

ACT 192

S.B. NO. 1799

A Bill for an Act Relating to the Uniform Information Practices Act (Modified).

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

SECTION 1. Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§92F-15.5 Alternative method to appeal a denial of access. (a) When an agency denies a person access to a government record, the person may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the person’s right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the person and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a).”

SECTION 2. Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§92F-27.5 Alternative method to appeal a denial of access. (a) When an agency denies an individual access to that individual’s personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual’s right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27.”

SECTION 3. Section 92F-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.”

SECTION 4. Section 92F-18, Hawaii Revised Statutes, is amended to read as follows:

“[§92F-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[.] using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices [and] on or before July 1, 1991. The public reports 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.

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection."

SECTION 5. Chapter 92F, Hawaii Revised Statutes, is amended by amending the title of Part III to read:

"PART III. DISCLOSURE [OR] OF PERSONAL RECORDS"

SECTION 6. Section 92F-25, Hawaii Revised Statutes, is amended to read as follows:

"[§92F-25] Access and correction; Correction and amendment; review procedures. (a) Not later than thirty business days after receipt of a 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."

SECTION 7. Section 92F-26, Hawaii Revised Statutes, is amended to read as follows:

"[§92F-26] Rules. [Each agency] The office of information practices 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.], which the agencies shall adopt, insofar as practicable, in order to ensure uniformity among state and county agencies."

SECTION 8. Section 92F-27, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(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.] notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices."

SECTION 9. Section 92F-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be within the department of the attorney general, for administrative purposes only, an office of information practices.”

SECTION 10. Section 92F-42, Hawaii Revised Statutes, is amended to read as follows:

“[§92F-42] Powers and duties of the office of information practices.

[(a)] The director of the office of information practices:

- (1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;
- (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;
- (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] administrative appeals structure which provides for (A) agency procedures for processing records requests; (B) a direct appeal from the division maintaining the record; and (C) time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other [changes] 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;

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- (14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies; [and]
- (15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;
- [(15)] (16) Shall have standing to appear in cases where the provisions of this chapter are called into question[.]; and
- (17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter."

SECTION 11. Each agency, as defined in Chapter 92F, Hawaii Revised Statutes, shall file its public report describing the records it routinely uses or maintains, in accordance with section 92F-18, Hawaii Revised Statutes; provided that each agency shall have filed with the office of information practices twenty-five per cent of its public report forms on or before September 30, 1990, fifty per cent on or before December 31, 1990, seventy-five per cent on or before March 31, 1991 and one hundred per cent on or before July 1, 1991.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

Note

- 1. Edited pursuant to HRS §23G-16.5.