

JAN 18 2019

A BILL FOR AN ACT

RELATING TO GOVERNMENT RECORDS.

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

1 SECTION 1. In 1988, the legislature established the
2 uniform information practices act, chapter 92F, Hawaii Revised
3 Statutes (UIPA). The underlying purposes and policies of the
4 UIPA include: promoting the public interest in disclosure;
5 providing for accurate, relevant, timely, and complete
6 government records; enhancing government accountability through
7 a general policy of access to government records; making
8 government accountable to individuals in the collection, use,
9 and dissemination of information; and balancing the individual
10 privacy interest and the public access interest, allowing access
11 unless it would constitute a clearly unwarranted invasion of
12 personal privacy.

13 The UIPA requires state and county government agencies,
14 including the legislature and the judiciary's administrative
15 offices, to allow, upon request, public access to government
16 records, unless the records qualify for one of five UIPA
17 exceptions to disclosure. Government records subject to the



1 UIPA include predecisional and deliberative memoranda and
2 correspondence transmitted within or between government
3 agencies, such as staff recommendations, drafts, and the
4 exchange of ideas and opinions before a decision or policy is
5 finalized and made public. In December 2018, the Hawaii supreme
6 court, in a 3-2 decision in Peer News LLC v. City & County of
7 Honolulu, No. SCAP-16-0000114, 2018 WL 6715464 (Haw. Dec. 21,
8 2018), held that a deliberative process privilege is not
9 consistent with the legislative intent of the UIPA and that
10 predecisional and deliberative government records cannot be
11 withheld from public access under an exception.

12 The legislature finds that the Hawaii supreme court's
13 dissenting opinion in Peer News LLC provides a more accurate
14 assessment of the legislative intent of the UIPA and correctly
15 concludes that the legislative intent of the UIPA is consistent
16 with a deliberative process privilege. The dissenting opinion
17 is more aligned with the legislative intent of the UIPA, as
18 compared to the office of information practices' expansive
19 interpretation and the majority opinion's overly narrow reading
20 of the UIPA. This Act reflects the middle-ground approach taken



1 by the dissenting opinion that is consistent with the
2 legislative intent behind the UIPA.

3 The purpose of this Act is to:

4 (1) Clarify that a deliberative process privilege is
5 consistent with the legislative intent of the UIPA;
6 and

7 (2) Specify that the exception for government records that
8 are confidential in nature include intra-agency and
9 inter-agency memoranda and correspondence that qualify
10 for the deliberative process privilege.

11 SECTION 2. Section 92F-13, Hawaii Revised Statutes, is
12 amended to read as follows:

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

14 This part shall not require disclosure of:

15 (1) Government records which, if disclosed, would
16 constitute a clearly unwarranted invasion of personal
17 privacy;

18 (2) Government records pertaining to the prosecution or
19 defense of any judicial or quasi-judicial action to
20 which the State or any county is or may be a party, to



1 the extent that such records would not be
2 discoverable;

3 (3) Government records that, by their nature, must be
4 confidential in order for the government to avoid the
5 frustration of a legitimate government function[+]
6 including intra-agency and inter-agency memoranda and
7 correspondence that qualify for the deliberative
8 process privilege; provided that the agency's need to
9 protect these records outweighs the public interest in
10 disclosure;

11 (4) Government records which, pursuant to state or federal
12 law including an order of any state or federal court,
13 are protected from disclosure; and

14 (5) Inchoate and draft working papers of legislative
15 committees including budget worksheets and unfiled
16 committee reports; work product; records or
17 transcripts of an investigating committee of the
18 legislature which are closed by rules adopted pursuant
19 to section 21-4 and the personal files of members of
20 the legislature."



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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Richard L. ...
by request



S.B. NO. 295

Report Title:

Government Records; Public Access; Uniform Information Practices Act

Description:

Clarifies that a deliberative process privilege is consistent with the legislative intent of the uniform information practices act. Specifies that the confidential disclosure exception includes intra- and inter-agency memoranda and correspondence that qualify for the deliberative process privilege.

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

