Hawaiian Affairs.
- b. Distributed 22 What's New articles and participated in one televised program and one online program to keep government personnel and the general public informed of open government issues, including proposed legislation.
- c. Received 29,320 unique visits on OIP's website and 96,621 website page views (excluding OIP's and home page hits).

**2. Year 1 Action Plan**

- a. Assist state and county agencies to electronically post open data, including the results of their UIPA Record Request Logs.

b. Prepare reports of the UIPA Record Request Log results for FY 2018 from all state and county agencies.

c. Utilize Log data to develop and evaluate proposed OIP rules concerning the UIPA record request process and fees.

d. Post information on OIP's website at [oip.hawaii.gov](http://oip.hawaii.gov) to provide transparency and obtain public input on the rulemaking process.

### 3. Year 2 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on their results of state and county agencies' UIPA Record Request Logs.

### 4. Year 5 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on the results of state and county agencies' UIPA Record Request Logs.

## D. Records Report System

### 1. Past Year Accomplishments

a. Conducted two live trainings of the RRS.

b. For FY 2017, state and county agencies reported 29,893 record titles on the RRS.

### 2. Year 1 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records.

while promoting open access to public data that may be disclosed.

### 3. Year 2 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

### 4. Year 5 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

## E. Legislation and Lawsuits

### 1. Past Year Accomplishments

a. After years of disagreement, OIP gained consensus from key stakeholders and successfully advocated for the adoption of Sunshine Law revisions embodied in House Bill 165, House Draft 1, Senate Draft 2, Conference Draft 1, which was signed into law by Governor David Ige as Act 64 (SLH 2017). Among other things, the new law will allow public inspection of Sunshine Law boards' packets; require meeting notices to be filed on state and county electronic calendars; require postal or electronic mailings of notices to requesters; allow meeting minutes to be kept in recorded form; and require minutes to be posted online within 40 days after a board meeting.

b. OIP also successfully advocated for passage of Senate Bill 572, Senate

Draft 1. House Draft 1. Conference Draft 1. which was enacted as Act 165 (SLH 2017). It extends existing UIPA provisions allowing OIP to adopt additional administrative rules to protect agency records and to prevent manifestly excessive interference with the discharge of agencies' other lawful responsibilities and functions. Any such rules adopted by OIP will apply to all state and county agencies, and thus provide for the uniform and consistent administration of the UIPA.

c. OIP obtained legislative approval to convert its long-time "temporary" employees to permanent status.

d. In FY 2017, OIP reviewed 108 bills and resolutions and testified on 26 of them.

e. In FY 2017, OIP monitored 40 cases in litigation, of which 11 were new cases.

## 2. Year 1 Action Plan

a. For the 2018 legislative session, OIP will continue to seek an increase of its appropriations to be able to provide competitive salaries that will help it to retain its experienced employees and preserve its institutional memory.

## 3. Year 2 Action Plan

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, open data, or OIP.

b. Obtain sufficient funding and position authorizations to train and retain OIP staff so as to keep up with anticipated increases in OIP's workload while reducing the formal case backlog.

## 4. Year 5 Action Plan

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, or OIP.

b. Obtain sufficient funding and position authorizations to recruit, train, and retain legal and administrative personnel to ensure the long-term stability, efficiency, and productivity of OIP.

## IV. Performance Measures

A. Customer Satisfaction Measure – Monitor evaluations submitted by participants after training or informational sessions as well as comments or complaints made to the office in general, and take appropriate action.

B. Program Standard Measure – Measure the number of: formal cases and AOD inquiries received and resolved; opinions issued; lawsuits monitored; legislative proposals monitored; unique visits to OIP's website; live training sessions and public presentations; training materials added or revised; and public communications.

C. Cost Effectiveness Measure – Considering the number and experience levels of OIP personnel in comparison to similar agencies, monitor the total numbers of requests for assistance and the numbers of state or county agencies or the general public who are assisted by OIP; the types of services provided by OIP; the number of state and county agencies submitting the UIPA Record Request Log; and the overall Log results.





# Highlights of Fiscal Year 2017

## Budget and Personnel

OIP's budget allocation is the net amount that it was authorized to use of the legislatively appropriated amount, minus administratively imposed budget restrictions. In FY 2017, OIP's total allocation was \$575,984, up 2% from \$564,041 in FY 2016.

OIP's allocation for personnel costs in FY 2017 was \$553,660. The allocation for operational costs was \$22,324. See Figure 3 on page 18.

As in the prior year, OIP had 8.5 full-time equivalent (FTE) total approved positions in FY 2017.

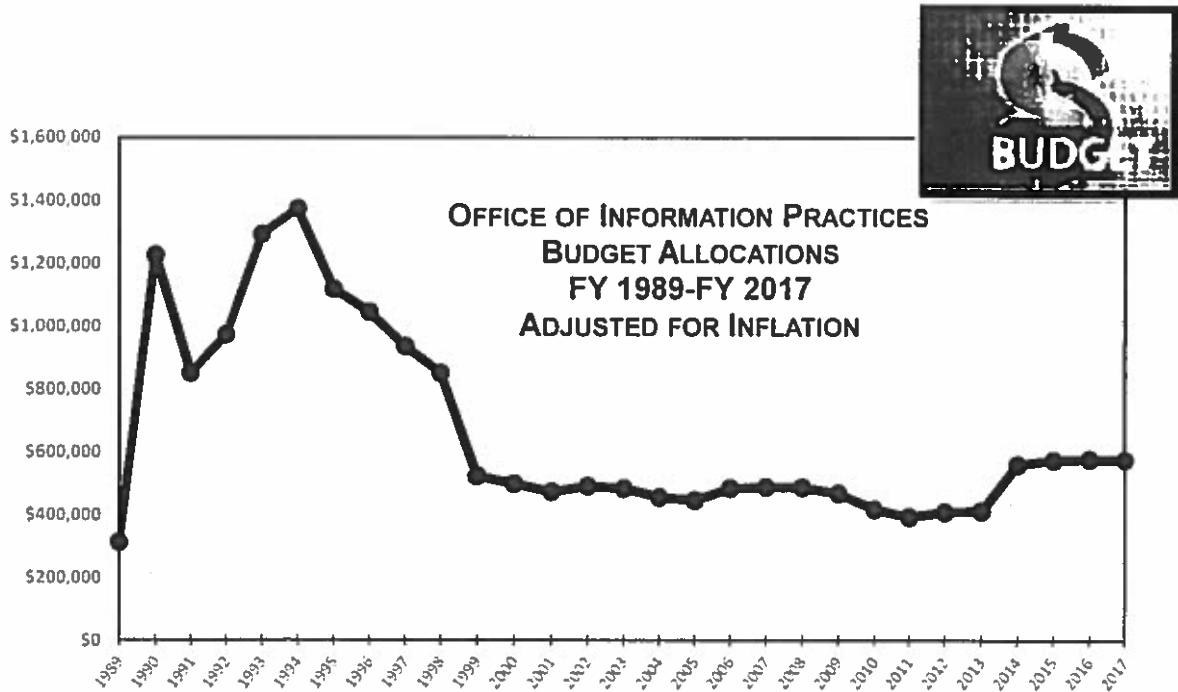


Figure 2



Office of Information Practices  
Budget FY 1989 to FY 2017

Fiscal Year	Operational Expense Allocation	Personnel Allocation	Total Allocation	Allocations Adjusted for Inflation**	Approved Positions
FY 17	22,324	553,660	575,984	575,984	8.5
FY 16	31,592	532,449	564,041	578,142	8.5
FY 15	45,228	507,762	552,990*	574,597	8.5
FY 14	88,862	450,895	539,757*	560,346	8.5
FY 13	18,606	372,327	390,933	412,253	7.5
FY 12	30,197	352,085	382,282	409,560	7.5
FY 11	42,704	314,454	357,158	393,836	7.5
FY 10	19,208	353,742	372,950	417,961	7.5
FY 09	27,443	379,117	406,560	467,591	7.5
FY 08	45,220	377,487	422,707	486,307	7.5
FY 07	32,686	374,008	406,694	487,911	7.5
FY 06	52,592	342,894	395,486	484,313	7
FY 05	40,966	309,249	350,215	445,966	7
FY 04	39,039	308,664	347,703	455,917	7
FY 03	38,179	323,823	362,002	483,809	8
FY 02	38,179	320,278	358,457	491,515	8
FY 01	38,179	302,735	340,914	472,799	8
FY 00	37,991	308,736	346,727	498,808	8
FY 99	45,768	308,736	354,504	523,064	8
FY 98	119,214	446,856	566,070	850,642	8
FY 97	154,424	458,882	613,306	936,106	11
FY 96	171,524	492,882	664,406	1,044,972	12
FY 95	171,524	520,020	692,544	1,118,940	15
FY 94	249,024	578,513	827,537	1,374,543	15
FY 93	248,934	510,060	758,994	1,292,519	15
FY 92	167,964	385,338	553,302	972,942	10
FY 91	169,685	302,080	471,765	851,136	10
FY 90	417,057	226,575	643,632	1,226,836	10
FY 89	70,000	86,000	156,000	312,823	4

Effective 7/1/98, OIP also administered the Sunshine Law →

OIP was created to administer WIPA →

\*Total allocation for FY 2014 and 2015 includes the additional appropriation through Act 263 SLH 2013 to assist with open data and open government matters.

Figure 3



Chart 1

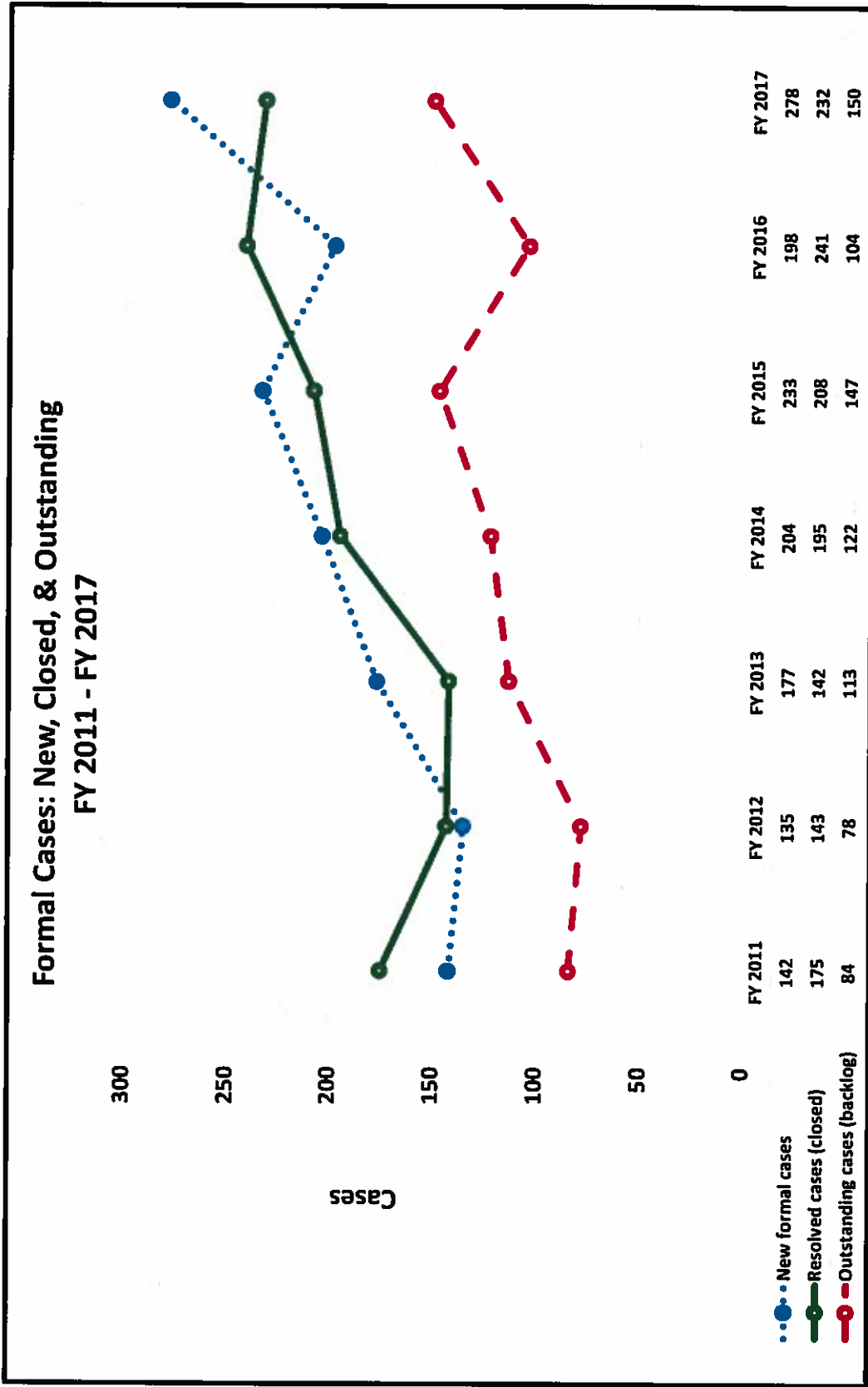
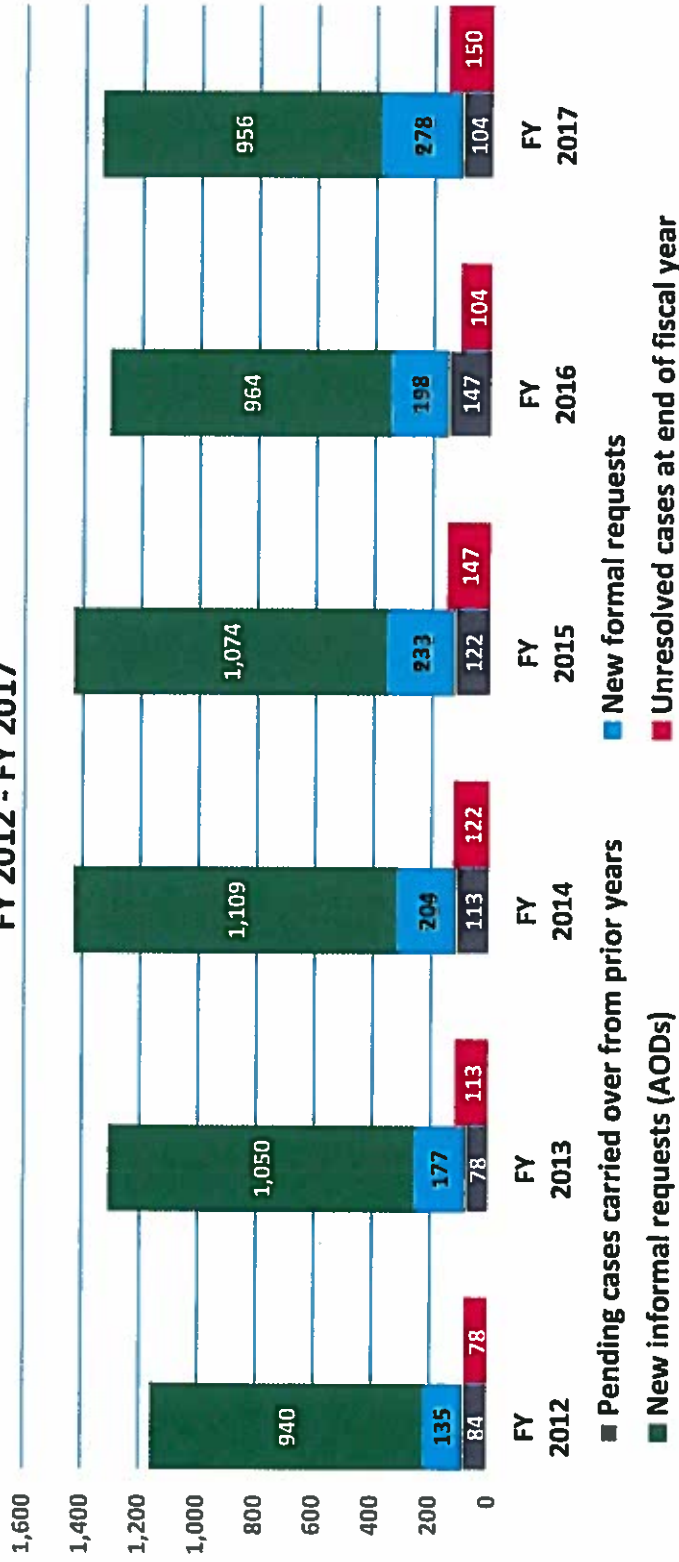


Chart 2

**New Requests for Services (AODs & Formal Cases)  
vs. Cases Pending at End of Fiscal Year\***  
FY 2012 - FY 2017



\* Does not include other activities such as training, rulemaking, monitoring legislation and lawsuits, and special projects.



Senate Committee on Government Operations  
Chair Donna Mercado Kim, Vice Chair Russell Ruderman

02/08/2018 3:15 PM Room 224  
SB3092– Relating to Open Government

TESTIMONY / SUPPORT  
Corie Tanida, Executive Director, Common Cause Hawaii

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Dear Chair Kim, Vice Chair Ruderman, and members of the committee:

**Common Cause Hawaii supports SB3092** which would require the Office of Information Practices to resolve all public complaints about noncompliance with chapter 92F and part I of chapter 92 within six months from the date OIP receives the complaint.

As OIP states in its annual report, “We define our democracy as a government of the people. And a government of the people must be accessible to the people.”<sup>1</sup> We wholeheartedly agree with this statement but add that the people not only expect access to government, but *prompt* access to government.

Our members and supporters share with us their frustrations at delayed responses which often lead them to abandon their requests for information. For instance, one Oahu member noted having to wait over year for a reply from OIP regarding a complaint. By the time he received a response, he had already given up as he no longer needed the information. Thus, while we commend OIP for making progress on their case backlog, with limited resources, we believe that six months is a reasonable amount of time to resolve public complaints, as states such as Illinois and Minnesota have deadlines in their statutes that are comparable.

We also note, that this bill does not provide additional resources for OIP, who already operates with a small staff which limits their capacity. We urge the legislature to adequately fund OIP so that they have the resources necessary to meet this requirement.

Thank you for the opportunity to offer testimony **supporting SB3092**.

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<sup>1</sup> Office of Information Practices. (2017). Annual Report 2017.



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Thursday, February 8, 2018, 3:15 PM, Conference Room 224  
SB 3092, Relating to Open Government

**TESTIMONY**

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Kim and Committee Members:

**The League of Women Voters supports the intent but suggests amendment of SB 3092.** This bill requires the Office of Information Practices (OIP) to resolve all public complaints about noncompliance with Chapter 92F (UIPA) and Part I of Chapter 92 (Sunshine) within 6 months from the date OIP receives the complaint.

According to OIP's annual reports, OIP usually can quickly informally resolve public UIPA and Sunshine complaints. When that is not sufficient, and a complaint morphs into an appeal, OIP issues a written opinion. Memorandum opinions are only binding upon the parties involved and are not cited by OIP as legal precedent. Formal OIP opinions set precedent for subsequent OIP opinions.

We are uncertain how long it currently takes the public to obtain a written OIP opinion to resolve a Sunshine appeal. However, it is our understanding that it usually takes longer than 6 months for the public to obtain a written OIP opinion to resolve an UIPA appeal.

Because OIP has multiple functions and limited resources, the statutory deadline proposed in SB 3092 may not be the best approach. Instead of a statutory deadline, we suggest amending SB3092 to require that every year, as part OIP's annual report, OIP must disclose the additional budget and staff needed to administratively resolve Sunshine and UIPA complaints and appeals within 6 months.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Honolulu, HI 96813

Office: (808) 531-4000  
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Senate Committee on Government Operations  
Honorable Donna Mercado Kim, Chair  
Honorable Russel E. Ruderman, Vice Chair

**RE: Testimony in Support of S.B. 3092, Relating to Open Government**  
Hearing: February 8, 2018 at 3:15 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **strongly supporting S.B. 3092**.

S.B. 3092 amends HRS § 92F-42 to require the Office of Information Practices (OIP) to resolve all public complaints regarding access to public records or open meetings within six months. This bill reinforces the legislative intent that OIP's review be "*expeditious, informal, and at no cost to the public.*"

OIP is not resolving complaints in an expeditious manner. Reviewing data from OIP, the Law Center discovered last year that time taken to resolve complaints has quadrupled in recent years, fewer complaints on average are being resolved each year, and OIP's backlog is trending upward despite a downward trend in new filings. Our more recent analysis revealed that *only three of the 46 OIP decisions from 2015-2017 were issued in less than 2 years.*

When we advise members of the public regarding options for resolving UIPA or Sunshine disputes, the Law Center must explain that an appeal to OIP will take at least a year, but closer to two years or more. Some give up. Others who move forward with OIP often complain later that the information they sought is no longer useful when OIP orders disclosure. Timely access is critical.

A six-month deadline is achievable for OIP with current staff levels. In the past, OIP was able to resolve complaints in a timely manner with a smaller staff and more complaints per year. And other states with agencies similar to OIP – operating with less staff per capita – are able to resolve complaints far more expeditiously than OIP.

A six-month deadline is critical to address the ongoing unacceptable delays at OIP and to provide the intended "expeditious" review of complaints.

Thank you again for the opportunity to testify in **support** of S.B. 3092.



Feb. 8, 2018

Sen. Donna Mercado Kim  
Senate Committee on Government Operations  
State Capitol  
Honolulu, HI 96813

Re: Senate Bill 3092

Chairwoman Kim and Committee Members:

We ask you to pass this measure and give the message to the Office of Information Practices that its current backlog of open records requests, some dating back more than a year, is unacceptable.

In journalism, all some bureaucrat has to do to discourage publication of an article is delay the release of records. The longer the wait the less newsworthy the subject matter may become.

We have not had this kind of slowdown in decisions on records requests since 20 years ago.

Thank you for your time and attention,

Stirling Morita  
President, Hawaii Chapter of the Society of Professional Journalists



**SB-3092**

Submitted on: 2/5/2018 8:49:55 PM

Testimony for GVO on 2/8/2018 3:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
christine trecker		Support	No

Comments:

As a concerned citizen, I firmly support SB3092 which seeks to address unreasonable delays in resolving public access disputes by the Hawaii Office of Information Practices (OIP). I was troubled to learn of the OIP's escalating backlog of unresolved public access disputes as reported by the Civil Beat Law Center for the Public Interest.

Citizens deserve open, accountable government and this should include **timely** access to public records and information. This measure is a positive step toward reaching that goal. Please pass SB 3092. Thank you.

Christine Trecker

**SB-3092**

Submitted on: 2/6/2018 6:08:22 PM

Testimony for GVO on 2/8/2018 3:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Brucato		Support	No

Comments:

This testimony is in support of SB3092. To have to wait so long for the results of OIP investigations is unreasonable for the public. Please consider supporting this bill putting a deadline of six months on OIP investigations, which are supposed to be expediant.

Thank you for your attention.

Respectfully,

Diane M. Brucato, RDH, EF, BS, FAADH

**Larry and Nanette Geller**  
Honolulu, HI 96817

SB3092  
AEN/ HMS  
Thursday, February 8, 2018  
3:15 p.m.  
Room 224

COMMITTEE ON GOVERNMENT  
OPERATIONS  
Senator Donna Mercado Kim, Chair  
Senator Russell E. Ruderman, Vice Chair

February 7, 2018

**Re: SB3092 Requires the office of information practices to resolve all public complaints about noncompliance with chapter 92F and part I of chapter 92 within six months**

**In Support with Concerns**

Dear Sen. Kim, Sen. Ruderman and members of the Committee:

First a **concern**: This bill would require OIP “to resolve all public complaints within **six months** of the date the complaint was received.” I would not want passage of this bill into law to suggest an interpretation something like “**well, we have six months to take care of this.**” I do understand that the six-month limit is intended to apply to appeals rather than simpler matters. I would support a **shorter time limit** to minimize this possibility.

**Why this legislation is needed (examples)**

In the distant past, even my most contentious disputes were resolved quite expeditiously. With assistance from the Attorney of the Day at the OIP office, **most of my several requests for help are attended to in a timely manner and do not lead to disputes.**

However... I have learned that one of my disputes, dating from 2014, may have been the **oldest in the OIP backlog**. It dates from **June 6, 2014** and concerns identification of restricted use pesticide applicators. OIP emailed me on **February 5, 2018 (!)** to let me know that they have obtained agreement from the Department of Agriculture to provide me with the information requested. But they have not actually resolved the more general issue of what is a public record concerning pesticide applicators, so that DOA may still deny any similar requests in the future.

**The information I requested was valuable in 2014** and following years as members of the public contended that spraying of pesticides near homes and schools was causing harm. The matter went to state and Kauai County legislatures. The information I requested could have contributed to the legislative process. **But I did not receive it.**

Another example of a delay that effectively made the request useless: When the state ethics commission fired its executive director a number of years ago, it held a series of executive sessions. It appeared, because they came out of executive session and voted on his dismissal, that all decisions were made in secret. Personnel matters are properly shielded by discussion in executive session, but not policy discussions. Since the ED had received very positive reviews, there is reason for the public, or members of the public, to want to know the particular policies that led the Commission to reach its conclusion and terminate the ED. So I requested the minutes of the executive session that concerned matters that should have been open to the public.

**A delay of years after the request** renders the information useless. In the end, I abandoned my request.

Based on my experiences, including the two cited above, I support passage of this bill, while expressing my **concern** that it **may lead to a pattern of routinely assuming that six month delays are acceptable.**

--Larry Geller  
Honolulu

Senator Donna Mercado Kim, Chair  
Senator Russell E. Ruderman, Vice Chair  
Committee on Government Operations

Senate of the State of Hawai'i

Lance D. Collins, Ph.D  
Law Office of Lance D. Collins

Thursday, February 8, 2018  
Support for Senate Bill No. 3092, Relating to Open Government

My name is Lance D. Collins. I am an attorney in private practice. I strongly support Senate Bill No. 3092, Relating to Open Government.

My law practice specializes in good government law and I therefore have a lot of experience with the Office of Information Practices.

Regrettably, I have been involved as counsel and in an advisory capacity where it has taken the Office years to render an opinion in my client's favor. For example, Letter Opinion No. 09-02 involved a procurement protest and access to the actual protest documents which were withheld by the state procurement office. By the time the opinion had been rendered over two years had elapsed and the entire procurement had long been resolved.

More recently, I represented a senior citizen advocacy organization that was denied access to government records, specifically required by statute to be made available for public inspection. After explaining the length of time in resolving a matter through the Office, my client elected to sue the department to seek disclosure. After obtaining partial summary judgment in the case, my client and the state settled the remaining Chapter 92F, HRS claims and the state reimbursed their court costs and attorney's fees. From filing to settlement, this all occurred within the span of approximately one year and included several rounds of negotiations, a deposition and two court hearings.

I understand that the Office of Information Practices is underfunded and that under-funding is a factor in the timeliness of rendering opinions. Nevertheless, I also believe that there is room within the broad discretion the Office is given in implementing Chapter 92F, HRS for more timely rendition of opinions. This likely will only occur, however, by providing the Office clear statutory guidance regarding the need for more timely rendition of opinions.

Thank you for this opportunity to testify.

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