Office of Information Practices

State of Hawaii

Annual Report 2016

This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices from July 1, 2015, to June 30, 2016, in the administration of the public records law (the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes) and the open meetings law (the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes).

Table of Contents

History 4
Executive Summary 6
Goals, Objectives, and Action Plan 11

Highlights of Fiscal Year 2016

Budget and Personnel 16

Legal Guidance, Assistance, and Dispute Resolution 18
- **Overview and Statistics** 18
  - **UIPA** 21
  - **Sunshine Law** 25
- **Formal Opinions** 26
  - **UIPA** 26
  - **Sunshine Law** 28
- **Informal Opinions** 31
  - **UIPA** 31
  - **Sunshine Law** 34
- **General Legal Guidance and Assistance** 36
  - **UIPA** 36
  - **Sunshine Law** 38

Education, Open Data, and Communications 40
- **Education** 40
  - **Training Sessions** 41
  - **Training Materials, Reports, and Model Forms** 42
- **Open Data** 44
- **Communications** 48

Records Report System 50

Legislation Report 52

Litigation Report 53

History

In 1988, the Legislature enacted the comprehensive Uniform Information Practices Act (Modified) (UIPA), codified as chapter 92F, Hawaii Revised Statutes (HRS), to clarify and consolidate the State's then existing laws relating to public records and individual privacy, and to better address the balance between the public's interest in disclosure and the individual's interest in privacy.

The UIPA was the result of the efforts of many, beginning with the individuals asked in 1987 by then Governor John Waihee to bring their various perspectives to a committee that would review existing laws addressing government records and privacy, solicit public comment, and explore alternatives to those laws. In December 1987, the committee's work culminated in the extensive *Report of the Governor's Committee on Public Records and Privacy*, which would later provide guidance to legislators in crafting the UIPA.

In the report's introduction, the Committee provided the following summary of the underlying democratic principles that guided its mission, both in terms of the rights we hold as citizens to participate in our governance as well as the need to ensure government's responsible maintenance and use of information about us as citizens:

> Public access to government records ... the confidential treatment of personal information provided to or maintained by the government ... access to information about oneself being kept by the government. These are issues which have been the subject of increasing debate over the years. And well such issues should be debated as few go more to the heart of our democracy.
>
> We define our democracy as a government of the people. And a government of the people must be accessible to the people. In a democracy, citizens must be able to understand what is occurring within their government in order to participate in the process of governing. Of equal importance, citizens must believe their government to be accessible if they are to continue to place their faith in that government whether or not they choose to actively participate in its processes.
>
> And while every government collects and maintains information about its citizens, a democratic government should collect only necessary information, should not use the information as a "weapon" against those citizens, and should correct any incorrect information. These have become even more critical needs with the development of large-scale data processing systems capable of handling tremendous volumes of information about the citizens of this democracy.
>
> In sum, the laws pertaining to government information and records are at the core of our democratic form of government. These laws are at once a reflection of, and a foundation of, our way of life. These are laws which must always be kept strong through periodic review and revision.

Although the UIPA has been amended over the years, the statute has remained relatively unchanged. Experience with the law has shown that the strong efforts of those involved in the UIPA's creation resulted in a law that anticipated and addressed most issues of concern to both the public and government.

Under the UIPA, all government records are open to public inspection and copying unless an exception authorizes an agency to withhold the records from disclosure.

The Legislature included in the UIPA the following statement of its purpose and the policy of this State:

> In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

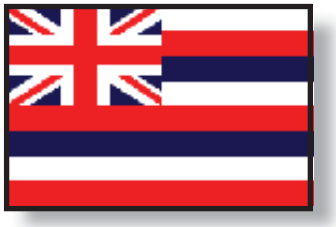
However, the Legislature also recognized that "[t]he policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawaii."

Accordingly, the Legislature instructed that the UIPA be applied and construed to:

> (1) Promote the public interest in disclosure;
>
> (2) Provide for accurate, relevant, timely, and complete government records;
>
> (3) Enhance governmental accountability through a general policy of access to government records;
>
> (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
>
> (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.

The Legislature also exercised great foresight in 1988 by creating a single agency— the state Office of Information Practices (OIP)—to administer the UIPA, with broad jurisdiction over all state and county agencies, including the Legislature, Judiciary, University of Hawaii, Office of Hawaiian Affairs, and County Councils. OIP promulgates the UIPA's administrative rules and provides uniform interpretation of the law, training, and despute resolution as a neutral decision-maker.

In 1998, OIP was given the additional responsibility of administering Hawaii's Sunshine Law, part I of chapter 92, HRS, which had been previously administered by the Attorney General's office since the law's enactment in 1975.



Like the UIPA, the Sunshine Law opens up the governmental processes to public scrutiny and participation by requiring state and county boards to conduct their business as transparently as possible in meetings open to the public. Unless a specific statutory exception is provided, the Sunshine Law requires discussions, deliberations, decisions, and actions of government boards to be conducted in a meeting open to the public, with public notice and with the opportunity for the public to present testimony.

OIP provides legal guidance and assistance under both the UIPA and Sunshine Law to the public as well as all state and county boards and agencies. Among other duties, OIP also provides guidance and recommendations on legislation that affects access to government records or board meetings.

Pursuant to sections 92F-42(7) and 92-1.5, HRS, this Annual Report to the Governor and the Legislature summarizes OIP's activities and findings regarding the UIPA and Sunshine Law for the 2016 fiscal year.

Executive Summary

The mission statement of the state Office of Information Practices (OIP) is "ensuring open government while protecting individual privacy." More specifically, OIP seeks to promote government transparency while respecting people's privacy rights by fairly and reasonably administering the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), requiring open access to government records, and the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes, requiring open access to public meetings.

Additionally, following the enactment of Act 263, SLH 2013 (see HRS § 27-44), OIP was charged with assisting the state Office of Information Management and Technology (now known as the Office of Enterprise Technology Services, or "ETS") to implement Hawaii's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the state. Besides providing relevant background information, this annual report details OIP's performance for fiscal year 2016, which began on July 1, 2015, and ended on June 30, 2016.

OIP Service Overview
FY 2011-2016

	2011	2012	2013	2014	2015	2016
Total Requests for OIP's Services	818	1,075	1,227	1,313	1,307	1,162
Informal Requests (AODs)	676	940	1,050	1,109	1,074	964
Formal Requests Opened	142	135	177	204	233	198
Formal Requests Resolved	175	143	142	195	208	241
Live Training	11	25	16	19	11	11
Training Materials Added/Revised	8	14	19	23	12	12
Legislation Monitored	180	267	134	181	101	175
Lawsuits Monitored	1	4	7	17	39	28
Public Communi-cations	7	48	30	35	33	30
Rules Adopted	0	0	0	1	0	0
Special - Projects	-	-	14	14	15	8

Figure 1

OIP's jurisdiction extends over state, county, and independent agencies and boards in all branches of government, including the Governor, Lt. Governor, Judiciary, Legislature, University of Hawaii (UH), Office of Hawaiian Affairs (OHA), and all County Councils. OIP serves the attorneys, staff, and volunteers for all government agencies and boards, as well as the general public, by providing training and legal guidance regarding the UIPA and Sunshine Law, and assistance in obtaining access to public records and meetings. As a neutral third party, OIP resolves UIPA and Sunshine Law disputes through a free and informal process that is not a contested case or judicial proceeding. OIP's decisions may be appealed to the courts and are also enforced by the courts.

With 8.5 full-time equivalent (FTE) positions, which includes 5 staff attorneys, OIP performs a variety of services. See **Figure 1**. In addition to resolving formal cases through opinions or correspondence, OIP provides informal, same-day advice over the telephone, via mail or e-mail, or in person through its Attorney of the Day (AOD) service. OIP prepares extensive training materials and presents in-person as well as online training programs, including continuing legal education programs for attorneys. During the legislative session, OIP monitors more than a hundred bills and resolutions and provides proposals and testimony on legislation impacting open government issues. OIP also monitors lawsuits that involve the UIPA or Sunshine Law. OIP proactively undertakes special projects, such as the UIPA Record Request Log, and must occasionally review and revise its administrative rules. Throughout the year, OIP shares UIPA, Sunshine Law, and Open Data updates and information with interested groups and members of the public, state and county government agencies, board members and staff, and the media.

Additional details and statistics are found later in this annual report, along with OIP's goals, objectives and action plan. This Executive Summary provides an overview, as follows.

Budget and Personnel

OIP's budget allocation is the net amount that it was authorized to use of the legislatively appropriated amount, minus administratively imposed budget restrictions. In FY 2016, OIP's total allocation was $564,041, up from $552,990 in FY 2015. See **Figure 3** on page 17. OIP's allocation in FY 2016 for personnel costs was $532,449 and for operational costs was $31,592. See **Figure 3** on page 17.

Legal Guidance, Assistance, and Dispute Resolution

One of OIP's core functions is responding to requests for assistance from members of the public, government employees, and board members and staff seeking OIP's guidance regarding the application of and compliance with the UIPA, Sunshine Law, and the State's Open Data policy. Requests may also be made for OIP's assistance in obtaining records from government agencies; appeals to OIP are filed following agencies' denial of access under the UIPA; and OIP's advisory opinions are sought regarding the rights of individuals or the functions and responsibilities of agencies and boards under the UIPA and the Sunshine Law. In FY 2016, OIP received 198 formal and 964 informal requests for assistance for a total of 1,162 requests, which is an 11% decrease from 1,307 requests in FY 2015. Nevertheless, the 1,162 total requests in FY 2016 constituted a 30% increase from the 818 requests in FY 2011, or an average 6% increase per year. See **Figure 1** on page 6.

Eighty-three percent (964) of the total requests for OIP's services are informal requests that are typically responded to within the same day through the Attorney of the Day (AOD) service. Although AOD inquiries decreased from the prior year, they have grown by 30% in the past five years, from 676 in FY 2011 to 964 in FY 2016. Seventy percent of AOD inquiries in FY 2016 came from state and county agencies and boards seeking guidance

to ensure compliance with the UIPA and Sunshine Law. While AOD inquiries have been taking an increasing amount of the staff attorneys' time, agencies usually conform to this general advice given informally, which thus prevents or resolves many disputes that would otherwise lead to more labor-intensive formal cases.

Many situations, however, are not amenable to quick resolution and OIP must open formal cases, which require more time to investigate, research, review, and resolve. In FY 2016, OIP opened 198 formal cases, which was a 15% decrease from the prior year and a welcome respite from the average 20% annual increases that OIP had experienced from FY 2013 through 2015.

In FY 2016, OIP was also able to close 241 formal cases as compared to the 208 cases resolved the prior year. See **Figure 1** on page 6. Thanks to this nearly 16% increase in formal cases resolved, along with the 15% decrease in the number of formal cases (198) filed in FY 2016, OIP was able to significantly reduce by over 41% the number of cases that remained pending at the end of FY 2016 (104) as compared to FY 2015 (147).

Notably, OIP also succeeded in keeping to two years the age of the oldest pending cases that are not in litigation. This is a substantial improvement since FY 2011 when the oldest case was 12 years old. Additionally, nearly 77% (152 of 198) of the cases opened in FY 2016 were resolved in the same year.

OIP continues to receive a disproportionately large number of formal cases filed by a small number of persons. Three non-inmate individuals accounted for 18.69% (37 cases) of the formal requests filed in FY 2016; inmates, many with similar issues, accounted for another 18.18% (36 cases). Formal cases filed by inmates began spiking higher three years ago, jumping from 11 (6.21%) in FY 2013 to 44 (21.57%) in FY 2015, 47 (20.17%) in FY 2016, and 36 (18.18%) in FY 2016. While OIP cannot control the number of cases filed by repeat requesters, it has taken administrative measures to equitably provide its services to all requesters and not just a few. For example, if OIP has resolved two or more cases from the same requester within the preceding 12 months, then other requesters' later-filed cases may be worked on before completing the repeat requesters' remaining cases. OIP will also cluster cases involving similar issues and resolve them at the same time.

OIP resolves most formal requests for its services through correspondence with the parties, but it must sometimes issue formal or informal (memorandum) opinions.

Formal opinions are usually reserved for novel or controversial legal issues, or those requiring complex legal analysis. Because OIP already has a considerable body of precedent-setting formal opinions that have resolved many legal questions, OIP has been issuing more informal opinions, which are based on prior precedent and are binding only on the parties directly involved. Additionally, because agencies generally find it easier to provide records, revise agendas, or re-do meetings than to engage in a protracted dispute before OIP or the courts, agencies will typically follow OIP's informal advice and will request an opinion only when there is a legitimate dispute or a need for legal clarity. Finally, where a formal opinion may be forthcoming, OIP often obtains the agencies' cooperation and may sometimes resolve a case without a formal opinion because the agencies do not want to risk having an adverse decision rendered by OIP that would be difficult to challenge on appeal to the courts, due to the "palpably erroneous" standard of review for agency appeals that was incorporated into the UIPA and Sunshine Law with the passage of Act 176 in 2012.

OIP issued five formal opinions and eleven informal opinions, for a total of 16 opinions in FY 2016. Summaries of the opinions are found beginning on page 26.

Education, Open Data, and Communications

In addition to opinions, OIP provides training and general advice on the UIPA and Sunshine Law to agencies, boards, and members of the public through online guides, in-person training sessions, continuing legal education seminars, or other means. "Quick Reviews" were initiated in FY 2013 to provide guidance and practical tips addressing questions of immediate widespread interest or which often arise in AOD inquiries. In FY 2016, OIP created or revised 12 training materials and forms and had a total of 71 training materials and forms.

As part of its educational and open data efforts, OIP developed the UIPA Record Request Log in 2012. The Log provides OIP and the public with easily accessible information and accountability as to how many UIPA record requests are being made, how they are being resolved, how long they take to be completed, and how much they are costing the government and requesters. Besides helping agencies to keep track of record requests and costs, the Log provides detailed instructions and training materials that educate agency personnel on how to timely and properly fulfill UIPA requests, and the Log collects important open data information showing how agencies are complying with the UIPA. The Log process also helps to educate the agencies on how they can use the State's open data portal at data.hawaii.gov to upload their own information online to make it more readily accessible to the public. The Master Log of all agencies' annual log results is posted at data.hawaii.gov.

Beginning in FY 2015, all state, county, and independent agencies—including the Governor's Office, Lt. Governor's Office, Judiciary, Legislature, University of Hawaii, and Office of Hawaiian Affairs—used the UIPA Record Request Log to track record requests and ensure compliance with the UIPA. In FY 2016, OIP prepared year-end reports summarizing the data posted by government agencies on the Master Log for FY 2015. OIP's reports are posted on its website at **oip.hawaii.gov/reports**.

In addition to promoting open data via the Log, OIP participates on both the Open Data Council and the Access Hawaii Committee to encourage the creation of electronic data sets that can make government information more readily accessible to the public.

OIP has long demonstrated its commitment to an open data policy by making its statutes, opinions, rules, subject matter index, and training materials easily accessible on its website at **oip.hawaii.gov** for anyone to freely use. In FY 2016, OIP expanded access to its website by converting all of its formal opinions and providing new online materials in a format accessible to people with disabilities. Additionally, thirty What's New articles informing readers of OIP's latest training materials, legislation, and open government issues were e-mailed to government agencies, media representatives, community organizations, and members of the public in FY 2016, and past articles are posted in the What's New archive on OIP's website at **oip.hawaii.gov**. OIP's website also links to other relevant state, county, and federal websites, including the State Calendar, where public meeting agendas are electronically posted.

By using and improving its technological resources to cost-effectively communicate and expand its educational efforts, OIP has been able to more efficiently leverage the time and knowledge of its small staff and to effectively make OIP's training and advice freely and readily available 24/7 to all members of the public, and not just to government employees or board members.

Records Report System

OIP's Records Report System (RRS) is a computer database that collects from all state and county agencies information describing the records that they routinely use or maintain. While the actual records remain with the agency and are not filed with OIP, all agencies must annually report to OIP the titles of their records and whether the records are accessible to the public or must be kept confidential in whole or in part. By the end of FY 2016, state and county agencies reported 29,838 record titles, of which 51% were described as being accessible to the public in their entirety.

The list of all agencies' record titles and their accessibility can be found on OIP's website at **oip.hawaii.gov/records-reports-system-rrs.**

Legislation

OIP serves as a one-stop resource for government agencies in matters relating to the UIPA and Sunshine Law. OIP often provides comments on these laws and makes recommendations for legislative changes to amend or clarify areas that have created confusion in application or work counter to the legislative mandate of open government. During the 2016 legislative session, OIP reviewed and monitored 175 bills and resolutions affecting government information practices, and testified on 24 of these measures. See **Figure 1** on page 6.

In FY 2016, OIP finished the preparations for its administrative transfer to the state Department of Accounting and General Services (DAGS), which became effective on July 1, 2016, pursuant to Act 92, SLH 2015. While no physical transfer was involved, OIP is now considered a "permanent" agency under a principal department and not a "temporary" agency under the Office of the Lt. Governor. OIP is attached to DAGS for administrative purposes only. OIP continues to retain its independence over substantive matters under its jurisdiction and is statutorily authorized to communicate directly with the Governor and the Legislature. HRS 92F-41.

Litigation

OIP monitors litigation in the courts that raise issues under the UIPA or the Sunshine Law or that challenge OIP's decisions, and may intervene in those cases. A person filing a civil action relating to the UIPA is required to notify OIP in writing at the time of filing. See **Figure 1** on page 6. Summaries of cases are provided in the Litigation section of this report.

Although litigation cases are not counted in the total number of cases seeking OIP's services, they nevertheless take staff time to process and monitor. In FY 2016, OIP monitored 28 cases in litigation, of which 8 were new cases that OIP began monitoring. Of the 28 cases monitored in FY 2016, 22 were UIPA cases (of which, 10 were filed by inmates) and 6 were Sunshine Law cases.

Goals, Objectives, and Action Plan

Pursuant to Act 100, SLH 1999, as amended by Act 154, SLH 2005, OIP presents its Goals, Objectives, and Action Plan for One, Two, and Five Years, including a report on its performance in meeting previously stated goals, objectives, and actions.

OIP's Mission Statement

"Ensuring open government while protecting individual privacy."

I. Goals

The primary goal of the Office of Information Practices (OIP) is to fairly and reasonably construe and apply the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), and the Sunshine Law, Part I of chapter 92, HRS, in order to achieve the common purpose of both laws, which is as follows:

> In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government[al] agencies—shall be conducted as openly as possible.

With the passage of Act 263, SLH 2013 (see HRS § 27-44), OIP has adopted another goal to assist the Office of Enterprise Technology Services (ETS) properly implement Hawaii's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from state agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the state.

II. Objectives and Policies

A. <u>Legal Guidance and Assistance</u>. Provide training and assistance to members of the public and all state and county agencies in order to promote compliance with the UIPA and Sunshine Law.

1. Provide accessible training guides, audio/visual presentations, and other materials online at **oip.hawaii.gov** and supplement OIP's online training with customized live training for state and county government entities.

2. Provide prompt informal advice and assistance to members of the public and government agencies through OIP's Attorney of the Day service.

3. Adopt and revise administrative rules, as necessary.

B. Investigations and Dispute Resolution. Assist the general public, conduct investigations, and provide a fair, neutral, and informal dispute resolution process as a free alternative to court actions filed under the UIPA and Sunshine Law, and resolve appeals under section 231-19.5(f), HRS, arising from the Department of Taxation's decisions concerning the disclosure of the text of written opinions.

1. Focus on reducing the age and number of OIP's backlog of formal cases in a manner that is fair to all requesters.

C. Open Data. Assist ETS and encourage all state and county entities to increase government transparency and accountability by posting open data online, in accordance with the UIPA and Sunshine Law and the State's Open Data Policy.

1. Post all of OIP's opinions, training materials, reports, and What's New communications at **oip.hawaii.gov**, which links to the State's open data portal at **data.hawaii.gov**.

2. Encourage state agencies to electronically post appropriate data sets onto **data.hawaii.gov** and to use the UIPA Record Request Log to record and report their record requests.

D. Records Report System. Maintain the Records Report System (RRS) and assist agencies in filing reports for the RRS with OIP.

1. Promote the use of the RRS to identify and distinguish private or confidential records from those that are clearly public and could be posted as open data on government websites.

E. Legislation and Lawsuits. Monitor legislative measures and lawsuits involving the UIPA and Sunshine Law.

1. Provide testimony or legal intervention, as may be necessary, to uphold the common purpose of the UIPA and Sunshine Law.

III. Action Plan with Timetable

A. Legal Guidance and Assistance

1. Past Year Accomplishments

a. Received 1,162 total requests for assistance in FY 2016, of which 964 (83%) were informal requests typically resolved the same day through OIP's Attorney of the Day (AOD) service.

b. Conducted 11 live training sessions for state and county agencies and boards.

c. Added or updated 12 training materials to OIP's website.

d. Prepared all new documents and presentations on OIP's website to be accessible to disabled persons.

2. Year 1 Action Plan

a. Focus OIP's limited resources on preparing and improving online training and communication in order to cost-effectively provide services to the greatest potential number of people and increase compliance by more government agencies, and reserve live presentations for advanced or special training.

b. Maintain current efforts to promptly provide general legal guidance through OIP's AOD service, so that approximately 80% of requests for OIP's assistance can be resolved the same day.

c. By the end of FY 2017, prepare drafts of new rules for personal records and revisions to OIP's existing rules.

3. Year 2 Action Plan

a. Obtain agency and public input on OIP's proposals for administrative rules and conduct public hearings in FY 2018, so that final rules can be adopted and implemented in FY 2019.

b. Continue to update and improve OIP's online training materials.

4. Year 5 Action Plan

a. Evaluate recently implemented rules and determine whether additional rules or revisions are necessary.

B. <u>Investigations and Dispute Resolution</u>

1. Past Year Accomplishments

a. Of the 198 formal cases opened in FY 2016, 152 (77%) were resolved in the same fiscal year.

b. After averaging more than 20% increases each year for three consecutive years, OIP finally saw a 15% decrease in the number of new formal cases opened in FY 2016 (198 total opened cases). At the same time, OIP continued to resolve 20% more cases (of 241 total closed cases) in FY 2016 than in the prior year. Consequently, OIP substantially reduced its formal case backlog by 41%, from 147 pending cases at the end of FY 2015 to 104 pending cases at the end of FY 2016.

c. Of the 104 cases that remained pending at the end of FY 2016, 46 (44%) were opened in FY 2016 and 58 (56%) were opened in FY 2014 or FY 2015.

d. No cases remained pending at the end of FY 2016 that were filed before FY 2014.

2. Year 1 Action Plan

a. Strive to resolve all formal cases filed before January 1, 2016, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

3. Year 2 Action Plan

a. Strive to resolve all formal cases filed before January 1, 2017, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

4. Year 5 Action Plan

a. Strive to resolve all formal cases within 12 months of filing, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

C. <u>Open Data</u>

1. Past Year Accomplishments

a. Prepared reports of the UIPA Record Request Log summarizing results for FY 2015 from 287 state and county agencies, including the Governor's Office, Lt. Governor's Office, Judiciary, Legislature, University of Hawaii, and Office of Hawaiian Affairs.

b. Created a new Checklist form and updated online training materials for the UIPA Record Request Log.

c. Conducted live training sessions on Oahu, Maui, Kauai, and the Big Island regarding the UIPA Record Request Log.

d. Distributed 30 public communications to keep government personnel and the general public informed of open government issues, including proposed legislation.

e. Received 38,054 unique visits on OIP's website and 116,119 website page views (excluding OIP's and home page hits).

2. Year 1 Action Plan

a. Assist state and county agencies to electronically post open data, including the results of their UIPA Record Request Logs.

b. Prepare reports of the UIPA Record Request Log results for FY 2016 from all state and county agencies.

c. Utilize Log data to develop and evaluate proposed OIP rules concerning the UIPA.

3. Year 2 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on their results of state and county agencies' UIPA Record Request Logs.

4. Year 5 Action Plan

a. Continue to assist state and county agencies to electronically post open data and report on the results of state and county agencies' UIPA Record Request Logs.

D. <u>Records Report System</u>

1. Past Year Accomplishments

a. Conducted one live training of the RRS.

b. For FY 2016, state and county agencies reported 29,838 record titles on the RRS.

2. Year 1 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

3. Year 2 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

4. Year 5 Action Plan

a. Continue to train and advise other state and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

E. Legislation and Lawsuits

1. Past Year Accomplishments

a. With DAGS' assistance and co-operation, OIP smoothly transitioned from being administratively housed in the Lt. Governor's Office to DAGS, effective July 1, 2016, and is now a permanent state agency falling under a principal department, pursuant to Act 92, SLH 2015. OIP continues to retain its independence over substantive matters within its jurisdiction and is statutorily authorized to directly communicate with the Governor and Legislature under HRS Section 92F-41.

b. In FY 2016, OIP reviewed 175 bills and resolutions and testified on 24 of them.

c. In FY 2016, OIP monitored 28 cases in litigation, of which 8 were new cases.

2. Year 1 Action Plan

a. For the 2017 legislative session, OIP will seek to convert its temporary employees to permanent status and to increase its appropriations to be able to provide competitive salaries that will help it to retain its experienced employees and, if necessary, recruit new employees.

3. Year 2 Action Plan

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, or OIP.

b. Obtain sufficient funding and position authorizations to train and retain OIP staff in order to keep up with the anticipated increases in OIP's workload while reducing the formal case backlog.

4. Year 5 Action Plan

a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, or OIP.

b. Obtain sufficient funding and position authorizations to retain trained and experienced staff to ensure the long-term stability and productivity of OIP.

IV. Performance Measures

A. Customer Satisfaction Measure – Monitor evaluations submitted by participants after training sessions as well as comments or complaints made to the office in general, and take appropriate action.

B. Program Standard Measure – Monitor the number of formal and informal requests for assistance; AOD inquiries received; opinions issued; lawsuits monitored; legislative proposals monitored; unique visits to OIP's website; live training sessions and public presentations; training materials added or revised; and public communications.

C. Cost Effectiveness Measure – Provide OIP's services with little or no additional cost and without exceeding OIP's budget amount. Monitor number, percentage, or age of cases opened and closed; pending cases; agencies posting their data onto the Master UIPA Record Request Log; and hits on OIP's website.

Highlights of Fiscal Year 2016

Budget and Personnel

OIP's budget allocation is the net amount that it was authorized to use of the legislatively appropriated amount, minus administratively imposed budget restrictions. In FY 2016, OIP's total allocation was $564,041, up from $552,990 in FY 2015.

OIP's allocation for personnel costs in FY 2016 was $532,449. The allocation for operational costs was $31,592, which included office modifications and equipment for an additional workstation and costs incurred for training of and by OIP personnel. See **Figure 3** on page 17.

In FY 2016, OIP had 8.5 full-time equivalent (FTE) total approved positions.

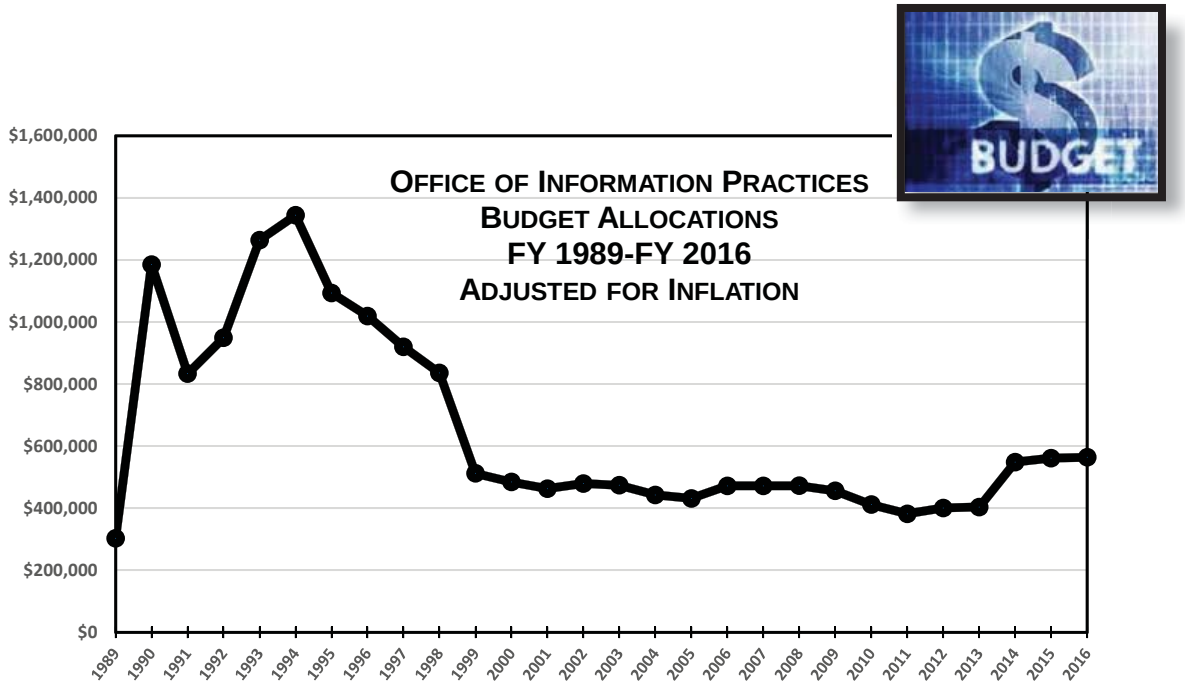


Figure 2

Office of Information Practices
Budget FY 1989 to FY 2016

Fiscal Year	Operational Expense Allocation	Personnel Allocation	Total Allocation	Allocations Adjusted for Inflation**	Approved Positions
FY 16	31,592	532,449	564,041	564,041	8.5
FY 15	45,228	507,762	552,990*	561,459	8.5
FY 14	88,862	450,895	539,757*	548,674	8.5
FY 13	18,606	372,327	390,933	403,837	7.5
FY 12	30,197	352,085	382,282	400,685	7.5
FY 11	42,704	314,454	357,158	382,099	7.5
FY 10	19,208	353,742	372,950	411,588	7.5
FY 09	27,443	379,117	406,560	456,039	7.5
FY 08	45,220	377,487	422,707	472,465	7.5
FY 07	32,686	374,008	406,694	472,020	7.5
FY 06	52,592	342,894	395,486	472,085	7
FY 05	40,966	309,249	350,215	431,531	7
FY 04	39,039	308,664	347,703	442,952	7
FY 03	38,179	323,823	362,002	473,949	8
FY 02	38,179	320,278	358,457	479,497	8
FY 01	38,179	302,735	340,914	463,240	8
FY 00	37,991	308,736	346,727	484,545	8
FY 99	45,768	308,736	354,504	512,066	8
FY 98	119,214	446,856	566,070	835,724	8
FY 97	154,424	458,882	613,306	919,565	11
FY 96	171,524	492,882	664,406	1,019,039	12
FY 95	171,524	520,020	692,544	1,093,560	15
FY 94	249,024	578,513	827,537	1,343,753	15
FY 93	248,934	510,060	758,994	1,264,011	15
FY 92	167,964	385,338	553,302	949,041	10
FY 91	169,685	302,080	471,765	833,545	10
FY 90	417,057	226,575	643,632	1,185,065	10
FY 89	70,000	86,000	156,000	302,749	4

*Total allocation for FY 2014 and 2015 includes the additional appropriation through Act 263, SLH 2013, to assist with open data and open government matters.
**Adjusted for inflation, using U.S. Bureau of Labor Statistics CPI Inflation Calculator.

Figure 3

Legal Guidance, Assistance, and Dispute Resolution

Overview and Statistics

The general public and nearly all of Hawaii's state and county government agencies and boards seek OIP's services. The government inquiries come from the executive, legislative, and judicial branches of the state and counties, and include government employees as well as volunteer board members.

In FY 2016, OIP received a total of 1,162 formal and informal requests for OIP's services, compared to 1,307 requests in FY 2015.

Formal Requests

Of the total 1,162 UIPA and Sunshine Law requests for services, 964 were considered informal requests and 198 were considered formal requests. Formal requests are categorized and explained as follows. See **Figure 4.**

Formal Requests - FY 2016

Type of Request	*Number of Requests*
UIPA Requests for Assistance	55
UIPA Requests for Advisory Opinion	1
UIPA Appeals	43
Sunshine Law Appeals	3
Sunshine Law Requests for Opinion	1
Correspondence	45
UIPA Record Requests	41
Reconsideration Requests	9
Total Formal Requests	**198**

Figure 4

UIPA Requests for Assistance

OIP may be asked by the public for assistance in obtaining a response from an agency to a record request. In FY 2016, OIP received 55 such written requests for assistance concerning the UIPA.

In these cases, OIP staff attorneys will generally contact the agency to determine the status of the request, provide the agency with guidance as to the proper response required, and in appropriate instances, attempt to facilitate disclosure of the records.

Requests for Advisory Opinions

A request for an opinion does not involve a live case or controversy and may involve only one party, and thus, will result in only an informal (memo) opinion that is binding on the parties involved but has no precedential value as to legal issues regarding the UIPA or Sunshine Law. In FY 2016, OIP received one request for a UIPA opinion and one for a Sunshine Law opinion.

UIPA Appeals

Appeals to OIP concern live cases or controversies and may result in formal or informal opinions. Prior to FY 2013, OIP provided written rulings only on UIPA appeals by requesters who had been denied access to all or part of a requested record by an agency. With OIP's adoption of new administrative rules effective January 1, 2013, OIP now defines "appeals" to also include the board's compliance with the Sunshine Law and the denial or granting of access to government records by the Department of Taxation.

In FY 2016, OIP received 43 appeals related to the UIPA.

Sunshine Law Appeals/ Requests for Opinions

In FY 2016, OIP received three Sunshine Law appeals and one request for an opinion. See page 25 for further information about Sunshine Law requests.

Correspondence, UIPA Record Requests, and Reconsideration Requests

OIP may respond to general inquiries, which often include simple legal questions, by correspondence. In FY 2016, OIP received 45 such inquiries by correspondence. OIP also received 41 UIPA record requests made for records maintained by OIP. Of 9 requests for reconsideration received in FY 2016, 8 were denied and 1 remained pending at the end of FY 2016.

Types of Opinions and Rulings Issued

OIP issues opinions that it designates as either formal or informal.

Formal opinions concern actual controversies and address issues that are novel or controversial, that require complex legal analysis, or that involve specific records. Formal opinions are used by OIP as precedent for its later opinions and are posted, in full and as summaries, on OIP's website at **oip.hawaii.gov.** Summaries of the formal opinions for this fiscal year are also found on pages 26-30 of this report. OIP's website contains a searchable subject-matter index for the formal opinions.

Informal opinions, also known as memorandum opinions, are binding upon the parties involved but are considered advisory and are not cited by OIP as legal precedents. Informal opinions are public records, but are not published for distribution. Summaries of informal opinions are available on OIP's website and those issued in this fiscal year are also found in this report beginning on page 31.

Because informal opinions generally address issues that have already been more fully analyzed in formal opinions, or because their factual bases limit their general applicability, the informal opinions typically provide less detailed legal discussion and do not have the same precedential value as formal opinions.

AOD Inquiries

Fiscal Year	Total	Public	Government Agencies
FY 16	**964**	289	675
FY 15	**1,074**	340	734
FY 14	**1,109**	280	829
FY 13	**1,050**	270	780
FY 12	**940**	298	642
FY 11	**676**	187	489
FY 10	**719**	207	512
FY 09	**798**	186	612
FY 08	**779**	255	524
FY 07	**772**	201	571
FY 06	**720**	222	498
FY 05	**711**	269	442
FY 04	**824**	320	504
FY 03	**808**	371	437
FY 02	**696**	306	390
FY 01	**830**	469	361

Figure 5

Informal Requests

Attorney of the Day Service (AOD)

The vast majority (83% in FY 2016) of all requests for OIP's services are informally handled through the AOD service, which allows the public, agencies, and boards to receive general, nonbinding legal advice from an OIP staff attorney, usually within 24 hours.

Members of the public use the service frequently to determine whether agencies are properly responding to record requests or to determine if government boards are following the procedures required by the Sunshine Law. Agencies often use the AOD service for assistance in responding to record requests, such as how to properly respond to requests or redact specific information under the UIPA's exceptions. Boards also use the AOD service to assist them in navigating Sunshine Law requirements.

Over the past 16 years, OIP has received a total of 13,472 inquiries through its AOD service, an average of 842 requests per year. In FY 2016, OIP received 964 AOD inquiries. See **Figure 5.** Since FY 2011, AOD inquiries have increased 43%.

Of the 964 AOD inquiries in FY 2016, 675 (70%) came from government boards and agencies seeking guidance to ensure compliance with the UIPA and Sunshine Law, and 289 inquiries (30%) came from the public. See **Figures 6 and 7**.

Of the 289 AOD inquiries from the public in FY 2016, 211 (73%) came from private individuals, 42 (15%) from media, 16 (6%) from private attorneys, 13 (4%) from businesses, 3 (1%) from public interest groups, and 4 (1%) from other types. See **Figures 7 and 8**.

AOD Inquiries from the Public FY 2016

Types of Inquirers	Number of Inquiries
Private Individual	211
News Media	42
Private Attorney	16
Business	13
Public Interest Group	3
Other Types	4
TOTAL	**289**

Figure 7

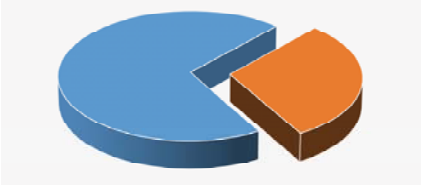


Figure 6

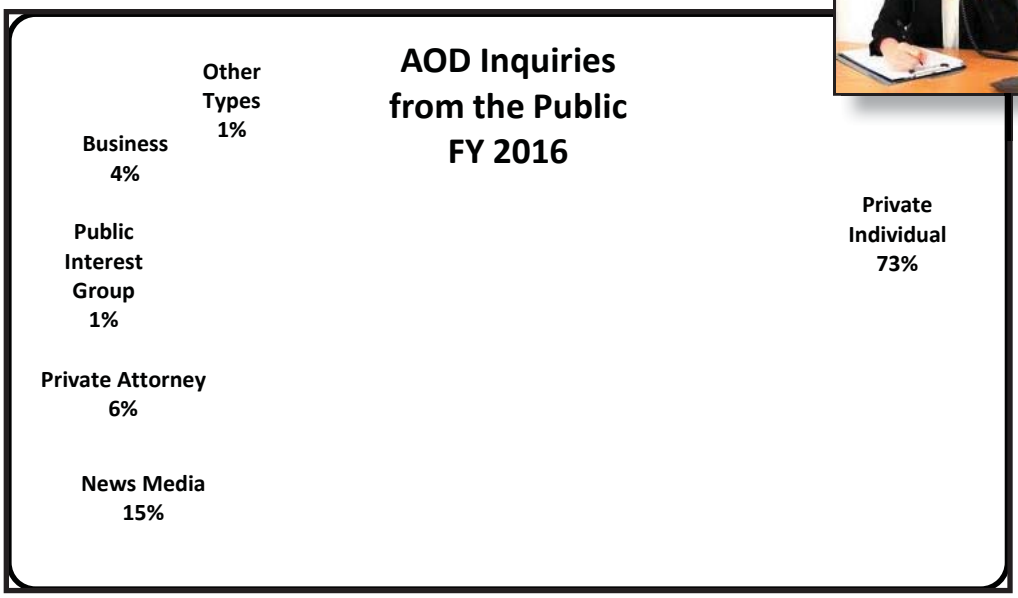


Figure 8

UIPA Requests:

UIPA AOD Inquiries

In FY 2016, OIP received 633 AOD requests concerning the UIPA from the public and government agencies. As with Sunshine Law AOD inquiries, the data further shows that most of the inquiries came from the agencies seeking guidance on how to comply with the laws. For a summary of the numbers and types of AOD inquiries, please see **Figures 9 to 13** that follow. A sampling of the AOD advice given by OIP starts on page 36.

State Agencies and Branches

In FY 2016, OIP received a total of 291 AOD inquiries about state agencies. About 51% of these requests concerned five state agencies: Department of Commerce and Consumer Affairs (35), Department of Education (33), Department of Land and Natural Resources (29), Department of Health (26), and Department of Transportation (26). As shown below in **Figure 9**, about 79% of these requests were made by the agencies themselves.

OIP also received 7 inquiries concerning the legislative branch and 8 inquiries regarding the judicial branch. See **Figure 9** below. These AOD requests exclude general inquiries that do not concern a specific agency.

AOD Requests About

State Government Agencies

FY 2016

Executive Branch Department	Requests by Agency	Requests by Public	Total Requests
Commerce and Consumer Affairs	35	0	35
Education (including Public Libraries)	28	5	33
Land and Natural Resources	23	6	29
Health	18	8	26
Transportation	24	2	26
Public Safety	11	3	14
Attorney General	8	4	12
Agriculture	7	3	10
Business, Econ Development, & Tourism	8	0	8
Governor	8	0	8
Budget and Finance	5	2	7
Accounting and General Services	5	1	6
Human Resources Development	5	1	6
Human Services	3	3	6
Hawaiian Home Lands	4	1	5
Labor and Industrial Relations	4	1	5
Lieutenant Governor (including OIP)	1	2	3
Tax	2	0	2
Defense	0	0	0
TOTAL EXECUTIVE	**199**	**42**	**241**
TOTAL LEGISLATURE	**6**	**1**	**7**
TOTAL JUDICIARY	**3**	**5**	**8**
University of Hawaii System	**20**	**8**	**28**
Office of Hawaiian Affairs	**0**	**0**	**0**
Unnamed Agency	**2**	**5**	**7**
TOTAL STATE AGENCIES	**230**	**61**	**291**

Figure 9

County Agencies

In FY 2016, OIP received 98 AOD inquiries regarding various county agencies and boards. Of these, 22 inquiries (22%) came from the public.

Of the 98 AOD inquiries, 42 inquiries concerned agencies in the City and County of Honolulu, up from 39 in the previous year. See **Figure 10**. As shown below, 76% of these requests were made by the agencies themselves seeking guidance to comply with the UIPA.

The largest number of requests concerned the Honolulu Police Department (9), the City Ethics Commission (6), and the Honolulu Fire Department (6).

OIP received 56 inquiries regarding neighbor island county agencies and boards: Hawaii County (14), Kauai County (28), and Maui County (14). See **Figures 11 to 13**.

AOD Inquiries About

City and County of Honolulu

Government Agencies - FY 2016

Department	Requests by Agency	Requests by Public	Total Requests
Police	7	2	9
City Ethics Commission	3	3	6
Fire	5	1	6
Corporation Counsel	4	0	4
Liquor Commission	3	0	3
Design and Construction	1	1	2
Mayor	2	0	2
Neighborhood Commission/ Neighborhood Boards	2	0	2
Unnamed Agency	0	2	2
Board of Water Supply	1	0	1
Budget and Fiscal Services	0	1	1
City Council	1	0	1
Customer Services	1	0	1
Enterprise Services	1	0	1
Environmental Services	1	0	1
TOTAL	**32**	**10**	**42**

Figure 10

AOD Inquiries About
Hawaii County
Government Agencies - FY 2016

Department	Requests by Agency	Requests by Public	Total Requests
Corporation Counsel	6	0	6
County Council	2	0	2
Water Supply	2	0	2
Mayor	1	0	1
Public Works	1	0	1
Police	0	1	1
Finance	0	1	1
TOTAL	**12**	**2**	**14**

Figure 11

AOD Inquiries About
Kauai County
Government Agencies - FY 2016

Department	Requests by Agency	Requests by Public	Total Requests
County Attorney	14	0	14
County Council	5	1	6
Police	3	2	5
Transportation	2	0	2
Planning	0	1	1
TOTAL	**24**	**4**	**28**

Figure 12

AOD Inquiries About

Maui County

Government Agencies - FY 2016

Department	Requests by Agency	Requests by Public	Total Requests
County Council	4	2	6
Police	2	2	4
Mayor	1	1	2
Corporation Counsel	1	0	1
Unnamed Agency	0	1	1
TOTAL	**8**	**6**	**14**

Figure 13

Sunshine Law Requests:

Since 2000, OIP has averaged more than 269 formal and informal requests a year concerning the Sunshine Law. In FY 2016, OIP received 335 Sunshine Law requests, which is 129 fewer than in FY 2015, but 140 more than the average number of requests received each year. See **Figures 14 and 15**.

Of the total Sunshine Law requests made in FY 2016, 331 (98%) were informal AOD requests, and 4 were formal cases. See **Figure 15**.

Of the 331 AOD requests involving the Sunshine Law, 317 were requests for general advice, and 14 were complaints. Also, 55 of the 331 AOD requests (16%) involved the requester's own agency.

In FY 2016, OIP provided 5 Sunshine Law training sessions to boards and commissions as well as to other agencies and groups. See page 41 for a list of the sessions provided. OIP also continued to make its Sunshine Law training materials available on the OIP website. These free online materials include a PowerPoint presentation with a voice-over, written transcripts, and examples, which OIP's attorneys formerly presented in person. The online training has reduced the need for in-person basic training on the Sunshine Law and enabled OIP to instead develop additional or more specialized training materials for live sessions, such as advanced question and answer sessions to address boards' specific needs. Moreover, the online training is not restricted to government personnel and is freely and readily accessible to members of the public.

Sunshine Law Inquiries

Fiscal Year	*AOD Inquiries*	*Formal Requests*	*Total*
2016	331	4	**335**
2015	433	31	**464**
2014	491	38	**529**
2013	264	27	**291**
2012	356	23	**379**
2011	166	13	**179**
2010	235	21	**256**
2009	259	14	**273**
2008	322	30	**352**
2007	281	51	**332**
2006	271	52	**323**
2005	185	38	**223**
2004	209	17	**226**
2003	149	28	**177**
2002	84	8	**92**
2001	61	15	**76**
2000	57	10	**67**

Figure 15

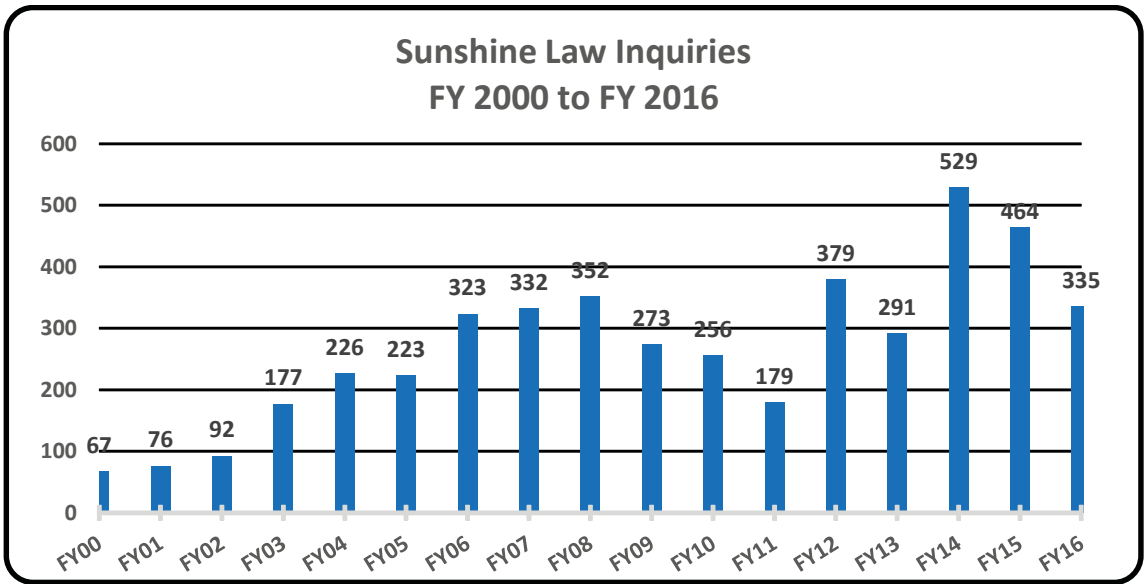


Figure 14

Formal Opinions

In FY 2016, OIP issued five formal opinions, two related to the UIPA and three related to the Sunshine Law, which are summarized below. The full text versions can be found at **oip.hawaii.gov**. In the event of a conflict between the full text and the summary, the full text of an opinion controls.

UIPA Formal Opinions:

No Duty to Search for Records that Do Not Exist

OIP Op. Ltr. No. F16-03

An individual made a request to the Hawaii Health Systems Corporation's (HHSC) West Hawaii Regional Board (WHRB) Chair for copies of or to inspect the audio and/or video recordings of the March 13, 2013 WHRB meeting. Requester received a response from HHSC's Corporate Director of Risk Management (CDRM) which stated that the request was being denied because no audio or video recording was made of the meeting. Requester and his spouse asked to appeal HHSC's response based on their "distrust" of the CDRM.

The UIPA contains affirmative disclosure responsibilities. Agencies must make government records available for inspection and copying during regular business hours. So long as an agency maintains the information in the form requested by a UIPA requester, the agency must generally provide a copy of that record in the format requested unless doing so might significantly risk damage, loss, or destruction of the original records. However, the UIPA does not impose an affirmative obligation on agencies to maintain records. Other laws may exist that require the creation or retention of records by agencies, but the UIPA contains no such requirements.

HHSC provided OIP with evidence to show that WHRB does not make audio or video recordings of its meetings, including the fact that WHRB's secretary at the time of the record request confirmed that there were no audio or video recordings of WHRB meetings made by her or any other employees or WHRB members. In cases such as this one, when an agency's response to a record request states that no responsive records exist and that response is appealed, OIP normally looks at whether or not the agency's search for a responsive record was reasonable. Here, there was no search for records because the agency receiving the request knew that it is not WHRB's practice to record its meetings. OIP therefore declined to advise that HHSC or WHRB should engage in a search for responsive records knowing that a search for responsive records would be fruitless. Relying on federal case law, OIP found that, in this case, because HHSC knew there would be no recordings found, no search for recordings was required. OIP found the assertions by HHSC employees that no responsive record exists were produced in good faith and that a search of WHRB records was not likely to uncover relevant documents. Thus, HHSC's response to Requesters request for an audio or video recording of the meeting was proper.

OIP emphasized that in most cases when an agency claims a record does not exist, it must first conduct a reasonable search. The decision reached here is not intended to lessen or overrule the general requirement that agencies conduct a reasonable search for responsive records when

receiving requests. In rare cases, such as here, an agency's staff may have actual knowledge that the type of record requested was never created. Only in these rare cases is an agency absolved from having to conduct a search reasonably likely to produce the requested records.

Visitor Permits for the Kalaupapa Settlement

OIP Op. Ltr. No. F16-04

Requester asked the Department of Health (DOH) to publicly disclose each visitor permit authorizing persons to visit on specified dates the Kalaupapa Settlement (KS) on Molokai, Hawaii, which was established to house Hansen's Disease patients. DOH denied access to the visitor permits.

OIP found that section 92F-12(a)(13), HRS, expressly requires an agency to disclose certain information from each permit it issued, specifically the name, business address, type and status of the permit. As this UIPA disclosure requirement applies to the visitor permits, OIP concluded that DOH must disclose the visitor permit naming each individual permitted to visit KS (Permittee) after redacting, if provided, the Permittee's age, home address, and personal emergency telephone number. These items of personal information about the Permittee are protected from public disclosure under the UIPA's exception for "[g]overnment records which, if disclosed would constitute a clearly unwarranted invasion of personal privacy." HRS § 92F-13(1) (2012). On the other hand, a Permittee's business address and general business telephone number, if provided on the visitor permit, must be disclosed because no UIPA exception applies to allow DOH to withhold them. If the Permittee provided a direct work telephone number as an emergency telephone number, however, the direct work telephone number can be withheld under the UIPA's exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." HRS § 92F-13(3) (2012).

It is generally appropriate for DOH to redact the name and address of the KS resident who is sponsoring the Permittee's visit to KS (Sponsor) because the "clearly unwarranted invasion of personal privacy" exception protects this information about the Sponsor's residency at KS. However, where a Sponsor is an employee of DOH or the federal National Park Service (NPS) and is sponsoring persons in an official capacity and on behalf of the government agency, the Sponsor's name as a government employee and government address, if applicable, must be disclosed because the "clearly unwarranted invasion of personal privacy" exception does not apply to this government employment information. Also, where visitor permits are provided to the Damien Tour (DT) operator accompanying visitors on DT's guided tours of KS, DOH must disclose the name of the Sponsor, who is the DT operator, because the "clearly unwarranted invasion of personal privacy" exception does not apply to information that is already public.

Sunshine Law Formal Opinions:

Councilmember Attendance at Kula Community Association Meeting

OIP Op. Ltr. No. F16-01

Boards are required to conduct their board business in open meetings under the Sunshine Law, subject to a few exceptions. A member of the public (Requester) complained that three members of the Maui County Council (Council) attended the Kula Community Association (KCA) Community Meeting in violation of the Sunshine Law. OIP concluded that their attendance was not a violation because it qualified as permitted interaction under section 92 2.5(e), HRS, which allows less than a quorum of a board to attend an informational meeting of another entity.

Section 92-2.5(e), HRS, contains several components, and the three Councilmembers complied with all of them. First, less than a quorum of the Council attended the Community Meeting. Also, the Community Meeting was not "specifically and exclusively organized for or directed toward members of the [Council.]" The incident complained of was the type of situation that section 92-2.5(e), HRS, was intended to allow. Finally, there was no evidence that any commitment to vote was made or sought. OIP thus concluded that the three Councilmembers were permitted under section 92-2.5(e), HRS, to attend and to participate in discussions about Council business during the Community Meeting.

Section 92-2.5(e), HRS, also requires that, at the next meeting after an informational meeting permitted interaction, the board members report their attendance and the matters discussed that related to board business at the informational meeting. The Council held a meeting subsequent to the Community Meeting, during which a Councilmember who attended the Community Meeting read her written report to the Council on her attendance with the two other Councilmembers. Having found that the three Councilmembers at the Community Meeting followed all the provisions of section 92-2.5(e), HRS, including the report requirement, OIP concluded that their attendance was in compliance with the Sunshine Law.

The Councilmembers' report of their attendance at the Community Meeting was listed on the agenda for the Council's subsequent March 1, 2013, meeting in accordance with the Sunshine Law's notice provisions in section 92-7, HRS. Requester complained that report was not properly noticed because it was under the "Communications" section of the agenda when it should have been under another section of the agenda listing items for the Council's deliberation; or that the Council should have considered a motion to waive its rules to allow for deliberation on this item–as the Council does not customarily consider or take action on "communication" items. OIP previously opined that the fact that an item is on an agenda indicates that it is "before" the board and is business of that board, which may or may not include deliberation and decision making by that board. The Councilmember report was listed on the March 1 agenda, and OIP found no violation of the Sunshine Law's notice requirements.

Requester further asserted that because section 92-2.5(e), HRS, requires members who attend an informational briefing to "report" back to the Council, this reporting requirement thereafter requires deliberation by the full board of the informational meeting report. OIP disagreed as section 92-2.5(e), HRS, contains no requirement that a board consider or take action on a report provided thereunder.

Requester filed a lawsuit regarding the decision rendered in this opinion. It is currently pending before Hawaii's Intermediate Court of Appeals. See page 60 of this report.

Notice of Public Meetings Required

OIP Op. Ltr. No. F16-02

Requester asked whether the Hawaii Public Housing Authority Resident Advisory Board (Board) violated the Sunshine Law by holding its August 9, 2013 meeting (Meeting) without first filing its notice at the Office of the Lieutenant Governor (LT GOV) at least six calendar days before the Meeting.

The Sunshine Law requires that boards file its notice at the LT GOV or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting[.]" HRS § 92-7(b) (2012). LT GOV's Policy on Filing Written Public Notice for State Board Meetings Pursuant to chapter 92, HRS, effective July 14, 2015, allows filings with the LT GOV during regular business hours by mail, in person, or via facsimile, but not by electronic transmission. For state boards specifically, Executive Memorandum Number 11-11 further requires that the notice be electronically posted on the State Online Calendar "as soon as" the notice is filed with the LT GOV. The Board's own administrative rules provide that its "[s]taff shall provide notice of the meetings of the resident advisory board pursuant to the requirements of section 92-7, HRS." HAR § 15-181 45 (2002).

OIP found that the Board, as a state board, was required by the Sunshine Law to file its notice with the LT GOV. Although the Board created the notice for its Meeting, it informed OIP that the agenda "inadvertently" was not sent to the LT GOV's office as required. OIP concluded that the Board's failure to file any notice of its meeting violated the Sunshine Law and thus, should not have been held.

OIP is unable to impose criminal sanctions in Sunshine Law cases. If it can be proven to a court, however, that a person willfully violated any provisions of the Sunshine Law, then a convicted person may be summarily removed from the board unless otherwise provided by law. § HRS 92-13 (2012). Additionally, any final action taken in violation of sections 92-3 and 92-7, HRS, may be voidable upon proof of violation if a suit is commenced in court within 90 days of the action. HRS § 92-11 (2012). OIP recommended that the Board prevent future violations by studying the many helpful guides, checklists, quick reviews on problematic issues, and other Sunshine Law training materials on OIP's website at www.oip.hawaii.gov/training/.

Description of Meeting Location

OIP Op. Ltr. No. F16-05

In OIP Op. Ltr. No. F16-05, OIP concluded that while the Sunshine Law does not necessarily require a meeting notice to provide a street address for a meeting location, the description of the location in the meeting notice must be sufficiently detailed to reasonably allow a member of the public to actually find the meeting location. In this case, the Agribusiness Development Corporation's Notice of Meeting failed to adequately describe the meeting location, which did not have a street address, with the result that at least one member of the public was actually unable to find it. This failure violated the Sunshine Law's requirement that a board give written public notice of every meeting including "the date, time, and place of the meeting." HRS § 92-7(a) (2012). Nevertheless, OIP is without authority to void any final action taken by a board, and thus need not consider whether such a remedy would have been appropriate in this case. See HRS § 92-11 (permitting a "suit to void any final action" taken in violation of sections 92-3 and 92-7, HRS, which must be brought in court within 90 days of the action).

Additionally, OIP concluded that section 92-7(b), HRS, requires posting the notice of a board's meeting at the meeting site "whenever feasible," but nothing in this requirement suggests that a board must post signs directing members of the public to the meeting site, such as maps or guideposts with the use of arrows. Further, because the Sunshine Law's notice requirement only requires posting of the meeting notice at the meeting location when "feasible," a board may not even be required to post the notice of its meeting at the meeting site for a particular meeting. HRS § 92-7(b).

Informal Opinions

In FY 2016, OIP issued six informal opinions relating to the UIPA and three informal opinions relating to the Sunshine Law. Summaries of these informal opinions are provided below. In the event of a conflict between the full text and a summary, the full text of an opinion controls.

UIPA Informal Opinions:

Confidential Commercial Information

UIPA Memo 16-1

Requester sought a decision as to whether, under Part II of the UIPA, the Public Utilities Commission (PUC) properly redacted certain terms and conditions concerning the seller's retention of the right to construct a wind farm (redacted Wind Farm Terms), which were contained in private property sales agreements that were disclosed.

The issue before the PUC was the transfer of utilities, and the redacted information concerned an unrelated matter contained in the private sales agreements. OIP found credible the PUC's assertion that disclosure of the redacted Wind Farm Terms would discourage persons from submitting to the PUC information related to but not directly about the matters that the PUC is reviewing. Further, following OIP's *in camera* review of both the redacted information and the PUC's assertions in its order, OIP believed that there is a high potential for substantial competitive harm to the private parties seeking the PUC's approval by disclosure of the redacted Wind Farm Terms. Consequently, with the exception of certain document names, section headings, and page information that should not have been redacted from the sales agreements that were publicly disclosed, OIP concluded that the PUC was justified in withholding the redacted Wind Farm Terms as confidential commercial information protected under the "frustration" exception under HRS § 92F-13(3) (2012).

Proposals for an Unexecuted Land License that was to be Re-Solicited

UIPA Memo 16-2

Requester sought access to various records from the Department of Hawaiian Home Lands (DHHL) concerning a request for proposals for a land license, which was not executed as DHHL planned a re-solicitation of proposals.

Pursuant to section 92F-13(3), HRS, OIP determined that DHHL properly denied disclosure of records that were maintained prior to the execution of the land license because the disclosure would cause "frustration of a legitimate government function" by providing Requester with a manifestly unfair advantage and causing substantial harm to the competitive position of other potential applicants in the planned re-solicitation for the land license. Under the "frustration" exception, OIP also concluded that DHHL properly withheld intra-agency memoranda that are predecisional and deliberative in nature and fell within the deliberative process privilege. OIP concluded, however, that other records should be disclosed after redacting the identifying information of applicants submitting a proposal. An outline of the interview process that was read almost verbatim to all applicants should also be disclosed.

Student's Personal Records

UIPA Memo 16-3

Requester sought a decision as to whether the University of Hawaii's Office of Judicial Affairs (UH-JA) properly denied, under Part III of the UIPA, his request for a copy of his personal records that UH-JA maintained about him.

OIP found that UH-JA is subject to the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99, which, if not complied with, would put UH's federal funding in jeopardy. But as FERPA does not prohibit UH-JA from providing Requester with a copy of Requester's "education record," OIP concluded that the UIPA requires UH-JA to provide Requester with access to the education records requested and provide a copy of those records.

OIP also found that some records that Requester sought were joint education records of Requester and another student under the UIPA, which are considered joint personal records under Part II of the UIPA and may be disclosable using the analysis explained in OIP Opinion Letter Number F13-01. Under FERPA, however, personally identifiable information about another student may not be disclosed and thus, OIP concluded that the other student's personally identifiable information was properly withheld from disclosure. Requester's own personally identifiable information in the form of his social security number, date of birth, and age should not be redacted from the records provided to Requester.

Personal Calendar, Telephone Message Slips, and Birth Records

UIPA Memo 16-4

Requester sought a decision as to whether the Department of Health (DOH) properly responded to her records request under Part II of the UIPA for documents related to: (1) communications between DOH, including the former Director of Health, Loretta Fuddy (Director), and Judith Corley, Bob Bauer and Barack Obama, President of the United States (Mr. Obama), or their respective representatives, between March 1, 2011 and August 31, 2012; (2) communications between DOH, including the Director, and Ms. Corley on April 21, 2011; and (3) the work-related calendars, daily appointment schedules and telephone records created and maintained by the Director between March 1, 2011 and August 31, 2012 (collectively referred to as "Records Request").

OIP concluded that DOH timely responded to the Records Request by conducting a reasonable search of its records and providing Requester letters that it maintains as "government records" that are subject to disclosure under the UIPA. Under the facts of this case, however, the Director kept her own paper calendar, the DOH did not maintain any work calendar for her, and any telephone message slips that were delivered to the Director were not thereafter maintained by the DOH. Therefore, as DOH did not maintain the Director's calendar or telephone message slips, they were not government records subject to disclosure under the UIPA.

Finally, OIP concluded that the DOH properly withheld from Requester a certified copy of Mr. Obama's birth certificate under section 338-18, HRS, which restricts the disclosure of public health statistics, such as birth certificates, to persons who have a direct and tangible interest in the record.

Alii Health Center, LLC, is Not an "Agency" Subject to the UIPA

UIPA Memo 16-5

Two Requesters asked whether Alii Health Center, LLC (AHC), properly responded under Part III of the UIPA, which contains the "personal record" provisions, to one Requester's request to amend his personal record maintained at AHC. In order to answer this question, the threshold question was whether AHC is an agency subject to the UIPA.

Requesters contended that AHC was part of Hawaii Health Systems Corporation (HHSC), which is a State agency. When HHSC was created, the Legislature gave it broad powers, including the power to create nonprofit corporations consistent with HHSC policies. In 1999, HHSC created Alii Community Care, Inc. (Alii) to build, own, and operate Roselani Place, a private assisted living facility on Maui, based on the Maui community's need for an assisted living facility. In 2007, Alii expanded its mission and created AHC to provide physician services in Kona, when a primary care physician was closing her practice in Kona, which would have left about five thousand people without a physician.

The Hawaii Supreme Court in *Olelo: The Corp. for Comm'ty Tel. v. Office of Info. Practices*, 116 Haw. 337, 173 P.3d 484 (Haw. 2007) (*Olelo*), determined that threshold issues that relate to the applicability of UIPA, such as the definition of "agency," are not left to OIP's discretion. Accordingly, any opinion by OIP on whether an entity is an "agency" subject to UIPA is not entitled to a deferential standard on review, but is subject to *de novo* review by the courts.

The *Olelo* Court strictly read the term "corporation" in the UIPA's definition of "agency" to mean one that is (1) owned by the state; or (2) operated by the state; or (3) managed by the state; or (4) owned, operated, or managed on behalf of the state. Using this standard set by the Supreme Court, AHC does not meet the UIPA's definition of "agency" and is not subject to the UIPA. Accordingly, Requester's request to AHC to amend his personal record is not subject to the personal record correction provisions in Part III of the UIPA.

E-mails Maintained by Agencies are Government Records

UIPA Memo 16-6

Two Requesters first asked whether an e-mail between an individual and a government agency or between two agencies is a government record under Part II of the UIPA. Requesters did not ask OIP for a decision regarding a specific e-mail or a specific record request. OIP advised that an e-mail may be maintained by a government agency in electronic, paper, or perhaps other physical form. All e-mails maintained by government agencies in a physical form are subject to the UIPA under a plain reading of the UIPA's definition of "government record." E-mails maintained by agencies may be withheld from public disclosure to the extent that any of the exceptions in section 92F-13, HRS, apply.

Second, Requesters asked whether an e-mail containing personal information is a personal record under Part III of the UIPA that is subject to requests for correction or amendment. The UIPA requires that agencies that maintain "any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form[.]" If an e-mail maintained by an agency contains information about an individual, *i.e.*, a natural person, then the portions about that individual are the individual's personal record. Individuals may request access to their personal records under Part III of the UIPA and may request that an agency correct or amend a personal record in accordance with sections 92F-23 through -25, HRS. An e-mail maintained by a government agency may be withheld from disclosure to the individual whom the record is about if any of the exemptions in section 92F-22, HRS, apply.

Agencies may impose copying charges as allowed by section 92-21, HRS, for copies of government and personal records. Agencies may also charge search, review, and segregation fees for government records as allowed by chapter 2-71, Hawaii Administrative Rules.

Sunshine Law Informal Opinions:

Sunshine Law informal opinions are written to resolve investigations and requests for advisory opinions. Overall, OIP wrote three informal opinions concerning the Sunshine Law in FY 2016, as summarized below.

Public Testimony was Not Restricted by Board

Sunshine Memo 16-1

Requester asked for an investigation into whether the Honolulu Liquor Commission (Commission) violated the Sunshine Law by restricting oral testimony at its meeting on an agenda item concerning a request for reconsideration of a previous decision.

Even assuming that the meeting was not one in which the Commission was exercising its adjudicatory function and was thus subject to the Sunshine Law, the evidence shows there was no Sunshine Law violation because the public was given an opportunity to testify and no restrictions on testimony were actually imposed before the Commission made its final decision on the request for reconsideration.

Executive Session for Attorney-Client Privileged Matters

Sunshine Memo 16-2

The Maui County Council's Policy and Intergovernmental Affairs Committee (PIA) held a public meeting on August 14, 2013. The agenda item at issue (Item 41) pertained to a PIA investigation of several County executive agencies regarding the "potential misuse of County funds appropriated for the rehabilitation of the Old Wailuku Post Office."

According to the meeting minutes regarding Item 41, the Chair stated during the public portion of the meeting that he would ask the PIA to enter an executive meeting to consult with Corporation Counsel on a couple of scenarios that the Chair felt were important for the PIA to consider regarding the strategy of how to move forward.

Requester stated that, after the executive meeting, the PIA voted (1) to write a letter to ask the county auditor to intervene in the matter and (2) to exempt the Department of the Corporation Counsel (Corporation Counsel) from the investigation. Requester asked OIP whether section 92-5(a)(4), HRS, covered the executive meeting that took place, or whether some of the PIA's deliberations of Item 41 should have been done in public.

The Sunshine Law generally requires that every meeting of all boards shall be open to the public. HRS § 92-3 (2012). Despite this general requirement of openness, the Sunshine Law does allow boards to hold executive meetings closed to the public under section 92-4, HRS, and executive meetings must be limited to one or more of the purposes listed in section 92-5, HRS. One of those purposes allows a board to enter an executive meeting "[t]o consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities[.]" HRS § 92-5(a)(4) (2012).

In order to determine whether the PIA had properly entered into an executive session, OIP sought an *in camera* review of the executive session minutes. Initially, the Corporation Counsel provided over 14 pages of completely redacted minutes, from which no information about what happened at the executive session could be ascertained. On behalf of Maui County, the Corporation Counsel then filed a lawsuit for injunctive relief challenging OIP's authority to review attorney-client

privileged documents *in camera* and seeking to prevent OIP from taking adverse action against Maui County in *County of Maui v. State of Hawaii Office of Information Practices*, Civil No. 13-1-1079 (2) (2nd Cir. Ct.). The parties stipulated to dismiss the lawsuit, however, after the Corporation Counsel provided OIP with a second redacted copy of the executive session minutes for OIP's *in camera* review, which withheld only the attorney's statements and provided sufficient information to resolve the underlying case.

OIP reviewed the second set of redacted executive minutes provided for *in camera* review and found it was clear that the PIA's attorney was in the executive meeting and that he was being asked legal questions to which he provided responses throughout the meeting. These discussions appeared to be attorney-client privileged discussions between the PIA and its attorney. Pursuant to *County of Kauai v. Office of Information Practices*, 120 Haw. 34, 44-45, 200 P.3d 403, 413-14 (2009), OIP concluded that the PIA's executive meeting was in compliance with sections 92-4 and 92-5(a)(4), HRS.

Insufficient Agenda Description of Personnel Matter for Discussion in Executive Meeting

Sunshine Memo 16-3

On agendas for two meetings in September and October 2013, the Kauai County Council listed the same personnel matter for discussion in executive session, but the Requester complained that the agendas did not give any description of the actual personnel matter. OIP found that the agenda item at issue merely identified the statutory authority for going into the executive session, namely, the discussion of certain personnel actions against an officer or employee that involved matters affecting privacy, and that it was not clear from those agendas that personnel matters concerning the County Auditor would be discussed in executive session. Therefore, OIP opined that the two agendas did not provide sufficient detail that would enable a member of the public to reasonably understand the subject of the matter and to decide whether to attend and to participate through oral or written testimony during the open portion of the meeting preceding the executive session. Consequently, OIP concluded that the Council's agendas for these two meetings violated the Sunshine Law by giving improper notice of the agenda item concerning the personnel matter.

General Legal Guidance and Assistance

To expeditiously resolve most inquiries from agencies or the public, OIP provides informal, general legal guidance, usually on the same day, through the Attorney of the Day (AOD) service. AOD advice is not necessarily official policy or binding upon OIP, as the full facts may not be available, the other parties' positions are not provided, complete legal research will not be possible, and the case has not been fully considered by OIP. The following summaries are examples of the types of AOD advice provided by OIP staff attorneys in FY 2016.

UIPA Guidance:

Reason for Request Irrelevant

A legislative office received a request for information regarding purchase orders made over the last five years. Requester's business sells information about government purchasing to companies that might want to do business with government agencies. OIP was asked whether there are any limitations or restrictions on disclosure to a requester whose purpose is profit. OIP advised that the UIPA provides that "each agency upon request by any person shall make government records available for inspection and copying." HRS § 92F-11(b). Under the UIPA, the reason for making a record request, including commercial motivation, is irrelevant. Thus, commercial and non-commercial requesters should be treated equally and should be provided with access, unless an exception to disclosure in section 92F-13, HRS, applies.

Record Requests Are Government Records

A state agency employee asked whether a request for information received by his office is a public record. OIP advised that if an agency receives a written record request (paper, fax, e-mail, etc.), that written request becomes a government record for so long as the agency continues to maintain it. Someone could thereafter make a record request for access to any record request previously received. Whether any information on the record request is protected from public disclosure would have to be determined on a case-by-case basis. For example, if a record requester includes a home address on the record request, the agency should redact the address before providing a copy of that record request in response to a subsequent record request. *See* OIP Op. Ltr. No. 93-23.

Substantiating Record Requests to Receive OIP's Assistance

A requester had made a written record request, but did not have a photocopy of the request and did not receive a response from the agency. In the absence of a copy of the request, OIP asked the requester to provide in writing to OIP the following information to substantiate his request:

1. What agency was the request made to?
2. Who was the request addressed to?
3. What was the date of the request?
4. What address was the request sent to?
5. What specific records were requested?
6. Where and how were the records to be disclosed to the Requester?

If the request was substantiated, OIP could open a request for assistance file and write to the agency for its response. In the alternative, the Requester could make another written request to the agency, keep a copy of the request and give the agency an opportunity to respond.

Agency Can Consolidate Multiple Requests by Same Person to Limit Fee Waivers

An agency had a requester with a pattern of submitting several similar requests within a few days to keep each request small enough to have search, review, and segregation fees that are less than the $30 that is automatically waived for every request. The agency asked OIP for guidance in dealing with the situation, as the requests were cumulatively taking a great deal of the agency's time, yet were not incurring fees.

OIP advised that so long as the agency's response was timely for all the requests, the agency could choose to consolidate several requests together and send out a Notice to Requester responding to the consolidated request, with only one $30 waiver applicable to the whole consolidated request. This would mean that the agency's deadline would be based on the earliest-submitted of the consolidated requests, so the agency would have less time to prepare its response for the later-submitted portions. An agency may find it best to consolidate requests that came in several different letters or e-mails, to process each request as it comes, or even to split up a large complicated request into several separate requests (with a $30 waiver applied to each one). So long as the agency's response is not late, it is the agency's call how it organizes its request responses to the same person, not the requester's call.

Extent of Redaction of Phone Numbers and Home Addresses

Regarding redaction of phone numbers and home addresses, an agency asked whether it could just redact the entire number or address, or whether it needed to redact more specifically.

OIP advised that when there is no reason to believe that a requester is specifically looking for as much of an address or phone number as possible, then it is generally fine for an agency to redact an entire home address or phone number, as doing so takes less time and thus generates less in fees than trying to do a more detailed redaction. However, in a case where the requester has indicated that she or he does want as much of that information as possible, then only the actual street address (not the town or zip code) and the last four digits of the phone number must be redacted to ensure privacy.

License Application Protected Under Frustration Exception

A caller to OIP explained that her business applied for and received a license to be a medical marijuana dispensary, and she asked whether license application information submitted to the Department of Health, such as security procedures, employee handbook, subcontracts and leases, would be subject to public disclosure.

As OIP explained, a private business' commercial information can be protected under the UIPA's "frustration" exception if public disclosure would likely cause substantial competitive harm. OIP has previously found that general information in an employees' handbook would not be protected under this exception, but it depends on the actual

contents of the business' handbook and whether an argument can be made that substantial competitive harm is likely from disclosure. Security procedures would likely be protected under the frustration exception. The details of the subcontracts and leases would also be protected, but general information about the existence of leases and subcontracts may not be.

Sunshine Law Guidance:

Meeting by Two Members of Two Different Boards

Two members of a county planning board asked whether they could meet with two members of the county council to talk about the county's general plan.

OIP advised that since there would not be more than two members of any one board present, each pair—the two from the planning board and the two from the council—would fall under section 92-2.5(a), the Sunshine Law's permitted interaction allowing two members of a board to discuss board business so long as no commitment to vote was made or sought. Each board member should, of course, take care not to use the two-person permitted interaction serially by discussing the same issue with a third member of the same board before the board's next meeting.

Disabled Board Member's Attendance via Skype

A board expected a member to attend a meeting remotely due to the member's disability. The board asked whether section 92-3.5 required the board to list the disabled member's location on the notice; whether Skype was adequate as the audio-visual connection; and whether the board needed to disclose the nature of the member's disability.

OIP advised that a board does not need to indicate on its meeting notice the location that a disabled member will be attending from, or to specifically state on the notice that the disabled member will be attending from a private location. There is no minimum technical standard set in the Sunshine Law for an audio-visual connection between meeting sites, so OIP must instead look to what is reasonable in the circumstances. For a disabled member attending remotely from a private location, using Skype on that member's end connected to the county's usual audio-visual setup on the other end is reasonable. During the meeting, the disabled member does need to disclose where she or he is attending from and who else is present (if anyone), but there is no Sunshine Law requirement for the member to disclose the nature of his or her disability.

Board Discussion with Legal Counsel in Executive Session About the Sunshine Law

A person sent to OIP an e-mail questioning whether the Charter Commission may properly meet in executive session to consult with its attorneys on questions and issues relating to the Sunshine Law, in particular section 92-7, HRS, and related OIP opinions regarding Sunshine Law agenda requirements.

OIP responded by explaining that the Sunshine Law provides an attorney consultation exception to its open meetings mandate by allowing a board to meet in executive session "[t]o consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." HRS § 92-5 (a)(4)(2012). In *County of Kauai v. Office of Information Practices*, 120 Haw. 34 (Haw. Ct. App. 2009) (*Kauai County)*, the Intermediate Court of Appeals (ICA) broadly interpreted this attorney consultation exception to open meetings under the Sunshine Law and found that this exception applied to all of the Kauai County Council's discussions with its attorney

in executive session. Thus, in light of the ICA's ruling in *Kauai County*, OIP informally opined that the Charter Commission is allowed to meet in executive session to consult with its attorneys about its "powers, duties, privileges, immunities, and liabilities," even with respect to matters concerning the Sunshine Law.

Homeowners' Associations are Not Sunshine Law Boards

A member of a homeowners' association (HOA) inquired into whether HOAs are subject to the Sunshine Law. Generally, HOAs are unlikely subject to the Sunshine Law. Section 92-2, Haw. Rev. Stat.(2012), states that a "[b]oard means any agency, board, commission, authority, or committee of the State or its political subdivisions which is **created by constitution, statute, rule, or executive order**, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions." (Emphasis added.) This definition of a board is further discussed in OIP Op. Ltr. No. 01-01 at 10, detailing the five elements of a "Sunshine Law Board" as (1) an agency, board, commission, authority, or committee of the State or its political subdivisions; (2) which is created by constitution, statute, rule, or executive order; (3) to have supervision, control, jurisdiction or advisory power over specific matters; (4) which is required to conduct meetings; and (5) and which is required to take official actions.

Typically, this definition of a Sunshine Law board does not apply to HOAs because they are usually not boards "of the State or its political subdivisions" and are not created by constitution, statute, rule, executive order, or a similar governmental act.

Testimony may be Taken at the Beginning of the Meeting

A caller inquired into whether a board may take testimony at the beginning of the meeting or whether it must take testimony only at the time the board considers the individual agenda item. The Sunshine Law requires boards to allow testimony on any agenda item, and does not dictate when the testimony must be allowed. Haw. Rev. Stat. § 92-3 (2012). Thus, OIP advised that the Board may decide to take testimony at the beginning of a hearing.

OIP noted, however, that if the board elects to take all testimony at the beginning of the meeting, its agenda must clearly state that it will be doing so and the board must permit testimony on each agenda item by every person who wishes to testify on at the time. Thus, for example, if the board has a bylaw that limits testimony to two minutes per item and the testifier wants to speak on three agenda items, the testifier would be allowed at the microphone for two minutes for each agenda item and six minutes overall. OIP Op. Ltr. No. 06-01 at 2.

Education, Open Data, and Communications

Education

Each year, OIP makes presentations and provides training on the UIPA and the Sunshine Law. OIP conducts this outreach effort to inform the public of its rights and to assist government agencies and boards in understanding and complying with the UIPA and the Sunshine Law.

Since FY 2011, OIP has increased the number of training materials that are freely available on its website at **oip.hawaii.gov** on a 24/7 basis. Additionally, OIP has produced online PowerPoint training on the UIPA and Sunshine Law, which is accessible by all, including members of the public with disabilities.

Because basic training and educational materials on the UIPA and Sunshine Law are now conveniently accessible online, OIP has been able to produce more specialized training workshops that are customized for a specific agency or board. OIP has also created accredited continuing legal education (CLE) seminars. The CLE seminars are specifically geared to government attorneys who advise the many state and county agencies, boards, and commissions on Sunshine Law and UIPA issues. By training these key legal advisors, OIP can leverage its small staff and be assisted by many other attorneys to help government agencies voluntarily comply with the laws that OIP administers.

Launched in FY 2013, the UIPA Record Request Log is now being used by all state Executive branch departments, all four counties, the Judiciary, the Legislature, the University of Hawaii, the Office of Hawaiian Affairs, and other independent agencies to record and report data about requests for public information. Besides helping agencies keep track of record requests and costs, the Log provides detailed instructions and training materials that educate agency personnel on how to timely and properly fulfill UIPA requests. It also collects important information showing how agencies are complying with the UIPA. In FY 2016, OIP continued to offer live and online Log training for state agencies as well as all four counties.

In FY 2016, OIP continued posting online "Quick Reviews" that provide easy-to-read guidance and practical tips on how to comply with the UIPA and Sunshine Law. "What's New" articles informing readers of OIP's latest training materials and relevant open government information are regularly emailed to government agencies, media representatives, community organizations, and members of the public, and past articles are posted in the What's New archive on OIP's website. The What's New articles and Quick Reviews allow OIP to more widely disseminate the advice it gives in response to Attorney of the Day (AOD) inquiries and to timely address questions of widespread interest.

OIP continues to present training sessions for the general public, various state agencies, and the constantly changing cast of state and county board members.

UIPA and Sunshine Law Training Sessions

OIP provided 11 training sessions in FY 2016 on the UIPA and Sunshine Law for the following agencies and groups:

- 7/10/15 Department of Land and Natural Resources/ Hawaii State Historic Preservation Board (Sunshine Law)
- 7/17/15 Maui Council Services (Councilmembers) (Sunshine Law)
- 8/4/15 Hawaii Island - Corporation Counsel (Hawaii Municipal Attorneys Conference) (UIPA and Sunshine Law)
- 9/1/15 Hawaii Island - Council Services (Sunshine Law)
- 9/17/15 Office of the Governor - Boards and Commissions (Sunshine Law)
- 10/3/15 Department of Land and Natural Resources (UIPA and UIPA Record Request Log)
- 3/4/16 OIP (with the Government Lawyers Section of the Hawaii State Bar Association) Continuing Legal Education Course: "How to Respond to Record Requests" (UIPA)
- 6/2/16 City & County of Honolulu (UIPA and UIPA Record Request Log)
- 6/3/16 Kauai County (UIPA and UIPA Record Request Log)
- 6/7/16 Hawaii County (UIPA and UIPA Record Request Log)
- 6/8/16 Maui County (UIPA and UIPA Record Request Log)

Training Materials, Reports, and Model Forms

OIP's online training materials, reports, and model forms help to inform the public and government agencies about the UIPA, the Sunshine Law, and the work of OIP.

All of OIP's training materials and reports are available online at **oip.hawaii.gov**, where they can be readily updated by OIP as necessary. While all Annual Reports can be found on the "Reports" page of **oip.hawaii.gov**, other publications can be found on the "Laws/Rules/Opinions" or "Training" pages of the website and are organized under either the Sunshine Law or UIPA headings. Additionally, all of OIP's forms can be found on the "Forms" page at **oip.hawaii.gov.**

OIP's publications include the Sunshine Law and UIPA training guides and presentations described below, as well as the *Guide to Appeals to the Office of Information Practices*, which explains the administrative rules to file an appeal to OIP when requests for public records are denied by agencies or when the Sunshine Law is allegedly violated by boards. OIP also prepares Quick Reviews and other materials, which provide additional guidance on specific aspects of the Sunshine Law or UIPA.

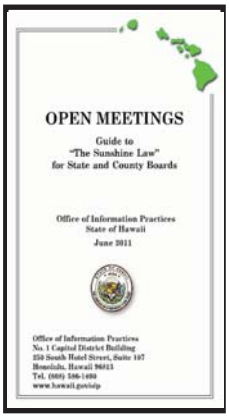
To help the agencies and the public, OIP has created model forms that can be used at various points in the UIPA or Sunshine Law processes.

In FY 2016, OIP released its second **Report of the Master UIPA Record Request Year-End Log for FY 2015**, which is summarized later in the Open Data section, beginning on page 44. How to navigate OIP's website to find the various training materials, reports, and forms is described later in the Communications section beginning on page 48.

Sunshine Law Guides and Video

Open Meetings: *Guide to the Sunshine Law for State and County Boards* (Sunshine Law Guide) is intended primarily to assist board members in understanding and navigating the Sunshine Law. OIP has also produced a Sunshine Law Guide specifically for neighborhood boards.

The Sunshine Law Guide uses a question and answer format to provide general information about the law and covers such topics as meeting requirements, permitted interactions, notice and agenda requirements, minutes, and the role of OIP. OIP also produced a 1.5 hour Sunshine Law PowerPoint presentation with a voice-over and full written transcript, and other training materials, which OIP formerly presented in person. The online materials make the Sunshine Law basic training conveniently available 24/7 to board members and staff as well as the general public, and has freed OIP's staff to fulfill many other duties.


OPEN MEETINGS

Guide to
"The Sunshine Law"
for State and County Boards

Office of Information Practices
State of Hawaii
June 2011

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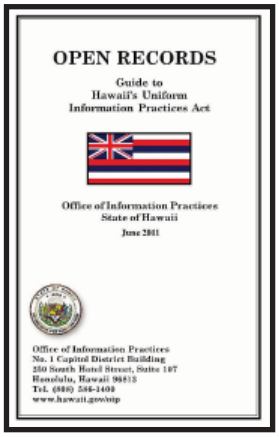
Tel. (808) 586-1400
www.hawaii.gov/oip

OIP has also created various Quick Reviews and other guidance for Sunshine Law boards, which are posted on OIP's website and cover topics such as whom board members can talk to and when; meeting notice and minutes requirements; and how a Sunshine Law board can address legislative issues.

UIPA Guides and Video

Open Records: Guide to Hawaii's Uniform Information Practices Act (UIPA Guide) explains Hawaii's public record law and OIP's related administrative rules.

The UIPA Guide navigates agencies through the process of responding to a record request, such as determining whether the record falls under the UIPA, providing the required response to the request, analyzing whether any exception to disclosure applies, and explaining how the agency may review and segregate the record. The UIPA Guide includes answers to a number of frequently asked questions.


OPEN RECORDS

Guide to
Hawaii's Uniform
Information Practices Act

Office of Information Practices
State of Hawaii
June 2001

Office of Information Practices
No. 1 Capitol District Building
250 South Hotel Street, Suite 107
Honolulu, Hawaii 96813
Tel. (808) 586-1400
www.hawaii.gov/oip

In addition to the UIPA Guide, a printed pamphlet entitled *Accessing Government Records Under Hawaii's Open Records Law* explains how to make a record request; the amount of time an agency has to respond to that request; what types of records or information can be withheld; fees that can be charged for search, review, and segregation; and what options are available for an appeal to OIP if an agency should deny a request.

As it did for the Sunshine Law, OIP has produced a 1.5 hour long PowerPoint presentation with voice-over and a full written transcript of its basic training on the UIPA.

Additionally, as discussed earlier in the "Training" section, OIP in FY 2013 implemented the UIPA Record Request Log, which will be a useful tool to help agencies comply with the UIPA's requirements.

Model Forms

OIP has created model forms for the convenience of agencies and the public.

REQUEST TO ACCESS A GOVERNMENT RECORD

To assist members of the public in making UIPA record requests to agencies, OIP developed a **"Request to Access a Government Record"** form that provides all of the basic information an agency requires to respond to a request. To assist agencies in properly following the procedures set forth in OIP's rules for responding to record requests, OIP has forms for the **"Notice to Requester"** or, where extenuating circumstances are present, the **"Acknowledgment to Requester."**

Members of the public may use the **"Request for Assistance to the Office of Information Practices"** form when their requests for government records have been denied by an agency, or to request other assistance from OIP.

To assist agencies in complying with the Sunshine Law, OIP provides a **"Public Meeting Notice Checklist."**

OIP has created a **"Request for OIP's Concurrence for a Limited Meeting"** form for the convenience of boards seeking OIP's concurrence to hold a limited meeting, which will be closed to the public because the meeting location is dangerous to health or safety, or to conduct an on-site inspection because public attendance is not practicable. Before holding a limited meeting, a board must, among other things, obtain the concurrence of OIP's director that it is necessary to hold the meeting at a location where public attendance is not practicable.

A **"Notice of Continuance of Meeting"** form can be used when a convened meeting must be continued past its originally noticed date and time. A Quick Review provides more specific guidance and practice tips for meeting continuances.

All of these forms, and more, may be obtained online at **oip.hawaii.gov**.

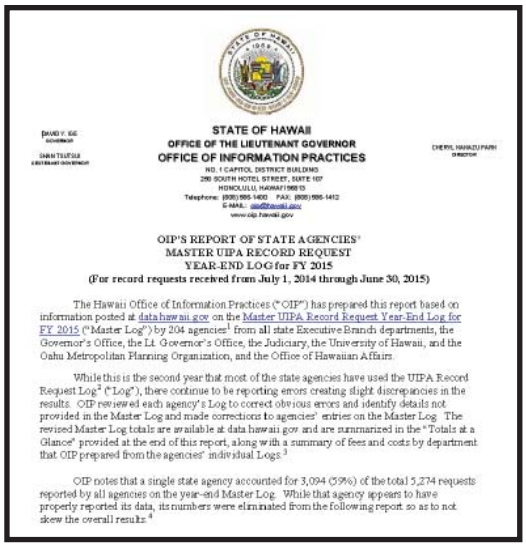
Open Data

To further its educational and open data objectives, and to evaluate how the UIPA is working in Hawaii, OIP has been collecting information from state and county agencies through the UIPA Record Request Log. The Log is an Excel spreadsheet created by OIP, which helps agencies track the formal UIPA record requests that they receive as well as report to OIP when and how the requests were resolved and other informaton.

In FY 2016, OIP released its second year-end reports based on information posted by 204 state and 83 county agencies on the **Master UIPA Record Request Year-End Log for FY 2015 (Master Log)**, at **data.hawaii.gov**. While separate reports were created for the state versus county agencies, the collected data showed overall that the typical record request was granted in whole or in part and was completed within approximately seven days, and the typical requester paid nothing for fees and costs.

State Agencies' UIPA Record Request Log Results

The 204 state agencies that reported Log results in FY 2015 came from all state executive branch departments, the Governor's Office, the Lt. Governor's office, Judiciary, University of Hawaii, Office of Hawaiian Affairs, and Oahu Metropolitan Planning Organization. Overall, formal UIPA record requests constituted less than 2% of the estimated 89,525 total formal and routine record requests that state agencies received in FY 2015. Excluding one agency whose results would have skewed the entire report, 203 agencies reported receiving 2,188 formal written requests requiring a response under the UIPA, of which all but 9 were completed in FY 2015. Of the 2,179 completed cases, 80% were granted in full or in part, and 4% were denied in full. In 16% of the cases, the agency was unable to respond to the request or the requester withdrew, abandoned, or failed to pay for the request.



STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
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HONOLULU, HAWAII 96813
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OIP'S REPORT OF STATE AGENCIES'
MASTER UIPA RECORD REQUEST
YEAR-END LOG for FY 2015
(For record requests received from July 1, 2014 through June 30, 2015)

The Hawaii Office of Information Practices ("OIP") has prepared this report based on information posted at data.hawaii.gov on the Master UIPA Record Request Year-End Log for FY 2015 ("Master Log") by 204 agencies[1] from all state Executive Branch departments, the Governor's Office, the Lt. Governor's Office, the Judiciary, the University of Hawaii, and the Oahu Metropolitan Planning Organization, and the Office of Hawaiian Affairs.

While this is the second year that most of the state agencies have used the UIPA Record Request Log[2] ("Log"), there continue to be reporting errors creating slight discrepancies in the results. OIP reviewed each agency's Log to correct obvious errors and identify details not provided in the Master Log and made corrections to agencies' entries on the Master Log. The revised Master Log totals are available at data.hawaii.gov and are summarized in the "Totals at a Glance" provided at the end of this report, along with a summary of fees and costs by department that OIP prepared from the agencies' individual Logs.[3]

OIP notes that a single state agency accounted for 3,094 (59%) of the total 5,274 requests reported by all agencies on the year-end Master Log. While that agency appears to have properly reported its data, its numbers were eliminated from the following report so as to not skew the overall results.[4]

After adjusting for the limitations of the data collection, state agencies took less than seven work days, on average, to complete 2,077 typical and personal record requests, which is 95% of all completed cases. In contrast, it took nearly four times as many days to complete 102 complex requests.

In terms of hours worked per request, the average number of search, review and segregation (SRS) hours for a typical record request was 1.11, as compared to .76 for a personal record request and 8.3 hours for a complex record request. Although the 102 complex record requests constituted only 5% of all requests, they accounted for 22.6% ($17,970) of the total gross fees and costs incurred by agencies ($79,423) and 5.6% ($2,123) of the total amount recovered from all requesters ($37,603).

State agencies recovered $37,603 in total fees and costs from 251 requesters, which is approximately 47% of the $79,423 incurred by agencies in gross fees and costs. Fifty-five percent of completed requests were granted $30 fee waivers, while another 4% were granted $60 public interest waivers.

Eighty-eight percent (1,928) of all requesters in completed cases paid nothing in fees or costs for their record requests. Of the 251 requesters that paid any fees or costs, 49.8% paid less than $5.00 and 34.3% paid between $5.00 and $49.99.

Moreover, of the 251 requesters that paid any amount for fees and or costs, just two commercial entities accounted for 68% of the total amount paid by all requesters; these two entities were charged for costs only and each paid $12,796.96. See chart 12 in OIP's summary, which is reproduced as **Figure 16** on page 46.

For the full reports and accompanying data, please go to the reports page at **oip.hawaii.gov**.

County Agencies' UIPA Record Request Log Results

FY 2015 was the first year that the counties participated in the Master UIPA Record Request Log. OIP prepared a separate report based on information posted by 83 agencies from all four counties, which is summarized as follows.

Formal UIPA record requests to the counties constituted less than 3% of the estimated 54,097 total formal and routine record requests that agencies received in FY 2015. Eighty-three county agencies reported receiving 1,515 formal written requests requiring a response under the UIPA, of which 94% were completed in FY 2015. Of the 1,427 completed cases, 85% were granted in full or in part, and 1% were denied in full. In 19% of the cases, the agency was unable to respond to the request or the requester withdrew, abandoned, or failed to pay for the request.

After adjusting for the limitations of the data collection, county agencies took about seven work days to complete 1,288 typical and personal record requests, which is 89% of all completed cases. It took nearly twice as many days to complete 139 complex requests.

In terms of hours worked per request, the average number of search, review and segregation (SRS) hours for a typical county record request was 2.52, as compared to .49 for a personal record request and 10.19 hours for a complex record request. Although the 139 complex record requests constituted only 9.7% of all requests, they accounted for 33.3% ($30,121) of the total gross fees and costs incurred by county agencies ($90,474) and 26.5% ($3,381) of the total amount recovered from all requesters ($12,745).

County agencies recovered $12,745 in total fees and costs from 603 requesters, which is approximately 14% of the $90,474 incurred by agencies in total gross fees and costs. Seventy percent of completed requests were granted $30 fee waivers, while another 4% were granted $60 public interest waivers.

Fifty-seven percent (824) of all requesters in completed cases paid nothing in fees or costs for their county record requests. Of the 603 requesters that paid any fees or costs, 58.5% paid less than $5.00 and 33% paid between $5.00 and $49.99. Only 51 requesters (8.5% of all paying requesters) paid $50 or more per request, and the maximum amount paid was $608.25, which was entirely for copying and delivery costs.

Separate tables showing each county's results can be found in OIP's full Report that is posted on the reports page at **oip.hawaii.gov**. See chart 12 in OIP's summary, which is reproduced as **Figure 17** on page 47.

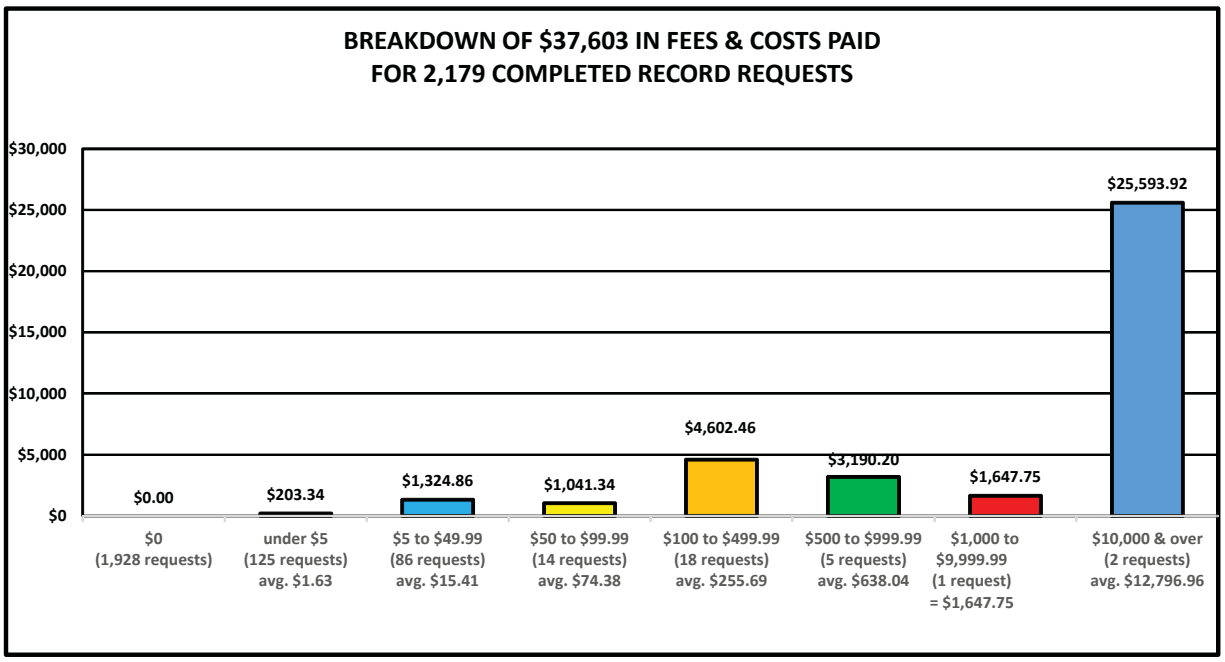


Figure 16

STATE AGENCIES'
UIPA RECORD REQUEST LOG
RESULTS FOR FY 2015

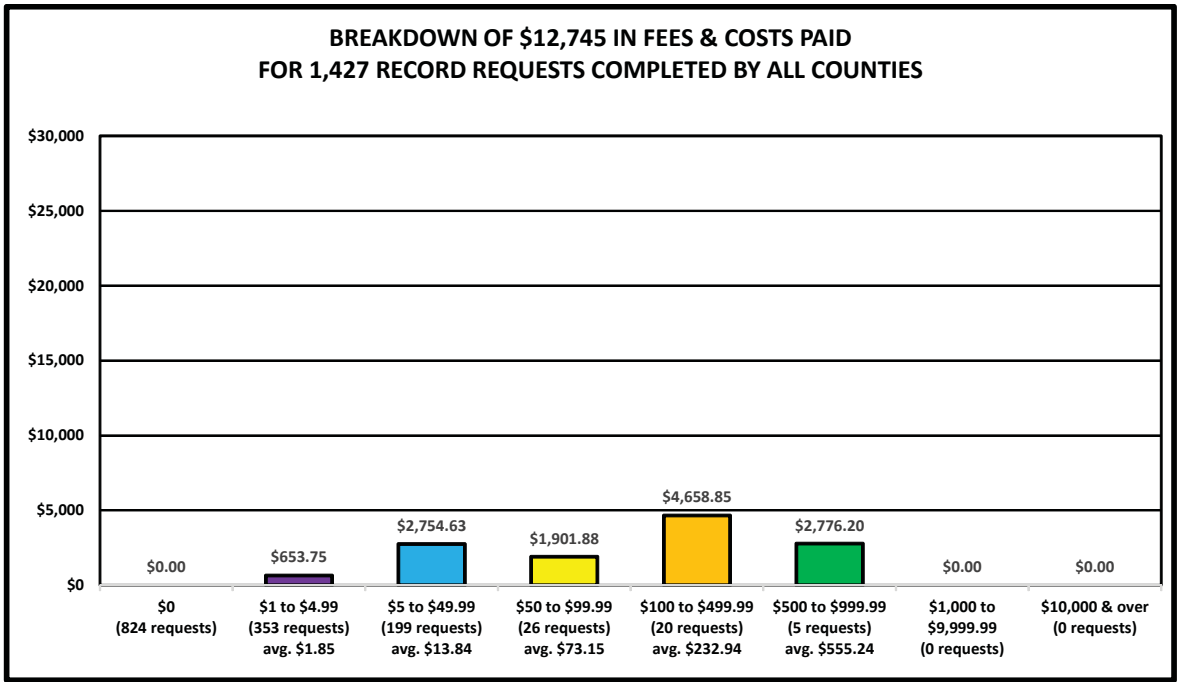


Figure 17

COUNTY AGENCIES'
UIPA RECORD REQUEST LOG
RESULTS FOR FY 2015

Communications

OIP's website at **oip.hawaii.gov** and the *What's New* articles that are e-mailed and posted on the website are important means of disseminating information on open government issues. In FY 2016, OIP continued its communications to the agencies and public, mainly through 30 *What's New* articles and one radio interview.

Visitors to the OIP website can access, among other things, the following information and materials:

- The UIPA and the Sunshine Law statutes
- OIP's administrative rules
- OIP's annual reports
- Model forms created by OIP
- OIP's formal opinion letters
- Formal opinion letter summaries
- Formal opinion letter subject index
- Informal opinion letter summaries
- Training guides, presentations, and other materials for the UIPA, Sunshine Law, and Appeals to OIP
- General guidance for commonly asked questions
- Guides to the Records Report System and links to the RRS
- *What's New* at OIP and in open government news
- State Calendar and Related Links

Website Features

OIP's website at **oip.hawaii.gov** features the following sections, which may be accessed either through the menu found directly below the state seal or through links in boxes located on the right of the home page (What's New, Laws/Rules/ Opinions, Training, and Contact Us).

"What's New"

The OIP's frequent *What's New* articles provide helpful tips and current news regarding OIP and open government issues. To be added to or removed from OIP's *What's New* e-mail list, please e-mail a request to *oip@hawaii.gov*.

"Laws/ Rules/ Opinions"

This section features these parts:

➢*UIPA:* the complete text of the UIPA, with quick links to each section; training materials and a guide to the law; UIPA Record Request Log training and instructions; additional UIPA guidance; and a guide to administrative appeals to OIP.

➢*Sunshine Law:* the complete text of the Sunshine Law, with quick links to each section; training materials and a guide to the law; additional guidance, including quick reviews on agendas, minutes, and notice requirements; a Sunshine Law Test to test your knowledge of the law; and a guide to administrative appeals made to OIP.

➢*Rules*: the full text of OIP's administrative rules; "Agency Procedures and Fees for Processing Government Record Requests;" a quick guide to the rules and OIP's impact statement for the rules; and "Administrative Appeal Procedures," with a guide to OIP's appeals rules and impact statement.

➢*Formal Opinions*: a chronological list of all OIP opinion letters; an updated subject index; a summary of each letter; and the full text of each letter.

➢*Informal Opinions*: summaries of OIP's informal opinion letters, in three categories: Sunshine Law opinions, UIPA opinions, and UIPA decisions on appeal.

➢*Legislative History*: recent legislative history of bills affecting the UIPA and Sunshine Law.

"Forms"

Visitors can view and print the model forms created by OIP to facilitate access under and compliance with the UIPA and the Sunshine Law. This section also has links to OIP's training materials.

"Reports"

OIP's annual reports are available here, beginning with the annual report for FY 2000. Also available are reports to the Legislature on the commercial use of personal information and on medical privacy.

In addition, this section links to the UIPA Record Request Log Reports, where you can find OIP's reports and charts summarizing the year-end data submitted by all state and county agencies.

"Records Report System (RRS)"

This section has guides to the Records Report System for the public and for agencies, as well as links to the RRS online database.

"Related Links"

To expand your search, links are provided to other sites concerning freedom of information and privacy protection, organized by state and country. You can also link to Hawaii's State Calendar showing the meeting agendas for all state agencies, or visit Hawaii's open data site at **data.hawaii.gov** and see similar sites of cities, states, and other countries. The UIPA Master Record Request Log results by the various departments and agencies are posted on **data.hawaii.gov**.

"Training"

The training link on the right side of the home page will take you to all of OIP's training materials, as categorized by the UIPA, Sunshine Law, and Appeals to OIP.

Records Report System

The UIPA requires each state and county agency to compile a public report describing the records it routinely uses or maintains and to file these reports with OIP. HRS § 92F-18(b) (2012).

OIP developed the Records Report System (RRS), a computer database, to facilitate collection of this information from agencies and to serve as a repository for all agency public reports required by the UIPA. The actual records remain with the agency.

Public reports must be updated annually by the agencies. OIP makes these reports available for public inspection through the RRS database, which may be accessed by the public through OIP's website.

As of FY 2016 year end, state and county agencies reported 29,838 record titles. See **Figure 18**.

Records Report System

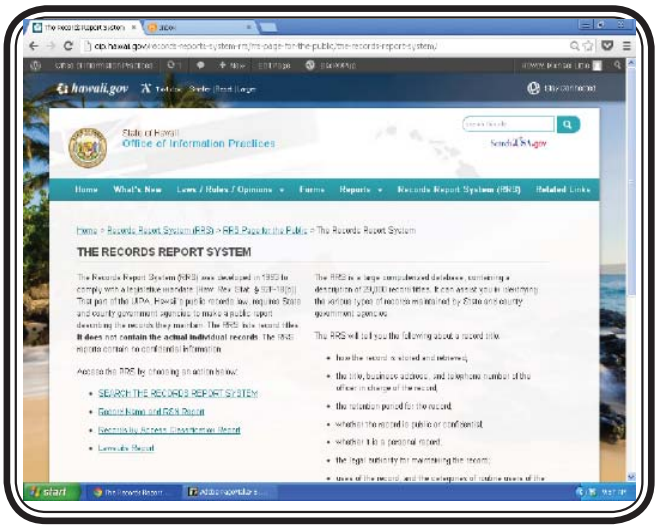
Status of Records Reported by Agencies: 2016 Update

Jurisdiction	Number of Record Titles
State Executive Agencies	20,790
Legislature	836
Judiciary	1,645
City and County of Honolulu	3,910
County of Hawaii	947
County of Kauai	1,069
County of Maui	642
Total Record Titles	**29,838**

Figure 18

RRS on the Internet

Since October 2004, the RRS has been accessible on the Internet through OIP's website. Agencies may access the system directly to enter and update their records data. Agencies and the public may access the system to view the data and to create various reports. A guide on how to retrieve information and how to create reports is also available on OIP's website at **oip.hawaii.gov.**



Key Information: What's Public

The RRS requires agencies to enter, among other things, public access classifications for their records and to designate the agency official having control over each record. When a government agency receives a request for a record, it can use the RRS to make an initial determination as to public access to the record.

State executive agencies have reported 51% of their records as accessible to the public in their entirety; 18% as unconditionally confidential, with no public access permitted; and 26% in the category "confidential/conditional access." Another 5% are reported as undetermined. See **Figure 19**. OIP is not required to, and in most cases has not, reviewed the access classifications.

Records in the category "confidential/conditional access" are (1) accessible after the segregation of confidential information, or (2) accessible only to those persons, or under those conditions, described by specific statutes.

With the October 2012 launch of the state's open data website at **data.hawaii.gov**, the RRS access classification plays an increasingly important role in determining whether actual records held by agencies should be posted onto the Internet. To prevent the inadvertent posting of confidential information onto **data.hawaii.gov**, agencies can use the RRS to determine which records contain confidential information and require special care.

Note that the RRS only lists government records by their titles and describes their accessibility. The system does not contain the actual records, which remain with the agency. Accordingly, the record reports on the RRS contain no confidential information and are public in their entirety.

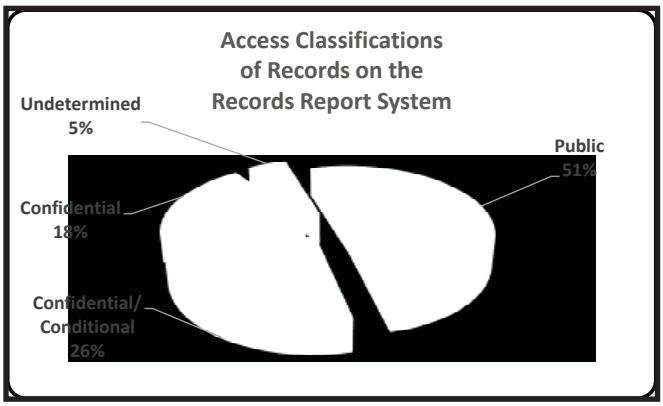


Figure 19

Legislation Report

One of OIP's functions is to make recommendations for legislative changes to the UIPA and Sunshine Law. OIP may draft proposed bills and monitor or testify on legislation to clarify areas that have created confusion in application; to amend provisions that work counter to the legislative mandate of open government; or to provide for more efficient government as balanced against government openness and privacy concerns. To foster uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA or Sunshine Law; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices. Since adoption of the State's Open Data policy in 2013, OIP has also tracked open data legislation.

During the 2016 legislative session, OIP reviewed and monitored 175 bills and resolutions affecting government information practices, and testified on 24 of these measures. OIP was most significantly impacted by the following legislation:

▶ **Act 56**, signed on June 6, 2016, enacts **S.B. 2121, S.D. 1, H.D.1, C.D. 1**. This act retains the provisions of section 92-3.1(b), which allow any number of county council members to attend meetings or presentations as guests of other boards or community groups. Although the bill originally sought to remove the restrictions applicable to this special type of limited meeting, the final version retained the restrictions and added a new requirement for each council to annually submit a report to the Legislature on the effectiveness and application of these procedures.

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Litigation Report

OIP monitors litigation that raises issues under the UIPA or the Sunshine Law or involves challenges to OIP's rulings.

Under the UIPA, a person may bring an action for relief in the circuit courts if an agency denies access to records or fails to comply with the provisions of the UIPA governing personal records. A person filing suit must notify OIP at the time of filing. OIP has standing to appear in an action in which the provisions of the UIPA have been called into question.

Under the Sunshine Law, a person may file a court action seeking to require compliance with the law or prevent violations. A suit seeking to void a board's "final action" must be commenced within 90 days of the action.

Under either law, OIP's opinions and rulings shall be considered precedential unless found to be palpably erroneous by the court, which is a high standard of review.

Although litigation cases are not counted in the total number of cases seeking OIP's assistance, they nevertheless take staff time to process and monitor. In FY 2016, OIP monitored 28 litigation cases, of which 8 were new.

Summaries are provided below of the new lawsuits monitored by OIP in FY 2016 as well as updates of cases that closed by November 2016 or remain pending. The UIPA cases, which are the majority, are discussed first, followed by those involving the Sunshine Law.

UIPA Litigation:

Presentence Investigation (PSI) Report

Raines v. Hawaii Paroling Authority
Civ. No. 14-1-1367-06 (1st Cir. Ct.)

Todd Raines (Plaintiff) filed a *pro se* lawsuit against the Hawaii Paroling Authority (HPA) to obtain a copy of his presentence investigation report (PSI). PSIs are prepared by the Adult Probation Office, which is part of the Judiciary, and they are used during sentencings and setting of minimum terms for convicted individuals.

Plaintiff apparently failed to properly serve HPA and filed a number of different motions, all of which were denied by the court. His complaint was dismissed without prejudice in an order filed January 5, 2016. Plaintiff made another motion in April 2016, which was also denied, and nothing further has been filed in this case. Plaintiff has also appealed the denial of access to his PSI to OIP.

Correction of Personal Record

Raines v. Hawaii Paroling Authority
Civ. No. 15-1-0432-03 (1st Cir. Ct.)

Raines v. Department of Public Safety
Civ. No. 15-1-0882-25 (1st Cir. Ct.)

Raines v. Department of Public Safety
Civ. No. 15-1-000431- (1st Cir. Ct.)

Raines v. Hawaii Paroling Authority.
15-1-0881-05 (1st Cir. Court)

Todd Raines (Plaintiff) made to the Hawaii Paroling Authority and the Department of Public Safety various requests for personal records under Part III of the UIPA. After being denied his requests to correct or amend his personal records, Plaintiff filed *pro se* lawsuits with the First Circuit Court, seeking attorney's fees and costs, orders directing agencies to correct his records, and damages of not less than $1,000, as allowed by section 92F-27, HRS. It appears that Plaintiff may not have properly served the agencies with his complaints, and he has filed a number of different motions related to service of process in each case, all of which have been denied by the court.

Pono Choices Survey

McDermott v. University of Hawaii
Civ. No. 15-1-0321-02 (1st Cir. Ct.)

State Representative Bob McDermott (Plaintiff) filed this lawsuit after the University of Hawaii (UH) denied his requests for access to a copy of the Pono Choices survey. Pono Choices is a sexual education curriculum and UH is responsible for producing questions that are administered to Hawaii public school students by the Department of Education. Plaintiff sought a declaratory judgment and preliminary and permanent injunctions ordering UH to disclose the requested records, and further sought an award of fees and costs. UH sought dismissal of all claims, and an award of its fees and costs. This case was dismissed by the court on February 23, 2016, based on Plaintiff's failure to file a pretrial statement. However, on April 11, 2016, the court issued an order granting Plaintiff's motion to set aside the dismissal. Plaintiff's pretrial statement was filed on April 27, 2016.

Deliberative Process Privilege

Peer News LLC, dba Civil Beat v.
City & County of Honolulu
Civ. No. 15-1-0891-05 (1st Cir. Ct.)
CAAP-16-000114 (Intermediate Court of Appeals)

Peer News LLC, dba Civil Beat (Plaintiff) requested from the City and County of Honolulu's Department of Budget and Fiscal Services (City) "each department's narrative budget memo for Fiscal Year 2016." Plaintiff described these documents as "formal memoranda and attachments that explain the initial recommendation of the department's director concerning the monies that should be allocated to the department when the Mayor submits proposed budgets to the City Council." The City denied access to portions of the responsive records, claiming that they were "predecisional and deliberative" and thus protected by the deliberative process privilege (DPP).

The DPP is a standard for resolving the dilemma of balancing the need for government accountability with the need for government to act efficiently and effectively. It is recognized under the UIPA's "frustration exception," which states that agencies need not disclose government records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function under section 92F-13(1), HRS.

When it enacted the UIPA, the Legislature left it to OIP and the courts to develop the common law interpreting the UIPA. OIP has issued a long line of opinions since 1989 that recognize and limit the DPP. OIP has construed the DPP narrowly when determining whether internal government communications must be disclosed. The policy purposes behind the DPP are: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies or decisions before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an

agency's action. For the DPP to apply, information to be withheld must be both predecisional and deliberative, and the privilege may be lost when a final decision chooses to expressly adopt or incorporate the information by reference.

Plaintiff filed a lawsuit on May 8, 2015, asking the court to order that OIP's precedential opinions discussing the DPP are palpably erroneous and to enjoin the City from invoking the privilege. The suit also sought to have the City disclose all requested documents after redaction of specific salaries. The City, through the Department of Corporation Counsel, filed a Third Party Complaint against OIP on June 10, 2015, claiming that OIP is a necessary party to the lawsuit. Soon thereafter, the Corporation Counsel offered to stipulate to dismiss OIP as a party, and the Stipulation to Dismiss was filed on July 24, 2015. Plaintiff filed a Motion for Summary Judgment (MSJ) on June 5, 2015, which was denied. The State of Hawaii, through the Department of the Attorney General, asked the court for approval to participate as amicus curiae, which was granted. Plaintiff thereafter asked the court to allow it to appeal the denial of its MSJ, or to expedite the proceeding. The court denied the request to certify the case for appeal, but granted Plaintiff's request to expedite the case.

In orders filed on January 13, 2016, the circuit court granted the City's two motions for partial summary judgment and denied Plaintiff's motion for summary judgment. Plaintiff appealed to the Hawaii Intermediate Court of Appeals, arguing that the circuit court erred (1) in recognizing a DPP privilege; (2) in applying the DPP to allow the City to withhold the requested records without weighing the public interest in disclosure, and (3) in holding that the requested records are protected by the DPP, thus allowing the City to withhold even after the City conceded that portions consist entirely of factual information.

On June 13, 2016, the State filed an amicus curiae brief on appeal, asserting that (1) the DPP protects pre-decisional communications reflecting the give-and-take of agency deliberations; (2) that the DPP protects the public interest; and (3) that OIP was not palpably erroneous in finding that the DPP protects the legitimate government function of decisionmaking. The case remains pending on appeal.

UH Lab Inspection Report Maintained by Federal Agency

Civil Beat Law Center for the Public Interest, Inc., v. Centers for Disease Control & Prevention
Case No. 1:16-cv-00008-JMS-KSC
(U.S. Dist. Ct. Haw.)

The Civil Beat Law Center (Plaintiff) made a record request to the Centers for Disease Control & Prevention (CDC) under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 522. FOIA is the federal counterpart to Hawaii's UIPA. Plaintiff's request was for a "show cause" letter and related inspection report for the University of Hawaii (UH). These records pertained to the use of biotoxins by a UH laboratory. The CDC denied the request on the basis that the records are exempt from disclosure because they are subject to a confidentiality statute, the federal Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42, U.S.C. § 262(h)(1)(C) and (E). Plaintiff thereafter filed this lawsuit for access.

The U.S. District Court for the District of Hawaii heard the parties' motions for summary judgment and ruled at the end of August 2016 that the CDC's redactions were mostly proper, but ordered re-redaction of the last page.

Mug Shots for All Individuals Booked into Correctional Facilities

Prall v. HPD
Civil No. 13-1-1917-07 ECN

As reported in OIP's FY 2015 Annual Report, Kyle Prall, a Texas resident and principal of Citizens Information Associates LLC, and Information Freedom, LLC, filed a complaint in the First Circuit Court for declaratory judgment and injunctive relief asking the court to compel the Honolulu Police Department and Department of Public Safety to disclose booking photos and mug shots of all individuals booked into all of the Oahu jails and correctional facilities, and for "jail/arrest" logs. After more than two years with no substantive developments, all parties stipulated to a dismissal without prejudice of all claims and parties on December 14, 2015.

Request for Correction of Death Certificate

Liu v. Department of the Medical Examiner, City & County of Honolulu
Civ. No. 25-2-0213-02
ICA CAAP-15-0000633

The Department of the Medical Examiner (ME) denied plaintiff's request made under Part III of chapter 92F to correct her deceased mother's death certificate, filed in 1985, by changing the cause of death from suicide to homicide. Plaintiff subsequently appealed the denial of her correction request to the court under section 92F-27, HRS. The court entered final judgment against plaintiff on July 21, 2015, and plaintiff subsequently filed a notice of appeal to the Intermediate Court of Appeals, where the case remains pending.

Registration Requirement for Farmers Growing Genetically Modified Crops

Doe v. County of Hawaii
Civ. No. 14-1-0094

As reported in OIP's FY2015 Annual Report, a Hawaii County farmer (Plaintiff) filed suit against the County of Hawaii, seeking to prevent it from implementing portions of a new law requiring registration of farmers growing genetically modified crops and potentially providing for disclosure of the registration information. One of Plaintiff's arguments was that the disclosure provision conflicted with the UIPA and other laws. The court granted Plaintiff's motion for a preliminary injunction against the County in July 2014. The litigation remains in the pretrial stage. Nothing new was filed in the past fiscal year.

Maui Community Correctional Center Records

Kong v. Maui Drug Court
12-1-0013(2) (2nd Cir. Court)

As reported in FY 2014 and 2015, Stanley Kong (Plaintiff) requested that the Maui Community Correctional Center (MCCC) provide him a copy of the contract agreement and stipulations signed by him upon entering the MCCC's Maui Drug Court Program. He also requested a copy of the approval form that granted him inmate to inmate correspondence and visits at MCCC. MCCC failed to respond to his records request. Thereafter, on December 27, 2012, Plaintiff initiated his *pro se* lawsuit in the Second Circuit Court, pursuant to the Hawaii Rules of Penal Procedure (HRPP) Rule 40. On January 4, 2013, the court ordered that Plaintiff's complaint was to be "treated as a civil complaint not governed by HRPP Rule 40" and Plaintiff "must follow all rules outlined in the Hawaii Rules of Civil Procedure." There has been no change since the court's January 4, 2013 order.

Department of Public Safety Records

Kong v. Department of Public Safety
CAAP-14-0001334 (Intermediate Court of Appeals) from 13-1-0067 (1st Cir. Court)

Stanley Kong (Plaintiff) requested that the Department of Public Safety (PSD) provide him a copy of various PSD records. After PSD failed to respond to his records request, Plaintiff initiated his *pro se* lawsuit on December 27, 2012. On November 25, 2014, he filed his "Notice of Appeal" with the Intermediate Court of Appeals (ICA), although the circuit court record shows no judgment. On June 8, 2015, the ICA dismissed Plaintiff's case for lack of appellate jurisdiction. This case is still open in the Circuit Court.

Marks v. Department of Public Safety
14-1-1801-08 (1st Cir. Court)

Donald Marks (Plaintiff) requested that the Department of Public Safety (PSD) correct his personal records, which PSD denied. Thereafter, on August 25, 2014, Plaintiff initiated his *pro se* lawsuit. On November 9, 2015, PSD filed its Answer to Plaintiff's Complaint. On April 4, 2016, Plaintiff filed his "Notice of Appeal" with the Intermediate Court of Appeals (ICA), although the circuit court record shows no judgment. This case is still pending at the ICA.

Hawaii Paroling Authority (HPA) Records

Raines v. Hawaii Paroling Authority.
15-1-0881-05 (1st Cir. Court)

Todd Raines (Plaintiff) requested that the Hawaii Paroling Authority (HPA) correct his personal records, which HPA denied. Thereafter, on May 7, 2015, Plaintiff initiated his *pro se* lawsuit. Twice, Plaintiff has requested and was granted leave by the court to file an Amended Complaint, which has not yet been filed.

Presentence Investigation Report and Minimum Decision Record

Marks v. Hawaii Paroling Authority
Civil No. 13-1-3219-11 (1st Cir. Court)

Donald Marks (Plaintiff) requested that the Hawaii Paroling Authority (HPA) provide him a copy of his Presentence Investigation Report and a copy of his Minimum Decision Record. HPA subsequently denied his records request. Thereafter, on December 10, 2013, Plaintiff filed a *pro se* lawsuit. On June 9, 2014, HPA filed its Answer to Plaintiff's Complaint. This case is still pending.

Kong v. Department of Public Safety
CAAP-14-0001321 (Intermediate Court of Appeals) from 14-1-1089-04 (1st Cir. Court)

Stanley Kong (Plaintiff) requested that the Department of Public Safety (PSD) provide him a copy of his Presentence Investigation Report. PSD subsequently denied his record request. Thereafter, on April 29, 2014, Plaintiff initiated his *pro se* lawsuit. On November 24, 2014, Plaintiff filed his "Notice of Appeal" with the Intermediate Court of Appeals (ICA), although no judgment is shown in the circuit court's record. On July 6, 2015, the ICA dismissed Plaintiff's case for lack of appellate jurisdiction. This case is still pending in the circuit court.

Personal Records about Honolulu Ethics Commission Investigation

Public Servant v. Ethics Commission of the City and County of Honolulu
Civil No. 15-1-1307-07 (KKS) (1st Cir. Ct.)

An employee of the City and County of Honolulu (Plaintiff) requested that the Honolulu Ethics Commission (HEC) disclose an ethics violation complaint that was filed against Plaintiff and submitted to HEC. Because HEC refused to provide a copy of the ethics complaint, Plaintiff

filed a lawsuit against HEC seeking a declarative and injunctive ruling that Plaintiff is entitled to a copy of the ethics complaint. In August 2015, Plaintiff filed a notice of dismissal of the complaint without prejudice.

Doe and Roe v. Ethics Commission of the City and County of Honolulu
Civil No. 15-1-1749-09 VLC (1st Cir. Ct.)

Two employees of the City and County of Honolulu (Plaintiffs) alleged that the Honolulu Ethics Commission (HEC) is investigating them on its own initiative without receiving an ethics violation complaint. In September 2015, Plaintiffs filed a lawsuit seeking access to the initiating information that prompted HEC's investigation, as well as information that HEC obtained during its investigation. Plaintiffs also sought a declarative ruling that HEC improperly investigated and prosecuted Plaintiffs and an injunction prohibiting HEC's further investigation of Plaintiffs. Finally, the lawsuit sought to immediately disqualify and prohibit the HEC's Executive Director and investigator from participating in further investigation and prosecution of Plaintiffs. HEC filed a motion to dismiss Plaintiffs' lawsuit.

In December 2015, the circuit court granted in part HEC's motion to dismiss Plaintiffs' request for the the production of records and the disqualification of the HEC's employees, but retained Plaintiffs' claims alleging improper investigation and prosecution. The circuit court further ordered that the matter be stayed while Plaintiffs pursued their remaining claims through the administrative agency process. In December 2015, Plaintiffs filed an appeal to the Hawaii Intermediate Court of Appeals. Although HEC's Executive Director resigned in June 2016, the case remains pending.

Police Disciplinary Records

Peer News LLC v. City & County of Honolulu
Civil No. 13-1-2981-11 (KKA) (Haw. Sup. Ct.)

This case was previously discussed in OIP's FY 2014 and 2015 Annual Reports. Peer News LLC, dba Civil Beat (Plaintiff) asked the Honolulu Police Department (HPD) to provide information regarding 12 police officers who received 20-day suspensions due to employment misconduct from 2003 to 2012, according to HPD's annual disclosure of misconduct to the state Legislature. Plaintiff asked for the suspended employees' names, nature of the misconduct, summaries of allegations, and findings of facts and conclusions of law. HPD denied Plaintiff's records request, asserting that the UIPA's "clearly unwarranted invasion of personal privacy" exception protected the suspended police officers' identities.

Plaintiff then filed a lawsuit in the First Circuit Court, alleging that HPD failed to disclose the requested records about the 12 suspended police officers as required by the UIPA and in accordance with a 1997 OIP opinion. In March 2014, the court granted Plaintiff's Motion for Summary Judgment and ordered the Defendants to disclose the requested records about the suspended police officers. The circuit court's decision was discussed in OIP's FY 2015 Annual Report. An appeal was filed in this case by Intervenor State of Hawaii Organization of Police Officers (Union).

In February 2015, the Hawaii Supreme Court granted Plaintiff's application for transfer of the case on appeal. The City and HPD filed a notice stating that neither party was taking a position in the appeal. In June 2016, after considering Plaintiff's and the Union's arguments, the Hawaii Supreme Court vacated the judgment and remanded the case to the circuit court with instructions to conduct an *in camera* review of the police suspension records and weigh the competing public and privacy interests in the disclosure of these records on a case-by-case basis. OIP has prepared a summary of the Supreme Court's

opinion, *Peer News LLC v. City and County of Honolulu*, 138 Haw. 53, 376 P.3d 1 (June 9, 2016), which can be found on OIP's website at https://oip.hawaii.gov/wp-content/uploads/2013/09/Peer-News-summary.pdf.

Police Disclosure of Hearings Officer Contract

Wills v. Department of Land and Natural Resources
Civil No. 16-1-1109-06 ECN (1st Cir. Ct.)

Pursuant to the UIPA, Aaron Wills, dba Lokahi Consulting (Plaintiff), asked the Department of Land and Natural Resources (DLNR) to disclose records concerning the appointment of the hearings officer in a dispute involving the proposed Thirty Meter Telescope that was pending before the Board of Land and Natural Resources (Board). DLNR disclosed a redacted copy of its contract with the hearings officer. DLNR's attorney informed Plaintiff that the contract amount, hourly rate and negotiated changes to the General Conditions were redacted from the contract and would be disclosed after the hearing officer's selection is final and unchallengeable. According to DLNR's attorney, disclosure of these contract terms would compromise the State's bargaining position if the current hearing officer is removed from the dispute and the State was required to negotiate and hire another officer. In June 2016, Plaintiff again requested the records and noted the Board's recent decision affirming the hearings officer's appointment. DLNR's attorney informed Plaintiff that the records would be withheld until the contested case hearing starts. Thereafter, Plaintiff filed a lawsuit in the First Circuit Court, alleging that DLNR failed to comply with the UIPA. The case was dismissed with prejudice in September 2016.

Academic Grievance Records at University of Hawaii

Williamson v. University of Hawaii
Civil No. 14-1-1397-06

Travis Williamson (Plaintiff) asked the University of Hawaii (UH) for documents pertaining to his academic grievances as a UH student. Plaintiff's attorney renewed Plaintiff's records requests, but UH did not respond.

Plaintiff then asked OIP for assistance and asked that his request be treated as an appeal. UH informed OIP that Plaintiff had not fully complied with its procedures for filing grievances and thus it had no records relating to Plaintiff's alleged grievances other than what was previously provided to Plaintiff. OIP informed Plaintiff that it was not accepting his appeal because it did not appear to be a denial of access to records as the records did not exist.

In June 2014, Plaintiff filed a lawsuit in First Circuit Court seeking access to the requested records and a declaration that UH withheld records in violation of the UIPA. In December 2014, UH filed its response. The case remains pending in the circuit court.

Sunshine Law Litigation:

Attorney Fees

Kanahele v. Maui County Council
2CC08-1-000115 (2nd Cir. Ct.)

This landmark Sunshine Law case was discussed in detail in OIP's FY 2013 Annual Report and other communications. Briefly, in 2013, the Hawaii Supreme Court upheld the Intermediate Court of Appeal's (ICA) decision that the Sunshine Law does not limit a continuance of a public meeting to just one time and concluded that Maui County Council (MCC) and one of its committees did not violate the Sunshine Law by continuing and reconvening their respective meetings beyond a single continuance. The Supreme Court, however, also held that memoranda sent by MCC members to all other MCC members did not fall within any Sunshine Law permitted interaction and concluded that they violated the Sunshine Law's spirit or requirements to decide or deliberate matters in open meetings.

The Supreme Court remanded the case to the Second Circuit Court for consideration of an attorney's fee award under section 92-12(c), HRS, where it remains pending.

Alleged Violation of Sunshine Law When Considering Applicants to Replace a Councilmember During an Executive Meeting Closed to the Public

Syngenta Seeds, Inc. v. County of Kauai
Civ. No. 14-00014 (U.S. 9th Cir.)

In a case previously reported in OIP's FY 2014 Annual Report, various companies engaged in the production and planting of genetically modified seeds on Kauai (Plaintiffs) filed a federal lawsuit against the County of Kauai that challenged the legality of a county legislative measure restricting the use of pesticides and the planting of genetically modified crops. Included among the Plaintiffs' 13 claims are alleged violations of Sunshine Law sections 92-4 (authority to conduct executive meetings) and 92-5 (matters that may be considered in executive session), HRS.

The federal District Court issued an "Order on Preemption and Order on Various Motions" that invalidated the Kauai law because it was preempted by a comprehensive framework of state law, and "denied as moot" the alleged violations of the Sunshine Law. This case remains on appeal to the 9th Circuit.

Permitted Interactions – Informational Meeting

In re Office of Information Practices
Opinion Letter No. F16-01
S.P. No. 15-1-0097(1) (Second Cir. Ct.)
CAAP-16-0000568 (Intermediate Court of Appeals)

OIP issued Opinion Letter No. F16-01 in response to a complaint by James R. Smith (Petitioner) alleging that three members of the Maui County Council (Council) attended the Kula Community Association (KCA) Community Meeting in violation of the Sunshine Law, Part I of chapter 92, HRS, which requires (with a few exceptions) that government boards hold open meetings. OIP found their attendance was not a violation because it qualified as a permitted interaction under section 92-2.5(e), HRS, which allows less than a quorum of a board to attend an informational meeting of another entity, so long as no commitment to vote is made or sought.

At a Council meeting held after the KCA Community Meeting, a Councilmember reported to the full Council on her attendance at the Community Meeting with the two other Councilmembers, as required by section 92-2.5(e), HRS. Petitioner complained that this report

was not properly noticed because it was under the "Communications" section of the agenda for the Council's meeting. Petitioner contended it should have been under another section of the agenda listing items for the Council's deliberation, or that the Council should have considered a motion to waive its rules to allow for deliberation on this item, as the Council does not customarily consider or take action on "communication" items. OIP previously opined that the fact that an item is on an agenda indicates that it is "before" the board and is business of that board, which may or may not include deliberation and decision making by that board. The Councilmember's report was listed on the agenda, and OIP found no violation of the Sunshine Law's notice requirements.

Petitioner further complained that, because section 92-2.5(e), HRS, requires board members who attend an informational briefing to "report" back to the Council, this reporting requirement thereafter requires deliberation by the full board of the informational meeting report. OIP determined that section 92-2.5(e), HRS, contains no requirement that a board consider or take action on a report provided thereunder.

Petitioner filed a request for reconsideration of OIP's opinion, but then withdrew his request and instead filed this *pro se* lawsuit which asked the circuit court to reverse OIP's opinion, to order OIP to write a reversal, and to award fees. OIP filed a motion for summary judgment which was granted. The court's order filed on June 16, 2016 ruled that the law does not allow individuals to appeal OIP's Sunshine Law opinions to the court or to sue OIP for alleged Sunshine Law violations by State or county agencies. The court further concluded that Petitioner's remedy lies in section 92-12, HRS, which allows an individual to bring a court action against the board itself, not OIP, to require compliance, prevent violations, and determine the applicability of the Sunshine Law. Petitioner filed a notice of appeal with the Intermediate Court of Appeals on August 15, 2016.

Access to Minutes of Closed Meetings

Akana vs. Machado
Civil No. 13-1-2485-09 VLC (1st Cir. Ct.)

As reported in OIP's FY 2014 Annual Report, Office of Hawaiian Affairs (OHA) Trustee Rowena Akana (Plaintiff) filed a complaint for declaratory and injunctive relief against the Chairperson and other members of OHA's Board of Trustees (Defendants) for judgment finding that OHA's practices and procedures to provide the public and Co-Trustees access to records of closed executive meetings of Trustees were unreasonably cumbersome and not properly adopted by OHA's Board of Trustees. Plaintiff sought injunctive relief to provide any trustee with unfettered access to minutes and records for closed executive meetings. Plaintiff also sought injunctive relief to provide the public with reasonable and timely access to minutes and records for closed executive meetings.

Defendants filed an Answer and a Counterclaim for injunctive relief alleging that Plaintiff breached her fiduciary duty when Plaintiff, without proper authorization, disclosed confidential, proprietary or privileged information. Plaintiff answered the Counterclaim by denying the allegations that Plaintiff had breached her fiduciary duty to OHA.

Defendants filed a Motion for Summary Judgment Establishing Plaintiff's Breach of Fiduciary Duty, which the court granted. Trial is scheduled for the week of March 6, 2017.

Polling Board Members and Public Testimony on Executive Session Item

In Re OIP Opinion Letter No. 15-02
S.P.P. No. 14-1-0543

As reported in OIP's FY 2015 Annual Report, the Office of Hawaiian Affairs (OHA) appealed OIP's Opinion Letter No. 15-02, which concluded that OHA's Board of Trustees had violated the Sunshine Law by polling board members outside a meeting to obtain their agreement to send a letter, and by denying members of the public the right to present oral testimony on an executive session item. This case represents the first use of section 92F-43, which was added to the UIPA in 2013 and allows agencies to appeal OIP decisions to court based on the record that was before OIP and established a deferential "palpably erroneous" standard of review. OHA served its complaint on OIP and the members of the public who requested the OIP opinion being appealed, as required by section 92F-43(b), in many cases relying on service by publication. One of the members of the public filed an answer, as did OIP, and the court entered default against the others. The litigation remains in a preliminary stage.

Maui County Council's Approval of the Real Property Tax Classification and Rates for Timeshare Properties

Ocean Resort Villas Vacation Owners Association v. County of Maui
Civil No. 13-1-0848 (2) (2nd Cir. Court)

In August 2013, a homeowners' association (Plaintiffs) filed a lawsuit in the Second Circuit Court alleging that the new Real Property Classification and Tax Rates for Timeshare Properties that had been approved by the Maui County Council violates the Equal Protection clauses of the United States and Hawaii Constitutions because the rates intentionally and arbitrarily categorize and tax non-resident timeshare owners compared to similarly situated residents. Plaintiffs also alleged that Maui County Councilmembers circulated memoranda or engaged in other improper interactions or discussions, outside of public meetings, with the purpose of circumventing the spirit or requirements of the Sunshine Law. Plaintiffs sought a declaration that the new timeshare tax rates set forth in the Council's resolution are void due to violations of the Sunshine Law.

Plaintiff filed an amended complaint seeking a declaration that the timeshare tax rates for FY 2015 as well as for FY 2014 are void due to violations of the Sunshine Law, and discovery is ongoing. The litigation is ongoing, and includes Maui County's motion for partial summary judgment as to Plaintiffs' allegations of Sunshine Law violations.