

## **QUICK REVIEW: Requester has Responsibilities and Requirements Before an Agency Must Provide Records** (Revised May 8, 2014)

OIP primarily advises agencies about their duties under the Uniform Information Practices Act (Modified) (UIPA), and has developed training materials that can be found on [OIP's training page at oip.hawaii.gov](http://oip.hawaii.gov). In this Quick Review, OIP reminds the agencies and the public about the responsibilities and requirements that a records requester must fulfill in order for an agency to process a records request.

### **1. Submit a Written Request for the Government Records**

OIP's administrative rules for processing records requests under the UIPA are set forth in Title 2, chapter 71, Hawaii Administrative Rules (HAR) (OIP Rules). Under OIP's Rules, an agency may choose to respond to a person's oral request for records. Alternatively, the agency may instead inform the requester to submit the records request in writing. HAR § 2-71-11. Written requests help to minimize unnecessary misunderstandings between an agency and the requester about the records request. Under OIP's appeal rules, Title 2, chapter 73, HAR, a written request is also required in order for a requester to appeal to OIP an agency's denial of access.

A written request can be in the form of an e-mail message, a completed "Request to Access a Government Record" form that OIP provides on its website, or any other document. A written records request must provide (1) the requester's contact information to enable the agency to correspond with the requester about the request (a requester may remain anonymous but must provide some method for the agency to correspond), and (2) a reasonable description of the records requested.

If the requester seeks a fee waiver in the public interest, the written records request must include a request for the fee waiver before an agency must consider whether the requester qualifies for the waiver.

When a records request is in writing, the agency must then comply with the procedures in OIP's Rules for processing records requests.

### **2. Respond to the Agency's Inquiries or Instructions in the Agency's Notice**

An agency may receive a written records request that does not provide sufficient information to enable the agency to identify and search for the records that the requester seeks to access. In such case, the agency's notice to the requester will state that the agency is unable to disclose the requested record, or a part thereof, because the agency requires a further description or clarification of the requested record.

If the agency's notice to the requester asks for further clarification, the requester should respond to the agency's notice inquiring about that part of the records request within twenty business days from the postmark date of the agency's notice, or if the notice is provided by e-mail, within twenty business days of the date of the e-mail. If the requester does not respond to the agency's inquiry within this time period, the requester is presumed to have abandoned the request and the agency has no duty to further process the records request.

NOTE: The agency's notice may be provided using OIP's model Notice to Requester form, or by e-mail message, letter, or in other written form.

### **3. Submit Prepayments and Final Payments of Fees and Costs Assessed by the Agency for Processing the Records Request**

When an agency intends to disclose records in response to a written request, the agency's notice may require the requester to prepay some of the agency's fees and all of the costs for processing the records request. Specifically, under OIP's Rules, the agency is authorized to require the requester to prepay:

- (1) 50% of the estimated fees for searching for, reviewing and segregating records (but only if the total fees are over \$30). These fees are set forth in section 2-71-31, HAR.
- (2) 100% of the estimated lawful fees for all other services to prepare and transmit the record, which may include costs for copying, mailing, and digital processing of the records. These costs are authorized by HRS § 92-21 and other legal authorities outside the scope of the UIPA that OIP administers.
- (3) 100% of the outstanding fees from previous records requests. Outstanding fees may result from a records request that a requester abandoned after the agency had already processed the request, or where the requester simply failed to pay the remaining balance of fees owed for a records request.

The requester should submit the required prepayment within twenty business days of the postmark date of the agency's notice to requester, or if the notice is provided by e-mail, within twenty business days of the date of the e-mail. If the requester does not submit the required prepayment of fees within this time period, the requester is presumed to have abandoned the request and the agency has no duty to further process the records request.

Agencies should note, however, that they must provide a good faith estimate of the fees and costs to requesters before they can hold requesters responsible for payment of any work performed. Agencies should wait to process a request until the requester has received the good faith estimate and sent in the required prepayment. This gives the requester the opportunity to narrow or otherwise modify the request, or to withdraw or abandon it altogether. If, however, the agency has performed the work after the requester approved it and the requester subsequently withdraws or abandons the request or fails to pay, then the agency has no duty to process any other requests by the same requester until the amounts due have been paid. For additional information on how to estimate fees and costs, see [OIP's Informal Guide to Processing Large or Complex UIPA Record Requests](#) on OIP's training page at [oip.hawaii.gov](http://oip.hawaii.gov).