
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 the house of
2 representatives adopted House Resolution No. 9 (2022) to
3 establish the commission to improve standards of conduct. The
4 resolution requests the commission ensure state laws and rules
5 relating to standards of conduct of public officers and
6 employees contain clear standards, enforcement, and penalties
7 and provide recommendations to increase awareness of, compliance
8 with, and deterrent effects of the code of ethics, lobbying
9 laws, campaign finance laws, and other relevant laws and rules.

10 Pursuant to House Resolution No. 9, the commission to
11 improve standards of conduct convened regularly throughout 2022
12 to diligently review, discuss, and consider the issues
13 presented, submitted an interim report to the house of
14 representatives outlining areas of immediate and long-term
15 focus, then continued its work with input from the public and
16 invited individuals and agencies to issue a final report with
17 various recommendations and accompanying proposed legislation.



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1 The legislature also finds that the strength and stability
2 of our democratic government rely upon the public's trust in
3 government institutions, including the expectation that officers
4 act ethically with prudence, integrity, and sound judgement.
5 Therefore, an essential goal of the commission was to provide
6 recommendations that would help restore public trust in state
7 government and increase the level of transparency in its
8 operations and accountability of individuals.

9 Additionally, the legislature finds that public records
10 laws are a critical mechanism to maintain government
11 accountability and transparency and support citizen involvement
12 in government decision-making. The real-world consequences of
13 restricting access to that information can range from serious to
14 routine but, in all cases, result in a less informed citizenry.
15 Fee waivers offer a simple and flexible solution.

16 The legislature also finds that further direction is
17 necessary to carry out the intent indicated by the legislative
18 history of section 92F-42, Hawaii Revised Statutes, and the
19 section's provision on waiver of fees, first introduced in House
20 Bill No. 2002, regular session of 1988. The original language
21 of House Bill No. 2002 only authorized fees for copies of



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1 records, but the version passing out of the house of
2 representatives judiciary committee 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 report, House Standing Committee Report No.
6 342-88, states:

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

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

18 The legislature finds that this Act adopts the Freedom of
19 Information Act standard to define waivers in the public
20 interest. The federal standard provides a waiver in limited
21 circumstances based on careful examination of various factors,



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1 including the subject matter of the request and identity of the
2 requestor. Case law under the Freedom of Information Act
3 provides additional guidance in this regard.

4 In addition, the legislature finds that clarification of
5 the standard for waivers in the public interest is not intended
6 to change the deadlines for agency response to a records
7 request. Under existing rules, which are unchanged by this Act,
8 agencies are permitted to provide reasonable and orderly monthly
9 disclosures in responding to voluminous record requests that
10 would require extensive effort by the agency or unreasonably
11 interfere with the agency's performance of other statutory
12 duties. These rules prevent undue burdens on the agency but can
13 delay the public's access to government records. The
14 legislature finds that timely disclosure of information is
15 especially critical when disclosure is in the public interest.
16 As such, for voluminous record requests, agencies and requestors
17 are strongly encouraged to discuss the records that are
18 available, how the records are being searched and reviewed, and
19 any methods to reduce the effort required of the agency and thus
20 delays to the requestor.



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1 Accordingly, the purpose of this Act is to implement
2 recommendations of the commission to improve standards of
3 conduct relating to the open records law by providing more
4 equitable access to government records, including:

- 5 (1) Imposing a cap on charges for the reproduction of
6 certain government records;
- 7 (2) Waiving the cost of duplication of government records
8 provided to requestors in an electronic format;
- 9 (3) Imposing a cap on charges for searching for,
10 reviewing, and segregating records;
- 11 (4) Providing for a waiver of fees when the public
12 interest is served by a record's disclosure; and
- 13 (5) Appropriating funds for two permanent positions within
14 the office of information practices.

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

17 "**§92-21 Copies of records; other costs and fees.** Except
18 as otherwise provided by law, a copy of any government record,
19 including any map, plan, diagram, photograph, photostat, or
20 geographic information system digital data file, [~~which~~] that is
21 open to the inspection of the public, shall be furnished to any



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1 person applying for the same by the public officer having charge
2 or control thereof upon the payment of the reasonable cost of
3 reproducing [~~such~~] the copy. Except as provided in section
4 91-2.5, the cost of reproducing any government record, except
5 geographic information system digital data, photographs, maps,
6 audio recordings, digital or electronic records, and other types
7 of physical records, shall not [~~be less than 5~~] exceed 25 cents
8 per page, sheet, or fraction thereof. Reproduction costs shall
9 not be charged for producing documents provided to requesters in
10 an electronic format; provided that the agency maintains those
11 documents in an electronic format; provided further that
12 requesters shall be charged for the agency's provision of
13 documents requested in an electronic format that are not
14 maintained by the agency in an electronic format and must be
15 manually faxed or converted into an electronic format. The cost
16 of reproducing geographic information system digital data,
17 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 office of information
20 practices that are applicable to every agency having charge or
21 control of that data. [~~Such~~] The reproduction cost shall



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1 ~~[include but shall not be limited to labor cost for search and~~
2 ~~actual time for reproducing, material cost, including~~
3 ~~electricity cost, equipment cost, including rental cost, cost~~
4 ~~for certification, and other related costs.] represent the~~
5 reasonable direct cost of making the copies and be limited to
6 the salary of the operator of the reproduction machinery as well
7 as the cost of the machinery. All fees shall be paid in by the
8 public officer receiving or collecting the same to the state
9 director of finance, the county director of finance, or ~~[to]~~ the
10 agency or department by which the officer is employed, as
11 government realizations; provided that fees collected by the
12 public utilities commission pursuant to this section shall be
13 deposited in the public utilities commission special fund
14 established under section 269-33."

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

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

19 (1) Shall, upon request, review and rule on an agency
20 denial of access to information or records, or an
21 agency's granting of access; provided that any review



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1 by the office of information practices shall not be a
2 contested case under chapter 91 and shall be optional
3 and without prejudice to rights of judicial
4 enforcement available under this chapter;

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

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

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

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

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



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- 1 (7) Shall report annually to the governor and the state
2 legislature on the activities and findings of the
3 office of information practices, including
4 recommendations for legislative changes;
- 5 (8) Shall receive complaints from and actively solicit the
6 comments of the public regarding the implementation of
7 this chapter;
- 8 (9) Shall review the official acts, records, policies, and
9 procedures of each agency;
- 10 (10) Shall assist agencies in complying with the provisions
11 of this chapter;
- 12 (11) Shall inform the public of the following rights of an
13 individual and the procedures for exercising them:
- 14 (A) The right of access to records pertaining to the
15 individual;
- 16 (B) The right to obtain a copy of records pertaining
17 to the individual;
- 18 (C) The right to know the purposes for which records
19 pertaining to the individual are kept;



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- 1 (D) The right to be informed of the uses and
2 disclosures of records pertaining to the
3 individual;
- 4 (E) The right to correct or amend records pertaining
5 to the individual; and
- 6 (F) The individual's right to place a statement in a
7 record pertaining to that individual;
- 8 (12) Shall adopt rules that set forth an administrative
9 appeals structure [~~which~~] that provides for:
- 10 (A) Agency procedures for processing records
11 requests;
- 12 (B) A direct appeal from the division maintaining the
13 record; and
- 14 (C) Time limits for action by agencies;
- 15 (13) Shall adopt rules that set forth the fees and other
16 charges that may be imposed for searching, reviewing,
17 or segregating disclosable records [~~, as well as to~~
18 ~~provide for a waiver of fees when the public interest~~
19 ~~would be served;]~~. The rules shall:



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- 1 (A) Set forth fees not exceeding \$5 per fifteen
2 minutes or fraction thereof for the search for
3 the record;
- 4 (B) Set forth fees not exceeding \$7.50 per fifteen
5 minutes or fraction thereof for the review and
6 segregation of the record; and
- 7 (C) Provide for a waiver of fees when the public
8 interest would be served by the record's
9 disclosure; provided that the waiver shall
10 require that the search for or review or
11 segregation of records be provided at no charge
12 to the requester if disclosure of the record is
13 in the public interest because the disclosure is
14 likely to contribute significantly to public
15 understanding of the operations or activities of
16 the government and is not primarily in the
17 commercial interest;
- 18 (14) Shall adopt rules [~~which~~] that set forth uniform
19 standards for the records collection practices of
20 agencies;



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

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

6 (17) Shall adopt, amend, or repeal rules pursuant to
7 chapter 91 necessary for the purposes of this chapter;
8 and

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

11 (A) Receiving and resolving complaints;

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

14 (C) Reporting each year to the legislature on all
15 complaints received pursuant to section 92-1.5."

16 SECTION 4. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$185,000 or so much
18 thereof as may be necessary for fiscal year 2023-2024 and the
19 same sum or so much thereof as may be necessary for fiscal year
20 2024-2025 for two full-time equivalent (2.0 FTE) permanent



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1 positions to be placed within the office of information
2 practices.

3 The sums appropriated shall be expended by the office of
4 information practices for the purposes of this Act.

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2023;
8 provided that sections 2 and 3 shall take effect on July 1,
9 2024.

10

INTRODUCED BY: _____



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Report Title:

Commission to Improve Standards of Conduct; Public Records; Duplication; Costs; Disclosure; Public Interest; Waiver; Appropriation

Description:

Beginning 7/1/2024, imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on charges for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices.

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

