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**OIP IS REACHING A TIPPING POINT**

March 13, 2018

March 11-17, 2018 marks the 13<sup>th</sup> Sunshine Week celebrating access to public information and June 9, 2018 will mark the 30<sup>th</sup> birthday of the state Office of Information Practices (OIP). While OIP can celebrate its many successes over the years to provide access to public records and meetings, it finds itself at a tipping point without sufficient resources to retain its experienced people and keep up with its increasing workload. This report will shed light on OIP's historic underfunding, its long struggle to do more with less resources, and the solutions that will help OIP remain neutral and independent for the next 30 years.

OIP was created in 1988, originally to administer Hawaii's open records law, the Uniform Information Practices Act (Modified) (UIPA), chapter 92F, Hawaii Revised Statutes (HRS). In 1998, OIP was given the additional responsibility of administering Hawaii's open meetings law, the Sunshine Law, Part I of chapter 92, HRS. **As the single, neutral agency charged with administering both open government laws, OIP has extensive jurisdiction covering all state, county, and independent agencies at all levels of government:** Executive (including the Governor and Lt. Governor and all county mayors), Legislative (including the Legislature and legislative offices, such as the Office of the Legislative Auditor, and all county Councils), and Judicial (except for nonadministrative functions, *i.e.*, judicial functions).

**But OIP has been underfunded for decades.** See **Chart 1**, Budget Chart from OIP's FY 2017 Annual Report. In FY 1994, when OIP administered only the UIPA, it had 15 authorized positions and an \$827,537 budget, which would be the inflation-adjusted equivalent of \$1,374,543 today. In FY 1998, when OIP was given the additional responsibility of administering the Sunshine Law, its position count was reduced to eight and its total budget was drastically cut to \$566,070, which would be \$850,642 today if adjusted for inflation. For FY 2018, OIP has only 8.5 authorized positions (including 6 attorneys) and a \$576,855 total budget.<sup>1</sup> In short, **OIP has less resources today than it had two decades ago and has been doing double the work with less than half the resources that it had at its height 24 years ago.**

Although it has the most extensive jurisdiction, **OIP also has the least resources of the State's good government agencies** listed in the attached **Chart 2**, State Good Government Agencies Comparison Chart. For personal services only (not including other expenses),

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<sup>1</sup> Because the two longest-serving employees work part-time, OIP actually has the full-time equivalent of eight employees. For FY 2018, all but \$13,000 of OIP's budget must go toward covering personnel costs.

comparable good government agencies have FY 2018 general fund budgets and position counts as follows:

State Ethics Commission: 11 positions; \$944,402  
State Ombudsman: 14 positions; \$1,256,599  
State Auditor: 37 positions (26 filled); \$2,630,927

On a per capita basis, even the State Campaign Spending Commission has a bigger personal services budget at \$443,932 for its five employees (including two attorneys).

**For years, OIP's salaries have continued to sink well below those offered by other state and county agencies, thus providing OIP's legal and administrative staff with little financial incentive to remain.** Although the Attorney General's (AG) office received \$1,940,000 in FY 2016 for pay increases for its personnel, OIP received no increase, even though its salary levels have long been well below that of the AG's office. Other county attorneys and University of Hawaii attorneys are also paid substantially more than OIP's staff attorneys. OIP attorneys are providing expert advice and assistance on UIPA and Sunshine Law issues to other government attorneys, but they are not being compensated at the levels paid to those attorneys. Like the attorneys, OIP's administrative staff have special expertise, particularly with the UIPA Record Request Log and the Records Report Management System, which are applicable to all non-federal government agencies. As a small office, OIP's administrative staff must also do multiple functions that several persons in larger departments perform. While other government employees have been getting cost of living increases on their higher pay levels, the same percentages are applied to the lower amounts paid to OIP employees, which is why OIP salaries fall further behind. **Without the funding to provide salary parity for OIP's employees, it is no wonder that several team members have left OIP in recent years for higher paying jobs at other government agencies.**

**OIP is fortunate, so far, to have retained team members who provide extensive experience and institutional memory covering all of OIP's nearly 30 years of existence.<sup>2</sup>** Five of OIP's six attorneys (including the director) have been licensed to practice law for 22 to 36 years; all but one of OIP's nine employees have worked at OIP for nearly 3 to over 23 years. **But if OIP's supplemental budget request for FY 2019 is not approved, OIP risks losing team members and may have to cut employee hours to stay within its budget next year.<sup>3</sup>**

**Yet, it is only because of its experienced and hard-working employees that OIP has been able to achieve so much with so little.** After years of underfunding, budget and position

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<sup>2</sup> One team member's experience even pre-dates OIP's existence as she worked for the House of Representatives' Judiciary Committee that led efforts to enact the UIPA, and she was the first staff attorney hired by OIP when it was created in 1988.

<sup>3</sup> OIP's cost of living salary increases were less than what was ultimately funded and so OIP had to reduce other budget items in FY 2018. OIP has already cut its other current expenses to the bare bones and even discontinued its subscriptions to freedom of information periodicals in order to conserve funds for anticipated rulemaking expenses, which are not a normal expense for OIP. For FY 2019, OIP will need to pay for expenses that it has been able to defer or avoid this year. Without a supplemental budget appropriation, OIP anticipates a shortfall in its budget next year unless it reduces personnel costs by decreasing employee hours.

cuts, and furloughs, **OIP in 2011 had a backlog of 89 of the toughest and oldest formal cases dating back to 1999 that had not been resolved by four prior OIP administrations.**<sup>4</sup> By prioritizing the resolution of the oldest cases over newly filed cases, OIP was finally able in FY 2015 to clear up the last of prior administrations' backlog. Having cleared all old cases from FY 1999 through FY 2014, OIP is now working to resolve the remaining 26 cases filed in FY 2015. **Eventually, with sufficient resources, OIP has a goal to resolve all cases within one year of filing.**<sup>5</sup>

**A major challenge to reducing the age of the OIP's oldest cases has been the substantial increases in the number of new formal case filings, which have doubled from FY 2011 to FY 2017, for an average increase of 17% per year.**<sup>6</sup> Seventy-seven percent of the formal cases (213 of 278) were for types of cases that are typically resolved by OIP within days or a few months.<sup>7</sup> Appeals to OIP (Appeals) and requests for advisory opinions (RFO), however, often require investigations, correspondence with the parties, legal research, and multiple drafts and reviews of written opinions, which is a much more time-consuming process.<sup>8</sup> There were 65 Appeals and RFOs filed in FY 2017, which constituted 23% of the 278 formal cases and only 5% of the 1,234 total requests for OIP's services. These cases, which may require written opinions, are generally resolved on a first in, first out priority so that older cases are worked on before newer ones.<sup>9</sup>

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<sup>4</sup> See attached Chart 3 of OIP's formal cases pending as of April 4, 2011. The current OIP director was appointed on April 1, 2011.

<sup>5</sup> See OIP's Action Plan on page 14 of its [Annual Report for FY 2017, which is posted at oip.hawaii.gov](#). OIP will strive to achieve this goal for cases that are not in litigation or filed by requesters for whom it has not already resolved 2 or more cases in the past 12 months. While OIP would like to achieve this goal as soon as possible, it has many other duties described *infra* and must have sufficient funding and additional personnel, plus time to hire and train them.

<sup>6</sup> See attached Chart 4 of OIP's new, closed, and outstanding cases from FY 2011 to FY 2017. OIP's formal case backlog is directly correlated to the number of new case filings. As Chart 4 shows, the red dashed line for the pending cases rose most years, except in FY 2016 when the blue dotted line for new case filings decreased 15%. But red and blue lines shot back up in FY 2017 when new case filings increased 40.4%. Note, however, that the solid green line representing the number of formal cases resolved by OIP has increased, as the discussion on OIP's productivity will explain. See footnote 13, *infra*.

<sup>7</sup> These formal cases not requiring opinions would be designated in files by OIP as UIPA Record Requests, Correspondence, UIPA Requests for Assistance, and Reconsideration Requests.

<sup>8</sup> Not all formal cases require written opinions. Opinions usually arise out of appeals to OIP when UIPA record requests are denied or a board's compliance with the Sunshine Law is questioned, or when advisory opinions are requested, and many of these cases are ultimately resolved informally without an opinion. Despite the resolution being achieved without issuance of an opinion, such cases often do consume the time of staff attorneys as they attempt to mediate or resolve disputes in other ways. In FY 2017, the 65 cases in which an opinion might be written constituted 23% of the 278 formal cases and only 5% of the 1,234 total requests for OIP's services.

<sup>9</sup> Although some have objected to OIP's "first in, first out" policy for cases requiring written opinions, OIP's case resolution priorities are similar to the federal guidelines for the processing of Freedom of Information Act (FOIA) requests made to federal agencies. The federal Department of Justice's Office of Information Policy (DOJ-OIP) encourages agencies to focus "on responding to the oldest pending requests at the agency" so that "those requesters who were 'first in line' will receive responses before those who submitted requests

All types of formal cases constitute 23% of the 1,234 total requests for OIP's services in FY 2017. The majority 77% of the 1,234 total requests for OIP's services<sup>10</sup> come in through OIP's Attorney of the Day (AOD) service, which are informally resolved by OIP usually within 24 hours. **Like the formal case filings, OIP has seen a substantial increase in the number of AOD inquiries, which rose 49% from 2011 to 2017.**<sup>11</sup>

**Through the AOD service, OIP provides same-day informal advice** to government employees (including attorneys) and board volunteers regarding their responsibilities and how to comply with the UIPA and Sunshine Law. Through the AOD service, OIP also provides **same-day** informal advice to members of the public, including media representatives, on their rights and may be informed of potential violations of the UIPA and Sunshine Law. For example, if OIP is informed by a member of the public of a late-filed notice or inadequate agenda that would violate the Sunshine Law, it will contact the board and advise that the meeting be postponed until a proper notice or agenda is filed. As another example, OIP often advises government employees and members of the public as to agencies' UIPA responsibilities and the procedures for responding to record requests. Agencies and boards will usually abide by OIP's written or oral AOD advice and, for example, will postpone untimely noticed meetings, revise defective agendas, or provide requested records.

Although OIP helps everyone who requests advice or an opinion involving matters within its extensive jurisdiction and it **has no control over the substantial increases** in the formal case filings and AOD inquiries in the years since 2011, OIP was still able to resolve **93%** of the total 1,234 formal cases and AOD inquiries received in FY 2017 **in the same year.**<sup>12</sup> Because of its AOD service, **OIP was typically able to resolve 77% of total formal and informal requests the same day**, thus quickly resolving most disputes and preventing small problems from turning into formal cases requiring opinions, or potential litigation. **Moreover, OIP's ability to resolve older cases requiring written opinions was vastly improved after FY 2014 when it received**

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subsequently. . . . [I]n order to have their requests processed out of turn, the FOIA requires that requesters demonstrate a 'compelling need,' as defined by the statute, or that they satisfy any other agency-specific standard for expedited processing." Like OIP's faster processing times for other types of formal requests such as UIPA record requests or Correspondence, federal agencies may also establish multiple processing tracks and "assign requests to different processing queues depending on the complexity of the request" so that simple requests are processed faster and separately from more complex requests or ones that involve a high volume of records. DOJ-OIP, OIP Guidance: Processing Reminders for the Last Quarter of Fiscal Year 2017 (updated July 24, 2017), last accessed on March 12, 2018, at [https://www.justice.gov/oip/oip-guidance/Processing\\_Reminders\\_As\\_Agencies\\_Enter\\_Last\\_Quarter\\_of\\_Fiscal\\_Year\\_2017](https://www.justice.gov/oip/oip-guidance/Processing_Reminders_As_Agencies_Enter_Last_Quarter_of_Fiscal_Year_2017); see OIP's Response to the 2017 Civil Beat Law Center report posted on the Annual Reports page at [oip.hawaii.gov](http://oip.hawaii.gov).

<sup>10</sup> In FY 2017, OIP received 956 Attorney of the Day (AOD) inquiries and 278 formal case filings, for a total of 1,234 requests for its services.

<sup>11</sup> In FY 2011, OIP responded to 676 AOD inquiries, which increased by 39% to 940 inquiries in FY 2012 and reached a high of 1,074 (59% increase) in FY 2015.

<sup>12</sup> Chart 4 shows that 150 formal cases remained pending at the end of FY 2017. Keep in mind, however, that 48 formal cases were filed in the last two months of FY 2017. If the 278 cases filed in FY 2017 had been evenly distributed throughout the year, there would have been about 23 cases filed each month for a total of 139 cases in a six-month period. OIP ended FY 2017 with only 85 cases pending that had been filed that year.

**much needed resources to hire and train an additional attorney and thus increased its productivity by 70%.<sup>13</sup>**

While most of the AOD advice and case resolution takes place orally through telephone calls, **OIP will often respond to AOD inquiries with short emails that are similar to other states' one- or two-page opinions, but do not meet OIP's more rigorous standards for its opinions** that are designed to withstand judicial scrutiny and "speak for themselves" in court.<sup>14</sup> **People who do not want to wait their turn to obtain a written opinion from OIP have the option to instead get informal written advice through the AOD same-day service.**<sup>15</sup>

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<sup>13</sup> As the green solid line on the attached Chart 4 shows, OIP's productivity increased 37% from 142 formal cases resolved in FY 2014, to 208 in FY 2015. OIP continued to increase its productivity and in FY 2016, OIP resolved a record 241 formal cases, which is a 70% increase from FY 2014. Productivity appears to have leveled in FY 2017 when 232 formal cases resolved, 9 cases less than the record set the year before. Although OIP's productivity in resolving cases increased after OIP was given an additional position, there are limits to what OIP's existing staff can do when the number of formal case filings keep growing and OIP has other duties to perform, which includes extensive rulemaking and training in FY 2018-19.

<sup>14</sup> When appropriate, OIP will write short dismissal orders or summary dispositions with abbreviated factual and legal discussions, but this may take place after much work has already been performed by OIP. *See* footnote 8, *supra*.

One critic of OIP's backlog of formal cases complained of the length of OIP's opinions and suggested in 2017 that OIP speed up its case resolution process by writing short, conclusory opinions like the Texas Attorney General that are only one or two pages long. *See* [page 13 of the Report attached to OIP's 2017 Response](#) posted on its Annual Report page at oip.hawaii.gov. Knowing that Texas and other states write short, conclusory opinions, the same critic concluded that OIP takes longer than other states to write opinions, but failed to point out to readers that other states' typically short opinions do not contain the same levels of factual and legal analyses as OIP's longer opinions. *See* [Report attached to OIP's 2018 Response](#) posted on its Annual Reports page at oip.hawaii.gov.

In both 2017 and 2018 reports, the critic also refused to consider the same-day written responses that OIP provides to AOD inquiries, which are similar to other states' short "opinions," in calculating the timeliness of OIP's services. Significantly, the methodology employed by the critic to calculate the average days to completion of formal cases measured only cases that were opened and closed within each director's term, and it did not consider the number or difficulty of the 89 cases that directors left unresolved for completion by the current director, which led to the delay in resolving cases filed within the current director's term. *See* attached Chart 1 referenced in footnote 2, *supra*. The methodology was also faulty because the longer the director's term, the more cases and longer period of time that a director would have to resolve cases. Not only did this methodology penalize the current director for serving a substantially longer term than the three prior directors, it also failed to include calculations based on the record of the first two OIP directors who had lengthy terms similar to the current director. Finally, the critic, who had no personal knowledge of the day-to-day operations of OIP, ignored the different priorities and types of opinions written during various directors' terms, including the fact that prior administrations may have written decisions that OIP would consider Correspondence today and which allow for speedy, informal advice and resolution of disputes.

<sup>15</sup> The same critic referenced in the previous footnote had suggested in 2017 that OIP suspend its AOD service in order to focus on writing opinions and clearing its backlog of formal cases. *See* [page 10 of the Report attached to OIP's 2017 Response](#) posted on its Annual Report page at oip.hawaii.gov. OIP disagrees, as suspension of the AOD service will leave government agencies, board volunteers, members of the public, and the media with no neutral agency to turn to for free, expert advice on UIPA and Sunshine Law matters. Although agencies and boards could turn to their government attorneys for such advice, there is likely to be conflicting advice given to different persons and entities who could no longer rely upon the uniform, consistent advice provided by OIP as the neutral agency charged with administering the UIPA and Sunshine Law. While suspension of the AOD service may lead members of the public to seek the services of private attorneys who can pick and choose the clients

The change in OIP's standards for its opinions came in 2012 after four years of litigation, three years of uncertainty, and legislative action that gave agencies the right to judicially appeal from OIP's decisions in exchange for a high standard of review requiring the courts' deference to OIP's opinions unless they were palpably erroneous as to the facts and the law.<sup>16</sup> **With the change in the law and OIP's new standards for opinions, OIP has not had to intervene in years long court cases challenging its opinions and can instead continue to do its regular work.**<sup>17</sup>

**OIP's duties go far beyond writing opinions and responding to AOD inquiries.**<sup>18</sup> As a result of the 2012 legislation, OIP engaged in the time-consuming process of **rulemaking** and adopted a new set of administrative rules regarding appeals to OIP.<sup>19</sup> Last year, OIP embarked on rulemaking to revise its rules for UIPA record request procedures and fees that were originally adopted in 1998,<sup>20</sup> to add new rules relating to personal record requests, and to

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that they want to represent in disputes with government agencies, it would not be in the overall public interest to create greater uncertainty in agencies' and boards' compliance with the law and to encourage potential litigation that would clog up the courts.

<sup>16</sup> Until 2009, OIP operated under the assumption that the UIPA did not give government agencies the right to appeal OIP decisions as the Legislature had intended that OIP would have the final word. After four long years of litigation, however, the Intermediate Court of Appeals concluded in County of Kauai v. Office of Information Practices, 120 Haw. 34, 200 P.3d 403, 2009 Haw. App. Lexis 35 (2009) ("Kauai case"), that agencies had the right to appeal under the Sunshine Law, which was also implicated in that case. Because this cloud was placed over OIP's authority in 2009, OIP sought legislative clarification in 2012. Act 176, SLH 2012, resolved the matter by recognizing the agencies' and boards' right to appeal OIP decisions under the UIPA and Sunshine Law in exchange for a high standard of judicial review requiring judicial deference to OIP's opinions unless they are "palpably erroneous" as to the facts and law. See Cheryl Kakazu Park and Jennifer Brooks, 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), which is posted on the Training page at oip.hawaii.gov.

<sup>17</sup> For example, during the four years that OIP was entangled in litigation in the Kauai case, OIP's attorneys were not able for much of the time to fulfill their regular duties as they had to write briefs and assist the special counsel representing OIP in the appeal. In contrast, OIP has spent none of its time defending its opinion in the lawsuit filed by the Office of Hawaiian Affairs (OHA) in December 2014, which challenges OIP Op. No. F15-02 concluding that OHA had violated the Sunshine Law. The case is still in the First Circuit Court, which ruled on May 1, 2017 that OIP's opinion was not palpably erroneous and denied OHA's motion for summary judgment. While OIP is represented by the Attorney General's office in the OHA case, OIP did not intervene in the case and so has not had to provide legal assistance and has continued its normal work while the case winds its way through the courts. Similarly, OIP did not intervene in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (2013), where after five years of litigation, the Hawaii Supreme Court applied the palpably erroneous standard of review and favorably cited to seven OIP opinions to address Sunshine Law issues involving the propriety of meeting continuances and distribution of memos among board members.

<sup>18</sup> For a list of OIP's 18 statutorily enumerated powers and duties, see sections 92-1.5 and 92F-42, HRS. Since 2013, OIP has also been charged with helping the Office of Enterprise Technology Services with open data issues under section 27-44.3, HRS.

<sup>19</sup> Chapter 2-73, Hawaii Administrative Rules (HAR).

<sup>20</sup> Chapter 2-71, HAR.

renumber its appeals rules.<sup>21</sup> Even before OIP goes to public hearing on the rules, it has sought to inform and solicit comments on draft rules from the government agencies and general public through materials posted online at OIP's website and in-person informational briefings held in all four counties, which were televised statewide several times on 'Olelo. As a result of comments received on the draft rules, OIP has revised them and its proposed rules are now going through the process of review by the Attorney General's office and other agencies before they can be finalized for public hearing. After rules are adopted, OIP will have to prepare new training materials, including extensive revisions to the UIPA Record Request Log and creation of a continuing legal education course, and must provide statewide training to all state and county agencies. Although necessary, all these projects cut into the time attorneys can spend on resolving formal cases.

**Training is another major duty of OIP**, which has emphasized **online training** since 2012 in order to more efficiently educate government employees, board volunteers, and the general public about the UIPA and Sunshine Law and proactively encourage compliance with the laws. By increasing the number of training materials online, **OIP has been able to make such training more widely and freely available 24/7 to all government employees on all islands as well as the general public.** While OIP has reduced the number of in-person sessions it provides for basic training of the laws, it can now provide more **customized in-person training** on specific areas of concern to agencies and boards. In 2012, OIP also provided, for the first time, accredited **continuing legal education courses** to over 265 attorneys so that they can properly counsel their clients on open government laws and procedures.

**The UIPA Record Request Log** developed by OIP in 2013 is not only an important tool to **train** government employees on the procedures to respond to record requests, it is also a means for agencies to **track requests and report their results** to OIP. Over the years, the Log has been systematically expanded to cover state, county, and independent agencies in all branches and levels of government and the year-end results have been summarized in two reports written annually by OIP. These results have provided **objective data** as to how the UIPA is working in Hawaii and helped to inform OIP in the development of its draft administrative rules.<sup>22</sup>

Each year, during the four-month session, OIP's director, a staff attorney, and an administrative member of OIP's staff spend much of their time on **legislative work**, which

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<sup>21</sup> In 2015, OIP successfully advocated for legislation recognizing it as a "permanent" agency attached for administrative purposes only to the Department of Accounting and General Services (DAGS), effective July 1, 2016. Because of this change, OIP must revise its administrative rules to fall within the numbering system for DAGS's rules.

<sup>22</sup> For example, [OIP's summary for state agencies' year-end results in FY 2017](#) concluded that they completed 2,238 or 98% of the UIPA record requests received and charged; granted 79% in full or in part, denied 6% in full, and could not respond or the requester withdrew in 15% of the cases; averaged less than 7 work days to complete the typical or personal record requests; and charged the typical requester nothing for fees and costs. As for the counties, [OIP's summary report for county agencies' year-end results in FY 2017](#) concluded that the county agencies completed 1,580, or 96% of requests received in FY 2017; granted 81% in full or in part, denied 5% in full, and could not respond or the requester withdrew in 14% of the cases; averaged less than 8 work days to complete typical and personal record requests; and the typical requester paid nothing in fees and costs. OIP's summary reports of the state and counties' UIPA Log results are posted on the [Annual Reports page at oip.hawaii.gov](#).

includes monitoring legislation, proposing bills and amendments, testifying, and keeping agencies and the public informed of important legislation. As the neutral agency administering the UIPA and Sunshine Law, **OIP plays a critical role in informing the Legislature of the potential impact of legislative proposals and has successfully brought together various stakeholders** to propose amendments that have advanced open government and transparency in Hawaii. For example, during the 2016 legislative session, OIP was instrumental in obtaining various stakeholders' agreement to major changes in the Sunshine Law, which includes new requirements for pre-meeting public inspection of board packets, electronic filing and delivery of meeting notices, and online posting of board minutes. After each legislative session, OIP must typically revise its training materials and provide updates on statutory changes to all government agencies.

Finally, throughout the year, **OIP monitors lawsuits** involving UIPA or Sunshine Law issues, while avoiding prolonged entanglement in litigation itself. OIP also **keeps the public informed** through What's New articles, interviews, increased training materials, and the preparation of annual reports, and performs **other administrative tasks**, such as converting its online materials to be ADA accessible and updating internal policies and procedures.

In summary, **OIP is doing more today than it has ever done, thanks to its dedicated team of nine employees** who have accomplished the following since 2011:

- Resolved cases from four prior OIP administrations dating back to 1999 and brought down the age of pending cases by eight years
- Resolved 93% of all FY 2017 requests for its services in the same year
- Responded to 77% of all FY 2017 requests for its service within the same day
- Achieved the results above, despite a doubling of formal case filings and an average 49% increase in AOD inquiries from 2011 to 2017
- Successfully advocated for major legislation to clarify OIP's authority and convert OIP to a permanent state agency
- Brought various stakeholders together on key legislation to improve the UIPA and Sunshine Law
- Created new online training, OIP's first accredited continuing legal education course, and the UIPA Record Request Log applicable to all state, county, and independent agencies state
- Increased public communications, through What's New articles, interviews, training materials and the preparation of two reports summarizing the Log results of state and county agencies in addition to its Annual Report to the Legislature
- Provided online materials in an ADA accessible format
- Adopted one set of new rules and is currently working on additional rulemaking to update existing rules and adopt new rules for personal record requests, including statewide informational briefings and extensive new training materials for the proposed rules
- Monitors lawsuits, without being entangled in litigation, relating to the UIPA and Sunshine Law



These duties, and more, take much time, experience, and commitment to protecting the public's right to government transparency and accountability. They also require a team with the courage and independence to do the work in a neutral and fair manner, despite others' attempts to influence public opinion against OIP with misinformation and unjustified criticism.

**But OIP's team is reaching the tipping point.** After a long history of being underfunded and underpaid, and with its meager budget in comparison to other good government agencies, OIP is now in danger of losing team members or having to reduce their hours. **To move toward salary parity and retain its existing team, OIP needs its supplemental budget request of \$115,000 for FY 2019.** While this amount is only about half of what OIP needs to reach salary parity with other state and county employees, it will be a huge morale boost for OIP's underpaid and embattled team and will provide sufficient funds so that OIP will not have to cut employee hours next year. OIP has been requesting additional funding for many years and cannot wait another year to study the appropriate level of funding for various good government entities – it **needs supplemental funding now** to survive the upcoming FY 2019, which begins on July 1, 2018, so that OIP can complete its many duties, including rulemaking and training.

**In order to do more work faster, OIP will need additional funds over and above the \$115,000 request, more attorneys, and the time to hire and train new attorneys.** After doing more with less for over two decades and clearing out the cases left behind by prior administrations, OIP is maxed out. OIP cannot continue to operate for the next 30 years on half the funding and positions that it had 24 years ago. OIP simply cannot continue to increase its productivity without additional attorneys, and it will need the money and time to hire and train them.<sup>23</sup>

Finally, **OIP's team needs support from the top to protect its independence.** That is why OIP supports Governor Ige's proposal in S.B. 2735, S.D. 2, which would restrict a Governor's currently unfettered power over the OIP director and would instead set the director's term, compensation, and removal provisions to be similar to those for other good government agencies, such as the State Ombudsman, State Auditor, and State Ethics Commission Director. These reforms would help to ensure OIP's independence by removing the potential for undue influence over the director and allowing OIP's team to continue to do its work as the neutral agency administering Hawaii's open records and open meetings laws.<sup>24</sup>

**OIP welcomes your support in its uphill battle for the resources and legislation that it needs to continue its work and keep the sun shining on Hawaii's government for the next 30 years.**

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<sup>23</sup> On March 7, 2018, the House Finance Committee approved H.B. 1900, H.D. 1 of the State's operating budget totaling \$7.4 billion, which did not include OIP's supplemental budget request for \$115,000. The House Draft 1 was passed by the House and will be considered in the Senate by the Ways and Means Committee.

<sup>24</sup> S.B. 2735, S.D. 2 is scheduled for a public hearing by the House Committee on Labor on March 15, 2018, at 9:00a.m. in Conference Room 309 at the Hawaii State Capitol.

# CHART 1

## Office of Information Practices Budget FY 1989 to FY 2017



Fiscal Year	Operational Expense Allocation	Personnel Allocation	Total Allocation	Allocations Adjusted for Inflation**	Approved Positions
FY 17	22,324	553,660	575,984	575,984	8.5
FY 16	31,592	532,449	564,041	578,142	8.5
FY 15	45,228	507,762	552,990*	574,597	8.5
FY 14	88,862	450,895	539,757*	560,346	8.5
FY 13	18,606	372,327	390,933	412,253	7.5
FY 12	30,197	352,085	382,282	409,560	7.5
FY 11	42,704	314,454	357,158	393,836	7.5
FY 10	19,208	353,742	372,950	417,961	7.5
FY 09	27,443	379,117	406,560	467,591	7.5
FY 08	45,220	377,487	422,707	486,307	7.5
FY 07	32,686	374,008	406,694	487,911	7.5
FY 06	52,592	342,894	395,486	484,313	7
FY 05	40,966	309,249	350,215	445,966	7
FY 04	39,039	308,664	347,703	455,917	7
FY 03	38,179	323,823	362,002	483,809	8
FY 02	38,179	320,278	358,457	491,515	8
FY 01	38,179	302,735	340,914	472,799	8
FY 00	37,991	308,736	346,727	498,808	8
FY 99	45,768	308,736	354,504	523,064	8
FY 98	119,214	446,856	566,070	850,642	8
FY 97	154,424	458,882	613,306	936,106	11
FY 96	171,524	492,882	664,406	1,044,972	12
FY 95	171,524	520,020	692,544	1,118,940	15
FY 94	249,024	578,513	827,537	1,374,543	15
FY 93	248,934	510,060	758,994	1,292,519	15
FY 92	167,964	385,338	553,302	972,942	10
FY 91	169,685	302,080	471,765	851,136	10
FY 90	417,057	226,575	643,632	1,226,836	10
FY 89	70,000	86,000	156,000	312,823	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.

CHART 2

STATE GOOD GOVERNMENT AGENCIES COMPARISON CHART (REVISED as of 2/21/2018) (All serve the general public)

Office/HRS/Constit.	Jurisdiction	Term	How Appointed	How Removed	Salary	FY 2018-19		
						Gen. Funds Appropriation	Personnel Services	Authorized FTE Positions
<b>OIP Director</b> HRS 92F-3, -41, -42; HRS 92-1.5, -2, -10	State, counties (including Mayors, Councils, and departments), independent agencies (UH, OHA), and <b>including</b> Executive branch (Gov, Lt. Gov. and agencies), Legislature, and Judiciary (except courts' nonadministrative functions), for UIPA (open records) ; also all Sunshine Law boards of state, county, and independent entities	At will	Governor's discretion	Governor's discretion	Governor's discretion			
<b>OIP Budget</b>						\$576,855	\$567,388	8.5 (includes 6 attorneys)
<b>Auditor</b> Constit. Art. VII, Sec. 10; HRS 23-1, -2, -3, -8	State and its political subdivisions, <b>except</b> Legislature	8 yrs	Legis. by maj. vote of each house in jt. session	2/3 vote in jt session, for cause May be removed by 2/3 vote in jt session "at any time for cause"	Same as DOH Director Cannot be diminished during term			
<b>Auditor Budget</b>						\$3,007,127	\$2,630,927	37 (26 actual)

**CHART 2**

<p><b>Ombudsman</b> HRS 96-1, -2, -3</p>	<p>Administrative acts of agencies, <b>except</b> Legislature, Judiciary, federal govt. , multistate govt'l entity, Gov. and personal staff, Lt. Gov. and personal staff, mayors, councils</p>	<p>6 yrs</p>	<p>Legis. by maj vote of each house in jt session</p>	<p>2/3 vote in jt session Legis. may remove "but only for neglect of duty, misconduct, or disability"</p>	<p>Same as DOH Director Cannot be diminished during term</p>
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<b>Ombudsman Budget</b>						\$1,330,834	\$1,256,599	14.0
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<p><b>LRB Director</b> HRS 23G-1, -2</p>	<p>Serves Legislature</p>	<p>6 yrs</p>	<p>Legis. by maj. vote of each house in jt. session</p>	<p>2/3 vote in jt session Legis. may remove "but only for neglect of duty, misconduct, or disability"</p>	<p>Same as DOH Director Cannot be diminished during term</p>
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<b>LRB Budget</b>						\$3,459,738 excl. dues	\$2,917,394 incl. session staff & OT	38.0
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<p><b>State Ethics Exec Dir.</b> HRS 84-2, -3, - 35</p>	<p>State only: all nominated, appointed, or elected officer, employee, and candidate to elected office, but <b>excluding</b> justices and judges</p>	<p>At will</p>	<p>State Ethics Commission's discretion</p>	<p>May be removed "at pleasure" as Commission "deems necessary for the performance of its functions"</p>	<p>Same as DOH Director</p>
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<b>State Ethics Budget</b>						\$1,112,093	\$944,402	11.0
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**CHART 2**

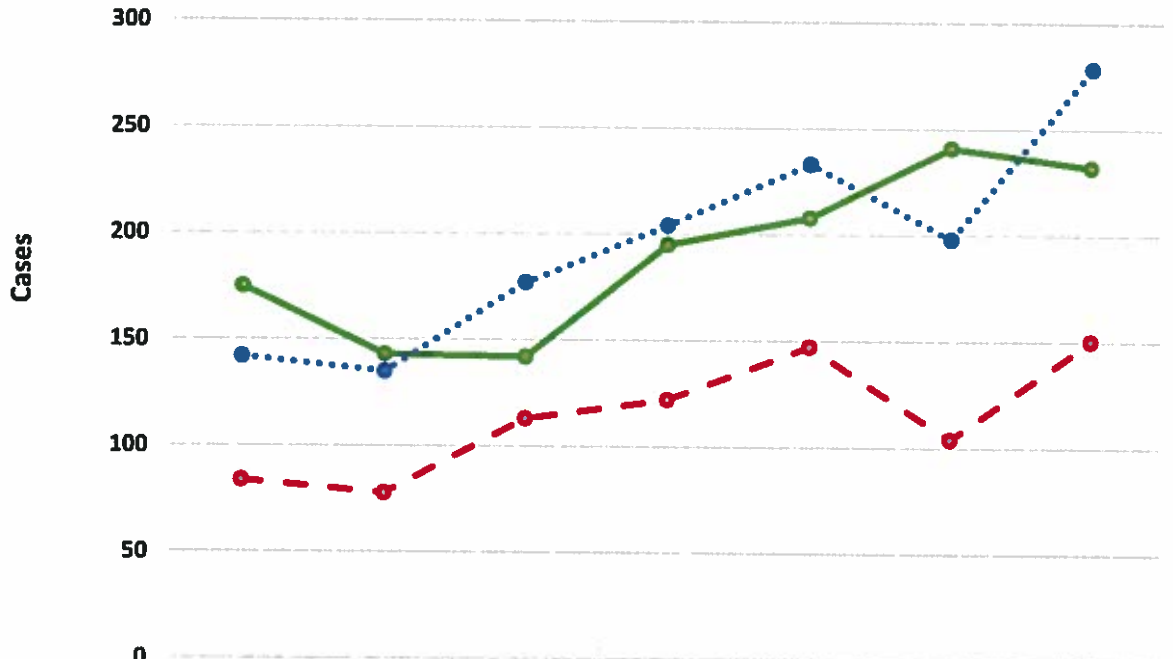
<b>State Campaign Spending Commission Executive Director</b>	Candidates	At will	Campaign Spending Commission's discretion	Campaign Spending Commission's discretion	Campaign Spending Commission's discretion; 2017: \$129,912			
HRS 11-314(12)								
<b>State CSC Budget</b>						\$505,585	\$443,962	5.0
<b>Chief Election Officer HRS 11-1, -1.6,</b>	Elections	At will	Elections Commission's discretion	Elections Commission's discretion	Not to exceed 87% of DHRD Director's salary; 2018: \$128,276			
<b>Elections Budget</b>						\$3,071,898, not inclu. fed. funds	\$2,234,383	27.44, inclu. 9.44 temp.

CHART 3

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	<b>FORMAL CASES PENDING AS OF 4/4/2011 (FY 2011)</b>														
2															
3		<b>FY99</b>	<b>FY00</b>	<b>FY01</b>	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10</b>	<b>FY11</b>	
4	<b>APPEAL</b>									2	6	3	9	13	33
5	<b>RFO</b>	1				2	1	2	3			1	4	3	17
6	<b>RFA</b>		1		1				2	1	3		5	7	20
7	<b>CORR</b>						1							1	2
8	<b>INV</b>								1	1		1	10	4	17
9															
10	<b>TOTALS</b>	<b>1</b>	<b>1</b>		<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>28</b>	<b>28</b>	<b>89</b>
11															
12	Gray	1	1		1										3
13	Kondo					2	1	3	6	4					16
14	Tsukiyama										9	5			14
15	Takase												28	28	56
16	<b>TOTALS</b>				<b>3</b>					<b>16</b>		<b>14</b>		<b>56</b>	<b>89</b>

# CHART 4

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



	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
••• New formal cases	142	135	177	204	233	198	278
— Resolved cases (closed)	175	143	142	195	208	241	232
- - - Outstanding cases (backlog)	84	78	113	122	147	104	150