

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 6, 2019, 2:20 p.m.  
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1354  
Relating to the Office of Information Practices Budget

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Thank you for the opportunity to submit testimony on this bill, which the state Office of Information Practices (“OIP”) **supports**.

This bill provides \$106,200 in general funds for FY2020 and \$100,000 for FY 2021, which would be in addition to OIP’s base budget authorized in H.B. 2, H.D. 1.

OIP appreciates the Legislature’s additional appropriation last session of \$100,000 for salary parity for its employees, which has tremendously helped morale and employee retention. This amount, however, was less than half of what OIP had initially requested of the Governor in 2017. H.B. 1354 has included an additional \$100,000 in general funds for OIP for the upcoming fiscal biennium to help OIP reach salary parity, along with \$6,200 in general funds to replace old and slow computers.

The same reasons that OIP gave last year for seeking salary parity funds apply to this year’s request in H.B. 1354. As the attached budget chart shows, **OIP has been underfunded for decades**. See attached Figures 1 and 2 of

OIP's budget history from OIP's FY 2018 Annual Report. OIP was created in June 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 \$1,403,003 today. Five years later, in FY 1999, OIP was given the additional responsibility of administering the Sunshine Law, which essentially doubled its work, but OIP's positions and budget had already started to precipitously decline. Thanks to last session's legislative appropriation and collective bargaining allocation, OIP currently has a budget of \$699,837 for this fiscal year and 8.5 FTE positions. **Nevertheless, OIP's current budget is still \$127,700 less in non-inflation adjusted dollars and \$703,166 less than what it had on an inflation-adjusted basis 25 years ago. In short, OIP has been doing more than double the work with half the resources that it had 25 years ago.**

While other agencies have received large or steady pay increases along the way, **last year's additional appropriation was OIP's first big boost in decades.** Other than collective bargaining allocations that were sometimes insufficient to match the pay increases provided to other units, **OIP did not receive additional funding in prior years when other agencies received large or steady pay increases**, such as in FY 2016 when the Attorney General's Office received a \$1.94M for pay increases and the Honolulu Corporation Counsel's office received 5% pay increases. This year, the Honolulu Corporation Council's and Prosecutor's offices received 4% pay increases on July 1, 2018. State salary levels are also expected to increase once the 2018 State Commission on Salaries presents its recommendations to the Legislature this March. As the attached Good Government Comparison Chart from last year shows, **OIP has the least funding and personnel of all state good government agencies.** (Campaign Spending

Commission has more on a per capita basis.) **Thus, despite the \$100,000 increase from last session, OIP's salaries still remain substantially below those of comparable government employees, even though OIP's employees' have extensive experience and expertise regarding two essential open government laws providing public access and government accountability by all state and county agencies.**

The general public and all state, county, and independent agencies (including UH, OHA, and HTA), as well as all branches of government—Executive (including the Governor, Lt. Governor, and all mayors), Legislative (including the Legislature and county Councils), and Judicial (excluding only the courts' nonadministrative, *i.e.*, judicial, functions)—rely upon OIP's neutral and uniform advice, training, and dispute resolution services regarding Hawaii's open records and open meetings laws. OIP's attorneys and personnel, therefore, have highly transferable knowledge and skills. **To keep OIP's personnel and their unparalleled institutional memory at the single, statewide agency that provides uniform and neutral advice and services throughout Hawaii, OIP respectfully requests that its additional budget appropriation be passed out of this committee.**

Please note, however, that **the additional funding requested in this bill is only sufficient to help retain OIP's existing employees and continue its current level of work. For OIP to do more work faster, it will need additional personnel and funding.** The extent of the additional resources required will depend upon what is expected of OIP.

OIP is already at its maximum capacity with its existing personnel and resources and expeditiously resolves most of the requests for assistance that it receives each year. **In FY 2018, OIP resolved over 95% (1,074 of 1,127) of all**

**FY 2018 formal and informal requests for assistance in the same year they were filed, and nearly 84% (945 of 1,127) within the same day they were filed.**

**Although the backlog of formal cases is directly related to the number of new cases filed each year and OIP has no control over cases filed with it, OIP has substantially reduced its backlog to 99 pending formal cases as of January 31, 2019, which is a 24% reduction from the end of FY 2018 (131 pending cases) and a 34% reduction from one year ago (151 pending cases).**

Not only has OIP substantially reduced its formal case backlog, **OIP has also kept down the age of the its oldest cases that are not pending in litigation.** OIP ended FY 2018 with its oldest case being one that was filed in FY 2015, only because a litigation involving the same issue is still pending in court and OIP will resolve any issues remaining after the litigation concludes; the rest were filed in FY 2016 or later. This is a considerable improvement since FY 2011 when OIP's oldest outstanding case was 12 years old. It took years for OIP to bring down the age of its oldest cases to where it is now, and barring another huge increase in new formal case filings (as OIP experienced in FY 2017) and with its current level of resources, OIP hopes to be able to resolve appeals within one year of filing before FY 2023.

OIP's formal cases consist of different types of cases filed by requesters, with "appeal" being one of them. "Appeals" to OIP are opened when an agency denies a request for UIPA records or a person seeks to determine if a board is subject to or has complied with the Sunshine Law, which typically require the most time and work by OIP to resolve and often result in written opinions. "Requests for Opinions" (RFO) are also labor intensive as they are opened when

there is no live case or controversy and a requester seeks an advisory opinion. If a requester seeks reconsideration of an OIP decision, then a RECON file is opened and may result in either a dismissal or a new opinion. In contrast, “Requests for Assistance” (RFA) do not require written opinions and are opened when requesters have not received a response to a record request from an agency, and they typically resolved within the same fiscal year. Other types of formal cases are for “Correspondence” and “UIPA” record requests made to OIP, which also do not require written opinions by OIP, although some of the Correspondence may be written advice equivalent to other states’ “opinions.”

**OIP already takes steps to “triage” its formal cases and appeals** to give priority to those that may be readily resolved without an opinion, are of great public importance, or for other compelling circumstances. Unless circumstances change, the remaining cases are resolved on a first in, first out basis to be fair to those who have been waiting longer. As of January 31, 2019, OIP has closed 129 formal cases, of which 39 were appeals; 33 of the appeals closed were for cases filed before FY 19 and 6 were filed in FY 19. **Without the 97 older appeals that were pending at the start of this fiscal year, OIP would have resolved more appeals (39) than have been filed to date in FY 2019 (25).**

**Requesters who do not wish to wait their turn always have the option to go directly to the circuit court,** which is supposed to provide an expedited review process. Even the courts, however, could take years to resolve an appeal from a denial of a record request. In fact, OIP’s oldest appeal filed in FY 2015 is on hold, along with four newer ones, awaiting the court’s decisions on UIPA or Sunshine Law issues in those cases.

**Focusing only on appeals ignores all the other work that OIP does for many, many more requesters in the same year, if not the same**

**day, and which often prevent the escalation of disputes into more appeals.** Eighty-four percent of the total requests are typically resolved within the same day through OIP's Attorney of the Day (AOD) service, whereby a staff attorney provides informal advice and guidance to the requester. *See* attached Figure 1 of the OIP Service Overview from OIP's 2018 Annual Report. The AOD service resolves many issues before they become problems and turn into appeals, and it is a much used and appreciated service provided by OIP. Oftentimes, OIP will provide written advice in emails or letters in response to AOD inquiries, which would be considered "opinions" in other states.

In addition to responding to formal and informal requests for assistance, OIP has many other duties, including training, monitoring and testifying on legislation, tracking lawsuits, keeping agencies and the public informed of open government issues, rulemaking, initiating special projects on its own, and preparing annual reports, including two summarizing all State and County UIPA Record Request Logs.

**For OIP to resolve appeals faster without neglecting its other duties, it will need three additional personnel positions; \$345,000 in general fund appropriations for salary, equipment and training; and time to hire and train them.** OIP is already living on the edge with its lean workforce of five staff attorneys (one of whom is half-time), 2.5 FTE administrative personnel, and one director, each of whom is crucial to OIP's operations. If any one of its employees leaves OIP or goes on extended sick, vacation, or family leave, OIP would lose 13% of its workforce and institutional memory that, in the case of one attorney, goes back as far as 1988. Thus, to ensure that it will have the trained and experienced workforce to resolve appeals at a faster pace, OIP needs three additional positions now. OIP would also need time to hire and train the new

positions, and anticipates the productivity of its experienced attorneys to go down while they train the new hires. Note, too, that even with these additional positions and appropriations, OIP would still have less resources than it did 25 years ago when it had 15 positions and was allocated \$1,403,003 on an inflation-adjusted basis.

Finally, if a time to resolve appeals is statutorily imposed, then OIP will also **need a dedicated source of funding** to ensure that it will be appropriated sufficient funding and personnel to do the work that will probably increase over time. A statute remains on the books forever, but adequate funding does not. **From OIP's experience with decades of underfunding, it knows that it could be starved of necessary resources to timely do its work if it does not have a dedicated source of funding to hire, equip, train, and retain sufficient personnel.** Rather than an unfunded mandate, OIP would need dedicated source of statutorily required appropriations to provide a reliable stream of funding and personnel that can fulfill statutorily imposed deadlines

Thus, depending on the Legislature's expectations and level of additional funding and personnel, OIP would welcome the challenge of completing more appeals in a shorter period of time, provided their underlying issues are not pending in litigation in the courts. Otherwise, OIP is simply seeking an additional \$100,000 and \$6,200, as this bill proposes, to retain its existing staff and to replace aged computers in order to keep up with its current level and pace of work.

Mahalo for considering OIP's testimony.

# Highlights of Fiscal Year 2018

## Budget and Personnel



OIP's budget allocation is the net amount that it was authorized to use of the legislatively appropriated amount, including any collective bargaining adjustments, minus administratively imposed budget restrictions. In FY 2018, OIP's total allocation was \$584,019, up 1.4% from \$575,984 in FY 2017.

OIP's allocation for personnel costs in FY 2018 was \$561,695. The allocation for operational costs was \$22,324. See **Figure 3** on page 17.

As in the prior year, OIP had a total of 8.5 FTE approved positions in FY 2018.

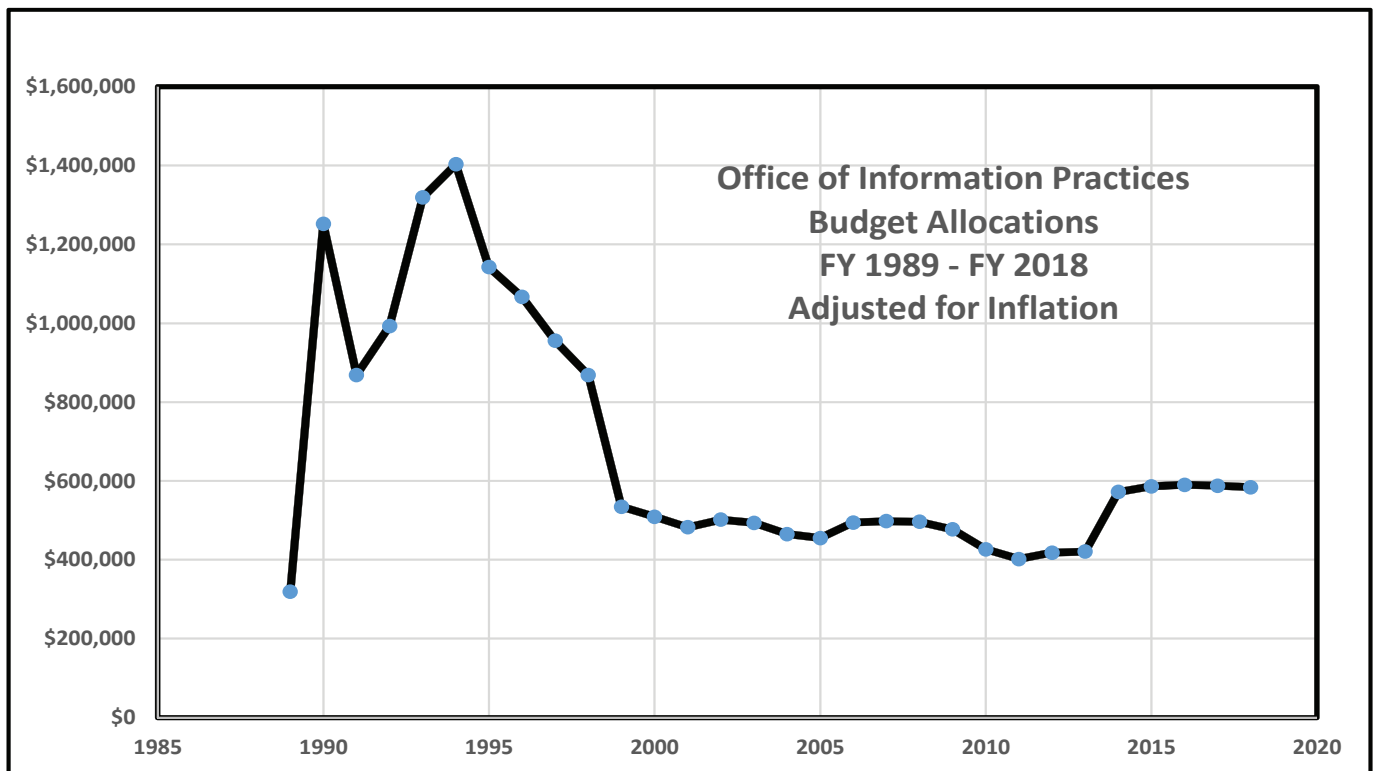


Figure 2





Office of Information Practices  
Budget FY 1989 to FY 2018

Fiscal Year	Operational Expense Allocation	Personnel Allocation	Total Allocation	Allocations Adjusted for Inflation**	Approved Positions
<b>FY 19</b>	<b>22,324</b>	<b>677,513</b>	<b>699,837</b>	<b>699,837</b>	<b>8.5</b>
FY 18	22,324	561,695	584,019	584,019	8.5
FY 17	22,324	553,660	575,984	587,909	8.5
FY 16	31,592	532,449	564,041	590,112	8.5
FY 15	45,228	507,762	552,990*	586,494	8.5
FY 14	88,862	450,895	539,757*	571,948	8.5
FY 13	18,606	372,327	390,933	420,789	7.5
FY 12	30,197	352,085	382,282	418,040	7.5
FY 11	42,704	314,454	357,158	401,991	7.5
FY 10	19,208	353,742	372,950	426,615	7.5
FY 09	27,443	379,117	406,560	477,272	7.5
FY 08	45,220	377,487	422,707	496,376	7.5
FY 07	32,686	374,008	406,694	498,014	7.5
FY 06	52,592	342,894	395,486	494,341	7
FY 05	40,966	309,249	350,215	455,200	7
FY 04	39,039	308,664	347,703	465,356	7
FY 03	38,179	323,823	362,002	493,826	8
FY 02	38,179	320,278	358,457	501,692	8
FY 01	38,179	302,735	340,914	482,588	8
FY 00	37,991	308,736	346,727	509,136	8
FY 99	45,768	308,736	354,504	534,813	8
FY 98	119,214	446,856	566,070	868,255	8
FY 97	154,424	458,882	613,306	955,489	11
FY 96	171,524	492,882	664,406	1,066,608	12
FY 95	171,524	520,020	692,544	1,142,107	15
FY 94	249,024	578,513	827,537	1,403,003	15
FY 93	248,934	510,060	758,994	1,319,281	15
FY 92	167,964	385,338	553,302	993,086	10
FY 91	169,685	302,080	471,765	879,759	10
FY 90	417,057	226,575	643,632	1,252,238	10
FY 89	70,000	86,000	156,000	319,300	4

Sunshine →  
Law added  
to OIP's  
duties



\*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.

\*\*Adjusted for inflation, using U.S. Bureau of Labor Statistics CPI Inflation Calculator.

Figure 3



# Executive Summary



OIP's mission statement 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 UIPA, which provides open access to government records, and the Sunshine Law, which provides open access to public meetings.

Additionally, following the enactment of Act 263, SLH 2013 (see HRS § 27-44) (Open Data Law), 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 2018, which began on July 1, 2017, and ended on June 30, 2018.

	2013	2014	2015	2016	2017	2018
<b>Total Requests for OIP's Services</b>	1,227	1,313	1,307	1,162	1,234	1,127
<b>Informal Requests (AODs)</b>	1,050	1,109	1,074	964	956	945
<b>Formal Requests Opened</b>	177	204	233	198	278	182
<b>Formal Requests Resolved</b>	142	195	142	208	241	201
<b>Live Training</b>	16	19	11	11	9	6
<b>Training Materials Added/Revised</b>	19	23	16	12	6	9
<b>Legislation Monitored</b>	134	181	101	175	108	93
<b>Lawsuits Monitored</b>	7	17	39	44	40	38
<b>Public Communications</b>	30	35	33	30	30	25
<b>Rules Adopted</b>	0	1	0	0	0	0
<b>Special Projects</b>	14	14	15	8	2	0

Figure 1

**STATE GOOD GOVERNMENT AGENCIES COMPARISON CHART (Based on 2018 data)**

Agency	Jurisdiction	FY 2018-19 Total State Gen. Funds Appropriation	Personnel Services	Authorized FTE Positions
<b>OIP</b> HRS 92F-3, -41, -42; 92-1.5, -2, -10	HRS State, counties (including Mayors, Councils, and departments), independent agencies (UH, OHA), and <b>including</b> Executive branch (Gov, Lt. Gov. and agencies), Legislature, and Judiciary (except courts' nonadministrative functions), for UIPA (open records) ; also all Sunshine Law boards of state, county, and independent entities			
<b>OIP Budget</b>		\$576,855	\$563,855	8.5 (includes 6 attorneys)
<b>Auditor</b> Constit. Art. VII, Sec. 10; HRS 23-1, -2, -3, -8	State and its political subdivisions, <b>except</b> Legislature			
<b>Auditor Budget</b>		\$3,007,127	\$2,630,927	37 (26 actual)
<b>Ombudsman</b> HRS 96-1, -2, -3	Administrative acts of agencies, <b>except</b> Legislature, Judiciary, federal govt. , multistate govt'l entity, Gov. and personal staff, Lt. Gov. and personal staff, mayors, councils			
<b>Ombudsman Budget</b>		\$1,330,834	\$1,256,599	14.0
<b>LRB Director</b> HRS 23G-1, -2	Serves Legislature			
<b>LRB Budget</b>		\$3,459,738 excl. dues	\$2,917,394 incl. session staff & OT	38.0
<b>State Ethics Exec Dir.</b> 84-2, -3, - 35	HRS State only: all nominated, appointed, or elected officer, employee, and candidate to elected office, but <b>excluding</b> justices and judges			
<b>State Ethics Budget</b>		\$1,112,093	\$944,402	11.0
<b>State Campaign Spending Commission Executive Director</b> HRS 11-314(12)	Candidates			
<b>State CSC Budget</b>		\$505,585	\$443,962	5.0
<b>Chief Election Officer</b> 11-1, -1.6,	HRS Elections			
<b>Elections Budget</b>		\$3,071,898, not inclu. fed. funds	\$2,234,383	27.44, inclu. 9.44 temp.



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HOUSE COMMITTEE ON JUDICIARY

Wednesday, February 6, 2019, 2:20 pm, Conference Room 325  
HB 1354, Relating to the Office of Information Practices Budget

**TESTIMONY**

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

Chair Lee and Committee Members:

**The League of Women Voters of Hawaii has the following comments on HB 1354 which relates to the Office of Information Practices budget.**

Formal public UIPA and Sunshine appeals to OIP are resolved on a first-come first served basis. Unless the backlog of unresolved appeals is significantly reduced, OIP will be unable to expeditiously resolve new appeals. We understand that to eliminate most or all of the backlog of unresolved UIPA and Sunshine appeals, OIP will need 3 new positions costing \$330,000/year for at least two years. The LWV-HI requests that the Legislature at least temporarily authorize these new positions and required funding. Unfortunately, these 3 new positions and required funding are NOT included in either HB 1354 or in the multi-agency Administration operating budget bill.

Thank you for the opportunity to submit testimony.



Feb. 6, 2019

Rep. Chris Lee  
Chairman, House Judiciary Committee  
State Capitol  
Honolulu, HI

Re: House Bill 1354

Chairman Lee and Committee Members:

We support the bill that would add \$100,000 to the Office of Information Practices' budget to help reduce the big backlog of information requests.

At last check, OIP had a backlog of more than a year's waiting time for information issues to be addressed.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter SPJ

TO: Members of the Committee on Finance

FROM: Natalie Iwasa  
808-395-3233

HEARING: 1:30 p.m. Wednesday, January 23, 2019

SUBJECT: HB1354, Budget for Office of Information Practices -- **COMMENTS**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB1354, which sets the budget for the Office of Information Practices (OIP) for next fiscal year.

Over the past decade, I have requested the services of the OIP several times. They have a backlog of cases, and it does little good for the public when decisions finally come for issues that have gone beyond the decision-making process. It took two years to get a response to one case I had several years ago. By that time, it was too late to do anything about it. I currently have another case in appeals that has been pending for over a year.

**Please provide funding that will allow this good-governance office to do its job effectively.**

**HB-1354**

Submitted on: 2/2/2019 12:33:54 AM

Testimony for JUD on 2/6/2019 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments:

Waste Of Money!!