
A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1 SECTION 1. The legislature finds that public records laws
2 are a critical mechanism to maintain government accountability
3 and transparency and support citizen involvement in government
4 decision-making. The real-world consequences of restricting
5 access to that information can range from serious to routine
6 but, in all cases, result in a less informed citizenry. Fee
7 waivers offer a simple and flexible solution. Governor Ige has
8 stated, "Effective citizen participation in state government
9 requires timely access to information and appropriate
10 opportunities for the public to provide its government with
11 feedback and ideas".

12 The legislature further finds that this Act seeks to
13 provide further direction and carry out the intent indicated by
14 the legislative history of section 92F-42, Hawaii Revised
15 Statutes, and the section's provision on waiver of fees, first
16 introduced in House Bill No. 2002, regular session of 1988. The
17 original language of House Bill No. 2002 (1988) allowed fees for



1 only copies of records, but the House of Representatives'
2 Judiciary Committee's House Draft 1 amended the bill to also
3 allow charges for searching, reviewing, and segregating records,
4 while also allowing waivers for public interest. The House
5 Judiciary Committee's report, House Standing Committee Report
6 No. 342-88, stated that:

7 It is the intent of your Committee that such charges for
8 search, compilation, and segregation shall not be a vehicle
9 to prohibit access to public records. It is the further
10 intent of your Committee that the Office of Information
11 Practices move aggressively against any agency that uses
12 such charges to chill the exercise of first amendment
13 rights. Your Committee also added new language to allow
14 waiver of these charges when such action serves the public
15 interest.

16 By providing public-interest fee waivers uniformly, the public
17 records request process can provide equitable access.

18 The purpose of this Act is to:

- 19 (1) Impose a cap on the costs charged for the reproduction
20 of certain government records;



(2) Waive reproduction costs for the first one hundred pages if a record's disclosure is in the public interest;

(3) Waive the cost of duplication of government records in an electronic format;

(4) Impose a cap on costs charged for searching for, reviewing, and segregating records; and

(5) Provide for a waiver of fees when the public interest is served by a record's disclosure.

SECTION 2. Section 92-21, Hawaii Revised Statutes, is amended to read as follows:

"§92-21 Copies of records; other costs and fees. Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing ~~such~~ the copy. Except as provided in section 91-2.5, the cost of reproducing any government record, except geographic information system digital data, photographs, maps,



1 audio recordings, digital or electronic records, and other types
2 of physical records, shall not [~~be less than 5~~] exceed 25 cents
3 per page, sheet, or fraction thereof. The first one hundred
4 pages shall be reproduced at no charge to the requester if
5 disclosure of the record is in the public interest because the
6 disclosure is likely to contribute significantly to the public
7 understanding of the operations or activities of the government
8 and is not primarily in the commercial interest. Reproduction
9 costs shall not be charged for producing documents provided to
10 requesters an in electronic format; provided that the agency
11 maintains those documents in an electronic format; provided
12 further that requesters shall be charged for the agency's
13 provision of documents requested in an electronic format that
14 are not maintained by the agency in an electronic format and
15 must be manually faxed or converted into an electronic format.
16 The cost of reproducing geographic information system digital
17 data, photographs, maps, audio recordings, digital or electronic
18 records, and other types of physical records shall be in
19 accordance with rules adopted by the agency having charge or
20 control of that data. [~~Such~~] The reproduction cost shall
21 [~~include but shall not be limited to labor cost for search and~~



1 ~~actual time for reproducing, material cost, including~~
2 ~~electricity cost, equipment cost, including rental cost, cost~~
3 ~~for certification, and other related costs.] represent the~~
4 reasonable direct cost of making the copies and be limited to
5 the salary of the operator of the reproduction machinery as well
6 as the cost of the machinery. All fees shall be paid in by the
7 public officer receiving or collecting the same to the state
8 director of finance, the county director of finance, or to the
9 agency or department by which the officer is employed, as
10 government realizations; provided that fees collected by the
11 public utilities commission pursuant to this section shall be
12 deposited in the public utilities commission special fund
13 established under section 269-33."

14 SECTION 3. Section 92F-42, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§92F-42 Powers and duties of the office of information**
17 **practices.** The director of the office of information practices:

18 (1) Shall, upon request, review and rule on an agency
19 denial of access to information or records, or an
20 agency's granting of access; provided that any review
21 by the office of information practices shall not be a



1 contested case under chapter 91 and shall be optional
2 and without prejudice to rights of judicial
3 enforcement available under this chapter;

4 (2) Upon request by an agency, shall provide and make
5 public advisory guidelines, opinions, or other
6 information concerning that agency's functions and
7 responsibilities;

8 (3) Upon request by any person, may provide advisory
9 opinions or other information regarding that person's
10 rights and the functions and responsibilities of
11 agencies under this chapter;

12 (4) May conduct inquiries regarding compliance by an
13 agency and investigate possible violations by any
14 agency;

15 (5) May examine the records of any agency for the purpose
16 of paragraphs (4) and (18) and seek to enforce that
17 power in the courts of this State;

18 (6) May recommend disciplinary action to appropriate
19 officers of an agency;

20 (7) Shall report annually to the governor and the state
21 legislature on the activities and findings of the



1 office of information practices, including

2 recommendations for legislative changes;

3 (8) Shall receive complaints from and actively solicit the
4 comments of the public regarding the implementation of
5 this chapter;

6 (9) Shall review the official acts, records, policies, and
7 procedures of each agency;

8 (10) Shall assist agencies in complying with the provisions
9 of this chapter;

10 (11) Shall inform the public of the following rights of an
11 individual and the procedures for exercising them:

12 (A) The right of access to records pertaining to the
13 individual;

14 (B) The right to obtain a copy of records pertaining
15 to the individual;

16 (C) The right to know the purposes for which records
17 pertaining to the individual are kept;

18 (D) The right to be informed of the uses and
19 disclosures of records pertaining to the
20 individual;



1 (E) The right to correct or amend records pertaining
2 to the individual; and

3 (F) The individual's right to place a statement in a
4 record pertaining to that individual;

5 (12) Shall adopt rules that set forth an administrative
6 appeals structure which provides for:

7 (A) Agency procedures for processing records
8 requests;

9 (B) A direct appeal from the division maintaining the
10 record; and

11 (C) Time limits for action by agencies;

12 (13) Shall adopt rules that set forth the fees and other
13 charges that may be imposed for searching, reviewing,
14 or segregating disclosable records[, ~~as well as to~~
15 ~~provide for a waiver of fees when the public interest~~
16 ~~would be served,~~]. The rules shall:

17 (A) Set forth fees not exceeding \$5 per fifteen
18 minutes or fraction thereof for the search for
19 the record;



1 (B) Set forth fees not exceeding \$7.50 per fifteen
2 minutes or fraction thereof for the review and
3 segregation of the record; and

4 (C) Provide for a waiver of fees when the public
5 interest would be served by the record's
6 disclosure; provided that the waiver shall
7 require that the search for or review or
8 segregation of records be provided at no charge
9 to the requester if disclosure of the record is
10 in the public interest because the disclosure is
11 likely to contribute significantly to public
12 understanding of the operations or activities of
13 the government and is not primarily in the
14 commercial interest;

15 (14) Shall adopt rules which set forth uniform standards
16 for the records collection practices of agencies;

17 (15) Shall adopt rules that set forth uniform standards for
18 disclosure of records for research purposes;

19 (16) Shall have standing to appear in cases where the
20 provisions of this chapter or part I of chapter 92 are
21 called into question;



1 (17) Shall adopt, amend, or repeal rules pursuant to
2 chapter 91 necessary for the purposes of this chapter;
3 and

4 (18) Shall take action to oversee compliance with part I of
5 chapter 92 by all state and county boards including:

6 (A) Receiving and resolving complaints;

7 (B) Advising all government boards and the public
8 about compliance with chapter 92; and

9 (C) Reporting each year to the legislature on all

10 complaints received pursuant to section 92-1.5."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Public Records; Duplication; Costs; Disclosure; Public Interest; Waiver

Description:

Imposes a cap on the costs charged for the reproduction of certain government records. Waives reproduction costs for the first 100 pages if disclosure is in the public interest. Waives the cost of duplication of government records in an electronic format. Imposes a cap on costs charged for searching for, reviewing, and segregating records. Provides for a waiver of fees when the public interest is served by a record's disclosure. Effective 7/1/2050. (SD2)

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