

OIP'S RESPONSE TO A STAGGERINGLY MISLEADING REPORT

February 12, 2018

Last year, the Hawaii Office of Information Practices (OIP)¹ responded to a report by the Civil Beat Law Center (CBLC) entitled, “Breaking Down Hawaii’s Broken System for Resolving Public Access Disputes.”² **OIP criticized last year’s report for being based on flawed methodology, inaccurate assumptions, its writer’s particular perspective as an advocate and legal advisor for a media outlet, and a lack of understanding of how and why OIP has actually conducted its business over time.**

This year, the **same criticism applies to a second report** by CBLC entitled, “A National Comparison: Delays at OIP Are Staggering” (Report), which contained the same flawed methodology, inaccurate assumptions, bias, and lack of understanding. The second Report, which was presented as a *fait accompli* to OIP a mere week before its release, compared the number of formal and informal opinions and length of time that OIP takes to decide them versus other states’ statistics and concludes that OIP is the worst of all states. **What was truly staggering about the second Report was its misleading use of statistics and blatant omission of relevant facts to support its predetermined conclusion** that OIP should be statutorily mandated to resolve its complaints in six months from the date of filing without any additional personnel or funding. Please consider the following 15 points.

1. The typical “opinions” and decisions by other states cited in the Report are not comparable to OIP’s opinions. The states cited by the Report with fast response times produce “opinions” that are usually only one to two pages long and do not contain the detailed factual and legal analyses provided in OIP’s formal and memorandum opinions. Those other states’ opinions are more comparable to the informal advice that OIP provides in response to Attorney of the Day (AOD) inquiries, which will be discussed further.

2. The Report did not explain that the reason that OIP must write more detailed opinions is because Hawaii’s courts must defer to OIP’s opinions that are judicially appealed, and these opinions are subject to a high standard of review by the courts. CBLC itself has argued to the courts that OIP’s opinions are entitled to deference.³ Through Act

¹ OIP is an independent Hawaii state agency charged with administering Hawaii’s Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS) and Uniform Information Practices Act, Modified, chapter 92F, HRS (UIPA). OIP is a neutral body and is statutorily required by sections 92-1.5 and 92F-42, HRS, to assist both Hawaii government agencies and the public.

² The [Office of Information Practices’ Response to the Civil Beat Law Center Report](#) (February 8, 2017) can be found on the [Annual Reports page at oip.hawaii.gov](#), where you will also find OIP’s FY 2017 Annual Report that provided much of the information for this response.

³ [Peer News LLC dba Civil Beat v. City & County of Honolulu](#), 138 Haw. 53, 58, 376 P.3d 1, 6(2016) (noting that “[i]n its [motion for summary judgment], Civil Beat argued that OIP’s analysis [in Op. Ltr. No. 97-01] was correct based on a plain reading of the UIPA, and that even if the UIPA is

176, 2012 Haw. Sess. Laws, the Legislature amended the UIPA and Sunshine Law to allow agencies to appeal from OIP's opinions, but made clear that "[o]pinions and ruling of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous."⁴ OIP may, but is not required to, intervene in appeals of its rulings. **Thus, to avoid OIP's previous experiences when it has been tied up in appellate litigation over the validity of its rulings,⁵ OIP is careful now to draft opinions so that they may "speak for themselves" if challenged in court and not require OIP's intervention.** As a prime example of how the new law is working, the Circuit Court of the First Circuit ruled on May 1, 2017 that OIP Op. No. F15-02 was not palpably erroneous and denied a motion for summary judgment filed by the Office of Hawaiian Affairs (OHA), which has been fighting since December 2014 to overturn OIP's Sunshine Law opinion. While OIP is defended by the state Attorney General's office, OIP was not required to join as a party in the OHA appeal, and thus **OIP itself has not had to provide legal assistance and has continued with its regular work over the years as the case continues to wind its way through the courts.⁶**

ambiguous, OIP's conclusion is entitled to deference.") Robert Brian Black, the Executive Director then and now of the Civil Beat Law Center, represented Peer News LLC dba Civil Beat in that case.

⁴ HRS § 92-12(d) (2012); *see also* HRS §§ 92F-43(c), 92F-15, 92-27. For a detailed explanation of the statutory changes enacted by Act 176 and OIP's appeal rules implementing those changes, *see* 2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practice, 36 University of Hawai'i Law Review 271 (Winter 2014).

⁵ In the earlier appeal from OIP decisions, the County of Kauai sued OIP in June 2005 in a case involving both Sunshine Law and UIPA issues after OIP ordered the disclosure of minutes from an executive session that it contended had been improperly closed to the public. The case was litigated and on appeal for four years, requiring the appointment of special counsel to represent OIP and the support of two OIP Directors and two OIP attorneys to assist in the litigation and brief writing. Despite OIP's vigorous and time-consuming defense, the Intermediate Court of Appeals ruled against OIP in a June 2009 opinion that was subsequently affirmed by the Hawaii Supreme Court in October 2009. County of Kauai v. Office of Information Practices, 120 Haw. 34, 200 P.3d 403., 2009 Haw. App. Lexis 35 (2009) (affirmed by the Hawaii Supreme Court without an opinion on October 26., 2009). Because the Kauai decision placed a cloud over OIP's authority, OIP sought and successfully obtained legislative clarification in Act 176 of the rights, procedures, and standard of review for agencies to judicially appeal from OIP rulings.

⁶ Since enactment of Act 176, the Hawaii Supreme Court has applied the palpably erroneous standard of review in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (2013) (involving the propriety of meeting continuances and distribution of memos among board members under the Sunshine Law), and favorably cited to seven OIP opinions. OIP was not involved in that case, which began in the Circuit Court on March 2008 and concluded over five years later with the Hawaii Supreme Court's opinion filed in August 2013.

In Peer News LLC dba Civil Beat v. City & County of Honolulu, 138 Haw. 53, 58, 376 P.3d 1, 6 (2016), the Hawaii Supreme Court applied a *de novo* standard of review to interpret a statute. Under this

3. If fast, informal advice comparable to other states' "opinions" is desired, then **people are already getting answers the same day from OIP through the AOD service, which responds to 77% of all requests for OIP's assistance.** Through this same day service, OIP often prevents or resolves UIPA and Sunshine Law disputes, either by a simple email or through verbal advice. For example, if OIP is made aware of a meeting notice that is untimely or insufficient under the Sunshine Law, it will orally notify the board and is usually successful in having the meeting postponed and/or the notice revised, without having to provide any written correspondence or escalate the matter to a formal appeal. As another example, if OIP receives an AOD inquiry as to whether an agency must disclose requested information, it may provide informal verbal or written advice as to the agency's responsibilities, which may then result in the agency's voluntary disclosure of the requested record. **The AOD service is well used by members of public, who have no attorney to turn to, as well as government employees, who often find OIP more accessible and knowledgeable than their agency attorneys.** Although OIP has no statistics on the number of verbal advice it gave that averted or resolved potential disputes, **OIP followed up within a day or so with 121 email responses to AOD inquiries in FY 2017. The Report, however, failed to include the AOD written and verbal case resolution numbers, as that data would have dramatically changed the Report's predetermined conclusion.**

4. Requests for OIP's services that cannot be informally resolved through the same day AOD service are opened as formal cases, which comprised 23% or 278 of the total 1,234 requests for services in FY 2017. OIP had an average of 23 formal cases filed each month last year, or 139 for a six-month period. **OIP ended FY 2017 with only 85 pending of the 278 formal cases that were filed in FY 2017,** which is quite an accomplishment considering that 48 were filed in the last two months of the year. In summary, for FY 2017, **OIP resolved 93% of 1,234 formal and informal cases in the same year they were filed, of which 77% were typically resolved the same day through the AOD service.**

5. Contrary to the Report's claims, **the number of new formal cases filed by OIP has substantially increased in five of the last seven years, for an average increase of nearly 17% per year,** as shown in the attached Chart 1 of "Formal Cases: New, Closed, & Outstanding FY 2011 – FY 2017." Although OIP had a brief respite in FY 2016 when the number of new formal cases filed went down to 198 from 233 the year before, OIP saw a 40.4% increase in new cases (+80 cases) in FY 2017, when a record 278 formal cases were filed.

6. **The Report failed to point out OIP's increased productivity for all but two years since FY 2011.** See Chart 1. Even with the 40.4% increase in new cases, OIP was able to resolve 232 formal cases in FY 2017, just 9 cases shy of the record 241 cases that it resolved in

standard for statutory review, the Court concluded that a 1997 opinion by OIP in Op. Ltr. No. 97-01 was palpably erroneous in determining that a 1996 opinion by the Court had eliminated the primary intent of a statute that was effective at the time of the Court's opinion but was not the subject of that decision since the case had been filed to challenge an earlier version of that statute. The Court favorably discussed another OIP opinion, Op. Ltr. No. 98-02, which had not and could not be challenged by a third-party intervenor. Peer News, 138 Haw. at 75, 376 P.3d at 23.

FY 2016. OIP's increased productivity was assisted by the addition of a new attorney position in FY 2014, even though the productivity of experienced attorneys decreases during training when they are supervising and mentoring new attorneys and have less time to work on their own cases.

7. The Report also failed to point out that despite OIP's increased productivity, the backlog of formal cases tracks the number of new formal cases filed each year, over which OIP has no control. See Chart 1. As shown in Chart 1, the red dashed line representing OIP's outstanding cases closely tracks the blue dotted line showing the number of new cases filed each year. Except for a slight drop in FY 2012 and a substantial drop in FY 2016, both the red dashed line and blue dotted line have shown almost parallel progressions higher. The gap between them began widening from FY 2013 as OIP's productivity (shown as the solid green line) began increasing with the addition of one attorney, so that the red dotted line for outstanding cases did not rise as fast as the blue dotted line for new case filings. But even with OIP's increased productivity, **new case filings increased an average of 20% annually for the three years from FY 2013 to 2015, dropped 15% in FY 2016, and increased 40.4% in FY 2017. While the 15% decrease in new case filings in FY 2016 allowed OIP to lower its backlog to 104 outstanding cases, the 40.4% increase in new case filings in FY 2017 led to a 44% increase in OIP's backlog, particularly as OIP received 48 new cases in the last two months alone.**

8. The Report further failed to point out that OIP has been steadily reducing the age of the backlog, which consists mostly of appeals and requests for opinions and had been the repository for the more difficult cases that were left unresolved by prior OIP administrations due to increased case filings, budget cuts, furloughs, and different priorities over the decades of severe underfunding of OIP. This is why the oldest case pending in FY 2011 had been filed 12 years earlier. Since 2011, **OIP has substantially brought down the age of pending cases.** As of the end of FY 2017, OIP's oldest case was filed in FY 2015. Unless there is good cause otherwise, **OIP gives priority to resolving the older cases first**, so not surprisingly, as the Report points out on page 4, "[n]one of OIP's formal decisions from 2015 to 2017 were decided in less than two years."

9. The Report omits readily available data showing how OIP has historically been underfunded and not given the resources needed to perform its duties. Instead, the Report blithely claims that OIP does not need any additional resources to resolve appeals within six months of filing. The fact is that **OIP has been doing double the work with half the resources that it had 24 years ago.** OIP was created 29 years ago in 1988 to administer the UIPA. At its height in FY 1994, OIP had 15 authorized positions and an allocated budget of \$827,537, which is the inflation-adjusted equivalent of \$1,374,543 today. See Figure 3 in OIP's FY 2017 Annual Report. Five years later, in FY 1999, OIP was given the additional responsibility of administering the Sunshine Law, which essentially doubled its work, but OIP had been slashed to only 8 positions and its budget was cut to \$354,505, which is the inflation-adjusted equivalent of \$523,064 today. In FY 2010-11, OIP personnel were subject to furloughs and supplemental leave without pay. It was not until FY 2014 that OIP was authorized an additional attorney position. Currently, OIP has 8.5 FTE authorized positions and a legislative appropriation of \$576,855, which is **\$304,473 less in unadjusted dollars and only 42% of what it had on an inflation-adjusted basis in FY 1994, and 40% less in authorized positions.**

10. The Report focuses on only a small percentage of OIP’s work while ignoring all the other important duties that OIP performs. Requests for OIP’s services come from state, county and independent agencies, the media, organizations, and the general public, and the formal cases and AODs do not include OIP’s other work, such as creating and revising **training materials**; conducting **live training**; monitoring and testifying on **legislation**; monitoring **lawsuits** regarding the UIPA, Sunshine Law, or OIP; keeping the public, boards, and agencies informed via **communications** like *What’s New* emails and media interviews; drafting and explaining new **administrative rules**; and initiating **special projects** on its own. (See Figure 1 on page 6 of OIP’s FY 17 Annual Report.) FY 2018 is proving to be an especially challenging year for OIP because of the tremendous work required to revise OIP’s administrative rules to fall within the numbering system for the Department of Accounting and General Services (to which it is now administratively attached) and to develop new and revised administrative rules for personal record requests, manifestly excessive interference with agency duties, and other UIPA procedures and fees. OIP has already held in person, online, and on television statewide informational briefings on draft rules to obtain public and agency input, and is waiting for the Attorney General’s office to complete its legal review before OIP can make revisions, publish a hearing notice, and hold a public hearing on the proposed rules. After the hearing and if new rules are adopted, OIP must create new training materials, including a revised UIPA Record Request Log, and intends to conduct statewide training to educate the state and county government agencies about the new rules. **If a six-month mandate goes into effect, OIP may not be able to perform these other duties, which are equally important and apply to everyone, not just a relatively small number of appeals.**

11. The Report omits discussion of the rules and statutes from other states that allow them to not accept new cases, to limit repetitive case filings, to more readily dismiss cases, to charge for opinions, or to penalize people filing frivolous appeals, which is how other states can meet shorter case resolution deadlines. Unlike other states or the CBLC, OIP must “take all comers” and cannot reject appeals that require the writing of opinions. Even the other types of formal cases require time and attention by OIP, and filings by repeat requesters detract from OIP’s ability to work on opinions for other people.⁷ Other states with shorter case

⁷ Notably, in FY 2017, one-third of the 278 new formal cases were filed by one couple (42 cases) and three individuals (25, 13, and 9 cases each).

resolution deadlines mentioned in the Report, such as Connecticut⁸ and Iowa,⁹ have various means to control frivolous appeals or multiple requests made by repeat requesters, so that a few people cannot monopolize services and delay resolution of cases filed by others. Other states also have means to expedite, limit, and dismiss cases. For example, Massachusetts¹⁰ will reject a complaint and close a file without any decision if complete information is not submitted at the time of filing. Unlike OIP, Massachusetts and Minnesota will dismiss appeals that are affected by pending litigation.¹¹ Minnesota¹² will also deny additional opportunities to supplement requests for appeal once they are filed and also charges requesters \$200 for Sunshine Law opinions. Indiana may reject complaints that are misleading, confusing, illegible, or contain superfluous exposition.¹³ As permitted by the U.S. Supreme Court, Hawaii could even amend the UIPA to grant its rights to only Hawaii residents.¹⁴ **These and other changes to Hawaii's**

⁸ Connecticut has statutory provisions automatically denying certain appeals not decided by its Freedom of Information Commission within 60 days and allowing the Commission to impose a civil penalty of not less than \$20 or more than \$1,000 for frivolous appeals taken “without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken[.]” Connecticut’s Commission may also obtain an injunction prohibiting a “person from bringing any further appeal to the commission which would perpetuate an injustice or would constitute an abuse of the commission’s administrative process.” If an appeal is brought after such injunction has been ordered, the “agency may seek further injunctive and equitable relief, damages, attorney’s fees and costs, as the court may order.” The Connecticut Freedom of Information Act may be viewed at <http://www.ct.gov/foi/cwp/view.asp?a=4161&Q=488540&foiNav=1>.

⁹ Iowa’s administrative rules allow its board to “[d]ismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board’s jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court.” Iowa Admin. Code 497—2.1(2); <https://www.legis.iowa.gov/docs/aco/agency/497.pdf>.

¹⁰ See page 3 in “A Guide to the Massachusetts Public Records Law.” www.sec.state.ma.us/pre/prepdf/guide.pdf.

¹¹ See page 70 in “A Guide to the Massachusetts Public Records Law” at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>. and “Requesting a Data Practices Advisory Opinion” at <https://mn.gov/admin/data-practices/opinions/request/data/>.

¹² See “Requesting a Data Practices Advisory Opinion” at <https://mn.gov/admin/data-practices/opinions/request/data/>; and “Requesting an Open Meeting Law Advisory Opinion” at <https://mn.gov/admin/data-practices/opinions/request/meetings/>.

¹³ Indiana Code 5-14-5-11 gives the Public Access Counselor broad discretion to “determine the form of a formal complaint filed.” Citing to this law, the instructions for filing a complaint state that formal complaints and requests for informal inquiries may be rejected “for being misleading, confusing, illegible or for containing superfluous exposition.” <http://iga.in.gov/legislative/laws/2017/ic/titles/005#5-14-5-11>; http://www.in.gov/pac/files/Instructions_for_Filing_a_Formal_Complaint.pdf.

¹⁴ *McBurney v. Young*, 569 U.S. 221, 133 S.Ct. 1709, 185 L.Ed.2d 758 (2013) (upholding Virginia’s Freedom of Information Act granting access to public records to only Virginia citizens).

statutes and rules would need to be considered to enable OIP to meet a statutorily mandated six-month case resolution deadline.

12. Contrary to the Report's assertion that no funding is necessary to meet a much shorter six-month deadline, **OIP would need even more personnel, equipment, and additional funding over and above its \$115,000 supplemental budget request for FY 2018**, which is needed to help retain OIP's existing employees and provide salary parity with other state and county positions. **And even with additional funding, OIP would need a dedicated source of funding to ensure it will continue to have the resources it needs to fulfill the proposed statutory mandate for the coming decades.** Without a dedicated funding source, appropriations could be reduced and necessary increases may not be made in future years, despite the ravages of inflation or increases in the number, complexity, or frivolousness of new case filings, as OIP well knows and has experienced.

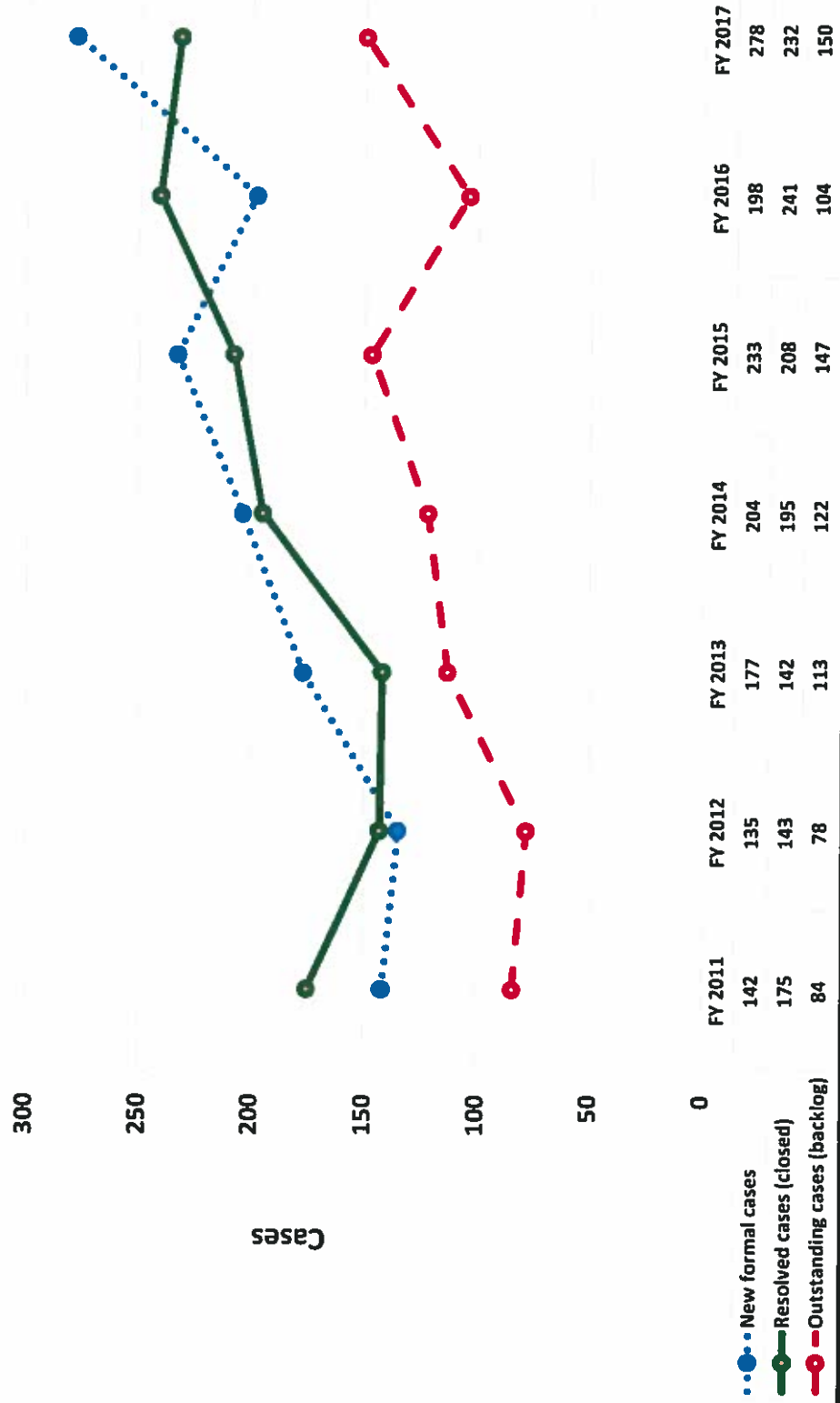
13. **OIP already has its own goal to resolve formal cases within 12 months of filing, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months. OIP would need money and positions appropriated and authorized immediately, and additional time to hire, train, and equip the new employees needed** to meet a shorter six-month deadline. Note that with new employees, OIP's productivity may initially decrease, because experienced employees will have less time to work on their own cases while training inexperienced employees. Thus, while the effective date for any **appropriations and personnel authorizations must be effective by July 1, 2018**, a new statutory mandate should not go into effect earlier than **three years for OIP to be reasonably able to implement it.**

14. **Most importantly**, if additional resources are not provided and a six-month mandate is passed, **the public will suffer from a weakened OIP.** The curtailing of OIP's training and many other functions could have the **net effect of lowering agency compliance** with the open government laws **and increasing the number of new cases filed due to more disputes, while leaving the public with nowhere to turn for neutral, expert advice.** **During the legislative session, there may not be another credible neutral party like OIP that is willing and able to find common ground and bring together various stakeholders** from various government agencies and the general public to propose solutions acceptable to the Legislature, as OIP did with Act 165, 2017 Haw. Sess. Laws.¹⁵ Without additional personnel or the time to train them, **the quality of OIP's opinions may be vastly lowered** to simple, conclusory "you win, you lose" decisions lacking factual or legal reasoning, **which could be more readily challenged in the courts, lead to greater strain on judicial resources, longer delays, and greater expense and less certainty for complainants.** **If the courts no longer deferred to OIP's shortened opinions, the agencies may be more willing to challenge OIP's opinions and may not feel it necessary to voluntarily comply with OIP's informal advice** given through AODs, correspondence, and training materials. OIP and members of the public would not have the time, money, or desire to challenge agencies in court.

¹⁵ This law updates the Sunshine Law in several key areas: it requires board packets to be open for public inspection, revises how meeting notices are to be filed, provides a new option for the recordation of meeting minutes and requires their publication online, and makes other changes.

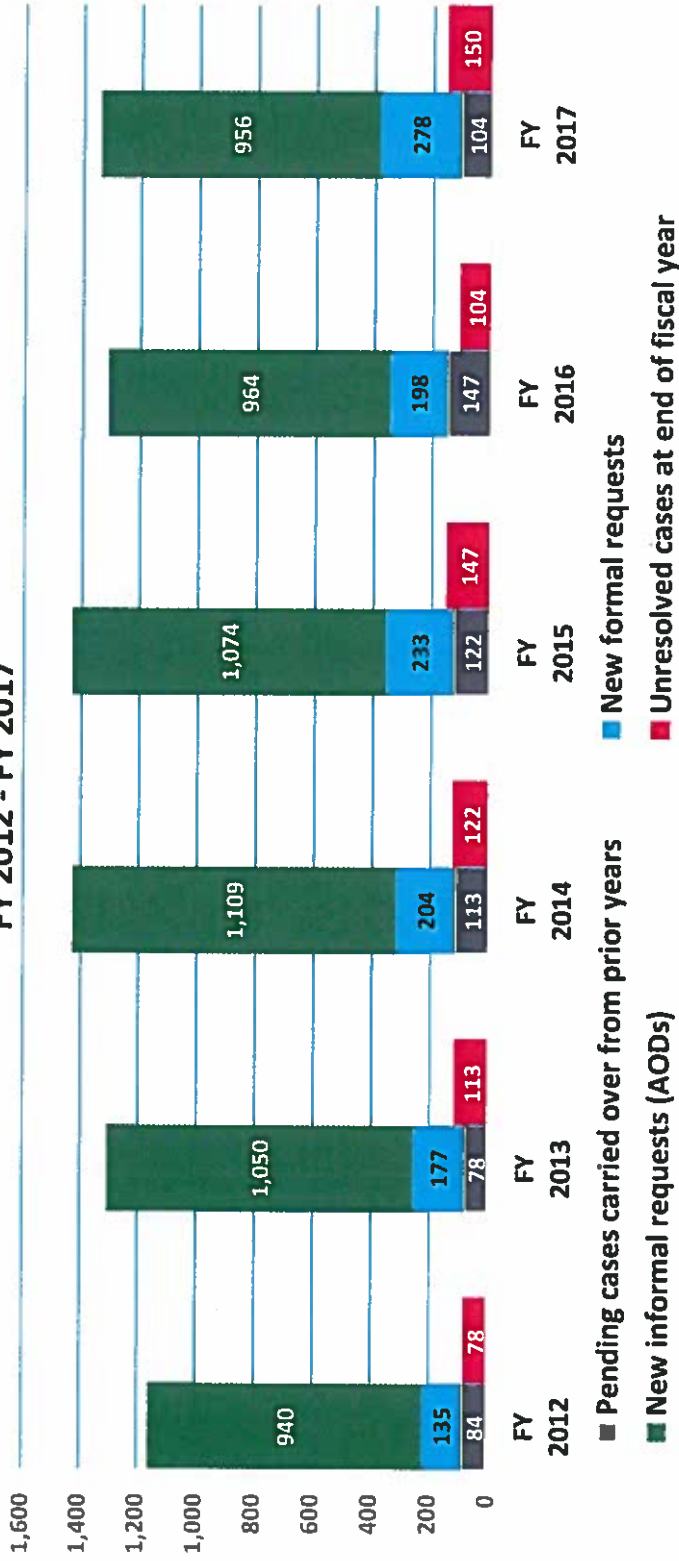
15. Last but not least, CBLC's motives are suspect. With all of these unintended consequences, the glaring omissions of relevant information and the misleading use of statistics in this Report, the big question is "Why?" Why is CBLC continuing to attack OIP, rather than helping it get the resources it clearly needs to perform its duties? The answer may be gleaned from CBLC's reports. In last year's report, CBLC recommended the elimination of the AOD service; this year's Report fails to recognize or account for the cases resolved informally by the AOD same day service to prevent disputes from arising or escalating to formal complaints. Without OIP's primary means of providing fast, free, informal, and neutral advice, members of the public would suffer the most as they do not have alternative access to governmental attorneys that assist agencies and boards. **Without OIP to provide this service, would there be more clients for a "public interest" law firm to choose from?**

Formal Cases: New, Closed, & Outstanding FY 2011 - FY 2017



New Requests for Services (AODs & Formal Cases) vs. Cases Pending at End of Fiscal Year*

FY 2012 - FY 2017



* Does not include other activities such as training, rulemaking, monitoring legislation and lawsuits, and special projects.

A NATIONAL COMPARISON:

Delays at OIP Are Staggering

The Legislature created the State of Hawai'i Office of Information Practices (OIP)—the agency charged with resolving public access disputes in Hawai'i—to provide a forum for expeditious resolution of public complaints about access to government information.¹ Last year, the Civil Beat Law Center for the Public Interest explored the backlog and delays at OIP. This process started because numerous members of the community expressed their frustration regarding increasingly lengthy delays at OIP.² Without data about OIP's outcomes historically and its current performance, it was not possible to assess whether the community's anecdotal concerns had merit. Thus, the Law Center began by requesting information from OIP.

Examining data from OIP, we discovered that OIP's average time to resolve complaints had quadrupled in recent years; that the agency was resolving fewer complaints on average per year; and that OIP's backlog is trending upward despite a downward trend in new filings.³ Consistent with the Law Center's mission, we made recommendations in our prior report with the goal of achieving the legislative intent to provide an expeditious forum for resolving disputes. OIP has not acted on any of the Law Center's recommendations.

This year, we applied the same analysis and found that the delays at OIP have not improved by any measure. And reviewing recent OIP formal and informal decisions, the Law Center realized that only

three of the 46 decisions from 2015-2017 were issued in less than 2 years. Thus, **a member of the public must assume that any complaint will take 2–3 years or more for OIP to decide.**

In a search for solutions, the Law Center examined information about agencies similar to OIP in other states. We assessed how the delays at OIP compared to other jurisdictions and whether other states may have replicable models for success in Hawai'i. We found that, **despite high staffing per capita, OIP has the longest delays for public access disputes among its peer agencies with available information.** However, the success of hard statutory deadlines in other jurisdictions may provide a solution.

Forcing the public to wait two years or more for resolution of public access disputes at OIP is unacceptable. These disputes concern access to information of intense public interest. For example, OIP currently has pending disputes focused on requests about environmental issues, civil defense, HART, prisons, police, government audits, nursing homes, public housing, and government contracts. As would be expected, nearly every major topic of concern in Hawai'i is reflected in OIP's backlog. But we should not have to wait more than three years to find out what information is accessible in pesticide reports or other government records.⁴ The process no longer provides the timely review that the Legislature intended.

¹ Conf. Comm. Rep. No. 122-88, in 1988 House Journal at 818. (OIP was created "to provide a place where the public can get assistance on records questions at no cost and within a reasonable amount of time."); H. Stand. Comm. Rep. No. 1288, in 1989 House Journal at 1319 (exempting OIP from contested case requirements "to comply with the legislative intent behind Chapter 92F, that review by the Office of Information Practices be expeditious, informal, and at no cost to the public").

² When that report was published in February 2017, the oldest pending dispute dated from September 2013; OIP resolved that dispute in May 2017. OIP's oldest currently pending dispute awaiting resolution is from July 2014.

³ Breaking Down Hawaii's Broken System for Resolving Public Access Disputes at 4-6 (Feb. 2017) [2017 Report], at www.civilbeatlawcenter.org/resources/.

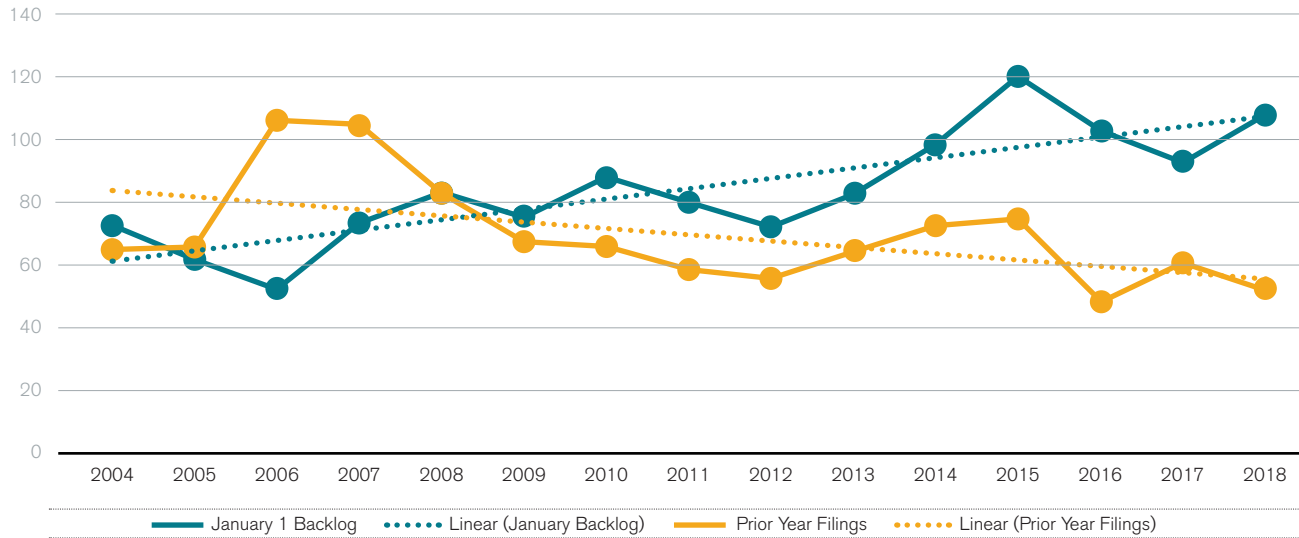
⁴ The oldest currently pending OIP dispute from July 2014 arose from inquiries related to pesticide spraying near schools on Kauai.

DELAYS AT OIP ARE NOT IMPROVING

Applying the same methodology as last year’s report, the Law Center analyzed year-end data from OIP for 2017.⁵ By every measure, the delays and backlog at OIP have continued to increase. OIP is resolving fewer matters and taking longer to address complaints. And its backlog continues to increase despite a downward trend in new filings.

Average Days to Decision ⁶		Average Decisions Per Year		Major Matters Resolved	
2016	2017	2016	2017	2016	2017
464	474	56	53	70	34

Backlog/New Filing Trends



It is worth considering the practical effect of these delays. As noted in the Law Center’s 2017 report, “decision” is a misnomer because not all major OIP matters are resolved by a formal or informal opinion; for example, some matters are summarily dismissed without any substantive resolution.⁷

Those matters that result in a formal or informal decision, however, illustrate the public impact of OIP’s delays. The following charts reflect the reality that if a member of the public wants a decision from OIP, it will take 2–3 years or more in nearly every instance.

Time to Decision for Formal Opinions (2015–2017)⁸

Year	OIP Op. Ltr. No.	Time in Years
2017	F17-05	3.58
2017	F17-04	3.75
2017	F17-03	2.58
2016	F17-02	3.33
2016	F17-01	3.17
2016	F16-05	2.67
2016	F16-04	2
2016	F16-03	2.67
2016	F16-02	2.58
2015	F16-01	2.42
2015	F15-04	2.33
2015	F15-03	2.75

⁵ The Law Center’s prior report describes in more detail the methodology used and the limitations of the data provided by OIP. OIP criticized the Law Center’s methodology. Office of Information Practices’ Response to the Civil Beat Law Center Report (Feb. 8, 2017), at <http://www.civilbeatlawcenter.org/resources/>. The Law Center reviewed OIP’s criticisms and found none that undermined the validity of the Law Center’s findings.

⁶ As described in the methodology for the prior report, these calculations are point-in-time averages for the entirety of the current OIP administration. Limiting the average to major matters decided in a specific year, the average days to decision for matters resolved in 2016 was 557 days, and the annual average for 2017 was 552 days.

⁷ 2017 Report at 4 n.8.

⁸ For these charts, we calculated the time to decision based on information contained in the opinion itself and rounded to the closest month.

Time to Decision for Informal Opinions (2015–2017)

Year	OIP Op. Ltr. No.	Time in Years
2017	S Memo 17-03	.17
2017	U Memo 17-08	2.5
2017	U Memo 17-07	3.92
2017	U Memo 17-06	3.67
2017	U Memo 17-05	2.58
2017	U Memo 17-04	3.67
2017	U Memo 17-03	.83
2017	U Memo 17-02	2.92
2017	U Memo 17-01	3
2016	S Memo 17-02	2.92
2016	S Memo 16-04/ S Memo 17-01 (recon)	2.08
2016	U Memo 16-05	3.25
2016	U Memo 16-04	2.25
2016	U Memo 16-03	2.75
2015	S Memo 16-03	2.17
2015	S Memo 16-02	2.33
2015	S Memo 16-01	2.58
2015	S Memo 15-07	2.33
2015	S Memo 15-06	2
2015	S Memo 15-05	2.58
2015	S Memo 15-04	2.17
2015	S Memo 15-03	2.5
2015	S Memo 15-02	2.08
2015	U Memo 16-02	2.33
2015	U Memo 16-01	2.58
2015	U Memo 15-14	4.67
2015	U Memo 15-13	2.17
2015	U Memo 15-12	2
2015	U Memo 15-11	2.92
2015	U Memo 15-10	2.58
2015	U Memo 15-09	1.75
2015	U Memo 15-08	2.42
2015	U Memo 15-07	2.17
2015	U Memo 15-06	2.5

Two years minimum is too long for a member of the public to wait for OIP to resolve a complaint. For example, a member of the public interested in examining the *immediate* danger of furloughing prison inmates in community housing after a spate of escaped inmates should not be required to wait more than three and a half years to find out what government information about inmates is accessible.⁹ Hawai'i deserves the expeditious forum for addressing public access disputes that the Legislature intended.

OIP LAGS FAR BEHIND ITS NATIONAL PEERS

OIP is not unique. Other states have non-judicial procedures for public access disputes. The Law Center reviewed the outcomes, models, and staffing used by other states to assess whether certain variations might lead to more timely resolution of public complaints in Hawai'i. Our review revealed that OIP is the worst among its peer agencies for delays in addressing public access disputes. But we found one easy-to-implement feature that would conform OIP to the expeditious informal dispute resolution process that the Legislature intended: a six-month deadline for OIP to resolve public complaints.

Twenty-nine states, besides Hawai'i, have statutory procedures for non-judicial resolution of access disputes. Of those states, fourteen have a specific office or administrator dedicated to handling disputes,¹⁰ and fifteen others direct access complaints to that state's attorney general.¹¹

⁹ The oldest pending dispute at the time of the Law Center's 2017 Report concerned access to the identities of furloughed inmates.

¹⁰ Connecticut, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, Pennsylvania, South Dakota, Tennessee, Utah, and Virginia.

¹¹ Arizona, Delaware, Florida, Illinois, Kansas, Kentucky, Maine, Missouri, Nebraska, New Mexico, North Dakota, Oregon, Rhode Island, Texas, and Washington.

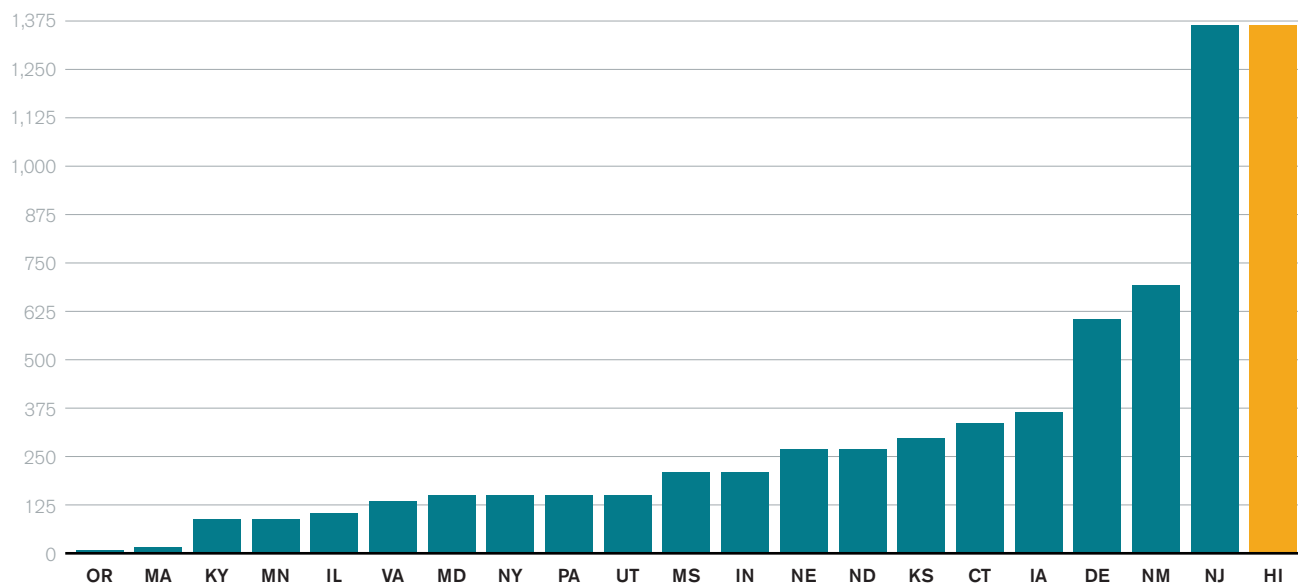
OUTCOMES

We reviewed outcomes in each of those states by examining public decisions. For states with available information (i.e., decisions accessible online), the Law Center identified the longest time to decision for the most recent disputes. The length of time to resolve matters was determined by looking at the date a complaint was submitted and the date the matter was resolved. Our review focused primarily on decisions issued from 2015 to 2017. For some states with few published decisions, we reviewed earlier decisions, and for states with more than 50 published decisions from 2015-2017, we reviewed a shorter timeframe. The chart below identifies the longest time to decision for each state with available information.

In conducting this review, we noted that using the longest time to decision as a metric frequently overstated the normal response time of a state. Longer pending matters often were outliers with most opinions issued in a shorter timeframe. The appendix to this report provides the Law Center’s additional observations, if any, regarding a state’s time to decision.

Using the same methodology for comparison, OIP’s longest time to decision is three years and nine months, or approximately 1365 days.¹² (OIP Op. Ltr No. 17-04). No state took longer than OIP to decide public disputes.¹³ And unlike those states where lengthy delays are an outlier phenomenon, long delays are the norm at OIP. None of OIP’s formal decisions from 2015 to 2017 were decided in less than two years.

Longliest Response by State (in days)



Note: All days are approximate.

¹² Examining informal opinions, which are not available on OIP’s website, we discerned that OIP’s longest response time for the most recent disputes was four years and eight months, or approximately 1700 days (OIP U Memo 15-14).

¹³ New Jersey had one decision that tied OIP’s longest pending formal opinion; we found no decisions that came close to OIP’s longest pending informal decision at 4 years and 8 months. New Jersey’s Government Records Council

has an executive director and only 4 staff members (one staff attorney). Moreover, New Jersey’s process is more complicated than OIP’s dispute procedure because New Jersey has a multi-step review with provision for a full evidentiary hearing, making the process more like a formal contested case proceeding. Despite the more complex procedures, the Law Center observed that, based on the information reviewed, New Jersey typically issued decisions within 1–2 years.

MODELS

Reviewing the models used by other states, the Law Center identified three features potentially relevant to expeditious resolution of disputes. First, the citizen-commission model—used by most states with a specific office for disputes—provides a measure of non-government oversight and pressure on government staff to provide timely responses to disputes. Second, numerous states have a hard deadline model that requires issuance of decisions about access disputes within a set period. Third, and least effective, a handful

of states have a soft deadline model that requires decisions to be rendered as promptly as possible.

Based on the performance of other states, Hawai'i could benefit from a statutory six-month deadline for OIP to review and resolve complaints. Hawai'i also may benefit from having a citizen commission that reviewed violations of the UIPA and the Sunshine Law. A board would supervise OIP's performance to ensure timely public assistance in accordance with its mission.

A. Citizen Commission

Eight states implement statutes that require the creation of commissions, committees, councils, or boards (all hereinafter referred to as commissions) to review complaints and inquiries from the public regarding denial of access to public records or open meetings.¹⁴ The size and procedures of each commission vary. But available data shows that nearly all commissions resolve public access complaints within one year.

Commission members—as with most Hawai'i state and county boards—typically serve as volunteers and come from a wide range of experience. Depending on the state, commission hearings may be informal or evidentiary proceedings. Connecticut, for example, requires that its commission complete a full contested case proceeding within one year of a public complaint.

Citizen volunteers on a commission have various incentives to encourage timely action regarding complaints and can supervise staff more closely when matters are delayed.

In prior years, bills have been introduced in Hawai'i to provide that a citizen commission oversee OIP. Concerns raised previously have focused on additional delays and cost. It is unlikely that a commission would result in more delays; any level of oversight would mitigate significantly OIP's refusal or inability to address the long delays under current practices. We agree, however, that a commission may require costs not currently incurred by OIP. Even if the costs for a volunteer commission were minimal, the Law Center recognizes the complexity of implementing such a solution, despite its benefits.

¹⁴ Connecticut, Iowa, Maryland, Mississippi, New Jersey, New York, Utah, and Virginia.

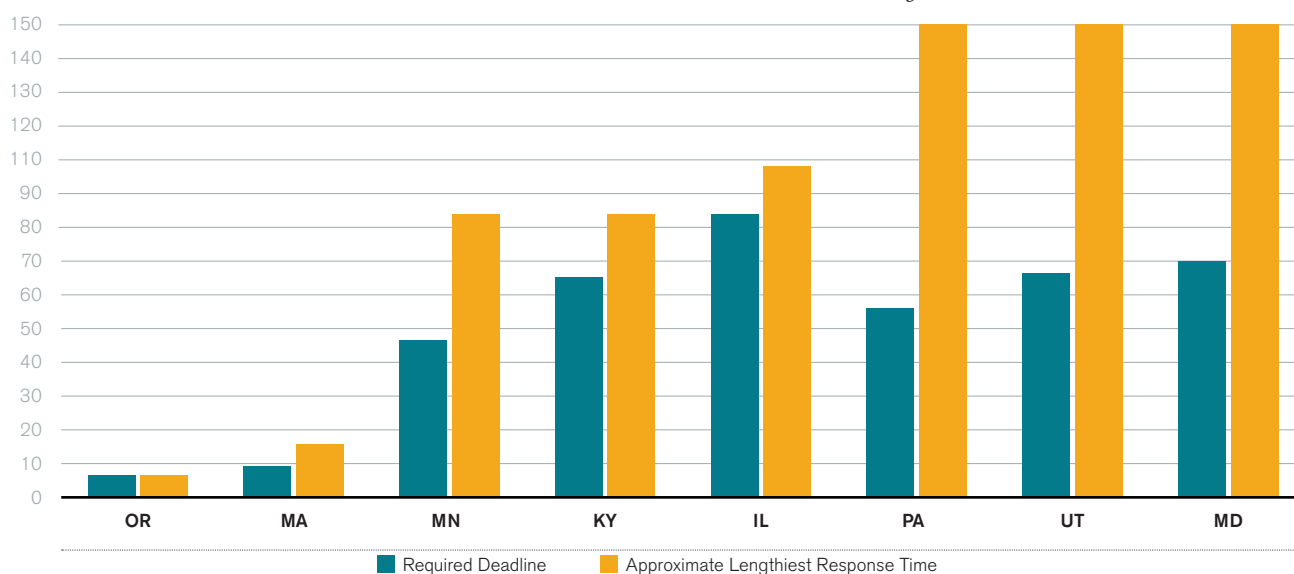
B. Hard Deadline

Twelve states with an informal dispute resolution process set specific deadlines for resolution of complaints.¹⁵ The deadline in each of those states is ninety days or less. Connecticut, which has a multi-step formal contested case hearing procedure for disputes, has a one-year deadline.¹⁶

Statutory time limits for reviewing complaints have a positive impact on timely and efficient resolution of public access disputes. Of the states with hard deadlines, eight states always render decisions in less

than six months.¹⁷ States with hard deadlines tend to comply with those deadlines in most instances, reducing delays. Based on available information, states without hard deadlines tend to have longer delays.¹⁸ Although these states set a specific deadline, the deadline is an aspirational reflection of the state's priorities; we are not aware of any state that penalizes OIP's peer agency for failing to meet the deadline. Requiring action in six months or less would be a highly effective and uncomplicated way to encourage expeditious resolution of public access complaints.

Six Months is an Achievable Outcome (*in days*)



C. Soft Deadline

There are five states that require public access disputes be resolved as promptly as possible.¹⁹ While this language theoretically promotes swift action, these states tend to have longer delays than states with hard deadlines. Based on available information, the lengthiest response times for each state range widely. We also learned that one of these states, Tennessee,

had a backlog of pending cases, with some matters delayed up to two years because, until July 2016, the two staff members in its Office of Open Records Counsel divided their time equally with unrelated duties.²⁰ The results of a soft deadline are inconsistent, and therefore it is not as effective as implementing a hard deadline or creating a citizen commission.

¹⁵ Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, Oregon, Pennsylvania, Texas, and Utah.

¹⁶ Connecticut always meets its one year deadline and often issues opinions much more quickly. Based on information reviewed, the typical time from complaint to resolution is between 5 and 10 months.

¹⁷ Based on information reviewed, Illinois, Kentucky, Maryland, Massachusetts, Minnesota, Oregon, Pennsylvania, and Utah always issue opinions in 6 months or less. Indiana usually issues opinions in 6 to 7 weeks; however, based on our review it has occasionally taken longer than 6 months to issue an opinion and as such is not included in this list. Nebraska also issued nearly all its opinions within 2 months—most within its deadline (15 days)—but had two opinions

that took longer than 6 months. Similarly, the majority of opinions issued in Delaware were rendered in under 6 months, with many meeting Delaware's statutory deadline (20 days); however, it also had a handful of matters that took longer to resolve. The Texas AG states in annual reports that it meets its deadline (72 days), but published decisions provide insufficient information to verify that statement. See the Appendix for more details.

¹⁸ See, e.g., Iowa, Mississippi, New Jersey, and New Mexico.

¹⁹ Iowa, Maine, New Jersey, Tennessee, and Virginia.

²⁰ Performance Audit Report, State of Tennessee Office of the Comptroller of the Treasury at 12-16 (Jan. 2017), at <http://www.comptroller.tn.gov/repository/SA/pa16210.pdf>.

STAFFING

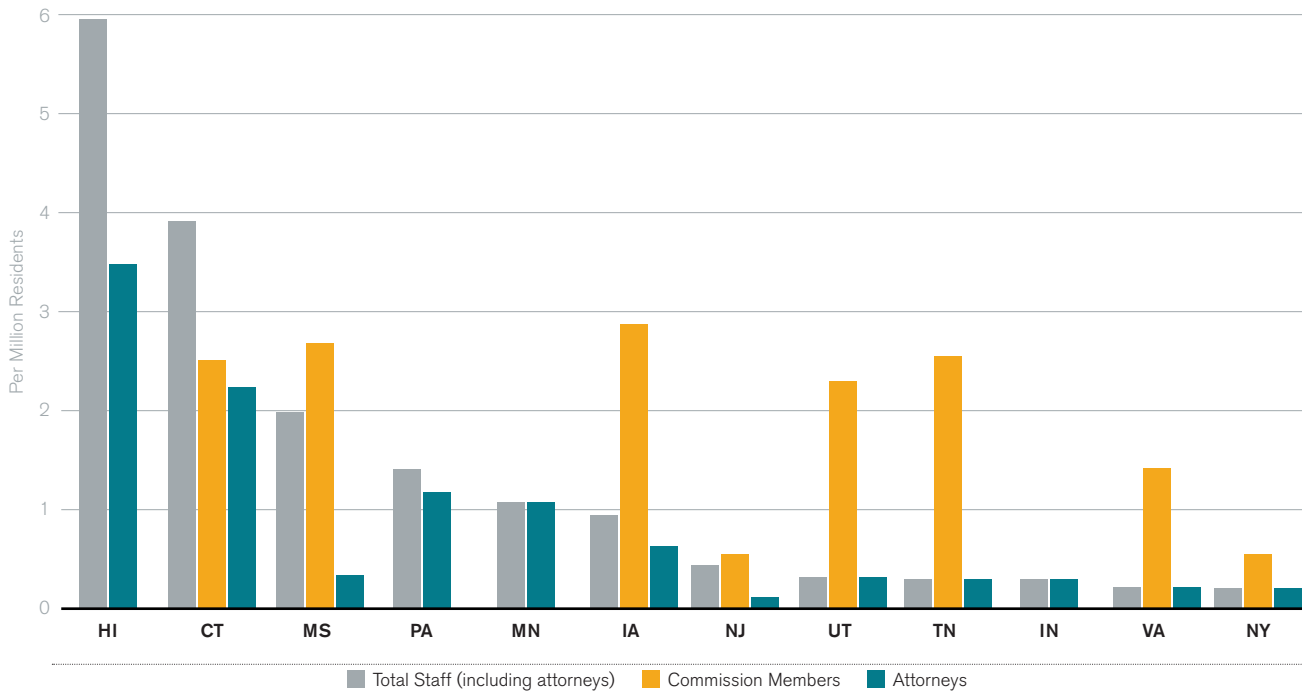
We also examined whether OIP is understaffed for its responsibilities in comparison to other states. For that comparison, the Law Center reviewed available information about the attorneys and other staff assigned to public access issues in each state. In some states, staff may have other duties, but, for our analysis, we treated each assigned individual as working full-time on public access issues. And for OIP, we used the full-time equivalent staffing as reported in OIP’s annual report. In an effort to make those staffing levels comparable across different states, we used state population as a proxy for each state’s approximate public access workload.²¹ Thus, below are various

agencies’ public access staffing per capita. OIP has the largest staffing level for both attorneys and overall staff per capita.

With respect to staffing, we also reiterate the findings from the 2017 Report concerning prior OIP administrations. During a four-year period with higher filings per year and operating with less staff, a prior OIP administration averaged 89 days to resolve major matters and resolved 102 major matters on average per year.²² As demonstrated by the success of this prior administration, OIP has the staffing to accomplish its mission as intended by the Legislature.

Attorneys and Staff Per Capita

OIP has more attorneys and total staff per capita than all other states with a similar office and available data



²¹ Population is an imperfect proxy for an agency’s workload. But in looking at a few of the states that report the number of complaints processed, we found that population was a reasonable approximation. Each agency is different with varying levels of responsibility and definitions of a relevant inquiry. As noted in our 2017 report, for example, OIP tracks every contact with the public or an agency even if it does not require a substantive response. 2017 Report at 3. Staffing levels thus are difficult to compare across states based on available information. The Law Center considers it striking and worth reporting, however, that OIP has measurably higher staffing per capita compared to peer agencies.

²² 2017 Report at 3-4, 6. OIP criticized the 2017 Report for averaging across the entire tenure of the current administration, which is longer than prior OIP administrations. A more direct comparison, however, does not change the outcome. Director Les Kondo served four years and five months as OIP director, from February 2003 to July 2007. Examining only the first four years and five months of the current OIP director’s tenure reveals an average of 408 days to resolve major matters and an average of 53 major matters resolved per year. The Law Center’s findings in the 2017 Report thus remain valid even under criteria adjusted to OIP’s criticism: (1) the time to decision for major matters has more than quadrupled; and (2) the average number of major matters resolved per year is at its lowest point.

APPENDIX

ARIZONA (Attorney General)

- Ariz. Rev. Stat § 39-121.02

CONNECTICUT (Commission/Hard Deadline)

- Conn. Gen. Stat. § 1-206(b)(1)
- Freedom of Information Commission (9 members)
- Hard Deadline: 1 year
- Alternatives: Staff attorneys with the commission may serve as ombudsman with agencies.
- Longest Time to Decision Identified: 337 days (11 months and 1 week)
- Staffing: 14 Staff members (Executive Director, Managing Director, 6 staff attorneys, 2 paralegals, Education Officer, HR Specialist, Administrative Assistant, Management Analyst)
- State Population: 3.576 million
- Other Observations: The commission hearing is a contested case proceeding. Based on available information from 2016 and 2017, the Commission typically renders decisions between five and ten months from the time of the initial appeal.

DELAWARE (Attorney General/Hard Deadline)

- 29 Del. Code § 10005(e)
- Hard Deadline: 20 days
- Longest Time to Decision Identified: 605 days (1 year and 8 months)
- Other Observations: The Delaware AG issued 64 opinions in 2017. Because of the number of opinions issued, the Law Center did not look past 2017. The majority of opinions issued in under 6 months, with many meeting the statutory deadline. The recent trend in decisions is moving toward more consistently issuing opinions within the statutorily mandated period. Of the few opinions that took longer than 6 months, only 4 opinions took one year or more to issue, and the Attorney General's office recognized the concerns with such delays, even apologizing for the delay in one instance. Del. A.G. Op. No. 17-IB11.

FLORIDA (Attorney General)

- Fla. Stat. § 16.60

ILLINOIS (Attorney General/Hard Deadline)

- 5 Ill. Comp. Stat. § 140/9.5(f)
- Public Access Counselor within the office of the Attorney General
- Hard Deadline: 90 days (Required to respond within 60 days of receiving a request, can extend up to 30 additional days for extenuating circumstances if the Counselor gives notice to the requester)
- Longest Time to Decision Identified: 105 days
- Other Observations: The Public Access Counselor rendered 45 opinions between 2015 and 2017. Opinions were typically issued within three months.

INDIANA (Hard Deadline)

- Ind. Code §§ 5-14-5-9 to -10
- Indiana Office of the Public Access Counselor
- Hard Deadline: 30 days
- Longest Time to Decision Identified: 210 days
- Staffing: Public Access Counselor and Legal Assistant
- Population: 6.633 million
- Other Observations: In addition to the 30 day deadline, priority complaints, as determined at the discretion of the Public Access Counselor, will be decided and an advisory opinion shall be issued not later than 7 days after the complaint is filed. Due to a change in the format of published opinions after July 2017, the length of time to issue opinions was no longer clear. As such, the Law Center evaluated 72 decisions decided in the beginning of 2017. Approximately 85% of the decisions were rendered in 6 weeks or less; the remaining few took approximately 7 weeks to decide.

IOWA (Commission/Soft Deadline)

- Iowa Code §§ 22.5, 23.5, 23.8, 23.9
- Iowa Public Information Board (9 members)
- Soft Deadline: as expeditiously as possible
- Longest Time to Decision Identified: 365 days
- Staffing: Executive Director, Administrative Assistant, Staff Attorney
- Population: 3.135 million

- Other Observations: The Public Information Board issues advisory opinions and answers formal complaints. Based on available information for 2015–2017 (approximately 30 opinions), advisory opinions typically issued within approximately 1 month. The Board issues more opinions for formal complaints than it does advisory opinions. For formal complaints, we reviewed the 20 most recent opinions and found that most matters are resolved in 2–3 months. A handful of more complex formal complaints took longer (4–6 months), and one matter took approximately 1 year to resolve.

KANSAS (Attorney General)

- Kan. Stat. § 45-222
- Longest Time to Decision Identified: 300 days
- Other Observations: The Attorney General's website only had 7 opinions posted.

KENTUCKY (Attorney General/Hard Deadline)

- Ky. Rev. Stat. § 61.880(2)(a)
- Hard Deadline: 70 days (20 business days, with the option to extend an additional 30 business days)
- Longest Time to Decision Identified: 90 days
- Other Observations: There were 277 opinions issued in 2017, and 281 issued in 2016. Due to the high number of opinions, we analyzed only the most recent 50 opinions from 2017 and a sampling of earlier opinions. The majority of opinions from 2017 were issued in 1 month. The sampling of earlier opinions also showed that the typical response time was generally close to 1 month.

MAINE (Soft Deadline)

- 5 Me. Rev. Stat. § 200-l(2)(D)
- Public Access Ombudsman
- Soft Deadline: in an expeditious manner
- Other Observations: Maine rarely issues opinions, and no discernable data was available regarding the length of time it took to issue the few opinions published.

MARYLAND (Commission/Hard Deadline)

- Md. Code Gen. Prov. § 4-101 et seq.
- Maryland Public Information Act Compliance Board (PIACB)
- Maryland Open Meetings Compliance Board (OMCB)
- Hard Deadline: 75 days
- Alternatives: Public Access Ombudsman may serve as mediator in disputes involving less than \$350 in fees or that arise out of the government custodian's handling of a request for access.
- Longest Time to Decision Identified: 150 days
- Other Observations: The PIACB hears complaints involving the imposition of fees of not less than \$350 under the state's Public Information Act. The OMCB handles matters related to violations and complaints regarding the state's open meeting laws. Both of these boards are relatively new. Only a small handful of posted opinions have sufficient information to adequately discern the amount of time it took to render the decision. Based on information available for 2016 and 2017, it appears that decisions are typically rendered in approximately 60 days.

MASSACHUSETTS (Hard Deadline)

- Mass. Gen. Laws ch. 66, § 10A(a)
- Office of the Supervisor of Records
- Hard Deadline: 10 days
- Alternatives: If an agency does not comply with the Supervisor's orders, cases may be referred to the Office of the Attorney General.
- Longest Time to Decision Identified: 17 days
- Other Observations: The Supervisor of Records office receives numerous complaints and issued more than 1000 opinions in 2017. The Law Center reviewed the most recent 50 opinions and a sampling of opinions issued earlier in 2017. We found that opinions are issued anywhere from the same day as the complaint to 17 days later. Half of the opinions reviewed were issued in 8 days or less.

MINNESOTA (Hard Deadline)

- Minn. Stat. § 13.072(c), (d)
- Minnesota Department of Administration, Data Practices Office
- Hard Deadline: 50 days (required to issue an opinion within 20 days of receiving an appeal, and may extend up to 30 days where there is good cause)
- Longest Time to Decision Identified: 90 days
- Staffing: Director and 5 staff attorneys
- Population: 5.52 million
- Other Observations: Based on the most recent opinions with information available (2015–2016), the department issued decisions between 30 and 90 days with most being published within 60 days. Opinions issued after February 2016 did not provide adequate information to identify the time to decision.

MISSISSIPPI (Commission)

- Miss. Code § 25-61-13
- Mississippi Ethics Commission (8 members)
- Longest Time to Decision Identified: 210 days
- Staffing: Executive Director supervises 6 staff members; staff do not issue opinions
- Population: 2.989 million
- Other Observations: Based on available information, most opinions issued within approximately 3 months.

MISSOURI (Attorney General)

- Mo. Rev. Stat. § 610.027(1)

NEBRASKA (Attorney General/Hard Deadline)

- Neb. Rev. Stat. § 84-712.03(1)(b)
- Hard Deadline: 15 days
- Longest Time to Decision Identified: 270 days
- Other Observations: Based on the 50 most recent available disposition letters, virtually all opinions issued with 2 months, with two outliers that took 7.5 and 9 months.

NEW JERSEY (Commission/Soft Deadline)

- N.J. Stat. 47:1A-6
- Government Records Council (5 members)
- Soft Deadline: all proceedings to move forward in “a summary or expedited manner”
- Longest Time to Decision Identified: Approx. 1365 days (3 years & 9 months)
- Staffing: Communications Specialist, Mediator, Staff Attorney, Secretary
- Population: 8.944 million
- Other Observations: New Jersey utilizes a multi-step appeal review process that involves several discretionary remedies. The Council provides an informal mediation program to facilitate the resolution of disputes regarding access to governmental records as well as receiving, reviewing, and adjudicating complaints. The Council may issue advisory opinions at its discretion if mediation is unsuccessful. Additionally, the Council may hold a contested case hearing after all other measures have been unsuccessful. The Council issued numerous opinions in 2017. We examined the most recent 50 decisions. Based on the information reviewed, formal decisions usually issued between 1 and 2 years. The Council often issued advisory opinions and interim orders before a final decision that ended a matter, but it is difficult to separately identify the typical time spent accomplishing those steps.

NEW MEXICO (Attorney General)

- N.M. Stat § 14-2-11
- Longest Time to Decision Identified: approximately 695 days (1 yr. 11 mo.)
- Other Observations: Only 5 of the 50 opinions reviewed took more than 1 year to resolve. The New Mexico Attorney General does not organize the opinions chronologically, but all of the decisions reviewed were within the 2015-2017 period.

NEW YORK (Commission)

- N.Y. Public Off. Law § 89(4)(a), (b)
- Committee on Open Government (11 members)
- Longest Time to Decision Identified: 150 days
- Staffing: Executive Director and 3 staff attorneys
- Population: 19.75 million
- Other Observations: The Committee archives opinions online alphabetically, making it difficult to quickly discern between the most recent decisions and older decisions. And not all opinions have adequate information to identify the time to decision. Some offer no indication of time, but begin with an apology for the delayed response. The advisory opinion database includes numerous opinions from 1993 to present day. Based on a sampling of 50 opinions from 2000 to 2017 that have sufficient timeline information, opinions typically issued within approximately one month.

NORTH DAKOTA (Attorney General)

- N.D. Cent. Code § 44-04-21.1
- Longest Time to Decision Identified: 270 days
- Other Observations: Based on the 50 most recent opinions available for 2015–2017, 46 opinions were issued in approximately 6 months or less. Opinions typically issued in approximately 3 months.

OREGON (Attorney General/Hard Deadline)

- Or. Rev. Stat. § 192.465(1)
- Hard Deadline: 7 days
- Longest Time to Decision Identified: 7 days
- Other Observations: All complaints not resolved within 7 days are automatically deemed denied, and the requester may file a formal complaint in the appropriate court.

PENNSYLVANIA (Hard Deadline)

- 65 Pa. Cons. Stat. § 67.1310(a)(6)
- Office of Open Records
- Hard Deadline: 60 Days (Required to respond within 30 days of receipt of the appeal and may invoke an additional 30 day extension under certain circumstances)
- Longest Time to Decision Identified: 150 days
- Staffing: 18 staff members, 15 are attorneys
- Population: 12.78 million
- Other Observations: Due to the large number of opinions issued by the Office of Open Records, the Law Center reviewed the most recent 50, which covered December 13-29, 2017, and a sampling of earlier opinions. The majority of opinions were issued in 1 month. We observed, but disregarded one opinion that took 9 months to resolve, however, because the requester had expressly given the Office of Open Records permission to utilize additional time.

RHODE ISLAND (Attorney General)

- R.I. Gen. Laws § 38-2-8

SOUTH DAKOTA

- S.D. Codified Laws §§ 1-27-38, -40
- Office of Hearing Examiners

TENNESSEE (Soft Deadline)

- Tenn. Code § 8-4-601(b)
- Office of Open Records Counsel
- Soft Deadline: “as expeditiously as possible”
- Alternatives: Tennessee also has an Advisory Committee on Open Government (17 members), but that committee’s role is unclear.
- Staffing: 2 staff attorneys
- Population: 6.651 million
- Other Observations: Audits of the office revealed that the Office had a backlog of 380 inquiries with some matters that dated back nearly two years. Tennessee is working to reduce its backlog after a change in staff and increase in resources.

TEXAS (Attorney General/Hard Deadline)

- Texas Gov't Code § 552.306(a)
- Hard Deadline: 72 days (55 business days, required to respond within 45 business days and may extend by 10 business days by informing the requester and the governmental body within the original forty-five day period)
- Other Observations: The Attorney General's office asserts that it usually meets its deadline. However, the available opinions lack sufficient information to confirm that assertion.

UTAH (Commission/Hard Deadline)

- Utah Code § 63G-2-403
- Utah State Records Committee (7 members)
- Hard Deadline: 71 days (64 days to schedule hearing, 7 days from hearing to render decision)
- Alternatives: The agency or the requester may request mediation.
- Longest Time to Decision Identified: 150 days
- Staffing: The committee is supported by 1 assigned attorney general
- Population: 3.051 million
- Other Observations: The Records Committee is an administrative appeals board. Based on a review of the most recent 50 decisions, from 2017 and late 2016, the longest time to decision was 5 months (150 days); however, opinions typically issued within 2–3 months.

VIRGINIA (Commission/Soft Deadline)

- Va. Code § 30-179
- Freedom of Information Advisory Council (12 members)
- Soft Deadline: "expeditious manner"
- Longest Time to Decision Identified: 135 days
- Staffing: 2 staff attorneys
- Population: 8.412 million
- Other Observations: Based on available information for opinions from 2015–2017, the Council typically takes 1-2 months to issue advisory opinions.

WASHINGTON (Attorney General)

- Wash. Rev. Code § 42.56.530