

OIP's Draft Rules: Agency Procedures & Fees for Processing UIPA Record Requests

The Uniform Information Practices Act (Modified), Chapter 92F, HRS

Hawaii's Office of Information Practices
(September 2017)



Purpose of today's briefing is to summarize OIP's draft rules about how UIPA record requests should be processed by agencies, so can get comments and make revisions before finalizing proposed rules

Draft rules, this presentation, and survey are on the Rules page at oip.hawaii.gov

OIP would like the completed surveys and comments on draft rules by the end of September, so that it can prepare rules for public hearing before 2017 ends.

- OIP needs time to create and provide training for agencies, so do not anticipate new rules going into effect until July 2018



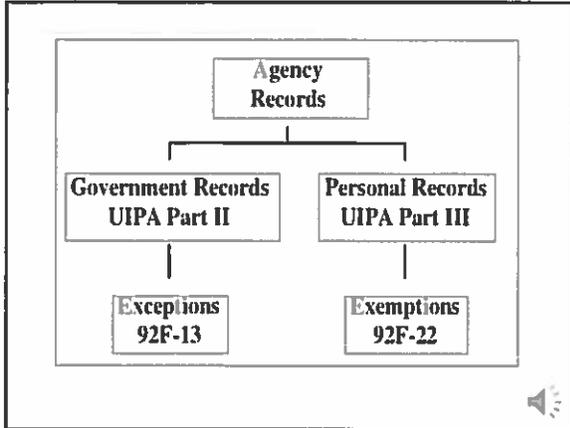
DRAFT RULES:

New Chapter 3-200, Hawaii Admin. Rules
Replaces Chapter 2-71, HAR (to be repealed)

Key new features:

- Personal record request procedures
- Revisions to time limits & other procedures
- Procedures to protect records and prevent manifestly excessive interference with agency functions
- Fees & fee waiver





- **Government Record** (UIPA definition) =
"maintained by an agency" & any person can request
- **(New) Personal Record** (UIPA definition) =
"about an individual" & only that individual can request
- **"Record"** (Rules definition, Sec. 3-200-2) =
Government Record or Personal Record

(New) Personal Records (Subchapter 4)
Implementing Part III of the UIPA

NOT applicable to requests for government records

- Individual's access only for "accessible" personal record
- Must verify the identity of the individual or the individual's agent
- Also for an individual's request for amendment & correction of personal records

(New) “Accessible” Personal Record
(Sec. 3-22-41)

Agency is able to locate the record with reasonable effort
i.e., Records are indexed by individuals’ names, OR individual gives helpful info for retrieval

When *Personal Records* are NOT “accessible,” they are processed as a request for *Government Records* with different time limits & fees



(New) Verifying an Individual’s Identity
(Sec. 3-200-42)

Identification is required for processing a request for a personal record

Identity verification options:

- Requester provides identifying number or address that matches agency’s records about requester
- Requester shows identifying documents
One government-issued I.D. with photo & signature (driver’s license, passport) OR
Two I.D.s with name & signature (credit card, library card)



(New) Verifying the Identity of an Individual’s Agent (Sec. 3-200-42)

Required for processing a personal record request by an agent of the individual

Agent verification:

- Evidence of the agent’s identity (same as prior slide) AND
- Evidence re: agent’s authority to represent individual
Court order, letter of guardianship, birth certificate (if the agent is the individual’s parent)



(New) Correction & Amendment of Personal Record—Request (Sec. 3-200-43)

• Written request from individual:

- Describe portion of personal record that is believed to have factual error, misrepresentation or misleading entry
- Explain why the record should be corrected or amended
- Provide evidence supporting correction or amendment
- Request specific language or information for correction or amendment

• Only for an accessible personal record



(New) Correction & Amendment of Personal Record—Agency's Response (Sec. 3-200-43(c))

Agency must respond within 20 business days after receiving complete formal request:

- Notify Requester that the record is NOT maintained or NOT accessible
- OR-**
- Make correction or amendment & notify requester
- OR-**
- Notify Requester of reason for denial and procedures to request agency's review of its decision



(New) Correction & Amendment of Personal Record—Review of Denial (Sec. 3-200-44)

After agency's denial, Requester can request review:

- Written request for review
- No later than 20 days after Requester received denial
- Attach original request for correction or amendment

Agency's final determination:

- Make correction or amendment, notify Requester
- Affirm denial & allow Requester to submit a statement as part of the personal record



NOTICE TO REQUESTER (NTR)

(Sec. 3-200-14)

NTR is required for formal requests when the entire record is not disclosed immediately or fees are being assessed.

NTR provides information about:

- 1) Who: Requester, agency, & contact info
- 2) What: Records requested
- 3) When: Disclosure after prepayment?
- 4) Where: Location for disclosure or inspection
- 5) How: Amount and instructions for payment
- 6) Why: Legal authority for denial; cite UIPA exception(s)



NTR:

Send for:

- Formal Request

Need not send for:

- Informal Request -- not in writing
 - But must disclose personal record within 10 business days of verifying requester's identity
- (New) Routine Request -- less than 15 minutes (Count, but not log in UIPA Record Request Log)
- Request for Amendment or Correction of Personal Record -- New Subchapter 4



(New) DUPLICATIVE REQUESTS

(Sec. 3-200-20)

Agency is not required to respond with an NTR or make records available when:

1. Pending request is duplicative or substantially similar to former request
2. Agency already responded within last 9 months
3. Agency response to same request would remain unchanged

If criteria met, agency must send a written notification that no response will be provided to any duplicative requests.



(New) Consolidating One Requester's Multiple Requests

(Sec. 3-200-34)

Agency has option to consolidate formal requests from one requester

Time Limits for Consolidated Response:

- The applicable time limits for first request received
- Incremental disclosure time limits for MEI requests



FORMAL REQUEST: CONTENTS

(Sec. 3-200-12)

- Written, including email
- Requester's contact information
- (New) Requester's name or unique identifier, if requester seeks personal records
- (New) An identifying particular such as an e-mail address, if requester seeks a fee waiver
- Description of requested record
- Request to inspect or obtain copy of record



(New) Request for Summary or Compilation of Information in Record

(Sec. 3-200-5)

Summary/compilation is NOT required, unless information is readily retrievable in the form requested—HRS § 92F-11(c)

(New) Readily retrievable when the time to prepare the compilation or summary is:

- Substantially less than the time to prepare the record for disclosure, and
- No more than 30 minutes



(New) TIME LIMITS START AFTER:
(Sec. 3-200-13(c))

Agency requested & received:

- **Description or clarification of record**
To enable agency to search for the record
- **Verification of individual's identity**
For personal record request only



TIME LIMITS:
NOTICE to REQUESTER (NTR)
(Sec. 3-200-13(a))

10 business days after formal request is received for government records, or for personal records not requiring prepayment

(New) But 5 business days after personal record request is received, if requiring prepayment of fees & costs

Unusual Circumstances
Send Acknowledgement first

NTR is not required if record is disclosed in its entirety and no fees or costs assessed



TIME LIMITS: DISCLOSE RECORD
(Sec. 3-200-13(b), (c), & (d))

For government records:

10 business Days after request is received
(When no prepayment required)

5 business Days after prepayment is received
(When prepayment is required)

For personal records:

10 business days after verification, whether or not prepayment is required

Unusual Circumstances have extended time limits for disclosure



**TIME LIMITS:
UNUSUAL CIRCUMSTANCES**

(Sec. 3-200-13(d))

10 Business Days after receiving request, send
ACKNOWLEDGEMENT of request

20 Business Days after receiving request, send
NOTICE to Requester

5 Business Days after sending Notice, **DISCLOSE**
RECORDS

New rule about "unusual circumstances" is similar to current rules about "extenuating circumstances" and "incremental disclosure."



Unusual Circumstances (Sec. 3-200-15)

Allow for extended time limits for responding to a formal request—NTR, record disclosure

Allow for incremental disclosure of voluminous government records

Despite unusual circumstances, must disclose personal records within 30 business days



Unusual Circumstances exist when:

(Sec. 3-200-15)

- Agency must consult with another person
(Including agency from whom records were received, but not to consult OIP or agency's attorney)
- Request requires extensive agency efforts
(Search, review, segregation, other preparation)
- Agency requires extra time to avoid unreasonable interference with its other duties
(E.g., agency spends much time responding to requests)
- Natural disaster or situation beyond agency control



LOCATION FOR INSPECTION/COPYING

(Sec. 3-200-18)

- At agency office where the record is maintained
- (New) Alternative place due to security concerns or administrative hardship
- (New) Agency option—mutually agreeable location



(New) INSPECTION OF RECORDS

(Sec. 3-200-18)

Agency may protect from loss or damage by:

- Allowing inspection of a copy instead of original record
- Lending to requester agency equipment or a copy in digital or electronic format (copying fees assessed when borrowed copy is not returned)
- May require Requester to sign a statement of criminal or civil liability for loss/damage



REQUESTER'S RESPONSIBILITIES

(Sec. 2-300-16)

If agency requests, Requester shall:

- Pay fees & costs assessed
Fees & costs for current & previous requests
- Make arrangements to inspect or obtain a copy of the record
- Provide further description or clarification of requested record
- Provide info to enable verification of requester's identity (for personal record requests)



ABANDONMENT OF REQUEST

(Sec. 3-200-16(b))

Agency has no further duty to process a record request:

- Requester fails to comply with duties 20 days after agency notice or availability of record to be disclosed
- Requester is presumed to have abandoned request



(New) Manifestly Excessive Interference w/ Agency Functions (MEI)

(Sec. 3-200-21)

Agency determines:

- 1) One or more requesters working in concert
- 2) Acted under the UIPA causing manifestly excessive interference with an agency's discharge of its other lawful duties



(New) Manifestly Excessive Interference w/ Agency Functions

(Sec. 3-200-21)

Agency makes its MEI determination based upon requests made w/in preceding 24 months; and other factors including:

- Demands for service outside of the UIPA
- Threatening, abusive actions or language
- Evidence of frivolous/punitive behavior

Requester may seek OIP or court review of agency determination.



(New) Manifestly Excessive Interference w/ Agency Functions

(Sec. 3-200-21)

After determining that there is MEI, an agency may:

- Consolidate formal requests from requester(s) and incrementally disclose government records;
- Give only one fee waiver for all requester(s); and
- Deny the fee waiver in the following fiscal year.

NO denial of fee waiver if a request is in the public interest - use same public interest criteria as current rule



(New) SRS FEES

(Sec. 3-200-11)



Increased SRS fees:

- \$7.50 per 15 minutes to search
- \$15 per 15 minutes to review or segregate

(New) SRS fee waiver up to \$400 in a fiscal year only for search, review, or segregation fees, not costs



(New) SRS FEE WAIVER (Sec. 3-200-31)

- Applies to any requester & replaces \$30/\$60 waivers per request
 - Limited exception for MEI
- Up to \$400 total SRS fees waived in a fiscal year
- Requester's name or **unique identifier required**
(Use Log to keep a running total of fee waivers)

Requester is limited to \$400 in fee waivers per year, even if using multiple names/emails



(New) Consolidating Formal Requests from Multiple Requesters for Fees

(Sec. 3-200-34)

Agency has option to consolidate formal requests from several requesters:

- When 2 or more requesters submit formal requests for access to same or substantially similar records
- To assess each requester an equal portion of total estimated fees
- For consolidated requests, use time limits for the first request received



SRS FEES CHARGED, EVEN IF NO DISCLOSURE OF RECORDS

(Sec. 3-200-15)

SRS fees can be assessed, even if the agency withholds the record in its entirety, **IF** the agency had reasonably believed that the requested record would be disclosable when it incurred the fees.

Note: Agency may require outstanding fees to be prepaid before processing a subsequent formal request.



(New) FEE to Prevent Loss & Damage During Inspection

(Sec. 3-200-32)

- Supervision of inspection to prevent record loss or damage
- \$7.50 per fifteen minutes
- After initial 2 hours of inspection



COSTS & PREPAYMENT

(Sec. 3-200-19)



- “other lawful fees and costs” (e.g. statutory copy fees)
- “reasonable incidental costs” (e.g. postage, CDs, extra copies for segregation)
- Prepayment of costs still ok



Additional New Rules

- OIP's copying cost & other costs (Sec. 3-200-51)
25 cents/page for copying, faxing, scanning
Actual costs to create other physical copies of records
- Government records for research (Sec. 3-200-22)
Agency responds in requests for access in same manner as for government records
- Personal records collection; protection of personal info (Sec. 3-200-46)
Agency complies with other laws re: personal info



Use UIPA Record Request Log

Log will help agencies to:

- Understand changes to rules
- Track the amount of SRS fee waivers for each requester during a fiscal year
- Track hours to support “unusual circumstances”
- Provide evidence “manifestly excessive interference” with agency's functions





Need Help?



- Attorney of the Day (AOD): 586-1400
- E-mail AOD: oiip@hawaii.gov
- OIP Website: www.oiip.hawaii.gov
- Write: 250 S. Hotel Street, # 107,
Honolulu, HI 96813