

ACT 262

H.B. NO. 2002

A Bill for an Act Relating to Public Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER UNIFORM INFORMATION PRACTICES ACT (MODIFIED)

PART I. GENERAL PROVISIONS AND DEFINITIONS

§ -1 **Short title.** This chapter shall be known and may be cited as the Uniform Information Practices Act (Modified).

§ -2 **Purposes; rules of construction.** In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public’s interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

The policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawaii.

This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
- (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.

§ -3 **General definitions.** Unless the context otherwise requires, in this chapter:

“Agency” means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the non-administrative functions of the courts of this State.

“Government record” means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

“Individual” means a natural person.

“Person” means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Personal record” means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual’s education, financial, medical, or employment history, or items that contain or make reference to the individual’s name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

PART II. FREEDOM OF INFORMATION

§ -11 Affirmative agency disclosure responsibilities. (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section -13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

(c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions.

§ -12 Disclosure required. (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information including all bid results except to the extent prohibited by section -13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll record on public works contracts;
- (10) Regarding contract hires and consultants employed by agencies; the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency which may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (or salary range for employees covered by chapters 76 and 77), job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment of present or former officers or employees of the agency, provided that this provision shall not require the creation of a roster of employees;

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- (15) Information collected and maintained for the purpose of making information available to the general public; and
 - (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.
- (b) Any provision to the contrary notwithstanding, each agency shall also disclose:
- (1) Any government record, if the requesting person has the prior written consent of all individuals to whom the record refers;
 - (2) Government records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the individual requesting access;
 - (3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;
 - (4) Government records requested pursuant to an order of a court;
 - (5) Government records pursuant to a subpoena from either house of the state legislature; and
 - (6) Information from the motor vehicle registration files, provided that the person requesting such files shall have a legitimate reason as determined by rules.

§ -13 **Government records; exceptions to general rule.** This chapter shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to State or federal law including an order of any State or federal court, are protected from disclosure; and
- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

§ -14 **Clearly unwarranted invasion of personal privacy.** (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.

(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
- (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except information relating to the status of any formal charges against the employee and disciplinary action taken or information disclosed under section -12(a)(14);
- (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
- (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
- (7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:
 - (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
 - (B) Information on the current place of employment and required insurance coverages of licensees; and
 - (C) The record of complaints including all dispositions; and
- (8) Information comprising a personal recommendation or evaluation.

§ -15 Judicial enforcement. (a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time to compel disclosure.

(b) In an action to compel disclosure the circuit court shall hear the matter *de novo*. Opinions and rulings of the office of information practices shall be admissible. The circuit court may examine the government record at issue, *in camera*, to assist in determining whether it, or any part of it, may be withheld.

(c) The agency has the burden of proof to establish justification for non-disclosure.

(d) If the complainant prevails in an action brought under this section, the court shall assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.

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

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

§ -16 Immunity from liability. Anyone participating in good faith in the disclosure or nondisclosure of a government record shall be immune from any liability, civil or criminal, that might otherwise be incurred, imposed or result from such acts or omissions.

§ -17 Criminal penalties. (a) An officer or employee of an agency who intentionally discloses or provides a copy of a government record, or any confidential information explicitly described by specific confidentiality statutes, to any person or agency with actual knowledge that disclosure is prohibited, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided for by law.

(b) A person who intentionally gains access to or obtains a copy of a government record by false pretense, bribery, or theft, with actual knowledge that access is prohibited, or who intentionally obtains any confidential information by false pretense, bribery, or theft, with actual knowledge that it is prohibited a confidentiality statute, shall be guilty of a misdemeanor.

§ -18 Agency implementation. (a) Each agency shall:

- (1) Issue instructions and guidelines necessary to effectuate this chapter; and
- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.

(b) Each agency shall compile a public report describing the records it routinely uses or maintains. The public reports shall be filed with the office of information practices and shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by;
 - (A) Another agency; or
 - (B) A person other than an agency;
- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
- (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
- (11) The agency procedures whereby an individual may request access to records; and
- (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

§ -19 Limitations on disclosure of government records to other agencies. (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;

- (6) To the legislature or any committee or subcommittee thereof;
 - (7) Pursuant to an order of a court of competent jurisdiction;
 - (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal monies;
 - (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; or
 - (10) Otherwise subject to disclosure under this chapter.
- (b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency.

PART III. DISCLOSURE OF PERSONAL RECORDS

§ -21 **Individual's access to own personal record.** Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use.

§ -22 **Exemptions and limitations on individual access.** An agency is not required by this chapter to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
 - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1;
 - (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports or informers, witnesses, and investigators; or
 - (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege.

§ -23 **Access to personal record; initial procedure.** Upon the request of an individual to gain access to the individual's personal record, an agency shall

permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section -22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay.

§ -24 **Right to correct personal record; initial procedure.** (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal.

§ -25 **Access and correction; review procedures.** (a) Not later than thirty business days after receipt of request for review of an agency refusal to allow access to, or correction or amendment of, a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow access to, or correction or amendment of, a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy.

§ -26 **Rules.** Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county.

§ -27 **Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections -23, -24, and -25 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$1,000; and

(2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance.

§ -28 Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access.

PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES

§ -41 Office of information practices. (a) There shall be within the department of the attorney general an office of information practices.

(b) The governor shall appoint, not subject to chapters 76 and 77, a director of the office of information practices who is its chief executive officer.

(c) All powers and duties of the office of information practices are vested in the director and may be delegated to any other officer or employee of the office.

(d) The director may employ such other personnel as are necessary, including but not limited to attorneys and clerical staff. None of the employees shall be subject to chapters 76 or 77.

§ -42 Powers and duties of the office of information practices. (a) The director of the office of information practices:

- (1) Shall review and rule on an agency denial of access to information or records, or an agency's granting of access;
- (2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;
- (3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;
- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;
- (6) May recommend disciplinary action to appropriate officers of an agency;

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- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;
- (9) Shall review the official acts, records, policies, and procedures of each agency;
- (10) Shall assist agencies in complying with the provisions of this chapter;
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
 - (A) The right of access to records pertaining to the individual;
 - (B) The right to obtain a copy of records pertaining to the individual;
 - (C) The right to know the purposes for which records pertaining to the individual are kept;
 - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
 - (E) The right to correct or amend records pertaining to the individual; and
 - (F) The individual's right to place a statement in a record pertaining to that individual;
- (12) Shall adopt rules that set forth an internal appeals structure which provides for direct appeal from the division maintaining the record and time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records as well as to provide for a waiver of such fees when the public interest would be served;
- (14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies; and
- (15) Shall have standing to appear in cases where the provisions of this chapter are called into question."

SECTION 2. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§89- Access to personal records by an employee organization. Exclusive representatives shall be allowed access to an employee's personal records which are relevant to the investigation or processing of a grievance. The exclusive representative shall not share or disclose the specific information contained in the personal records and shall notify the employee that access has been obtained."

SECTION 3. Chapter 92, part V, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 92E, Hawaii Revised Statutes, is repealed.

SECTION 5. Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 6. There is hereby appropriated out of the general revenues of the State of Hawaii, the sum of \$156,000, or so much thereof as may be necessary for fiscal year 1988-1989, for the office of information practices. The sum appro-

priated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 1989, except that Part IV of SECTION 1 and SECTION 6 of this Act shall take effect upon approval.

(Approved June 9, 1988.)

Note

1. Edited pursuant to HRS §23G-16.5.