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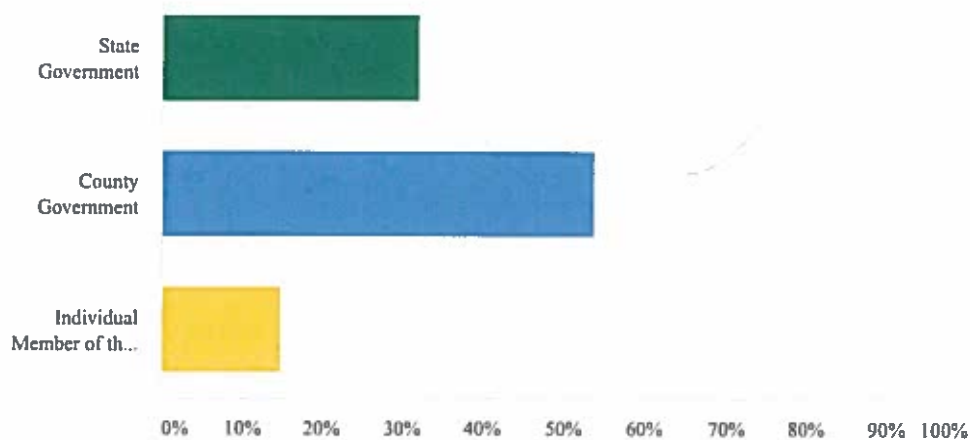
CHERYL KAKAZU PARK
DIRECTOR

SURVEY RESULTS AND COMMENTS ON OIP'S DRAFT RULES
on Agency Procedures and Fees for Processing Record Requests, and
Additional Procedures for Disclosure, Correction and Amendment, and
Collection of Personal Records, Under the Uniform Information
Practices Act, (Modified), Chapter 92F, HRS

As of October 2, 2017

State or County Government, or Individual Member of the Public

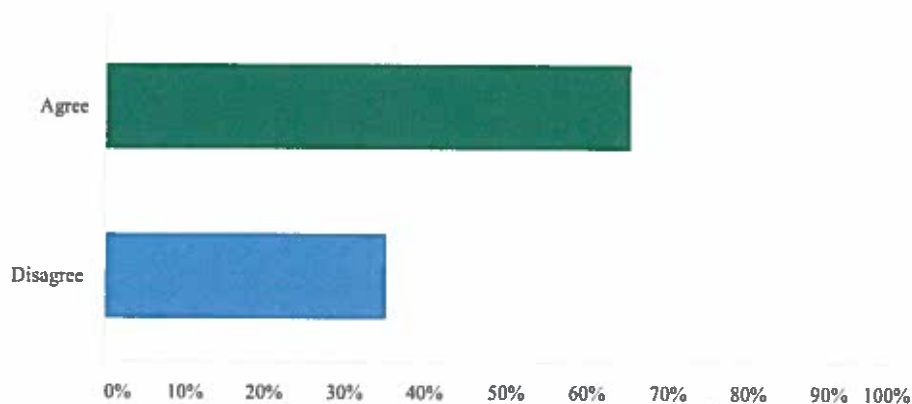
Answered: 41 Skipped: 0

**ANSWER CHOICES****RESPONSES**

| | | |
|---------------------------------|--------|----|
| State Government | 31.71% | 13 |
| County Government | 53.66% | 22 |
| Individual Member of the Public | 14.63% | 6 |
| TOTAL | | 41 |

Please check whether you agree or disagree with the following statements, and provide any overall comments regarding the briefing or the draft rules. Before the briefing, I already had a good or excellent understanding of the current rules to process UIPA record requests.

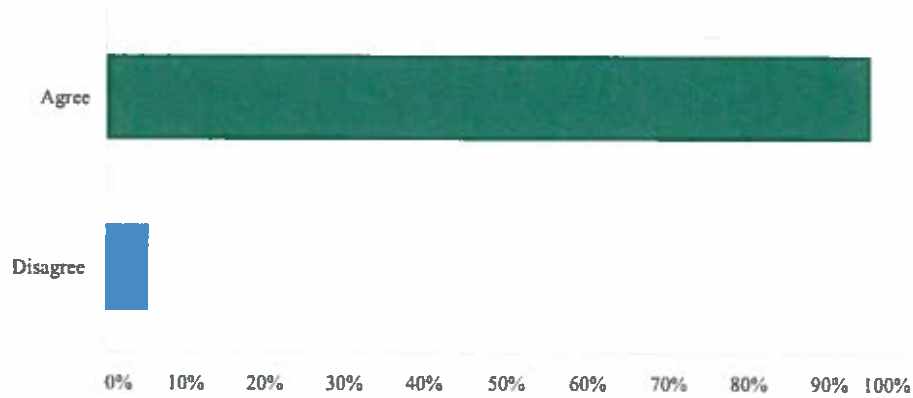
Answered: 40 Skipped: 1

**ANSWER CHOICES****RESPONSES**

| | | |
|------------|--------|----|
| - Agree | 65.00% | 26 |
| - Disagree | 35.00% | 14 |
| TOTAL | | 40 |

The PowerPoint presentation clearly summarized the draft rules.

Answered: 38 Skipped: 3



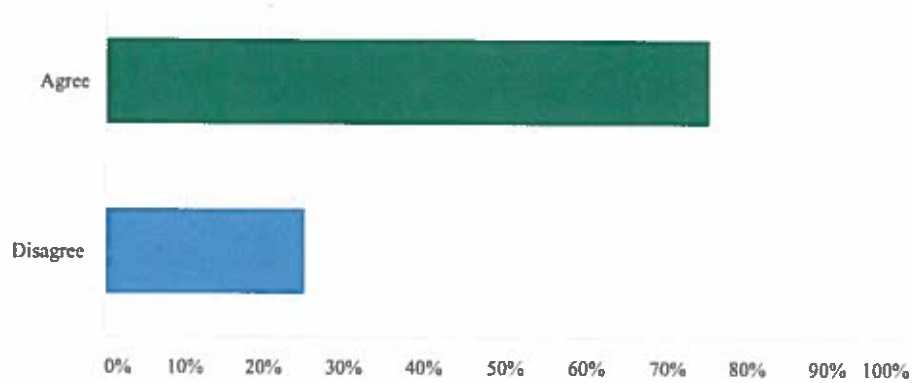
ANSWER CHOICES

RESPONSES

| | | |
|----------|--------|----|
| Agree | 94.74% | 36 |
| Disagree | 5.26% | 2 |
| TOTAL | | 38 |

I have read OIP's draft rules.

Answered: 40 Skipped: 1



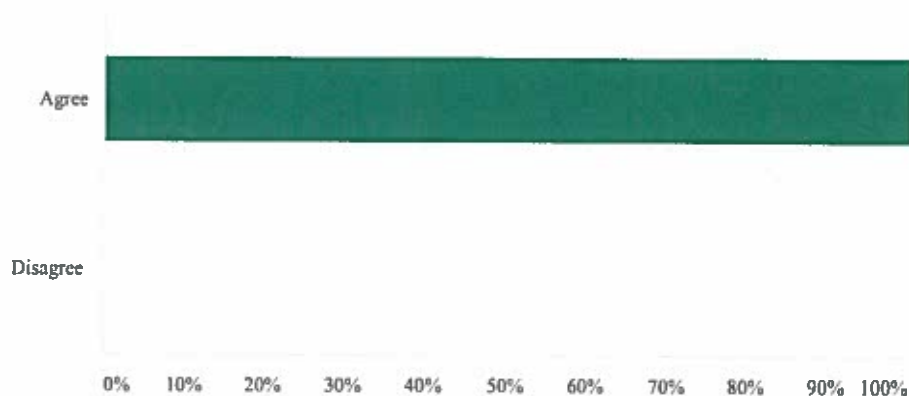
ANSWER CHOICES

RESPONSES

| | | |
|------------|--------|----|
| - Agree | 75.00% | 30 |
| - Disagree | 25.00% | 10 |
| TOTAL | | 40 |

I understand that OIP intends to revise the draft rules after receiving these surveys and public comments, before preparing rules that OIP will actually propose later this year for public hearing and possible adoption.

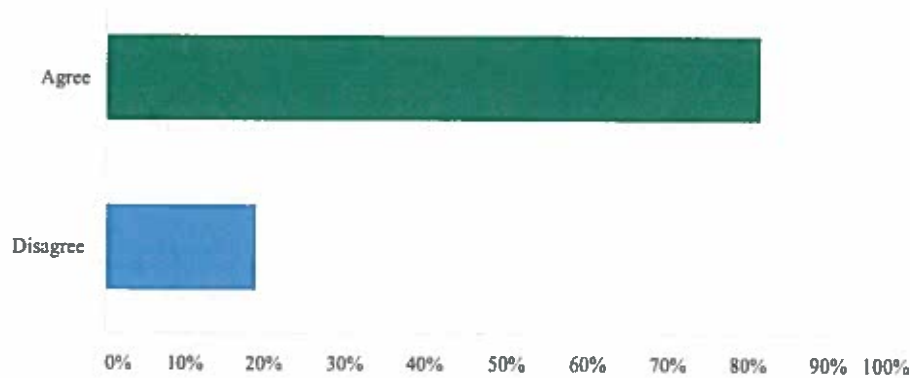
Answered: 40 Skipped: 1

**ANSWER CHOICES****RESPONSES**

| | | |
|----------|---------|----|
| Agree | 100.00% | 40 |
| Disagree | 0.00% | 0 |
| TOTAL | | 40 |

I believe that the draft rules fairly and reasonably implement the public's right to access records while considering the agencies' practical challenges in providing access to records.

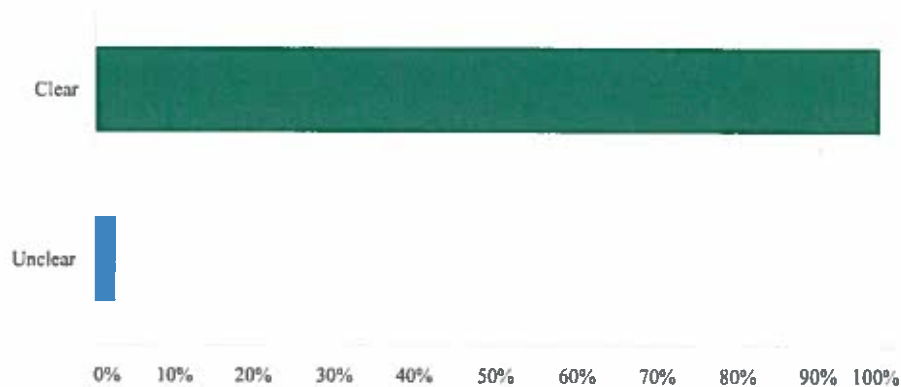
Answered: 37 Skipped: 4

**ANSWER CHOICES****- RESPONSES**

| | | |
|------------|--------|----|
| - Agree | 81.08% | 30 |
| - Disagree | 18.92% | 7 |
| TOTAL | | 37 |

The draft Personal Records Rules are clear that personal records are different from government records - must be “about an individual.”

Answered: 36 Skipped: 5

**ANSWER CHOICES**

- Clear

- Unclear

RESPONSES

97.22%

2.78%

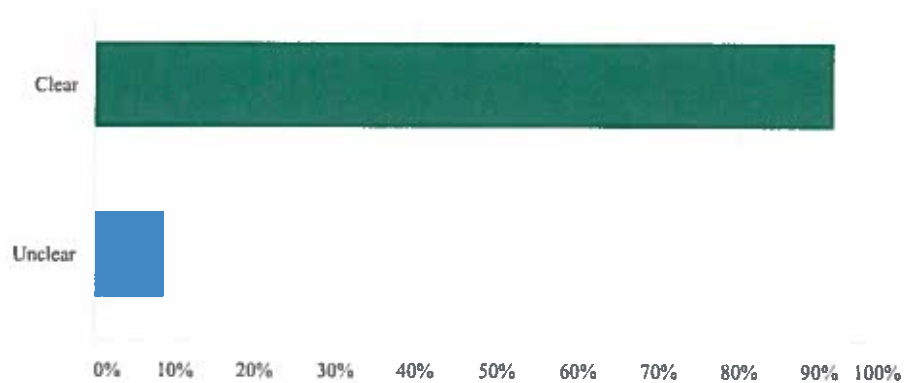
35

1

Total Respondents: 36

The draft Personal Records Rules are clear that personal records must be accessible by agency.

Answered: 35 Skipped: 6

**ANSWER CHOICES**

- Clear
- Unclear

RESPONSES

91.43% 32

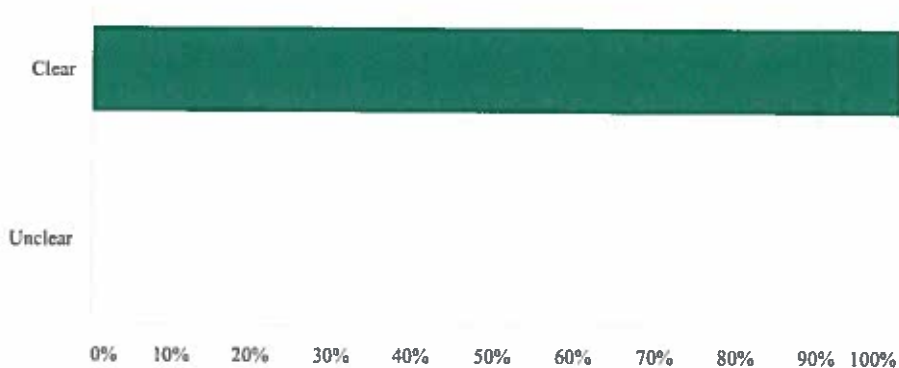
8.57% 3

TOTAL

35

The draft Personal Records Rules are clear that an agency needs to verify the identity of a personal record requester or agent.

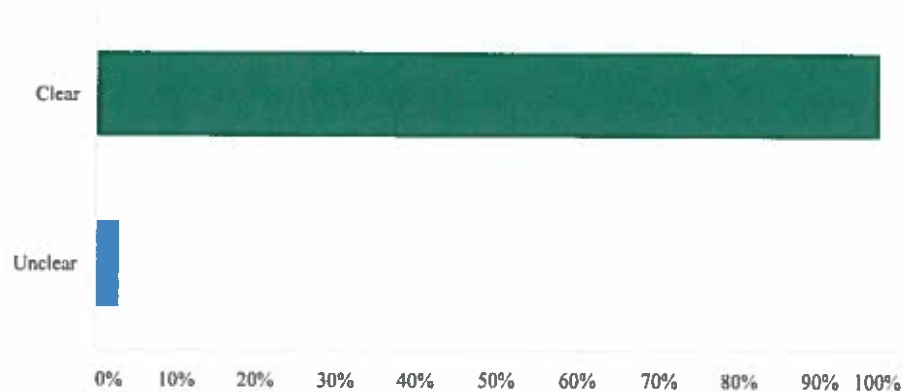
Answered: 34 Skipped: 7



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|----|
| Clear | 100.00% | 34 |
| Unclear | 0.00% | 0 |
| TOTAL | | 34 |

The draft Personal Records Rules are clear that an agency needs verification of an agent's authority for personal record requests made by that agent.

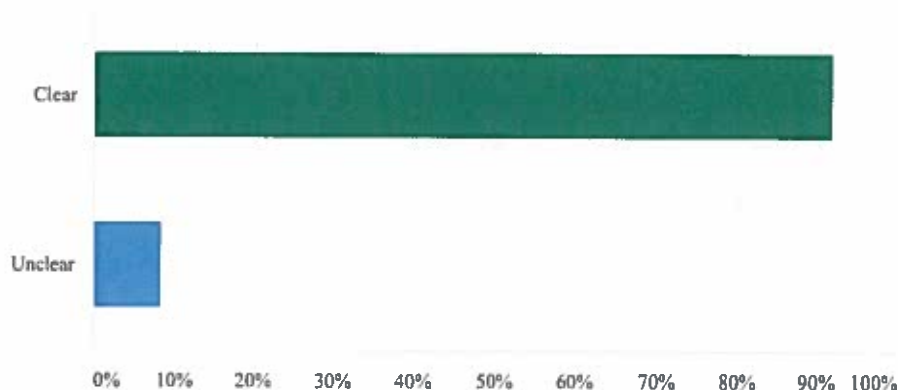
Answered: 35 Skipped: 6

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 97.14% | 34 |
| Unclear | 2.86% | 1 |
| TOTAL | | 35 |

The draft Personal Records Rules are clear that there is a time limit of 10 business days to respond to personal record request, unless extended due to unusual circumstances.

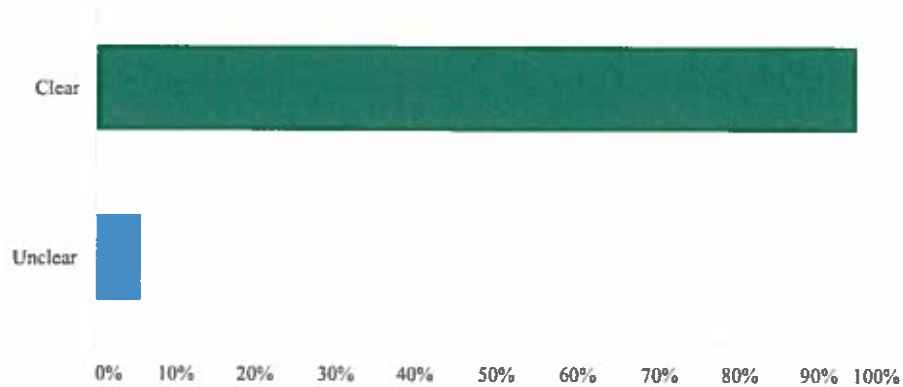
Answered: 36 Skipped: 5

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 91.67% | 33 |
| Unclear | 8.33% | 3 |
| TOTAL | | 36 |

The draft Personal Records Rules are clear that there is a time limit of 5 business days to send an NTR if prepayment is required.

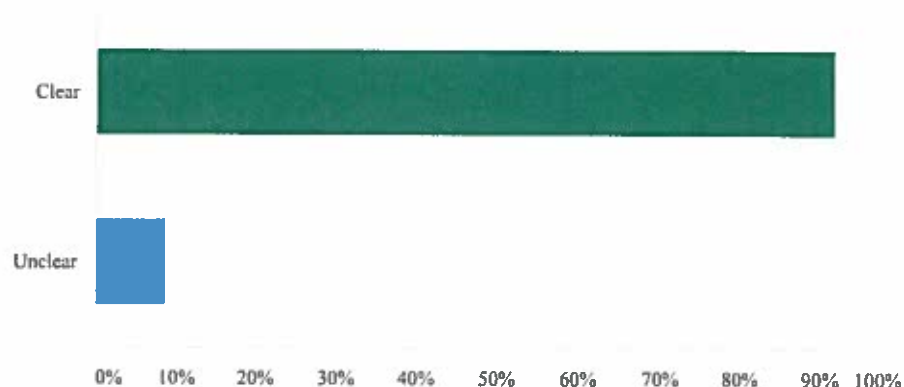
Answered: 35 Skipped: 6

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 94.29% | 33 |
| - Unclear | 5.71% | 2 |
| TOTAL | | 35 |

The draft Personal Records Rules are clear that agencies need a written request for amendment/clarification of personal records.

Answered: 35 Skipped: 6

**ANSWER CHOICES**

- Clear

- Unclear

TOTAL

RESPONSES

91.43%

8.57%

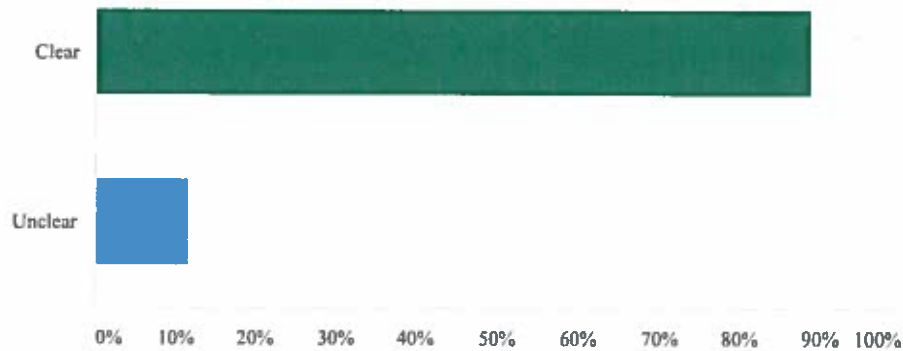
32

3

35

The draft Personal Records Rules are clear that there is a time limit of 20 business days for the agency's response to a written request for amendment/clarification.

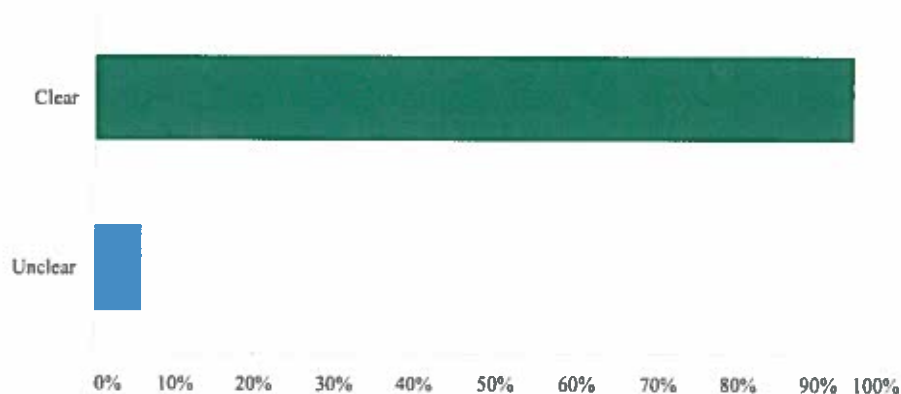
Answered: 35 Skipped: 6

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 88.57% | 31 |
| Unclear | 11.43% | 4 |
| TOTAL | | 35 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that an NTR must be sent for formal written requests, unless the record is disclosed in its entirety and no fees are assessed.

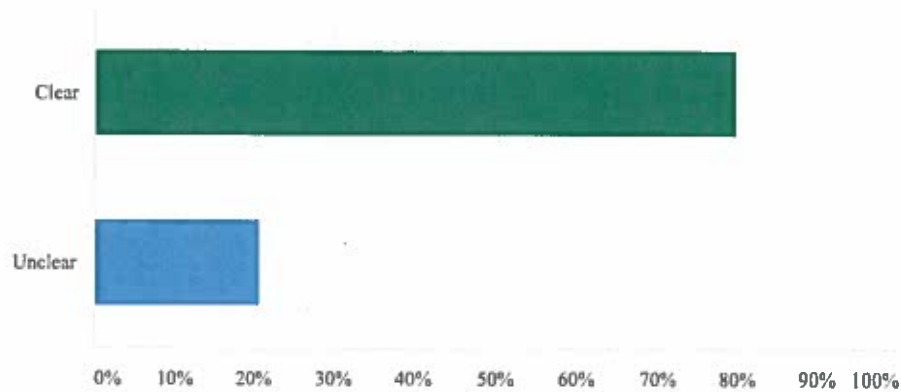
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 94.12% | 32 |
| Unclear | 5.88% | 2 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that an NTR need not be sent for informal, routine, or duplicative requests.

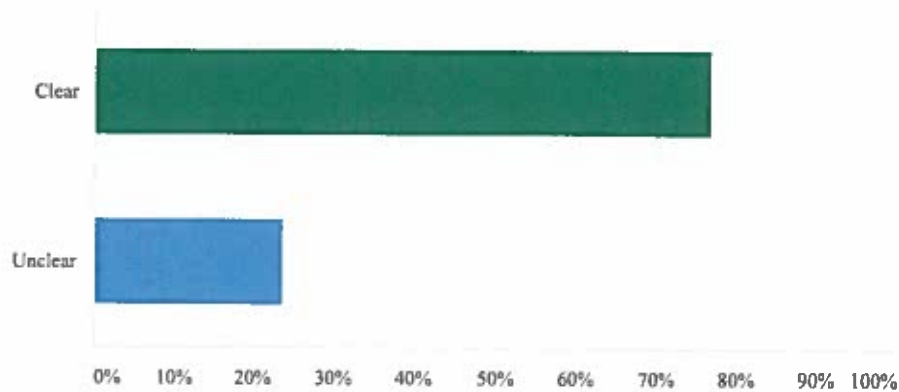
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 79.41% | 27 |
| Unclear | 20.59% | 7 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that a notice of no response must be sent for duplicative requests.

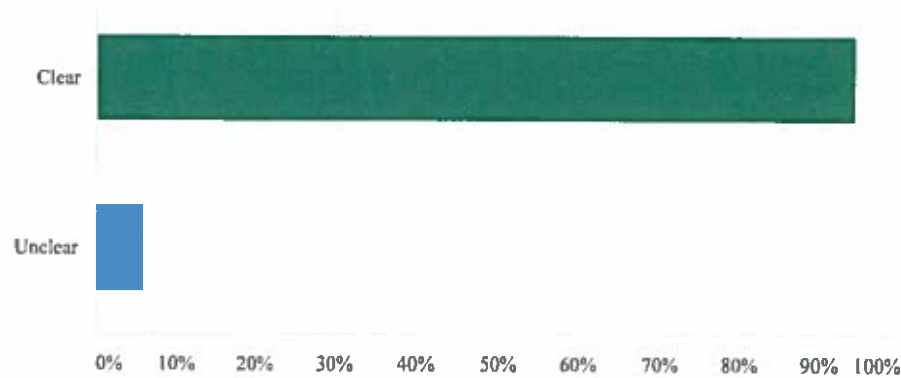
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 76.47% | 26 |
| Unclear | 23.53% | 8 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that multiple requests from the same requester may be consolidated.

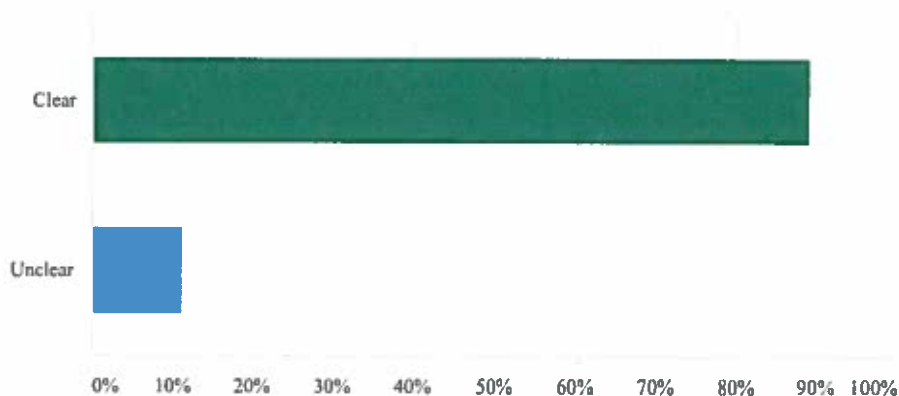
Answered: 34 Skipped: 7



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|----|
| Clear | 94.12% | 32 |
| Unclear | 5.88% | 2 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that a record is "readily retrievable" when it would take less time to create a compilation or summary than to review and segregate records for disclosure and not more than 30 minutes.

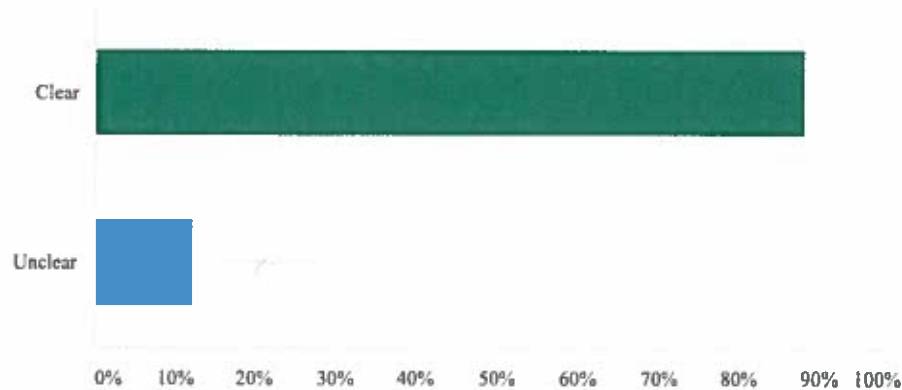
Answered: 36 Skipped: 5

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 88.89% | 32 |
| - Unclear | 11.11% | 4 |
| TOTAL | | 36 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that there may be different time limits to 1) send the NTR and 2) disclose the requested records.

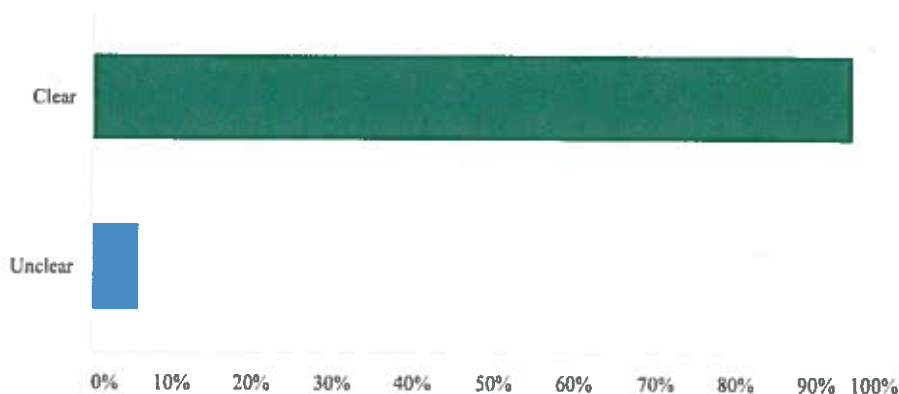
Answered: 33 Skipped: 8



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|----|
| Clear | 87.88% | 29 |
| Unclear | 12.12% | 4 |
| TOTAL | | 33 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that the time limits for an agency's response may depend on whether it is a government versus personal record.

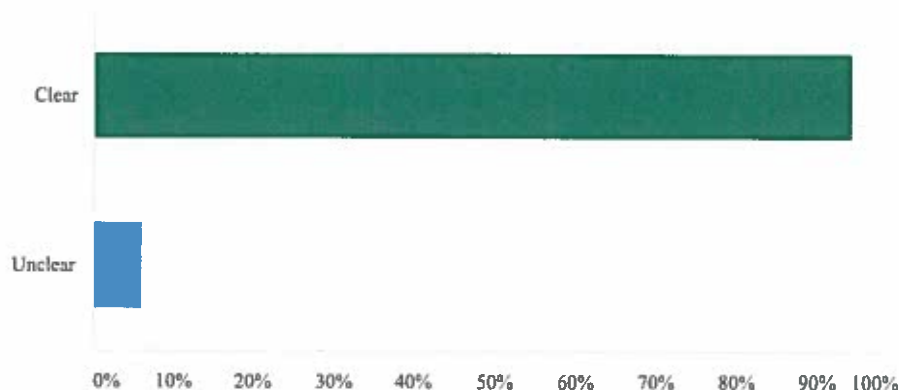
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 94.12% | 32 |
| Unclear | 5.88% | 2 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that there are extended time limits for unusual circumstances.

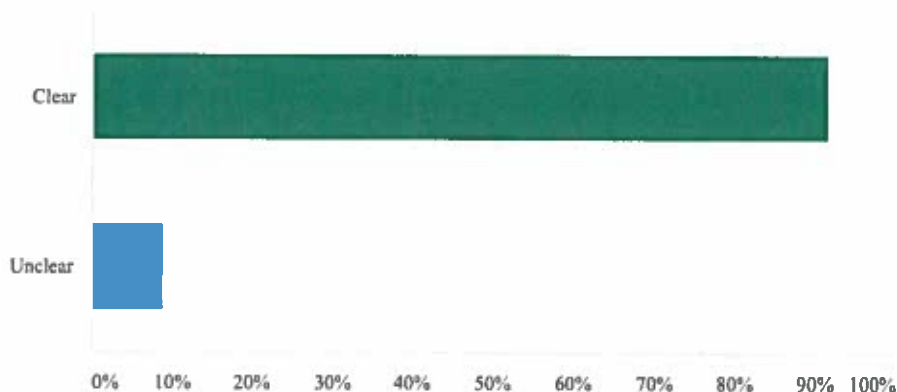
Answered: 33 Skipped: 8



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|----|
| Clear | 93.94% | 31 |
| Unclear | 6.06% | 2 |
| TOTAL | | 33 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that an agency may provide an alternative location for inspection or copying.

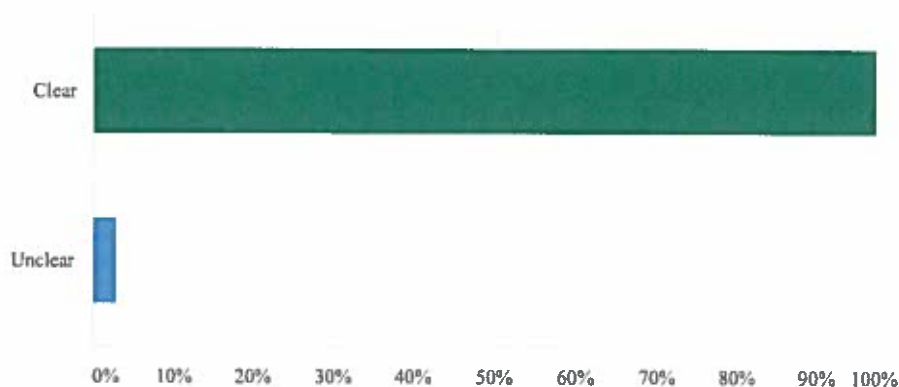
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 91.18% | 31 |
| - Unclear | 8.82% | 3 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that the requester has certain responsibilities.

Answered: 34 Skipped: 7



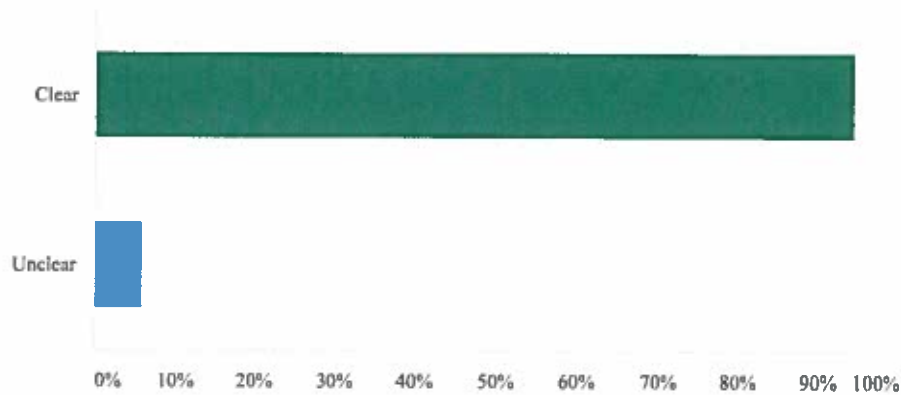
ANSWER CHOICES

RESPONSES

| | | |
|---------|--------|----|
| Clear | 97.06% | 33 |
| Unclear | 2.94% | 1 |
| TOTAL | | 34 |

The draft rules for Agency Procedures to Respond to Any Record Request are clear that a request may be considered abandoned if the requester fails to meet the requester's responsibilities.

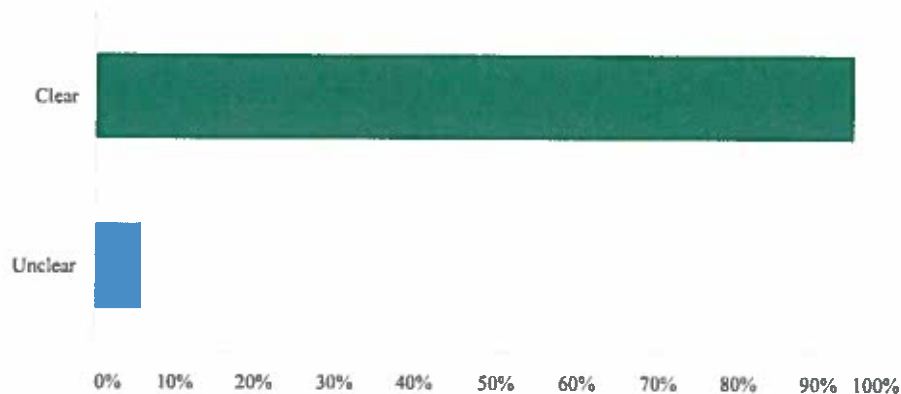
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 94.12% | 32 |
| - Unclear | 5.88% | 2 |
| TOTAL | | 34 |

Protection of Records and MEI draft rules are clear that an agency may provide a redacted copy instead of blacking out the original record.

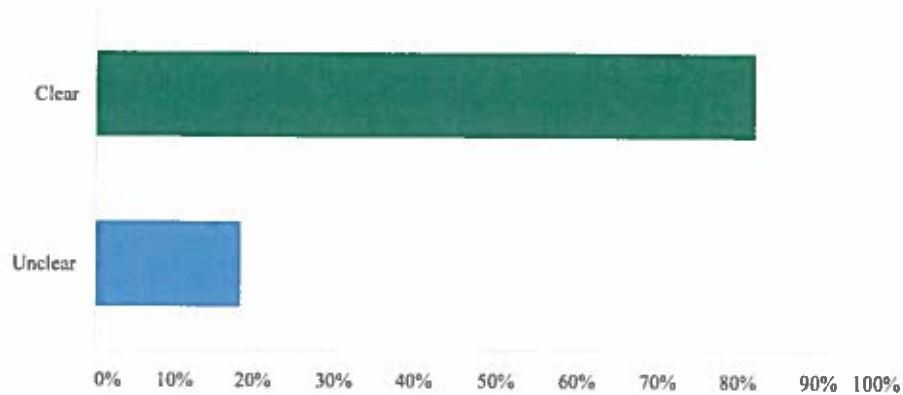
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 94.12% | 32 |
| Unclear | 5.88% | 2 |
| TOTAL | | 34 |

Protection of Records and MEI draft rules are clear that a requester seeking to inspect records may be required to sign a statement of criminal and civil liability for loss or damage to a record being inspected.

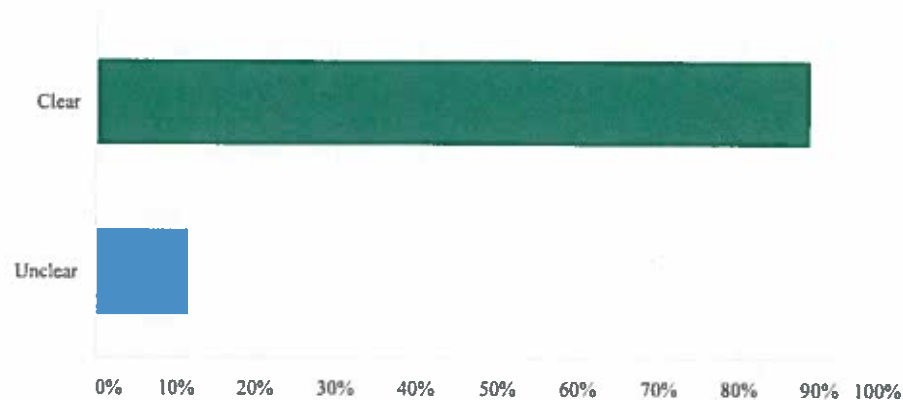
Answered: 33 Skipped: 8

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 81.82% | 27 |
| Unclear | 18.18% | 6 |
| TOTAL | | 33 |

Protection of Records and MEI draft rules are clear that there are various factors to establish MEI.

Answered: 35 Skipped: 6



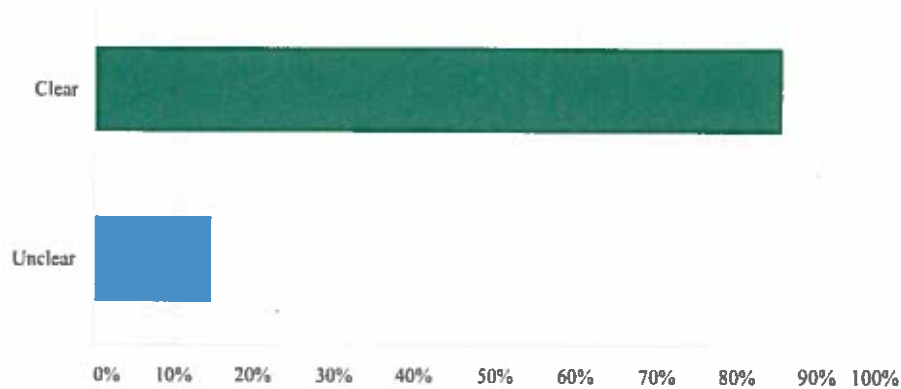
ANSWER CHOICES

RESPONSES

| | | |
|---------|--------|----|
| Clear | 88.57% | 31 |
| Unclear | 11.43% | 4 |
| TOTAL | | 35 |

Protection of Records and MEI draft rules are clear that only one fee waiver applies to consolidated MEI requests.

Answered: 34 Skipped: 7



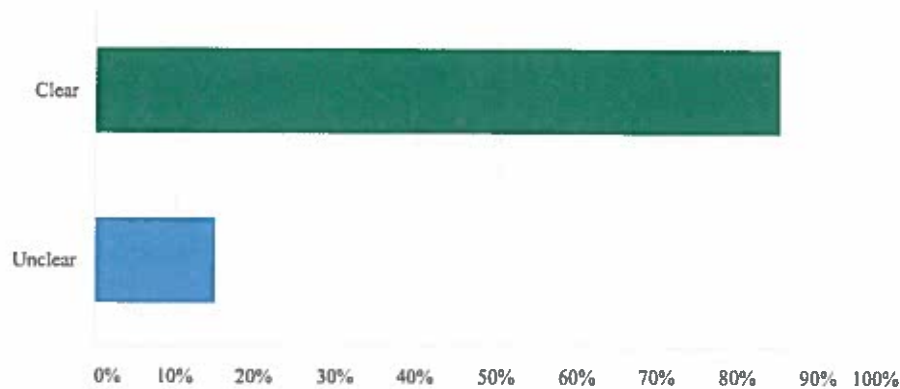
ANSWER CHOICES

RESPONSES

| | | |
|---------|--------|----|
| Clear | 85.29% | 29 |
| Unclear | 14.71% | 5 |
| TOTAL | | 34 |

Protection of Records and MEI draft rules are clear that an agency may deny fee waiver in next fiscal year for an MEI requester.

Answered: 33 Skipped: 8



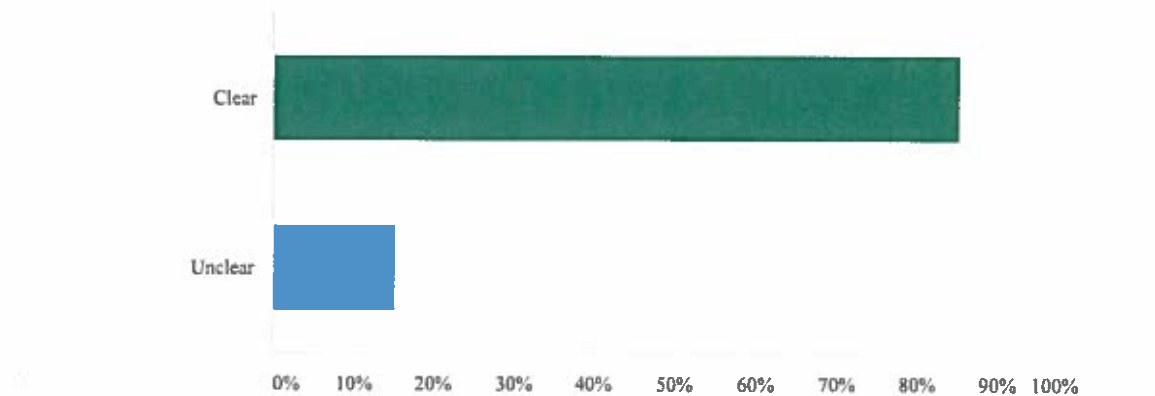
ANSWER CHOICES

RESPONSES

| | | |
|-----------|--------|----|
| - Clear | 84.85% | 28 |
| - Unclear | 15.15% | 5 |
| TOTAL | | 33 |

Protection of Records and MEI draft rules are clear that there is no denial of the fee waiver, if an MEI request is in the public interest.

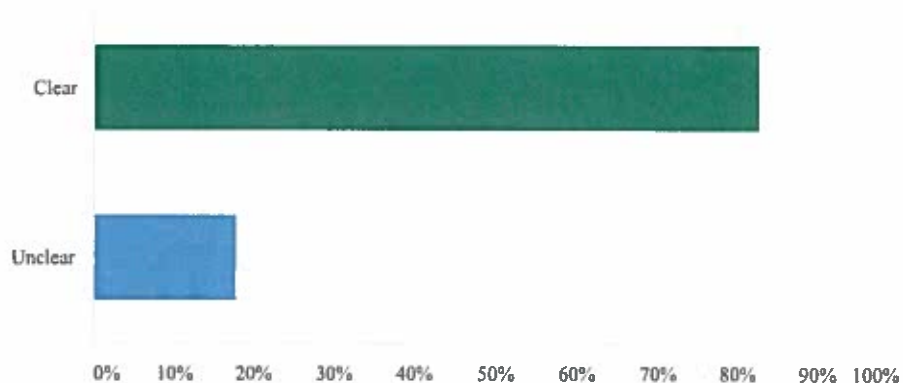
Answered: 33 Skipped: 8

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 84.85% | 28 |
| Unclear | 15.15% | 5 |
| TOTAL | | 33 |

Protection of Records and MEI draft rules are clear that incremental disclosure is allowed for MEI requests.

Answered: 34 Skipped: 7



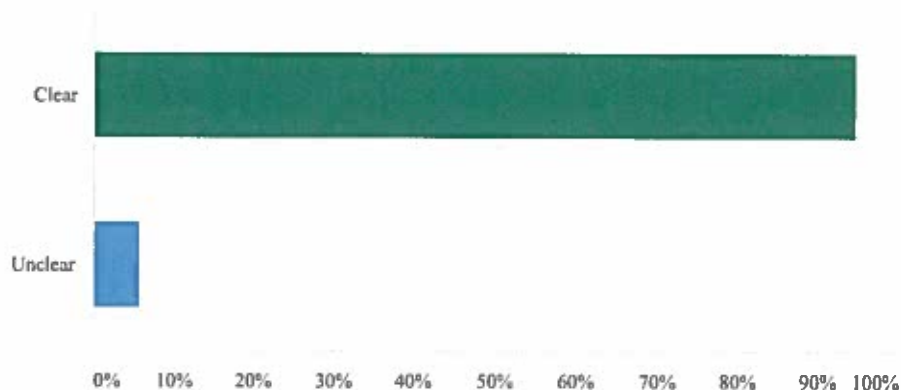
ANSWER CHOICES

RESPONSES

| | | |
|-----------|--------|----|
| - Clear | 82.35% | 28 |
| - Unclear | 17.65% | 6 |
| TOTAL | | 3 |

Fees, Costs, and Waiver draft rules are clear that "SRS" fees are to search for, review and segregate records. SRS fees apply to government and personal record requests.

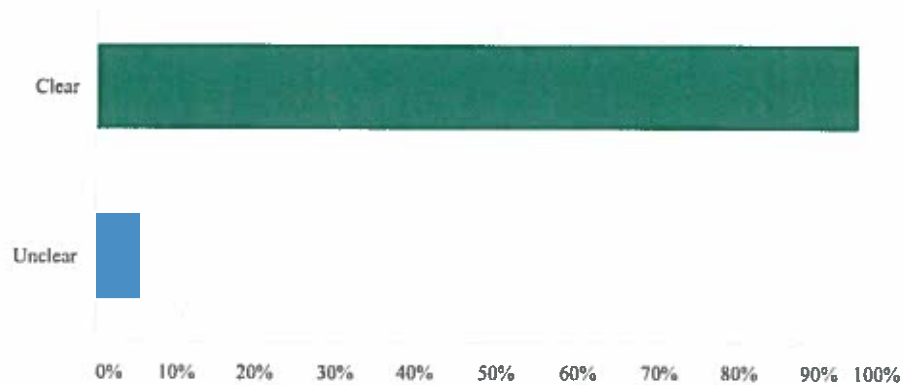
Answered: 35 Skipped: 6

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 94.29% | 33 |
| - Unclear | 5.71% | 2 |
| TOTAL | | 35 |

Fees, Costs, and Waiver draft rules are clear that search fees will be increased to \$7.50 per 15-minute increment.

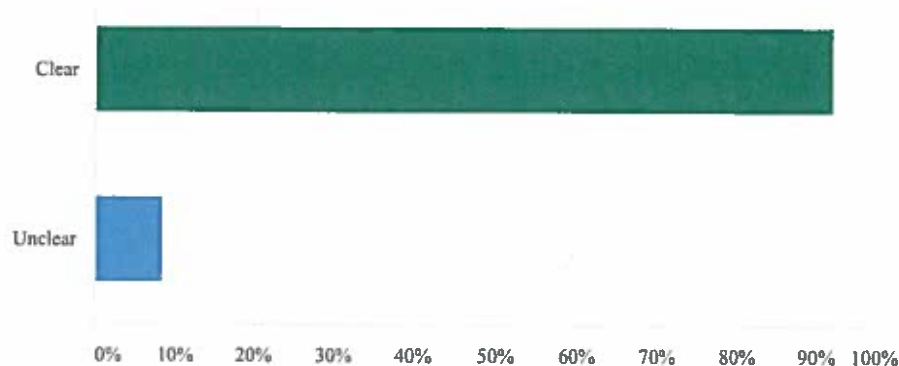
Answered: 37 Skipped: 4

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 94.59% | 35 |
| Unclear | 5.41% | 2 |
| TOTAL | | 37 |

Fees, Costs, and Waiver draft rules are clear that review and segregation fees will be increased to \$15 per 15-minute increment.

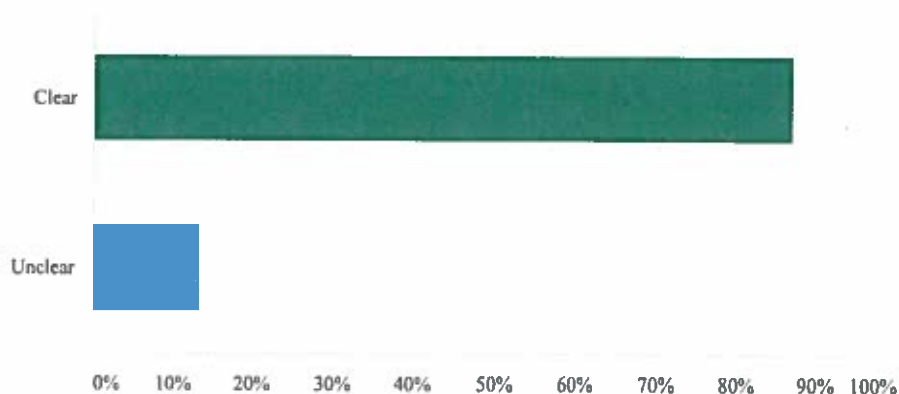
Answered: 36 Skipped: 5

**ANSWER CHOICES****RESPONSES**

| | | |
|-----------|--------|----|
| - Clear | 91.67% | 33 |
| - Unclear | 8.33% | 3 |
| TOTAL | | 36 |

Fees, Costs, and Waiver draft rules are clear that there is a total of \$400 in SRS fee waivers per requester per fiscal year by an agency, even if multiple names or email addresses are used by same requester.

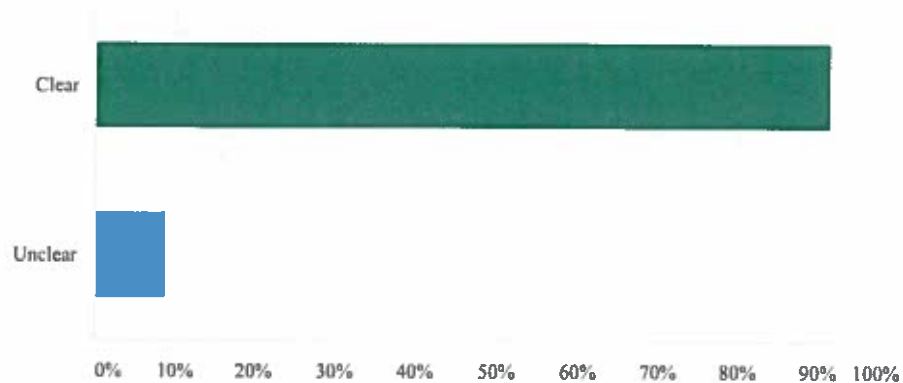
Answered: 38 Skipped: 3

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 86.84% | 33 |
| Unclear | 13.16% | 5 |
| TOTAL | | 38 |

Fees, Costs, and Waiver draft rules are clear that the SRS fee waiver is not applicable to costs or the inspection fee.

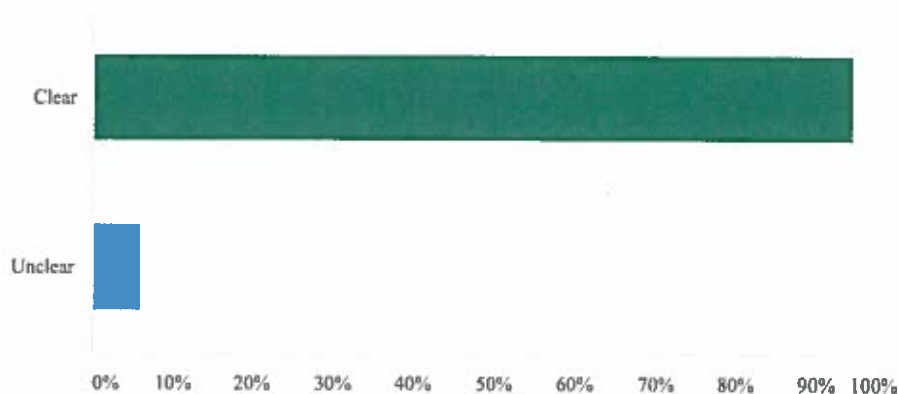
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 91.18% | 31 |
| Unclear | 8.82% | 3 |
| TOTAL | | 34 |

Fees, Costs, and Waiver draft rules are clear that an inspection fee of \$7.50 per 15-minute increment may be assessed after the first two hours of inspection oversight by an agency.

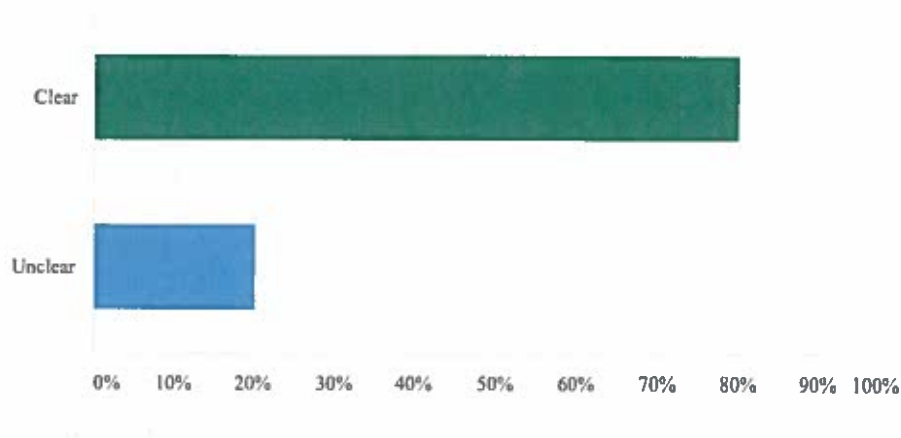
Answered: 34 Skipped: 7

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 94.12% | 32 |
| Unclear | 5.88% | 2 |
| TOTAL | | 34 |

Fees, Costs, and Waiver draft rules are clear that fees can be apportioned equally between requesters for substantially similar record requests, but time limits for the first request apply.

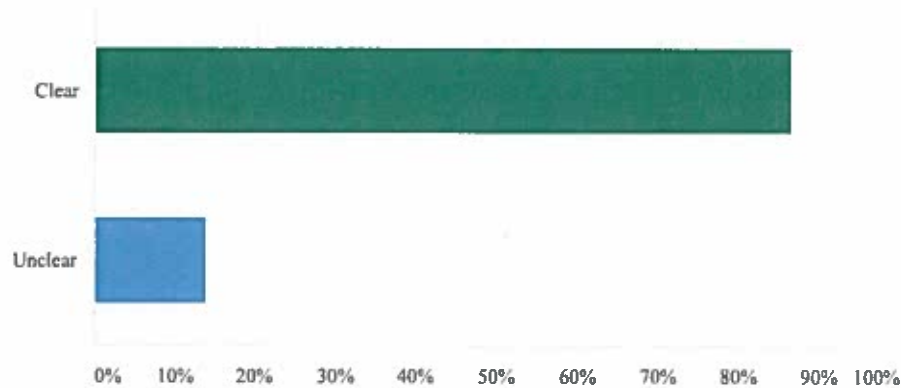
Answered: 35 Skipped: 6



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|----|
| - Clear | 80.00% | 28 |
| - Unclear | 20.00% | 7 |
| TOTAL | | 35 |

Fees, Costs, and Waiver draft rules are clear that agencies can charge for reasonable incidental costs, such as making an extra copy to segregate records.

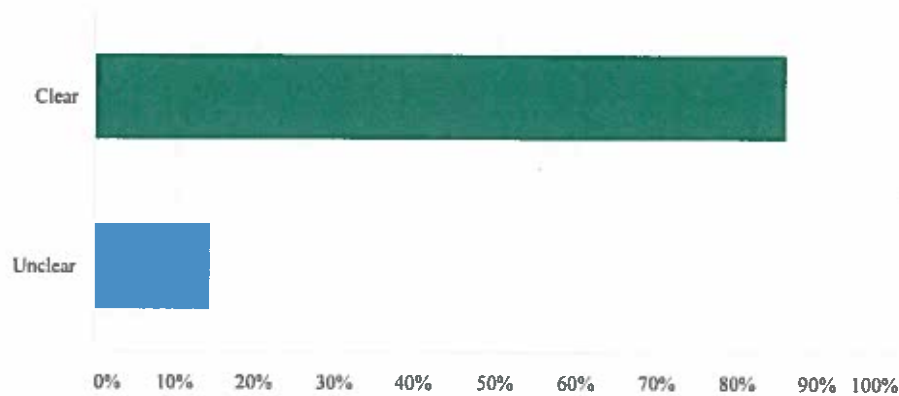
Answered: 36 Skipped: 5

**ANSWER CHOICES****RESPONSES**

| | | |
|---------|--------|----|
| Clear | 86.11% | 31 |
| Unclear | 13.89% | 5 |
| TOTAL | | 36 |

Fees, Costs, and Waiver Rules are clear that prepayment of fees and costs will still be allowed.

Answered: 35 Skipped: 6



ANSWER CHOICES

- Clear
- Unclear

RESPONSES

85.71% 30

14.29% 5

TOTAL

35

SURVEY COMMENTS:
Regarding OIP'S Proposed Draft Rules
For Processing UIPA Record Requests

October 2, 2017

Overall COMMENTS on Draft Rules and Presentation:

Respondent #2: The draft rules authorize agencies to implement overly burdensome requirements for individuals to obtain personal records.

Respondent #3: Please consider defining group of requesters as more than one requester or changing the wording to "multiple requesters." In my experience two people can cause a lot of havoc with an agency's attempts to respond. (Remember the birthers?) Sorry if this was addressed in the power point; I have not yet had the time to watch it. I also have not yet had time to thoroughly review the whole set of draft rules. I will try to do so and provide additional comments.

Respondent #4: It was thorough, but it seemed to breeze over certain sections such as research rules.

Respondent #5: Good.

Respondent #8: The presentation was clear and informative. It was well planned and having access to the power point slides in advance was helpful for us note-takers.

Respondent #11: Good work!

Respondent #12: Excellent and informative

Respondent #13: They seem fair for the agency and public.

Respondent #14: Very detailed & extensive rules to remember.

Respondent #16: Good presentation

Respondent #17: Seems reasonable. The waiver of \$400 should be reduced based on the cost of manpower, etc. to the agencies.

Respondent #20: I was more concerned about the rules that affect the Boards and Commissions which go into effect on July 1, 2018.

Respondent #22: Power point presentation was somewhat too long (52 minutes), should have been a bit shorter.

Respondent #24: As a whole the draft rules appear relevant. However, some treat frequently encountered issues unrealistically.

Respondent #26: While I am not authorized to make official comments on behalf of HHSC, I am concerned that some of the requirements relating to processing of personal records may not be consistent with the requirements already imposed on HHSC facilities by HIPAA (the Health Insurance Portability and Accountability Act of 1996) and the 2009 HITECH amendments. I will compare the draft rules with HIPAA requirements and make recommendations to HHSC with regard to specific questions and comments about the draft.

Respondent #29: The timelines were a little bit unclear re: personal requests vs government requests.

Respondent #30: Good initial presentation.

Respondent #31: my concern is that the sunshine law and the procedure for obtaining documents are part of the same important law protecting my ability to participate in government decision making. It seems the proposed rules will make that more expensive and difficult for obtaining an agenda or committee report from the office of the clerk or council services in the county of maui. money appears the only issue validating the proposed burden and injury I will have to endure. and it appears the office of lieutenant governor has flexibility to provide adequate resources.

Respondent #32: I really appreciate OIP's outreach and education efforts and look forward to further dialogue as OIP moves on in this process. Thank you for the opportunity to comment on this draft.

Respondent #33: It will be a practical challenge to keep track of waiver fees, especially when multiple individuals request information on behalf of a larger organization. More time is needed to gather and produce the documents after the requester prepays the fees. Five days is not sufficient in a lot of cases.

Respondent #35: I only experienced the online presentation of the draft rules, but the slides presented the information clearly.

Respondent #39: The draft rules should be available to the public in the Ramseyer format, in order that it be readily apparent what is proposed for change. Also, when discussing fee increases, the current charges should be stated for comparison.

Respondent #40: With all of the available technology, researching documents, redacting documents, consulting with others about what can or cannot be released or what must be redacted should be much, much easier in 2017, not harder. In the past, when there were no computers, no faxes, no cellular telephones, no video conferencing and no wifi or ultra-high speed internet or even internet, researching government documents and other items took more time and required more people power. That should not be the case in 2017. The job should have become easier, not harder. As a result, any fees being proposed should be LESS not more. Or, the fees should be waived altogether. I do not believe it is a valid reason to state that the fees are justified due to having to take an OIP employee(s) and making the person conduct research in the public's interest. That is your JOB. You are a state agency paid for with taxpayer funds to do one job, which is to provide access to government records at a reasonable fee. There is no excuse that being forced to redact documents, being forced to research government records due

to an OIP request is somehow a distraction or something takes an OIP employee away from his/her job. That is his/her job.

Respondent #41: While we face challenges, increase in fees seems to be against the Public's right-to-know and the State's policy to conduct business as openly as possible. Instead of increasing the fees, consider mandating the agencies to conduct government business openly. While the Sunshine Law is about the open meetings, UIPA could be applicable to meeting minutes or records on who was there and how they voted.

Respondent #42: I write, on behalf of Hawaii Health Systems Corporation ("HHSC"), in support of the OIP draft rules for processing UIPA record requests. In particular, HHSC supports the implementation of Sections 3-200-20 and 3-200-21, which provide agencies options for handling duplicative formal requests for government records and requests that impose manifestly excessive interference with an agency's functions. The public should have the right to scrutinize the records of government agencies, including HHSC. Notwithstanding the fact that HHSC is a healthcare organization and subject to strict privacy regulations, there is no doubt that HHSC is obligated to be transparent within the confines of these regulations and consistent with chapter 92F, Hawaii Revised Statutes ("HRS"). HHSC's facilities have from time-to-time been subject to duplicative requests for information from individuals that are manifestly excessive or in bad faith that interfere with our facilities' ability to perform their primary purpose, providing health care to our State's residents and visitors. HHSC appreciates the ability to limit responses to such repetitive requests or requests that excessively interfere with the facilities' operations. Thank you for this opportunity to comment on the draft rules.

The draft Personal Records Rules are clear that an agency needs to verify the identity of a personal record requester or agent. Comments:

Respondent #2: The document criteria is burdensome and does not allow for individuals with alternate forms of identification or homeless individuals.

Respondent #30: While it is clear that verification will be required, the actual process of verification could be time-consuming. Would OIP consider providing a personal requester request form?

Respondent #32: More guidance is needed on the methods and types of ID that can be used to positively identify a requester. Which types of ID can be used in which circumstances? In the case of an ID containing a signature, would the agency be expected to compare signatures contained within requested documents? For mainland-based requesters, would we be able to require notarization, to ensure that a real live person has positively identified the requester? In the event that a person does not look like the photo on their ID or their signature does not match, can the agency refuse to release the records?

Respondent #33: It could be difficult for us to verify via email. Would it be appropriate to require the person to submit a copy of a government-issued ID along with the request to access a government record?

The draft Personal Records Rules are clear that an agency needs verification of an agent's authority for personal record requests made by that agent. Comments:

Respondent #2: The draft rules authorize agencies to implement overly burdensome requirements.

Respondent #32: In the case of an attorney acting as an agent, would a copy of a pleading be sufficient to establish the agent's authority? In the case of an individual requester represented by an attorney, would a signed waiver releasing documents be needed to establish identity and agent relationship?

Respondent #33: It is unclear about what could be acceptable as verification.

The draft Personal Records Rules are clear that there is a time limit of 10 business days to respond to personal record request, unless extended due to unusual circumstances. Comments:

Respondent #32: More guidance and clarity is needed on deadlines based on the date that pre-payment of fees is received (currently, most deadlines are geared towards receipt of request and/or sending of notice). We commonly do not start processing documents until receipt of pre-payment, because requests are often abandoned prior to payment. 10 business days is often not enough time or barely adequate time for us to process documents without interfering with regular functions.

Respondent #38: Your survey question is unclear in light of the language contained in section 3-200-13(c).

The draft Personal Records Rules are clear that there is a time limit of 5 business days to send an NTR if prepayment is required. Comments:

Respondent #30: Sorry, this wasn't clear from the briefing or maybe I just needed more time to digest this new time line.

Respondent #32: 5 business days is not enough time to process a request. If staff are on vacation, there may not be anyone with sufficient knowledge to process in time.

OVERALL COMMENTS ON PERSONAL RECORDS DRAFT RULES:

Respondent #2: The draft rules authorize agencies to implement overly burdensome requirements for individuals to obtain personal records. It can be extremely difficult for individuals to know what to request, how to request it, and what documentation is needed, and some agencies will take advantage of this to avoid compliance.

Respondent #4: We are more concerned regarding public records and don't have much feedback on personal records rules at this time. However, we may revisit this as the rule making process begins.

Respondent #8: Changes make sense and assure fair and affordable access to government and personal records.

Respondent #12: Excellent and informative

Respondent #13: They are clearly stated.

Respondent #26: Concerns about consistency with HIPAA requirements as stated in comment above.

Respondent #32: I like the idea of verifying identity before release but feel a lot more guidance is needed for practical implementation.

Respondent #39: The draft rules should be available in the Ramseyer format, in order that it be readily apparent what is proposed for change. Also, when discussing fee increases, the current charges should be stated for comparison.

Respondent #40: With all of the available technology, researching documents, redacting documents, consulting with others about what can or cannot be released or what must be redacted should be much, much easier in 2017, not harder. In the past, when there were no computers, no faxes, no cellular telephones, no video conferencing and no wifi or ultra-high speed internet or even internet, researching government documents and other items took more time and required more people power. That should not be the case in 2017. The job should have become easier, not harder. As a result, any fees being proposed should be LESS not more. Or, the fees should be waived altogether. I do not believe it is a valid reason to state that the fees are justified due to having to take an OIP employee(s) and making the person conduct research in the public's interest. That is your JOB. You are a state agency paid for with taxpayer funds to do one job, which is to provide access to government records at a reasonable fee. There is no excuse that being forced to redact documents, being forced to research government records due to an OIP request is somehow a distraction or something takes an OIP employee away from his/her job. That is his/her job.

The draft rules for Agency Procedures to Respond to Any Record Request are clear that an NTR need not be sent for informal, routine, or duplicative requests. Comments:

Respondent #1: Although defined, “routine request” is not a term used in the draft rules.

The draft rules for Agency Procedures to Respond to Any Record Request are clear that a notice of no response must be sent for duplicative requests. Comments:

Respondent #1: Written notification that the agency will not be responding to duplicative requests will be confusing for some requesters who may not believe that a request is duplicative. The written notification to a requester should explain that the agency has found that a request is duplicative of an earlier request, state that the agency’s response would not change, and specify the earlier request(s). Also, the rule on duplicative requests exceeds OIP’s rule-making authority. If the Legislature considered OIP’s authority sufficient to address duplicative requests, it would not have enacted (and let sunset) a statutory provision on duplicate requests that is virtually identical to the proposed rule.

Respondent #38: Section 3-200-20 states the agency shall send “written notification” that it will not be responding, so the survey question appears to be inconsistent with the draft rule?

The draft rules for Agency Procedures to Respond to Any Record Request are clear that a record is “readily retrievable” when it would take less time to create a compilation or summary than to review and segregate records for disclosure and not more than 30 minutes. Comments:

Respondent #1: Thirty minutes is arbitrary. Determining if a document is readily retrievable should be a fact sensitive analysis rather than dependent on a brief time limit. Previous OIP opinions have found that whether information can be deemed readily retrievable is a “question of fact that must be determined on a case-by-case basis.” OIP Op. Ltr. No. 10-02. Thirty minutes is especially unreasonable for electronic data sets. Extracts from electronic data sets should not be considered a “compilation or summary.” But if agencies attempt to apply this rule to electronic data sets, the thirty-minute limit will result in inefficiencies and the loss to the public of access to critical information about government operations. Thirty minutes also is inconsistent with prior guidance from OIP.

Respondent #4: No it is not clear. Does this apply to both paper records and electronic records? It seems the 30 minute limit is reasonable if a person is actively searching through paper records

for example, but if someone is doing an electronic download or search, which takes more than 30 minutes (which could happen if the file is large), it seems unreasonable.

Respondent #35: Previously agencies were not required to create lists or summaries of documents. The requirement kicks in if the amount of time to prepare the compilation or summary would be 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 the time is no more than thirty minutes. This sounds like a level of interpretation that I feel should not be required by the agency as it may be subject to legal review.

The draft rules for Agency Procedures to Respond to Any Record Request are clear that there may be different time limits to 1) send the NTR and 2) disclose the requested records. Comments:

Respondent #1: OIP has an obligation to ensure agencies respond to requests in a timely manner. A timely response is important for effective communication with the requester that allows the information requested to be its most valuable. OIP should use its authority over fees to ensure compliance with the deadlines set by the rules. If an agency misses a required response deadline, the requester should not be charged fees. Also, the current rule, § 2-71-13 provides that simple unredacted records (e.g., agency rules or meeting minutes) shall be disclosed "within a reasonable time not to exceed ten business days." The proposed rules omit that distinction, leaving simple requests subject to a straight 10 business day limit. There is no reason to remove the phrase "within a reasonable time." To encourage prompt public access to simple records, OIP should retain the "within a reasonable time" language or impose a shorter period than 2 weeks.

The draft rules for Agency Procedures to Respond to Any Record Request are clear that there are extended time limits for unusual circumstances. Comments:

Respondent #1: OIP should make clear in the rules that consultation with another person does not include consultation with attorneys or OIP about legal issues with the request, or the rule should make clear that the consultation is for purposes of ascertaining facts relevant to whether a record is exempt. OIP Op. No. 10-04. Also, the unusual circumstance for extensive effort to respond, (a)(2), is a subset of the unusual circumstance for avoiding unreasonable interference with agency duties, (a)(3), and should be consolidated to follow the language in (a)(3).

Respondent #40: Please create a better, clearer definition of "Unusual circumstances." Please post real, actual, past examples of these "unusual circumstances"

OVERALL COMMENTS ON AGENCY PROCEDURES DRAFT RULES:

Respondent #1: The draft rules fail to promulgate rules for the collection of information or for research access. By referring to other statutes and laws, OIP—to the detriment of the public—did not meet the legislative intent to create rules for the collection of information or for viewing records for research purposes. If OIP is not going to promulgate actual rules as required by statute, then it should not address the subject at all.

Respondent #12: Excellent and informative

Respondent #13: They seem to be clearly stated.

Respondent #32: During the presentation, it was mentioned that the model Notice to Requestor form will be updated along with the rules. I would like the new model form to include: o checkboxes for some commonly-used exceptions (e.g., those listed in 92F-13 and 92F-14) o space for the agency to explain what is being provided and what has been redacted from the requested records o space for those requesting records “in the public interest” to provide detailed explanation of their ability to widely disseminate and details of their “public interest” intentions

Respondent #39: Within the Maui County Planning Department we respond to numerous requests. If the request is simple and made by phone to a planner, we generally send PDFs of documents via email. Must faster and better customer service!

Respondent #40: With all of the available technology, researching documents, redacting documents, consulting with others about what can or cannot be released or what must be redacted should be much, much easier in 2017, not harder. In the past, when there were no computers, no faxes, no cellular telephones, no video conferencing and no wifi or ultra-high speed internet or even internet, researching government documents and other items took more time and required more people power. That should not be the case in 2017. The job should have become easier, not harder. As a result, any fees being proposed should be LESS not more. Or, the fees should be waived altogether. I do not believe it is a valid reason to state that the fees are justified due to having to take an OIP employee(s) and making the person conduct research in the public's interest. That is your JOB. You are a state agency paid for with taxpayer funds to do one job, which is to provide access to government records at a reasonable fee. There is no excuse that being forced to redact documents, being forced to research government records due to an OIP request is somehow a distraction or something takes an OIP employee away from his/her job. That is his/her job.

Protection of Records and MEI draft rules are clear that an agency may provide a redacted copy instead of blacking out the original record. Comments:

Respondent #1: The rules should explain that a record is reasonably segregable unless, after redaction, the document is meaningless. OIP Op. No. 09-02. Also, redactions should specify on the document what UIPA exception justifies each redaction. Disclosure of lengthy documents involving multiple exceptions leads to unnecessary confusion for the requester about what exceptions apply to which redactions throughout the documents.

Respondent #23: Can we charge for the redacted copy that we prepare even if the individual only inspects the record and does not request copies?

Respondent #38: where in section 3-200-21 is redaction mentioned?

Respondent #40: Please create clearer rules/definitions that explain why redactions are needed and why they are done and for what specific reason.

Protection of Records and MEI draft rules are clear that a requester seeking to inspect records may be required to sign a statement of criminal and civil liability for loss or damage to a record being inspected. Comments:

Respondent #30: Will the OIP provide a sample statement?

Respondent #38: Where in section 3-200-21 is the language contained in 3-200-18?

Respondent #39: Oh come on! This points practice to a bloated beauacracy.

Protection of Records and MEI draft rules are clear that there are various factors to establish MEI. Comments:

Respondent #1: This provision exceeds OIP's rule-making authority. OIP purports to give agencies the authority to label a requester a "bad actor" and punish those individuals by impeding public rights of access without adequate due process. OIP seeks to create a whole new cause of action under the UIPA to have agencies, OIP, and the courts make determinations about a requester's behavior, not the substance of his or her requests. If the Legislature intended to provide OIP such authority, it could have enacted the "vexatious requester" bill (H.B. 1518) or similar bills. The Legislature has not done so. An agency has other legal remedies in court to dissuade a requester who, through due process, is actually found by a court to be harassing the agency. Also, the factors specified in this provision unfairly target high-volume public record requesters, such as non-profit organizations and media outlets. While OIP preserves the \$400 fee reduction for such organizations, it still permits agencies to slow down responses to exactly those

entities who are seeking timely disclosure to disseminate information in the public interest. Targeting such organizations directly contradicts the legislative intent of the UIPA.

Respondent #4: It is not clear. There is no definition of what is an MEI. Thus agencies are left to make this claim without applicable standards. If left undefined, an agency under political fire could easily invoke this provision, and as such, the rules should be crafted to avoid this possibility. Also it is unclear if reporters could be considered MEI. This should be clearly laid out.

Protection of Records and MEI draft rules are clear that an agency may deny fee waiver in next fiscal year for an MEI requester. Comments:

Respondent #1: It is unclear whether the MEI determination has an expiration date. If the determination attaches to a requester indefinitely, then that requester's right to access public records will be extremely burdened until the agency or the court says otherwise. Fees should not serve as an insurmountable obstacle to otherwise accessible public records just because a requester has been deemed an MEI requester by an agency. An indefinite MEI determination would effectively deprive all but the wealthiest requesters of the right to access public documents.

Respondent #8: It will be helpful if this can/will be calculated by the log

Protection of Records and MEI draft rules are clear that there is no denial of the fee waiver, if an MEI request is in the public interest. Comments:

Respondent #1: The \$400 reduction is not a fee waiver.

Respondent #23: HAR § 3-200-31 does not define public interest. Seems as if we can grant public interest waiver if requester provides name or unique identifier and does not exceed \$400 in fee waivers. Also, divisions in DCCA do not contact one another when they process a 92F request. Does not seem practical for the \$400 fee waiver to be per department. Will require one point of contact per division to be informed each time a division grants a fee waiver. That person will have to be consulted to find out if the \$400 fee waiver has been reached by that individual. If the fee waiver were per division it would be easier to track. The cap on the fee waiver could be lower and it could be limited to waivers granted by a division. For instance, a \$100 fee waiver cap per division for that particular requester.

Respondent #32: Disagree - denial of fee waiver should be allowed even for records requested in the public interest in the case of vexatious requesters abusing the process

Respondent #35: While I agree with the purpose of this new rules, I believe that if MEI is determined that the denial of a fee waiver should be implemented even if the request is made in the public interest. The argument for the public interest stipulation is often abused by requesters, who make the claim that because they have social media accounts they are able to widely disperse the information. I believe these means are available to any member of the public and do not constitute a privileged position of serving the public interest, in my opinion. Therefore, the "public interest" clause should be removed from all rules and the benefits previously afforded to items deemed in the public interest should be universally available to every request. In this day and age, it should be assumed that any document released can be widely dispersed easily.

Respondent #36: Could use a better definition of what constitutes "the public interest." There are many pseudo journalistic enterprises on the internet that falsely claim to be operating "in the public interest."

Protection of Records and MEI draft rules are clear that incremental disclosure is allowed for MEI requests. Comments:

Respondent #1: The rules for incremental disclosure must be clarified. If OIP will continue to use "voluminous" as a threshold for incremental disclosures, then it should provide a definition or standard for that term. Also, OIP should set a required monthly minimum effort (in quantity of time or pages) for preparing records for incremental disclosure to the requester. Existing rules would permit an agency to disclose one page per month as an incremental disclosure without consequence. And it is unfair to MEI requesters to delay access to simple record requests (e.g., agency rules or meeting minutes) that should be readily available to all requesters in short order.

OVERALL COMMENTS ON PROTECTION OF RECORDS AND MEI DRAFT RULES:

Respondent #1: We oppose the MEI draft rules. All persons have a right to access public records in a timely and useful manner. The MEI rules would substantially burden that right without any statutory authority.

Respondent #13: I'm glad that the issues of MEI requests have been identified and addressed.

Respondent #37: I have been working on UIPA requests for our office since 2009. Previously, some requests have been for "any and all government records, emails or other communications" or for all records covering a long duration of time such as from Jan. 1, 2011 - July 4, 2013 requiring large periods of time to research and fulfill. This does not allow me to perform my

other assigned job duties for my agency. In addition, we have received formal requests where the requester has been harassing, intimidating and/or rudely sarcastic to agency personnel. Having MEI rules in place would assist the agency in making a determination as to whether a request was considered MEI based on written HAR (as approved) and factors set forth in the rules.

Respondent #40: With all of the available technology, researching documents, redacting documents, consulting with others about what can or cannot be released or what must be redacted should be much, much easier in 2017, not harder. In the past, when there were no computers, no faxes, no cellular telephones, no video conferencing and no wifi or ultra-high speed internet or even internet, researching government documents and other items took more time and required more people power. That should not be the case in 2017. The job should have become easier, not harder. As a result, any fees being proposed should be LESS not more. Or, the fees should be waived altogether. I do not believe it is a valid reason to state that the fees are justified due to having to take an OIP employee(s) and making the person conduct research in the public's interest. That is your JOB. You are a state agency paid for with taxpayer funds to do one job, which is to provide access to government records at a reasonable fee. There is no excuse that being forced to redact documents, being forced to research government records due to an OIP request is somehow a distraction or something takes an OIP employee away from his/her job. That is his/her job.

Fees, Costs, and Waiver draft rules are clear that "SRS" fees are to search for, review and segregate records. SRS fees apply to government and personal record requests.

Comments:

Respondent #1: Contrary to the legislative intent, fees at the current rates already are a major obstacle to fact-gathering for public dissemination. Tripling the fees will only serve to ensure that information of public interest will not be released. OIP should promulgate rules that ensure fees do not restrict access to information of public interest. Agencies should be required to work efficiently, itemize their costs, and work with the requester to save time and money. The following are various proposals: a. Provide a waiver of fees for requests made in the public interest. Requesters who will widely disseminate records to the general public serve more than their personal interests and contribute significantly to the open and informed discussion of government operations. Fees for such requests are unjustified. b. No fees for disclosure of documents under HRS § 92F-12. OIP Op. No. 00-02. c. No fees for disclosure of the same or substantially similar documents requested by a five or more people. If multiple people are making the same request, then the requested documents have obvious public interest and should be disclosed without fees if at least one requester will disseminate the information widely to the general public. d. As noted above, no fees when an agency misses OIP deadlines. If a requester will be burdened by significant fees, then he or she deserves timely service. e. Require agencies to communicate and work with requesters on the scope of requests to minimize fees. Requesters

do not know how an agency maintains its records or how to phrase a request to minimize costs. Only the agency knows the most efficient means to obtain the requested information. Agencies thus should be required to provide the requester with basic information to assist in minimizing fees. f. Segregation fees should be charged only for information that is required to be redacted by statute or other law. Elective redactions for nonresponsive information or permissive exceptions should be done at the expense of the agency, not the requester. Agencies should be as open as possible. And OIP's rules should encourage disclosure, not secrecy. If an agency chooses not to disclose nonresponsive information or elects not to waive permissive exceptions, then a requester should not be penalized for the agency's choice. g. Clarify that agencies may charge for only one layer of review and redaction. Agencies should not be charging for multiple people to review the same document. If an agency chooses to have a second or third layer of review, that additional review should not be charged to the requester. h. Require agencies to maintain documentation of time spent on requests if it will charge fees and provide that documentation on request. Agencies commonly do not keep documentation of the actual time used to charge a requester for fees, relying on the "estimate" in the notice to requester. With the significant fees proposed by OIP, a requester is entitled to an itemized invoice of who performed what work and when on the request. Agencies should not be permitted to charge \$60/hour without supporting documentation of actual work performed. Clarify in the rules that agencies cannot charge for work performed without approval from the requester. Agencies should not proceed with requests that would incur fees unless disclosed to and approved by the requester. Agencies could easily waste a requester's fee reduction in excessive fees without the requester's permission. A requester must have an opportunity to consider the fees, discuss alternatives with the agency, and clarify or restrict the scope of a request to minimize fees.

Respondent #15: Is the acronym "SRS" defined anywhere?

Fees, Costs, and Waiver draft rules are clear that search fees will be increased to \$7.50 per 15-minute increment. Comments:

Respondent #2: This is an excessive amount.

Respondent #4: What is the basis for the proposed charges? It should not just be due to inflation. As there have been instances where high costs are used as a deterrent to accessing records, we should be wary of increasing fees just for the sake of it, with no additional justification.

Respondent #39: However, when discussing fee increases, the current charges should be stated for comparison to the proposed changes..

Respondent #41: \$30 an hour for administrative/clerical is very high

Fees, Costs, and Waiver draft rules are clear that review and segregation fees will be increased to \$15 per 15-minute increment. Comments:

Respondent #2: Also an excessive amount.

Respondent #39: However, when discussing fee increases, the current charges should be stated for comparison to the proposed changes.

Respondent #41: \$60 an hour for review/segregation is very high

Fees, Costs, and Waiver draft rules are clear that there is a total of \$400 in SRS fee waivers per requester per fiscal year by an agency, even if multiple names or email addresses are used by same requester. Comments:

Respondent #1: A blanket \$400 fee reduction is not a waiver of fees when the public interest would be served. Also, it is not clear that individuals working at a single organization would be treated as separate requesters for purposes of the \$400 fee reduction. Because "requester" includes both individuals and organizational entities, OIP's use of "requester" for consolidating requests that used multiple names could be used to limit the fee reduction for all the individuals at a single organization. The intent of 3-200-31(a) appears focused on individuals defrauding a government agency with the intent to obtain multiple fee reductions through various aliases. An organizational requester acting through its various employees or volunteers, however, would not be abusing the system. One way to fix this issue would be revising the proposed rule to read: "When it reasonably appears that an individual [a requester] has used multiple names . . ." HRS § 92F-3 ("Individual means a natural person."). Alternatively, OIP could clarify that this rule does not apply to requests made by different individuals within an organizational entity. OIP's 9/20/17 "clarification" of the rules stating that agencies may "consolidate fee waivers for requesters acting in concert" is not a clear summary of the draft rules at all and is not acceptable policy. Unlike the person with fraudulent aliases, multiple people acting for a "common cause" are not cheating the system to get a larger fee reduction than they are collectively entitled; they are using their individually allotted fee reductions for a shared purpose. If enacted, such a provision would heavily penalize public interest organizations, such as non-profit entities and media outlets, that operate through multiple individuals for a "common cause" to obtain government records for dissemination widely to the general public. If a non-profit volunteer or a reporter has a valid fee reduction remaining, that individual should not be denied the reduction simply because he or she is working toward a common goal with other like-minded people in the public interest. OIP's proposal would contradict the long-standing policy that a requester is not required to justify his or her request to an agency and an agency may not inquire as to the purpose of a request. OIP Op. No. 89-05.

Respondent #17: This amount should be reduced.

Respondent #30: This will require some changes to our procedures so that we can keep track by fiscal year.

Respondent #32: Disagree with this fee structure as the practical effect for DHR is that we will no longer be able to recover any fees for record requests, since our fees are pretty much always less than \$400 and we rarely would get a request from the same individual requester within a 12 month period (even if we might get multiple requests from the same news agency, but different reporters, or reporters working "freelance")

Respondent #35: the increase in the amount of fees that can be waived should be proportional to the increase in rates for search and review. Also the waived fee should be applied to every request, not an annual limit per requester. Therefore, the maximum waive fee should be \$180 per request. I foresee situations where organizations can request records under the names of various employees in order to unduly enjoy the proposed \$400 waiver fee for an extended period. The practice of keeping track of fee waivers leaves much room for abuse on the part of the requester as well as an undue burden to the agency.

Respondent #37: How would an agency know that it is the same requester, if the requester is using an alias or different email address?

Respondent #38: At the seminar, OIP stated each reporter shall be deemed a separate requester notwithstanding the same employing entity. Where is that stated in the rules that representatives of media outlets, including entities such as Civil Beat, shall be treated individually rather than one requester?

Fees, Costs, and Waiver draft rules are clear that the SRS fee waiver is not applicable to costs or the inspection fee. Comments:

Respondent #2: It is inappropriate to not allow other costs and fees to be waived.

Fees, Costs, and Waiver draft rules are clear that an inspection fee of \$7.50 per 15-minute increment may be assessed after the first two hours of inspection oversight by an agency. Comments:

Respondent #1: It is not clear when this provision applies. Oversight of inspection should apply only when a requester is reviewing original records. Inspection of copies should not require oversight by a government employee. If the inspection fee does apply to copies, OIP should clarify that it does not apply to inspection of any records that are required to be disclosed under § 92F-12.

Fees, Costs, and Waiver draft rules are clear that fees can be apportioned equally between requesters for substantially similar record requests, but time limits for the first request apply. Comments:

Respondent #1: As noted above, there should not be any fees when five or more people request the same or substantially similar information and at least one person will disseminate widely the information to the general public.

Fees, Costs, and Waiver draft rules are clear that agencies can charge for reasonable incidental costs, such as making an extra copy to segregate records. Comments:

Respondent #1: Agencies should never charge for more than one copy of a document. Electronically stored documents can be redacted electronically without printing an extra copy. Hard copy originals can be redacted and then copied or scanned for the requester. Extra copies are not necessary. Unless incidental costs are absolutely necessary to respond to a request, a requester should not be charged for costs that an agency chooses to incur for its own convenience.

Respondent #2: It is inappropriate to not allow other costs and fees to be waived.

Respondent #23: However, it's not clear if "segregating records" includes redacting a copy for inspection; even if requester does not want to obtain a copy of the records being inspected.

Respondent #30: We like that we can now charge costs for copies that we will be redacting.

Respondent #32: Appreciate this clarification in the rules that extra copies for the agency's use (i.e. for redaction purposes) may be charged

Respondent #39: Provide records electronically!

Respondent #41: It is unlawful to charge the customer requesting for the copies Agency decides to make.

Fees, Costs, and Waiver Rules are clear that prepayment of fees and costs will still be allowed. Comments:

Respondent #2: It is unclear how the waiver interacts with the prepayment option that agencies may impose on requesters.

OVERALL COMMENTS ON FEES, COSTS, AND WAIVER DRAFT RULES:

Respondent #1: We oppose the proposed substantial increase in fees and costs across all areas of the draft rules. OIP should have a fee waiver for the public interest, rather than a fee reduction for all requesters across the board. The \$400 fee reduction eliminates any specific allowance for requesters seeking information for the public interest by granting the reduction to all requesters. While we believe cheaper access for all would be beneficial, this change in the rules would cause public interest requesters to pay more fees annually for accessing public records. When estimating costs and later giving requesters the bill for their services, agencies should be required to itemize actual costs so that requesters are not merely charged the estimated cost without indication of the services that incurred those costs. The proposed cost of copies for OIP records is high, and OIP should provide clarification as to how it determined that \$0.25/page reflected the reasonable cost of reproducing a government record.

Respondent #2: It is inappropriate to not allow other costs and fees to be waived. It is not clear how the requester will know of the \$400 waiver and agencies may be able to hide info about the waiver. It is also unclear how the waiver interacts with the 50% up front payment that can be required.

Respondent #4: Under 3-200-15, “voluminous” remains undefined. Again, we need standards for agencies (and the public) to be able to understand and follow. Without a definition, this leaves the door open to abuse. The “research” portion of the rules is very vague. Perhaps there should be some guidance, such as having researchers (and maybe journalists) agree to additional nondisclosure requirements, so they are able to access data that they need. There should be a way for agencies to prescreen users (3-200-32) to avoid having unnecessary supervision. For example, we’ve had members who have been supervised, in rooms with no place to hide records to review “simple” records such as an agency’s minutes from the past several years. In such cases, there’s no reason for staff to be taken from their duties to supervise this request. It would be beneficial to both staff and the public to be able to address this issue. Rules should specifically allow requesters to use digital devices, including cell phones or tablets to copy records made available for inspection. Agencies have told our members they are not allowed to use a cell phone while inspecting records. The rules should account for technological advances and eliminate impediments to such digital copying. The incremental disclosure of files is very vague too. For instance, in theory, could release 1 page per year over the span of several years. While we hope this doesn’t happen, it would seem prudent to close this loophole now before it is abused. Thank you for the opportunity to provide comments. We look forward to the revisions and participating throughout the rule making process.

Respondent #8: OIP’s efforts to train agencies on the UIPA and Rules is very helpful. I feel it’s the best way to promote compliance and understanding of the sometimes confusing processes.

Respondent #13: Clearly stated. Thank you.

Respondent #14: Would need a cheat sheet to remember all details.

Respondent #30: We support the increase in SRS fees.

Respondent #32: Have concerns that the new fee structure places an administrative burden on the agencies to track fees. Already as it stands, the reality is that agencies are unable to recover much of the actual time it takes to respond to 92F requests (because response requires a lot of time that cannot be categorized as search or review such as coordination time, communication with others affected, consultation with attorneys, etc.) and tracking fee waivers would only add to more nonchargeable hours. The practical effect of this rule for DHR will be that we will never recover fees.

Respondent #36: Is it possible to define "manifestly excessive interference"? Also, subchapter 5 uses cites OIP's copying charge of 25 cents per page. The assumption is that other agencies are free to levy whatever copying charge they feel is appropriate. Should this be stated in the rules? or does it fall back to HRS 92f?

Respondent #37: In 3-200-51, in the draft rules, it is written as (a) OIP shall notify the requester of the estimated cost to copy...and (b) OIP may charge 25 cents per page for reproduction of paper copies...however, this section might be consistent with the other sections if written as "each agency"?

Respondent #39: As public servants, we should strive to provide the best possible service as part of our regular duties, at the lowest possible cost. On Maui, we charge a per page fee.

Respondent #40: With all of the available technology, researching documents, redacting documents, consulting with others about what can or cannot be released or what must be redacted should be much, much easier in 2017, not harder. In the past, when there were no computers, no faxes, no cellular telephones, no video conferencing and no wifi or ultra-high speed internet or even internet, researching government documents and other items took more time and required more people power. That should not be the case in 2017. The job should have become easier, not harder. As a result, any fees being proposed should be LESS not more. Or, the fees should be waived altogether. I do not believe it is a valid reason to state that the fees are justified due to having to take an OIP employee(s) and making the person conduct research in the public's interest. That is your JOB. You are a state agency paid for with taxpayer funds to do one job, which is to provide access to government records at a reasonable fee. There is no excuse that being forced to redact documents, being forced to research government records due to an OIP request is somehow a distraction or something takes an OIP employee away from his/her job. That is his/her job.

Note: Respondent #43's comments are attached.



DISABILITY AND COMMUNICATION ACCESS BOARD

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September 19, 2017

Ms. Cheryl Park
Director
Office of Information Practices
No. 1 Capitol District Building
250 South Hotel Street
Suite 107
Honolulu, HI 96813

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Regarding: Office of Information Practices, Hawaii Administrative Rules, Title 3, Chapter 200, Subtitle 15, Entitled "Agency Procedures and Fees for Processing Record Requests, and Additional Procedures for Disclosure, Correction, and Amendment, and Collection of Personal Records"

Dear Ms. Park,

Thank you for the opportunity to provide comments to the Office of Information Practices to update its administrative rules, Title 3, Chapter 200, Subtitle 15, entitled "Agency Procedures and Fees for Processing Record Requests, and Additional Procedures for Disclosure, Correction, and Amendment, and Collection of Personal Records." These rules implement, in part, the Uniform Information Practices Act (UIPA) insofar as it governs procedures and fees for processing record requests and provides additional guidance and procedures for requesting either government or personal records. Our Board discussed the issue at our September 14, 2017 Board meeting and appreciate the opportunity to offer input prior to the development of a final draft.

The majority of the proposed rules are procedural and while they impact the Disability and Communication Access Board as a state agency from an operational perspective, they do not necessarily have any disability impact.

However, there are two areas which DO have a disability policy impact as follows and our Board offers the following comments:

(1) New term "Accessible" personal records

The proposed rules create a new Subchapter 4 entitled "Disclosure, Amendment, and Collection of Personal Records." In this Subchapter a term "accessible personal record" is created to explain when such records are reasonable. 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." The definition is intended to clarify that

Ms. Cheryl Park

Director

Office of Information Practices

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September 19, 2017

Page 2

an agency is not required to expend an unreasonable amount of time or effort to go through all its files to try to find every bit of personal information about a requester.

While the concept is reasonable from an operational perspective, the use of the term "accessible" to describe those records that are *reasonable* for an agency to have readily available and retrievable can be confusing and misleading when the term is also customarily used in other laws to reference a record "in an accessible format" for a person with a disability. Thus, DCAB suggests the use of an alternate term such as "*easily retrievable*" or similar term. Please do not use the term "accessible" in this context.

(2) Accessible formats of documents

The rules speak to the issue of providing information to the public upon request and within the limitations set forth under the rules. The rules only speak to making the information available to the requestor but do not speak to the format of the information. Thus, there is no mention of the need to ensure that the information provided is in a format that is "accessible" to a person with a disability if it is a document that is generated for the public.

We understand that your office does not wish to include provisions that are covered by other laws (such as the Americans with Disabilities Act). However, there are some areas that require clarification. Your proposed rules set forth a fee schedule for both the actual costs of documents as well as labor for searching, reviewing, and segregating records. If a person with a disability asks for information in a format that is not accessible, there may be an increase in both the copying costs (i.e., one large print format of a document may result in three times the printed paper as a standard document) or the labor costs (i.e., staff time to convert the document into the desired accessible format). This would constitute a "surcharge" or a "premium" cost solely based upon the person's disability and desire to have the information in a format that is accessible and required by law. Such surcharges or premiums are not permitted under either state or federal law. The permitted charge would be the equivalent cost of the information in the non-accessible format. For example, if a document is ten pages in standard print but thirty pages in large format, then the cost to the person would be the cost for ten pages, not thirty pages.

We ask that your rules reflect the above in your fee schedule.

Should you have any questions, please feel free to contact our Executive Director, Francine Wai, at 586-8121 or dcab@doh.hawaii.gov for more information.

Sincerely,



WILLIAM H.Q. BOW
Chairperson