

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 15

OFFICE OF INFORMATION PRACTICES

CHAPTER 200

AGENCY PROCEDURES AND FEES FOR PROCESSING RECORD
REQUESTS, AND ADDITIONAL PROCEDURES FOR DISCLOSURE,
CORRECTION AND AMENDMENT, AND COLLECTION OF PERSONAL
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Historical note: This chapter is based substantially upon chapter 71 of Title 2. [Eff. 2/26/1999; R _____]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-200-1 Purpose, scope, and construction. The purpose of this chapter is to establish, with respect to the Uniform Information Practices Act (Modified), chapter 92F, HRS, the following standards in order to ensure uniformity among state and county agencies:

- (1) Procedures and time limits that an agency shall follow when processing requests to inspect or copy government records under part II of chapter 92F, HRS;
- (2) Procedures and time limits that an agency shall follow when processing individuals'

- requests to inspect or copy personal records under part III of chapter 92F, HRS;
- (3) The procedures that an agency shall follow when processing individuals' requests for amendment or correction of personal records under part III of chapter 92F, HRS;
 - (4) The procedures that an agency may use 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;
 - (5) Standards for agencies' collection of personal records; and
 - (6) The fees that an agency may charge for processing record requests, including fees for searching for, reviewing, and segregating records, and a waiver of these fees when the public interest would be served. The fees set forth in this chapter are not intended to obstruct access to disclosable records, but rather are intended to allow agencies to recover some costs in providing access upon request. [Eff
] (Auth: HRS §§92F-26,92F-42)(Imp: HRS §§92F-11,92F-23,92F-24)

§3-200-2 Definitions. Unless the context otherwise requires, in this chapter:

"Access" means inspection of disclosable records, acquisition of copies of disclosable records, or both, when requested under either or both parts II and III of chapter 92F, HRS.

"Agency" shall be as defined in section 92F-3, HRS.

"Business day" means a government agency business day within the office hours set forth in section 80-1, HRS, excluding Saturdays, Sundays, and state holidays observed pursuant to chapter 8, HRS.

"Copying" means to reproduce a record in the same

or different physical form, including but not limited to electronically scanning paper records to create paper or electronic duplicates of the record and the steps taken to prepare the record for reproduction.

"Disclosable record" means a record that is required to be made available to the requester for inspection and copying under chapter 92F, HRS, after payment of applicable fees.

"Duly authorized representative" means the parent or guardian of any unmarried and unemancipated minor, the guardian of the person of an individual appointed under article V of the uniform probate code or a guardian with similar authority under the laws of any state or country, or any individual's duly appointed agent.

"Formal request" means a request that:

- (1) Is in writing, including in electronic or other physical form;
- (2) Is submitted by a person to an agency for access to records; and
- (3) Contains the information prescribed by section 3-200-12(b).

"Government record" shall be as defined in section 92F-3, HRS.

"Individual" shall be as defined in section 92F-3, HRS.

"Informal request" excludes formal requests and means a request that is not in writing and to which the agency responds in accordance with section 3-200-11.

"Maintain" means to hold, possess, preserve, retain, store, or administratively control.

"OIP" means the office of information practices, which is attached, for administrative purposes only, to the department of accounting and general services, State of Hawaii.

"Person" shall be as defined in section 92F-3, HRS.

"Personal record" shall be as defined in section 92F-3, HRS.

"Prepayment" means the fees and costs that a requester must tender to the agency before the agency

begins processing a request for records in accordance with section 3-200-19(b).

"Record" means a government record, personal record or both.

"Requester" means any person making a request for access to a record or amendment of a personal record.

"Review" means to examine a record, in response to a request for access to the record, in order to determine which portions, if any, of the record are exempt from disclosure by law. Review does not include the time spent by the agency, or another person, to resolve issues of general law or policy regarding the applicability of exceptions and exemptions to disclosure under chapter 92F, HRS.

"Routine request" means a request for access to a record that an agency spends a minimal amount of time, not exceeding fifteen minutes, to search for, review, and segregate.

"Search" means to look for a record, including page-by-page or line-by-line identification of a record. A search may be performed manually or by computer using existing retrieval or programming capabilities.

"Segregate" means to prepare a record for disclosure by redacting any portion of the record that will not be disclosed under chapter 92F, HRS.

[Eff _____] (Auth: HRS §§92F-26, 92F-42)
(Imp: HRS §92F-3)

§3-200-3 Reporting to OIP. As required by OIP, each agency shall file with OIP reports in the form prescribed by OIP. [Eff _____]
(Auth: HRS §92F-42) (Imp: HRS §§92F-18, 92F-42)

§3-200-4 Computation of time. Unless otherwise stated in these rules, in computing any period of time prescribed by these rules:

- (1) A period of time is measured in business days; and
- (2) The date of receipt shall not be included, but the last day of the period shall be included. [Eff]
(Auth: HRS §§92-1.5, 92F-42) (Imp: §§92-1.5, 92F-11, 92F-23)

§3-200-5 Compilation or summary of information from records when readily retrievable. (a) 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.

(b) A compilation or summary of information from records is readily retrievable in the form requested when the amount of time to prepare the requested compilation or summary would be:

- (1) Substantially less than the amount of time that the agency would take to review, segregate, and otherwise prepare the records in order to disclose the requested information contained therein; and
- (2) No more than thirty minutes. [Eff]
(Auth: HRS §92F-42) (Imp: HRS §92F-11(c))

§§3-200-6 to 3-200-10 (Reserved).

SUBCHAPTER 2

AGENCY PROCEDURES FOR PROCESSING RECORD REQUESTS
UNDER PARTS II and III OF CHAPTER 92F, HAWAII REVISED
STATUTES

§3-200-11 Informal requests for access to

records; agency response. (a) Any person may submit to an agency's place of business an informal request for access to a record.

(b) Upon receiving an informal request under this section, an agency shall respond to the request by doing one or more of the following:

- (1) Provide access in a reasonably timely manner to any disclosable record requested; provided that:
 - (A) The agency shall inform the person of the amount of any fees and costs charged pursuant to section 3-200-19, or an estimate thereof, before processing the request; and
 - (B) If the informal request is for access to a personal record, the agency shall disclose the personal record within ten business days of receiving a request for which the requester has submitted sufficient information verifying the requester's identity; provided that if it is necessary for the agency to obtain information verifying the requester's identity pursuant to section 3-200-42, the ten business days shall not run until the agency has obtained the verification;
- (2) Deny access to all or any part of the record requested that will not be disclosed under chapter 92F, HRS, or any other law; provided that if the requester disagrees with the agency's denial, the agency shall advise the requester of the option of submitting a formal request;
- (3) Inform the requester that the agency does not maintain the record; or
- (4) Direct the requester to submit a formal request in accordance with section 3-200-12, including when the agency is unable to verify an individual's identity for a personal record request as required by section 3-200-42.

(c) When a requester is not satisfied with the agency's response, or its failure to respond, to the informal request, the requester may make a formal request for access to records in accordance with section 3-200-12.

(d) A request that complies with section 3-200-12 shall be treated as a formal request under this chapter, unless otherwise agreed upon by the requester and the agency. [Eff _____] (Auth: HRS §92F-42) (Imp: HRS §§92F-11, 92F-23)

§3-200-12 Formal requests for access to records; contents. (a) Any person may submit a formal request to an agency's place of business in accordance with this section.

(b) A formal request shall be in writing, including in electronic or other physical form, and shall contain the following information:

- (1) Information that would enable the agency to correspond with or contact the requester; provided that a request for personal records must also contain sufficient information verifying or enabling the agency to verify the requester's identity pursuant to section 3-200-42;
- (2) A sufficient description of the requested record to enable agency personnel to locate it with reasonable effort, including, if known, the record name, subject matter, date, location, and any other additional information that describes the requested record;
- (3) A request to inspect or obtain a copy of the records described and, if applicable, the means by which the requester would like to receive the copy; and
- (4) If the requester seeks a waiver of fees pursuant to section 3-200-31, the requester's name or unique identifier.
[Eff _____] (Auth: HRS §92F-

§3-200-13 Formal request received; agency response; time limits. (a) When an agency receives a formal request, the agency shall provide a notice in accordance with section 3-200-14 within whichever of the following time limits applies:

- (1) Five business days after the agency's receipt of a request for a personal record when the agency requires a prepayment of fees under section 3-200-19;
- (2) For any formal request not covered by paragraph (1), ten business days after the agency's receipt of a record request; provided that the agency is not required to provide a notice when the request is for a record that the agency will make available to the requester in its entirety and no fees will be assessed under section 3-200-31; and
- (3) When unusual circumstances exist, the time limit set forth in subsection (d).

(b) When an agency receives a formal request, the agency shall disclose the record, or the disclosable portions thereof, within whichever of the following time limits applies:

- (1) Ten business days after the agency's receipt of a request when the agency will make the record available to the requester in its entirety or in part, and the agency will not require a prepayment pursuant to section 3-200-19;
- (2) Five business days after receiving the requester's prepayment when the agency has provided a notice requiring a prepayment of the fees and costs in accordance with section 3-200-19; or
- (3) When unusual circumstances exist, the time limits set forth in subsection (d); provided that the agency may disclose government records incrementally when authorized under

section 3-200-15.

(c) The time limits set forth in this section do not start to run until after, if applicable:

- (1) The agency's receipt of the necessary verification of an individual's identity when an individual requests access to a personal record and the agency requires verification in accordance with section 3-200-42;
- (2) The agency's receipt of sufficient description or clarification of the requested record that would enable the agency to search for the record when the agency had requested further description or clarification; or
- (3) The agency's receipt of the necessary information under both paragraphs (1) and (2).

(d) When unusual circumstances exist in accordance with section 3-200-15, the agency may respond to a formal request by providing a written acknowledgment within ten business days after the agency's receipt of the formal request. When the agency provides a written acknowledgment, the agency shall:

- (1) Describe in the acknowledgement the unusual circumstances causing the delay;
- (2) State in the acknowledgment that the notice required under section 3-200-14 shall be sent within a reasonable time not to exceed twenty business days after the date of the agency's receipt of the request;
- (3) Within a reasonable time not to exceed twenty business days after the date of the agency's receipt of the request, provide a notice in accordance with section 3-200-14; and
- (4) Disclose the requested record within ten business days after providing notice; provided that, if applicable:
 - (A) When the agency required a prepayment under section 3-200-19, the agency

shall disclose the requested record within five business days after receiving the prepayment; or

- (B) When the agency will be disclosing the record incrementally under section 3-200-15, the agency shall disclose the requested record as provided by that section.

(e) When a unit of an agency receives a formal request that should have been directed to another unit of the same agency for a response, the unit receiving the request shall promptly forward the request to the head of the agency.

(f) When one unit of an agency forwards a request to the head of that agency, the duties of this section do not commence until the agency head receives the request.

(g) When an agency receives a request for a record that it does not maintain and reasonably believes that another agency maintains the record, the agency receiving the request shall provide a notice in accordance with subsection 3-200-14(c)(1). [Eff] (Auth: HRS §92F-42)(Imp: HRS §§92F-11, 92F-23)

§3-200-14 Agency's notice. (a) When an agency intends to disclose a record in response to a formal request, the agency's written notice to the requester shall state:

- (1) The location where the record will be made available to the requester in accordance with section 3-200-18;
- (2) The following information about fees and costs, if applicable:
 - (A) A good faith estimate of all fees and costs that will be assessed to the requester in accordance with this chapter; and
 - (B) The amount of prepayment required, if any.

- (3) Information as to how the record will be disclosed, including any additional arrangements to be made by the requester for the inspection or copying of the records;
- (4) When the agency will make the record available to the requester; and
- (5) The agency's intention to disclose the government records incrementally under section 3-200-15, if applicable.

(b) When the agency intends to deny access to all or part of the information in the requested record, the agency's notice to the requester shall include:

- (1) A description of the record or portions of the record that will not be disclosed;
- (2) The specific legal authorities under which the request for access is denied under chapter 92F, HRS, or other laws; and
- (3) The requester's right to seek a review of the denial of access from OIP or, in the alternative, from the circuit courts of the State, as provided by chapter 92F, HRS.

(c) When an agency is unable to disclose a record or part thereof, the agency's notice shall so state and shall further state as applicable that:

- (1) The agency does not maintain the record, and the agency may provide the name and address of another agency that the agency reasonably believes may maintain the requested record;
- (2) The agency requests a further description or clarification of the requested record in order to identify and search for the record;
- (3) The agency must verify the individual's identity in accordance with section 3-200-42; or
- (4) The request requires the agency to create a summary or compilation of information from records that is not readily retrievable.

[Eff _____] (Auth: HRS §92F-42)
(Imp: HRS §§ 92F-11, 92F-23)

§3-200-15 Unusual circumstances; incremental disclosure of government records. (a) As used in this chapter, unusual circumstances exist when:

- (1) The agency must consult with another person, including an agency from whom the records were received, to determine whether the record is exempt from disclosure under chapter 92F, HRS;
- (2) The request requires extensive agency efforts to search for, review, or segregate the records, or otherwise prepare the records for inspection or copying;
- (3) The agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other duties and functions, including when the agency is already devoting a significant amount of time to processing other record requests; and
- (4) A natural disaster or other situation beyond the agency's control prevents the agency from sending a notice or responding to the request within ten business days.

(b) When unusual circumstances are present and the requested records are voluminous government records, an agency may, in good faith, elect to make the government records available in increments and shall:

- (1) Send a notice in accordance with section 3-200-14; provided that the agency may instruct the requester in the notice to submit prepayment of the estimated fees and costs for each increment in lieu of making one prepayment under section 3-200-19; and
- (2) Disclose each increment, and notify the requester of the balance due from that increment and the prepayment required for the next increment where applicable, within twenty business days after either:
 - (A) The prior incremental disclosure, when receiving one prepayment; or

(B) Receipt of the prepayment for each increment.

(c) If an agency processes a request in increments, the agency shall do so until:

- (1) All requested records have been disclosed; or
- (2) The requester withdraws or abandons the request. [Eff _____] (Auth: HRS §92F-42)(Imp: HRS §§92F-11, 92F-23)

§3-200-16 Requester's responsibilities; abandonment of request. (a) The requester shall:

- (1) Pay any fees and costs assessed by the agency in accordance with this chapter;
- (2) Make any arrangements with the agency to inspect and obtain a copy the disclosable record as stated in the agency's notice;
- (3) If practicable, provide the agency with any further description or clarification requested in the agency's notice; and
- (4) When the request is for a personal record, provide the information required to enable the agency to verify the requester's identity in accordance with section 3-200-42.

(b) The requester shall be presumed to have abandoned the record request, and the agency shall have no duty to further process the request, when the requester fails to comply with subsection (a) within twenty business days after whichever applies:

- (1) The date of the agency's notice; or
- (2) The date that the agency made the record available under sections 3-200-13 or 2-200-15 if the requester was informed in a reasonable manner as to when and where the record would be made available. [Eff _____](Auth: HRS §92F-42) (Imp: HRS §§92F-11, 92F-23)

§3-200-17 Segregation of information in records. (a) When information in a requested record is not required to be disclosed under chapter 92F, HRS, or any other law, an agency shall determine whether the information is reasonably segregable from the requested record. If the record is reasonably segregable, the agency shall:

- (1) Provide access to the portions of the record that are required to be disclosed under chapter 92F, HRS; and
- (2) Provide a notice to the requester in accordance with section 3-200-14(b) regarding information that is not disclosed.

(b) An agency shall segregate information from a requested record so that it is reasonably apparent that information has been redacted from the record. An agency shall not replace information that has been segregated with information or text that did not appear in the original record unless done in a manner that makes obvious that the new information or text has been added.

(c) When information not required to be disclosed under chapter 92F, HRS, is not reasonably segregable from the disclosable portions of the record, the agency may withhold the entire record.

[Eff] (Auth: HRS §92F-42) (Imp: HRS §§92F-11, 92F-23)

§3-200-18 Location of disclosure; inspection of records; transmitting a requested copy. (a) The location where an agency maintains a record shall be where the agency makes the record available to the requester for inspection or obtaining copies.

(b) An agency may provide an alternative location for inspection of a record due to security concerns or administrative hardship.

(c) An agency may, but is not required to, arrange with a requester for the inspection of a

record at a mutually agreeable location.

(d) An agency may allow inspection or duplication of a copy of an original record when inspection or duplication of the record in the form requested would result in a risk of loss, defacement, alteration, or deterioration of an agency's original record.

(e) When a requester seeks to inspect a record that contains information that an agency may segregate in accordance with chapter 92F, HRS, the agency may allow inspection of a copy of the original record.

(f) If a requester seeks to inspect a digital or other electronic record, an agency may either:

- (1) Allow inspection on its equipment at its office; or
- (2) Lend to the requester a copy of the record on a digital or other electronic recording medium and require the requester to return the copy by a specified date. If the requester does not return the copy that was loaned by the specified date, the agency shall be deemed to have provided a copy of the record to the requester and the agency may assess the appropriate copying cost to the requester.

(g) Before an agency presents an original record to a requester for inspection, the agency may require the requester to review and sign a prepared statement, which may include the following information:

- (1) The requester may be subject to civil liability, including damages and attorney fees, and criminal prosecution for theft, loss, defacement, alteration, or deterioration of the record; and
- (2) The agency may make a copy of the record before allowing the requester to inspect the original record. The copy of the record may be submitted as evidence of the record's condition prior to inspection.

(h) When a requester requests that a copy of a record be transmitted by mail, email, or other means, the agency shall make a reasonable effort to transmit

the copy of the record in the manner sought by the requester; provided that the requester pays all fees and costs assessed under section 3-200-19 and the transmission does not unreasonably interfere with the agency's functions. [Eff _____] (Auth: HRS §92F-42) (Imp: HRS §§92F-11, 92F-23)

§3-200-19 Assessment of fees and costs;

prepayment. (a) An agency may charge a requester:

- (1) Fees for searching for, reviewing, and segregating the record; provided that these fees shall be assessed in accordance with this chapter;
- (2) Any reasonable incidental costs of services rendered by the agency to respond to the record request, such as postage, costs of electronic media, or costs incurred by the agency during segregation; and
- (3) Any other lawful fees and costs.

(b) An agency may require a requester to prepay the following amounts before the agency begins its search for and review of records in response to a request:

- (1) Fifty per cent of the total estimated fees for searching for, reviewing, and segregating records, except when the formal request qualifies for the fee waiver in the public interest pursuant to section 3-200-31;
- (2) One hundred per cent of other estimated lawful fees and costs under subsection (a) for other services to prepare and transmit the record; and
- (3) One hundred per cent of the outstanding fees and costs from previous requests, including abandoned requests, in accordance with subsection (d).

(c) The agency shall inform the requester of the requirement to prepay in its notice in accordance with

section 3-200-14.

(d) A requester is liable for and shall pay any fees and costs outstanding for services rendered by an agency to respond to any previous or current request. Upon written request, the agency shall provide an itemized bill of all fees and costs assessed.

[Eff _____] (Auth: HRS §92F-42) (Imp: HRS §92F-42)

§3-200-20 Duplicative formal requests; when response not required. An agency shall not be required to make records available or respond to a requester's subsequent duplicative formal request, if:

- (1) After conducting a good faith review and comparison of the earlier formal request and the pending formal request, the agency finds that the pending formal request is duplicative or substantially similar in nature;
- (2) The earlier formal request has already been responded to within the past nine months; and
- (3) The agency's response to the pending formal request would remain unchanged.

The agency shall send written notification informing the requester that it will not be responding to any duplicative formal requests. [Eff _____]

(Auth: HRS §92F-42) (Imp: HRS §§92F-11, 92F-42)

§3-200-21 Manifestly excessive interference with agency functions. (a) When an agency reasonably determines that a requester or a group of requesters working in concert has acted under chapter 92F, HRS, in a manner that is causing or has caused manifestly excessive interference with an agency's discharge of its other lawful responsibilities, the agency may:

- (1) Consolidate all formal requests for government records from the requester or group of requesters working in concert, including any requests made in the future, as provided in section 3-200-33, and respond to such consolidated requests on an incremental basis as set forth in section 3-200-15; provided that the time limit for the agency to provide the notice required by section 3-200-13 for each new request shall be twenty business days after receipt of the new request;
 - (2) Treat a group of requesters working in concert as a single requester for the purpose of this rule and the fee waiver set forth in section 3-200-31; and
 - (3) Deny the fee waiver set forth in section 3-200-31 in the fiscal year following the fiscal year in which the agency determined that the requester or group of requesters working in concert had caused manifestly excessive interference with its discharge of its other lawful responsibilities; provided that the agency shall not deny the fee waiver when the request is in the public interest based on the following:
 - (A) The requested record pertains primarily to the operation or activities of the agency;
 - (B) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the general public at large; and
 - (C) The record is not readily available in the public domain.
- (b) In determining whether a requester or a group of requesters working in concert is causing or has caused manifestly excessive interference with an

agency's discharge of its other lawful responsibilities, an agency shall consider primarily the requests made within the preceding twenty-four months; provided that the agency may also consider other factors including:

- (1) Requests made during prior years;
- (2) Demands for services or other inquiries made to the agency outside the scope of chapter 92F, HRS;
- (3) Threatening, harassing, intimidating, or abusive language or actions directed toward the agency or its personnel;
- (4) Any evidence that the pattern of behavior is frivolous, punitive, or harassing in nature; and
- (5) Any adverse impacts on the agency's operations or funding.

(c) An affected requester may seek OIP's review of an agency's determination that the requester or group of requesters working in concert is causing or has caused in the past fiscal year manifestly excessive interference with the agency's discharge of its other lawful responsibilities; provided that:

- (1) Such review shall not be an appeal as provided in chapter 201; and
- (2) The requester may seek judicial review as provided by chapter 92F, HRS. [Eff _____](Auth: HRS §92F-42)
(Imp: HRS §§92F-11, 92F-15, 92F-27, 92F-42)

§3-200-22 Access to government records for research purposes. An agency shall respond to a request for government records for research purposes in the same manner provided for requests for government records generally under part II of chapter 92F, HRS, and this chapter. [Eff _____]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

§§3-200-23 to 3-200-30(Reserved).

SUBCHAPTER 3

FEEES FOR SEARCHING FOR, REVIEWING, AND SEGREGATING GOVERNMENT AND PERSONAL RECORDS; FEE TO PREVENT LOSS

§3-200-31 Fees for searching for, reviewing, and segregating records; waiver of fees in the public interest; other agencies' fees to recover actual costs. (a) An agency shall provide a waiver in the public interest of the fees that may be assessed under subsection (b); provided that:

- (1) The requester seeking the fee waiver provides the requester's name or unique identifier in the formal request; and
- (2) For each requester, the total amount of fees waived in a fiscal year does not exceed \$400.

When it reasonably appears that a requester has used multiple names or identifying characteristics to make requests, the agency may treat all requests made under those names or identifying characteristics as coming from a single requester.

(b) When an agency intends to assess fees pursuant to section 3-200-19(a)(1), the agency shall assess the following fees, except as otherwise provided in subsection (c):

- (1) For a search for the record, \$7.50 per fifteen minutes or fraction thereof;
- (2) For the review and segregation of the record, \$15 per fifteen minutes or fraction thereof.

(c) For those agencies which, by statute, are required to recover actual costs in lieu of the fees set forth in subsection (a), an agency may establish fees, by rule, that do not exceed in their totality

the actual costs incurred from searching for, reviewing, and segregating records. The fees may include:

- (1) The actual time expended by personnel in performing the search, review, or segregation of the record; and
- (2) Where the information requested is part of an electronic database or other electronic method of information storage, the actual cost of:
 - (A) Modifications to existing programming capacity; or
 - (B) Additional equipment or software used to search for, review, or segregate the information.

(d) An agency shall submit to OIP a copy of its rule under subsection (c) setting forth fees; provided that the agency's failure to do so shall not invalidate its rule.

(e) An agency may only assess fees under this section to search for, review, or segregate a record when the agency must actually expend the time to do so in response to the request for which the fees are being assessed.

(f) An agency may waive the fees for any agency or any federal or foreign government entity requesting access to a government record. [Eff _____]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

§3-200-32 Fee for agency measures taken to prevent loss or damage of record during requester's inspection. An agency may charge a fee for supervising a requester's inspection of records to prevent loss or damage of records. The agency may charge a fee of \$7.50 per fifteen minutes after the initial two hours of the requester's inspection. [Eff _____] (Auth: HRS §92F-42) (Imp: HRS §§ 92F-11, 92F-42)

§3-200-33 Consolidating a requester's multiple formal requests. An agency may consolidate formal requests submitted by the same requester; provided that:

- (1) The agency shall comply with the same time limits, as set forth in section 3-200-13, for all the consolidated requests, which are the time limits applicable to the first request received; and
 - (2) Where there is a pattern of manifestly excessive interference with an agency's discharge of its other lawful responsibilities, the agency's deadline to respond to each new request shall be as provided in section 3-200-21. [Eff] (Auth: HRS §92F-42)
- (Imp: HRS §92F-42)

§3-200-34 Consolidating formal requests from multiple requesters when assessing fees. When two or more requesters submit formal requests for access to the same or substantially similar records, the agency may consolidate the requests in order to assess from each requester an equal portion of the total estimated fee. When the agency elects to consolidate formal requests under this section, the agency shall comply with the same time limits, as set forth in section 3-200-13, for all the consolidated formal requests, which are the time limits applicable to the first formal request received. [Eff]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

§3-200-35 Fees charged for records that will not be disclosed. An agency may assess and collect fees to search for or review a government record in accordance with section 3-200-31 even if the requested record will be withheld in its entirety, if the agency reasonably believed before its search or

review that the requested record would be disclosable. If the requester fails to pay the fees, the agency may assess the outstanding fees in accordance with section 3-200-19. [Eff
] (Auth: HRS §92F-42)
(Imp: HRS §92F-42)

§§3-200-36 to 3-200-40 (Reserved).

SUBCHAPTER 4

DISCLOSURE, AMENDMENT, AND COLLECTION OF PERSONAL RECORDS

§3-200-41 Individual's access to an accessible personal record. For purposes of the time limits and fees provisions in this chapter, an individual's formal request for a record about that individual shall be processed as a formal request for a personal record only when the personal record is accessible.

A personal record is accessible when it is:

- (1) Maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or
- (2) Otherwise retrievable because an agency is able to locate the record based on information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources. [Eff

](Auth: HRS §92F-26) (Imp:
HRS §§92F-21, 92F-23, 92F-24)

§3-200-42 Verifying the identity of an individual

or an individual's agent requesting access to a personal record. (a) At the time of a request for access to an individual's personal record, the agency shall verify that the requester is the individual before treating the request as complete and acting on the request as required by section 3-200-13.

(b) An agency is deemed to have verified a requester's identity when the requester has provided an identifying number, address or email address in the personal record request and the identifying information provided by the requester matches the individual's identifying information in the individual's personal records that the agency maintains.

(c) When the requested record is required to be disclosed to the general public under chapter 92F, HRS, or any other law, verification of identity shall not be required as a condition of disclosure, and the request shall be treated as a request for government records.

(d) An agency may set additional procedures to establish a requester's identity; provided that an agency shall not require a requester to appear in person at the agency's office to establish the requester's identity. As an alternative to any procedures an agency may set, a requester may establish the requester's identity by:

- (1) Submitting in writing to the agency, or appearing at the agency during regular business hours and presenting, either:
 - (A) One form of government-issued identification containing a photograph and signature, such as a passport, driver's license, military or state identification card; or
 - (B) Two pieces of identification bearing the individual's name and signature, such as a library card or a credit card; and
- (2) Submitting such additional proof of identity as the agency deems reasonably necessary considering the circumstances of a

particular request. Nothing in this section shall preclude the agency from requiring additional identification before disclosing a personal record if the agency reasonably believes that the requester may not be the individual to whom the record pertains or the individual's duly authorized representative, or if the sensitivity of the data warrants additional measures to verify a requester's identity.

(e) If an individual's duly authorized representative has requested access to the individual's personal record, an agency shall treat the request as complete and take action on the request as required by section 3-200-13 only after verifying the identity and authority of the duly authorized representative by requiring the representative to provide:

- (1) Credible evidence of the duly authorized representative's authority to act for the individual to whom the record pertains, which may be established by a court order, letters of guardianship, a notarized statement from the individual, the individual's birth certificate (if the individual is a minor and the duly authorized representative is the individual's parent), or other document that verifies the duly authorized representative's authority to the agency's satisfaction; provided that the agency shall not require the duly authorized agent to come to the agency's office in person to establish authority to act; and
- (2) Evidence of the duly authorized agent's identity, which may be established using the procedures provided in this section.
[Eff _____] Auth: HRS §92F-26)
(Imp: HRS §§92F-21, 92F-22)

§3-200-43 Correction and amendment of personal records. (a) An individual has the right to have any factual error in that individual's accessible personal record corrected and any misrepresentation or misleading entry in the record amended by the agency that is responsible for its maintenance as set forth in part III of chapter 92F, HRS, provided that the individual shall exercise this right in accordance with the procedures set forth in this chapter.

(b) If, after inspecting or receiving a copy of a personal record, an individual believes that there is a factual error, misrepresentation, or misleading entry in the personal record, the individual may request that the personal record be corrected or amended. The request for correction or amendment shall be submitted in writing, including in electronic or other physical form, on a form provided by the agency or OIP or in another format, and shall contain the following information:

- (1) The requester's name and information that would enable the agency to correspond with or contact the requester;
- (2) The specific portion of the personal record that the requester wants corrected or amended;
- (3) An explanation of why the personal record should be corrected or amended;
- (4) Evidence, if any, supporting the correction or amendment, including copies of any supporting documents; and
- (5) The facts, language, or information that the requester asks to be used to correct or amend the personal record.

The requester shall verify the requester's identity to the agency's satisfaction, as described in section 3-200-42.

(c) Within twenty business days after receiving a request for correction or amendment of an individual's personal record, an agency shall acknowledge in writing that it received the request, and shall do one of the following:

- (1) Make the requested correction or amendment

- and notify the requester in writing of the action taken;
- (2) If the agency does not maintain the record, notify the requester in writing that the agency is unable to make the correction or amendment because it does not maintain the record; or
 - (3) Notify the requester in writing that it will not correct or amend the record as requested, giving the specific reason for its denial and the procedures for review of the denial pursuant to section 3-200-44; provided that if the denial is based on an exemption to personal record access under chapter 92F, HRS, the agency shall instead give notice of the denial as required by section 3-200-14. [Eff]
(Auth: HRS §92F-26) (Imp: HRS §§92F-24)

§3-200-44 Procedures for the review of a denial of a request to correct or amend.

(a) If an agency denies a request to correct or amend a personal record, the requester may request a review of the denial. A request for review shall:

- (1) Be in writing, including in electronic or other physical form;
- (2) Be submitted to the agency no later than twenty business days after the requester's receipt of the agency's denial;
- (3) Explain why the requester believes that the agency's determination is incorrect; and
- (4) Attach a copy of or refer by name and date to the original written request.

(b) No later than thirty business days after the agency receives a request under subsection (a), the head of the agency, or the agency head's authorized representative, shall make a final determination and the agency shall do one of the following:

- (1) If the agency decides to correct or amend the personal record, the agency shall

promptly make the requested correction or amendment and so notify the requester in writing; or

(2) If the agency affirms its denial, the agency shall:

- (A) Notify the requester in writing of the denial and of the requester's right to judicial review of the agency's decision under section 92F-27, HRS; and
- (B) Allow the requester to submit a statement as permitted by section 92F-25, HRS. The statement shall be a permanent part of the personal record and shall be disclosed as part of the record whenever the disputed portion of the personal record is disclosed.
[Eff _____] (Auth: HRS §92F-26)
(Imp: HRS §§92F-25, 92F-26)

§3-200-45 Agency procedures for review of the denial of a request to correct or amend a personal record. Each agency may establish additional internal procedures for its review of the denial of a request to correct or amend a personal record. [Eff _____] (Auth: HRS §92F-26) (Imp: HRS §92F-25)

§3-200-46 Personal records collection; protection of personal information. (a) When collecting personal information such as social security numbers, each agency shall comply with chapters 487J, 487N, and 487R, HRS, and other laws regarding the protection of personal information. [Eff _____] (Auth: HRS §92F-42) (Imp: HRS §§92F-42, 487J-5)

§§3-200-47 to 3-200-50 (Reserved).

SUBCHAPTER 5

COPYING & OTHER COSTS FOR PROCESSING REQUESTS TO OIP
FOR ACCESS TO RECORDS

§3-200-51 Copying cost; other costs. (a) Before assessing copying or delivery costs, OIP shall notify the requester of the estimated cost to copy and deliver physical copies of the requested records and may require prepayment of the entire amount. Checks shall be made payable to the "Office of Information Practices".

(b) OIP may charge 25 cents per page for reproduction of paper copies and documents that must be manually faxed or scanned into an electronic format to fulfill a request.

(c) For copies of photographs, maps, audio recordings, digital or electronic records, and other types of physical copies, OIP may charge the requester the actual cost to create the copy, including labor, materials, equipment rental, third party charges for certification or copying work, and other related costs. OIP may waive charges for its own overhead and equipment expenses.

(d) The entire cost of delivery, including packaging materials, may be charged to the requester. [Eff] (Auth: HRS §92F-42) (Imp: HRS §§92F-42, 92-21)

OFFICE OF INFORMATION PRACTICES

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

The repeal of chapter 71 of Title 2 and the adoption of Chapter 3-200, Hawaii Administrative Rules, were adopted on _____, following a public hearing held on _____, after public notices was given in the _____ on _____.

The foregoing rulemaking action shall take effect thirty days after filing with the Office of the Lieutenant Governor.

Cheryl Kakazu Park
Office of Information
Practices

APPROVED:

David Y. Ige
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

OFFICE OF INFORMATION PRACTICES

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-200
Hawaii Administrative Rules

date

SUMMARY

Chapter 3-200, Hawaii Administrative Rules, entitled "Agency Procedures and Fees for Processing Record Requests, and Additional Procedures for Disclosure, Correction and Amendment, and Collection of Personal Records" is adopted.