

JAN 22 2021

A BILL FOR AN ACT

RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION
PRACTICES ACT.

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

1 SECTION 1. Section 92F-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§92F-15 Judicial enforcement.** (a) A person aggrieved by
4 a denial of access to a government record may bring an action
5 against the agency at any time within two years after the agency
6 denial to compel disclosure.

7 (b) In an action to compel disclosure, the circuit court
8 shall hear the matter de novo; provided that if the action to
9 compel disclosure is brought because an agency has not made a
10 record available as required by section 92F-15.5(b) after the
11 office of information practices has made a decision to disclose
12 the record and the agency has not appealed that decision within
13 the time period provided by 92F-43, the decision of the office
14 of information practices shall not be subject to challenge by
15 the agency in the action to compel disclosure. Opinions and
16 rulings of the office of information practices shall be



1 admissible and shall be considered as precedent unless found to
2 be palpably erroneous, except that in an action to compel
3 disclosure brought by an aggrieved person after the office of
4 information practices upheld the agency's denial of access to
5 the person as provided in section 92F-15.5(b), the opinion or
6 ruling upholding the agency's denial of access shall be reviewed
7 de novo. The circuit court may examine the government record at
8 issue, in camera, to assist in determining whether it, or any
9 part of it, may be withheld.

10 (c) The agency has the burden of proof to establish
11 justification for nondisclosure. No later than thirty days
12 after service of process, the agency shall file a motion for
13 summary judgment in support of its denial of access to the
14 government record that is presently before the court; provided
15 that the court may extend the thirty-day deadline if doing so is
16 in the interest of justice. If the agency does not timely file
17 a motion for summary judgment, the circuit court shall order
18 immediate disclosure of the government record, except to the
19 extent prohibited by law.

20 (d) If the complainant prevails in an action brought under
21 this section, the court shall assess against the agency



1 reasonable attorney's fees and all other expenses reasonably
2 incurred in the litigation.

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

7 (f) Except as to cases the circuit court considers of
8 greater importance, proceedings before the court, as authorized
9 by this section, and appeals therefrom, take precedence on the
10 docket over all cases and shall be assigned for hearing and
11 trial or for argument at the earliest practicable date and
12 expedited in every way.

13 (g) Either party may appeal the decision of the circuit
14 court. An appellate court shall uphold the circuit court
15 decision to compel disclosure unless that decision was palpably
16 erroneous; provided that any decision or portion of a decision
17 affirming the agency's denial of access shall be reviewed de
18 novo. Enforcement of a circuit court decision to compel
19 disclosure shall be stayed automatically for fourteen days after
20 its entry, during which time the agency may petition the supreme
21 court for a determination that the circuit court's decision to



1 compel disclosure is palpably erroneous. If the agency timely
2 files a petition, the complainant may file a response within
3 seven days after service. After a timely petition, enforcement
4 of the circuit court's decision shall be stayed pending the
5 supreme court's determination."

6 SECTION 2. New statutory material is underscored.

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

8
INTRODUCED BY:





S.B. NO. 297

Report Title:

Judicial Enforcement and Review; Request for Government Records;
Time for Agency to Appeal; Appeals and Stays

Description:

Clarifies and expands procedural requirements for judicial review of an agency's denial of access to a government record. Provides procedural requirements and standards of review upon appeal.

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

