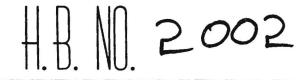
HOUSE OF REPRESENTATIVES FOURTEENTH LEGISLATURE, 1988 STATE OF HAWAII



A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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2	SECTION 1. The Hawaii Revised Statutes is amended by adding
3	a new chapter to be appropriately designated and to read as
	follows:
5	"CHAPTER
6	UNIFORM INFORMATION PRACTICES ACT (MODIFIED)
7	PART I. GENERAL PROVISIONS AND DEFINITIONS
8	§ -1 Short title. This chapter shall be known and may be
9	cited as the Uniform Information Practices Act (Modified).
10	§ -2 Purposes; rules of construction. This chapter shall
11	be applied and construed to promote its underlying purposes and
12	policies, which are to:
13	(1) Provide for accurate, relevant, timely, and complete
14	<pre>governmental records;</pre>
15	(2) Enhance governmental accountability through a general
16	policy of access to governmental records;

- 1 (3) Make government accountable to individuals in the
 2 collection, use, and dissemination of information
 3 relating to them;
 - (4) Protect individual privacy and related interests whenever the public interest in disclosure does not outweigh those interests; and
 - (5) Make uniform the law with respect to the subject matter of this chapter among states enacting it.
 - § -3 <u>Severability.</u> If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.
 - § -4 <u>General definitions</u>. Unless the context otherwise requires, in this chapter:

"Accessible record" means a personal record, except research record, that is:

- (1) Maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or
- (2) Otherwise retrievable because an agency is able to locate the record through the use of information provided by a requester without an unreasonable

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expenditure of time, effort, money, or other resources.

"Agency" means a unit of government in this State, any county or combination of counties, a department, institution, board, commission, district, council, bureau, office, officer, official, governing authority, or other instrumentality of state or county government, or a corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the legislative and judicial branches of the state.

#"Government record" means information maintained by an agency in written, aural, visual, electronic, or other physical form.

"Individually identifiable record" means a personal record that identifies or can readily be associated with the identity of an individual to whom it pertains.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

"Personal record" means any item or collection of information in a government record which refers, in fact, to a particular individual, whether or not the information is maintained in individually identifiable form.

"Research purpose" means an objective to develop, study, or report aggregate or anonymous information not intended to be used

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in any way in which the identity of an individual is material to the results.

"Research record" means an individually identifiable record collected solely for a research purpose and not intended to be used in individually identifiable form to make any decision or to take any action directly affecting the individual to whom the record pertains.

PART II. FREEDOM OF INFORMATION

- § -11 Affirmative agency disclosure responsibilities.

 Each agency shall make available for public inspection and copying during regular business hours:
 - (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability, adopted by the agency; and
 - (2) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.
 - (3) Government purchasing information including all bid results except to the extent prohibited by section -13
 - [A (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;

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- (5) Land ownership, transfer and lien records including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings including but not limited to proceedings subject to chapter 91;
- (8) Name, occupation, amount, purpose and current status of any person borrowing funds from a state or county loan program;
- (9) Certified payroll records on public works contracts;
- (10) Information on contract hires and consultants employed by agencies;
- (11) Building permit information;
- (12) Water service consumption data maintained by the boards of water supply; and
- (13) Roster of persons holding licenses or permits granted by an agency which may include name, business address, type of license held, and status of the license.
- § -12 <u>Duties of agency</u>. (a) Except as provided in section -13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.
- (b) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

for duplicating records and for making memoranda or abstracts from them. If a government record is not immediately available or a request for access is denied, the agency shall inform the requester of the right to make a written request for access under subsection (d).

(d) Not later than seven days after receiving a written

(c) Each agency shall assure reasonable access to facilities

- (d) Not later than seven days after receiving a written request for access which reasonably identifies or describes a government record, the agency shall:
 - (1) Make the record available to the requester, including, if necessary, an explanation of any machine readable code or any other code or abbreviation;
 - (2) Inform the requester that the record is in use or that unusual circumstances have delayed or impaired the handling of the request and specify in writing the earliest time and date, not later than twenty-one days after receipt of the request, when the record will be available;
 - (3) Inform the requester that the agency does not maintain the requested record, and provide if known, the name and location of the agency maintaining the record; or
 - (4) Deny the request.

- (e) Unless otherwise provided by law, whenever an agency provides a copy of a government record, it may charge the currently prevailing commercial rate for copying. An agency may not charge for the services of government personnel in searching for a record, reviewing its contents, and segregating disclosable from nondisclosable information or for expenses incurred in establishing or maintaining the record. The agency shall establish a schedule of its charges and make it available to the public.
- (f) If a request for access to a government record is denied, in whole or in part, the agency in writing shall notify the requester of the specific reasons for its denial, and identify by name and position or of title the individual responsible for its denial. In addition, the agency shall inform the requester that review of a denial of access may be sought from the office of information practices and that a request for review must be filed within fifteen (15) days with the office of information practices after notification of the denial, as provided by sections of this chapter.
- (g) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions.

1	\$	-13	Information not subject to duty of disclosure. (a)
2	This chap	pter	shall not require disclosure of:
3	(1)	Info	ormation compiled for law enforcement purposes,
4		incl	uding victim or witness assistance program files, if
5		the	disclosure would:
6		(A)	Materially impair the effectiveness of an ongoing
7			investigation, criminal intelligence operation, or
8			law enforcement proceeding;
9		(B)	Identify a confidential informant;
10		(C)	Reveal confidential investigative techniques or
)			procedures, including criminal intelligence
12			activity; or
13		(D)	Endanger the life of an individual;
14	(2)	Inte	er-agency or intra-agency advisory, consultative, or
15		del:	iberative material other than factual information if:
16		(A)	Communicated for the purpose of decision-making;
17			and
18		(B)	Disclosure would substantially inhibit the flow of
19			communications within an agency or impair an
20			agency's decision-making processes;
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- (3) Material prepared in anticipation of litigation which would not be available to a party in litigation with the agency under the rules of pretrial discovery for actions in a circuit court of this State;
- (4) Materials used to administer a licensing, employment, or academic examination if disclosure would compromise the fairness or objectivity of the examination process;
- (5) Information which, if disclosed, would frustrate government procurement or give an advantage to any person proposing to enter into a contract or agreement with an agency including information involved in the collective bargaining process provided that a roster of employees shall be open to inspection by any organization which is allowed to challenge existing employee representation;
- (6) Information identifying real property under consideration for public acquisition before acquisition of rights to the property; or information not otherwise available under the law of this State pertaining to real property under consideration for public acquisition before making a purchase agreement;
- (7) Administrative or technical information, including software, operating protocols, employee manuals, or other information, the disclosure of which would jeopardize the security of a record-keeping system;

- (8) Proprietary information, including computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by the agency or entrusted to it;
- (9) Trade secrets or confidential commercial and financial information obtained, upon request, from a person;
- (10) Library, archival, or museum material contributed by private persons to the extent of any lawful limitation imposed on the material;
- (11) Information that is expressly made nondisclosable or confidential under federal or state law or protected by the rules of evidence.
- (12) An individually identifiable record not disclosable under part III.
- (b) If an agency pursuant to subsection (a) of section 13 of this part decides to grant a request to inspect or copy a government record to which paragraphs (8), (10), or (12) of said subsection (a) applies, the agency shall make reasonable efforts to notify the person to whom the record relates and provide the person an opportunity to object to disclosure of the record.
- (c) If a person submits information to an agency that he affirmatively claims is not required for disclosure under paragraph (9) of subsection (a) of this section, the agency shall

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notify the person making the claim and provide the person with an opportunity to object prior to acting on any request for disclosure of the record, unless the person signs a written waiver of any notice and objection to disclosure.

- (d) If, over objection, the agency grants the request for access, it shall inform the objector of the agency's decision and the right to seek review from the office of information practices prior to release of the information. The agency shall not release any of the information until a written decision of the office of information practices authorizing the release is received by the agency.
- #(e) If the office of information practices grants the request for access over objection, notice of the decision shall be given to each objector. If the agency denies a request for access, and the office of information practices affirms the denial, and the agency is thereafter sued to compel disclosure as a result of such denial, the agency shall make reasonable efforts to inform each objector of the suit.
- (f) The agency shall provide any reasonably segregable portion of the record to the person requesting it after deleting the undisclosable material.

- § -14 Judicial enforcement. (a) A person aggrieved by a violation of section -12 or -13 may bring an action against the agency to compel disclosure following the formal review and decision of the office of information practice to affirm the agency decision. In an action to compel the disclosure of a government record, the court shall hear the matter de novo. The court may examine the record at issue in camera to determine whether it or any part of it may be withheld. The agency has the burden of proof to establish justification for nondisclosure, unless the record is alleged to be nondisclosable under part III.
- (b) If the complainant prevails in an action brought under this section, the court may assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.
- (c) The court in the judicial circuit in which the requested record is maintained or the agency's headquarters are located shall have jurisdiction over an action brought under this section.
- (d) If the agency fails to comply with the time limits of
 section -12, the requester may bring an action under this
 section.

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PART III. DISCLOSURE OF PERSONAL RECORDS

- § -21 <u>Limitations on disclosure to public.</u> An agency shall disclose or authorize the disclosure of an individually identifiable record to any person other than the individual to whom the record pertains where the disclosure is:
 - (1) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
 - (2) Pursuant to the prior written consent of the individual to whom the record refers;
 - (3) Information collected and maintained for the purpose of making information available to the general public;
 - (4) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public;
 - (5) Pursuant to federal law or a statute of this State that expressly authorizes disclosure;
 - (6) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual, in which case the agency shall make reasonable efforts to notify the individual to whom the record refers;

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(7)	Pursuant to an order of a court in which case the agency
	shall notify the individual to whom the record refers by
	mailing a copy of the order to the individual's last
	known address;
(8)	Pursuant to a subpoena from either house of the state

- (8) Pursuant to a subpoena from either house of the state legislature or any committee or subcommittee, in which case the agency shall notify the individual to whom the record refers by mailing a copy of the subpoena to the individual's last known address;
- (9) Information from motor vehicle registration lists which is necessary for recall purposes;
- (10) For a research purpose as provided in sections -29 and -30; or
- (11) In any other case, not a clearly unwarranted invasion of personal privacy.

§ -22 Clearly unwarranted invasion of personal privacy.

- (a) Disclosure of an individually identifiable record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.
- (b) Except where this chapter otherwise provides for disclosure of the information described by the examples set forth in this section, no agency shall disclose information subject to a

i	significant privacy inte	rest unless the	public interest	in
2	disclosure is compelled	by an imminent	threat to public	health and
3	safety.	N.	•	

- (c) The following are examples of information in which the individual has a significant privacy interest:
 - (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information concerning an individual's presence at any facility;
 - (2) Information compiled and identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
 - (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
 - (4) Information in an agency's personnel file, or applications, nomination, recommendations, or proposals 6~r public employment or appointment to a governmental position, except information relating to the status of any formal charges against the employee and disciplinary action taken;

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- (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for the particular position;
- (6) Information in an income or other tax return measured by items of income or gathered by an agency for the purpose of administering the tax;
- (7) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
- (8) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except (a) the record of any proceeding, resulting in revocation or suspension of a license and the grounds for revocation or suspension; (b) information on the employment and required insurance coverages of licensees; and (c) the record of complaints including all dispositions; and
- (9) Information comprising a personal recommendation or evaluation; and
- (10) Social Security numbers; and

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- (11) Information concerning donations made for public purposes such as to the Hawaii Public Broadcasting Authority; provided that this provision shall not apply to campaign contributions under Hawaii Revised Statutes Chapter 11, part XII.
- § -23 <u>Disclosures to agencies of government.</u> (a) In addition to disclosures permitted under section -21, an agency may disclose or authorize the disclosure of an individually identifiable record if made to:
 - (1) Another agency if disclosure is:
 - (A) Certified by the requesting agency as being necessary to the performance of its duties and functions; and
 - (B) Compatible with the purpose for which the information in the record was originally collected or obtained;
 - (2) The state archives for purposes of historical preservation or administrative maintenance;
 - (3) Another agency, another state, or the federal government, if disclosure is:
 - (A) For the purpose of a civil or criminal law enforcement investigation;
 - (B) Specifically authorized by statute or compact; and

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(4) An agency for transmission to courts of this State, another state, or the United States for presentence or probationary purposes;

(C) Pursuant to agreement or written request;

- (5) A foreign government pursuant to executive agreement, compact, treaty, or statute;
- (6) A criminal law enforcement agency of this State, another state, or the federal government if the information requested is limited to an individual's name and other identifying particulars, including present and past addresses and present and past places of employment;
- (7) Authorized officials of the federal government or of an agency of this State for audit or review purposes if:
 - (A) The audit or review is expressly authorized by law; and
 - (B) Disclosure is certified by the requesting agency as being necessary to the performance of audits or reviews; or
- (8) The United States Bureau of the Census for the purpose of planning or carrying out a census, survey, or related activity under title 13 of the United States Code.
- An agency receiving information pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the information as the originating agency.

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	\$	-24	Prohibiti	ons on disclosures not affected. Nothing
in	sect	ion	-21 to	-23 authorizes the disclosure of an
ind	divid	ually	identifial	ble record if disclosure is otherwise
pro	ohibi	ted b	y law.	

- § -25 Access to records by record subject. Except as provided in section -26, an individual or an individual's duly authorized representative may examine or copy, during the regular business hours of the agency, any accessible record that pertains to the individual. In implementing the rights under this section, the agency shall follow the procedures established in section -12, subject to the following additional requirements:
 - (1) Upon receipt of a written request to examine or copy an accessible record, the agency shall verify the identity of the requester; and
 - (2) The agency, if specifically requested, shall inform the requester of all disclosures of the record outside the agency as required in section -28(a)(2).
- § -26 <u>Limitations on individual access.</u> (a) An agency is not required by section -25 to disclose:
 - (1) Information that may be withheld pursuant to section
 -13(a)(1) and (3) to (11) except to the extent
 that the information sought was submitted by the

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- requester, but under appropriate safeguards designed to protect the integrity of the examination process, an individual may examine, but not copy, the individual's own test questions and answers in any examination used for licensing or employment;
- (2) Information collected and used solely to evaluate the character and fitness of persons, but only to the extent that disclosure would identify the source of the information; or
- (3) Information that does not relate directly to the requester, and, which if disclosed, would constitute a clearly unwarranted invasion of another individual's personal privacy.
- (b) This section shall not abridge any statute that authorizes an agency to withhold information from the parent or legal guardian of a child.
- (c) If an individual requests an accessible record containing information the agency is not required to disclose under subsections (a) and (b), the agency shall provide any reasonably segregable portion of the record to the requester after deleting the undisclosable material.

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-27 Correction and amendment of records; propagation.

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An individual may request an agency to correct or amend any

incomplete or inaccurate information pertaining to the individual

if it is contained in an accessible record and the record is

-25.

- Not later than seven days after receiving a request from an individual in writing to correct or amend an accessible record pertaining to the individual, an agency shall:
 - (1) Make the requested correction or amendment and inform the requester of the action;
 - (2) Inform the requester that the agency does not maintain the record and, if it knows, provide the name and location of the agency maintaining it; or
 - (3) Inform the requester in writing of its refusal to correct or amend the record as requested, the reason for the refusal, the procedures for review of the refusal by the office of information practices, and the name and position or title of the individual responsible for the refusal.
- Not later than thirty days after an individual requests review with the office of information practices of an agency's refusal to correct or amend the individual's record, the office of information practices shall make a final determination.

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- (d) If, after the review provided for by subsection (c), the office of information practices affirms the agency refusal to correct or amend the record in accordance with the request, the office of information practices shall order the agency to:
 - (1) Permit the requester to file with the record a concise statement of the requester's reasons for the requested correction or amendment and reasons for disagreement with the agency's refusal; and
 - (2) Notify the requester of the requester's right to bring an action pursuant to section -32.
- (e) Whenever an agency discloses information to a third party about which an individual has filed a statement pursuant to subsection (d), the agency shall:
 - (1) Clearly identify the disputed portion of the information;
 - (2) Furnish a copy of the individual's statement; and
 - (3) Furnish a concise statement of the agency's current position with respect to the request for correction or amendment and transmit a copy of this statement to the last known address of the individual whose record is disclosed.
- (f) Each agency maintaining personal records shall take reasonable steps to provide statements of disagreement and

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of the reco	rd v	within the	pre	cedi	ng three	year	rs.			

- § -28 <u>Collection and maintenance of information</u>. (a)
 Each agency that collects, receives, or maintains personal records shall:
 - (1) Collect or maintain only information about individuals necessary to accomplish its purposes as authorized by federal law or executive order, state statutes or executive order, or county ordinance or executive order;
 - (2) Maintain a record of all disclosures of individually identifiable records to recipients outside the agency during the preceding three years, including the identity of each recipient and the date of each disclosure, but an agency is not required to maintain an accounting of disclosures made pursuant to section 21(1) to (4) and -23(a)(2), (5), and (7);
 - (3) Collect information, whenever practicable, directly from the individual to whom the information pertains;
 - (4) Inform each individual from whom information is requested:
 - (A) Of the principal purposes for which the agency intends to use the information;

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- (B) Of the consequences to the individual of not providing the information; and
- (C) Whether the information collected and the identity of the person providing it will be accessible to the individual to whom the information pertains;
- (5) Collect and maintain all records used by the agency with the accuracy, completeness, timeliness, and relevance reasonably necessary to assure fairness in agency action affecting the individual to whom they pertain; and
- (6) Establish reasonable safeguards to assure the integrity, confidentiality, and security of individually identifiable records.
- (b) The requirements of subsection (a) (5) do not apply to an agency or component thereof whose principal function is criminal law enforcement if the agency clearly identifies potentially inaccurate, untimely, incomplete, or irrelevant information to the users and recipients of information.
- § -29 <u>Disclosure of individually identifiable records for research purposes; limitations on redisclosure.</u> (a) An agency may disclose or authorize disclosure of an individually identifiable record for research purposes only if the agency:
 - (1) Determines that the research purpose cannot reasonably be accomplished without use or disclosure of the

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information in individu	ually identifiable form and the	
additional risk to the	individual privacy as a result of	of
the disclosure will be	minimal;	

- (2) Receives adequate assurances that the recipient will establish the safeguards required by section -28(a)(6) and will remove or destroy the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
- (3) Secures from the recipient of the records a written statement of the recipient's understanding of and agreement to the conditions of this subsection; and
- (4) Prohibits any subsequent use or disclosure of the record in individually identifiable form without express authorization of the agency or the individual to whom the record pertains.
- (b) A person or agency may use or disclose a research record only if:
 - (1) The person or agency reasonably believes that use or disclosure will prevent or minimize physical injury to an individual and the disclosure is limited to information necessary to protect the individual who has been or may be injured;

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- (2) The record is disclosed in individually identifiable form for the purpose of auditing or evaluating a research program and:
 - (A) The audit or evaluation is expressly authorized by law; and
 - (B) No subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section; or
- (3) The record is furnished in compliance with a search warrant or subpoena as provided in section -30(a).
- § -30 Research records: amenability to compulsory process; researcher privilege. (a) A court may issue a search warrant or subpoena concerning a research record only if the purpose of the warrant or subpoena is to assist inquiry into an alleged violation of law by a person using the record for a research purpose or by a person or agency maintaining the record.
- (b) Any research record obtained pursuant to subsection (a), as well as any information directly or indirectly derived from the record, may not be used as evidence in an administrative, judicial, or legislative proceeding except in a proceeding against a person using the record for a research purpose or a person or agency maintaining the record.

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- \$ -31 Government contractors, recipients, providers. (a)

 Any contractor, recipient, or provider, or subcontractor of any
 one of them, who performs any function of an agency that requires
 the contractor, recipient, or provider to maintain individually
 identifiable records is subject to sections -21 and -22 with
 respect to those records.
- (b) The agency with which the contract or grant is established shall be responsible for assuring compliance with this part.
- (c) For purposes of the civil remedies of section -32, a contractor, recipient, or provider is a separate agency and in that capacity is subject to injunctive or other relief, and shall be liable for damages, attorney's fees, and all other expenses reasonably incurred in the litigation.
- (d) An official or employee of an agency may not obligate the agency to indemnify a contractor, recipient, or provider or subcontractor of any one of them, for losses suffered as a result of its liabilities under section -32.
- § -32 <u>Civil remedies.</u> (a) Any individual aggrieved by a violation of sections -21 to -31, or the statutes and sections specifically enumerated in section 13 of this chapter, with respect to the individual's personal records or other confidential information may bring an action for relief as provided in this section.

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- (b) In an action brought under this section, the court shall hear the matter de novo, may order the agency to comply with this part and to cease the unlawful practice or procedure, and may provide any other appropriate relief.
- agency's refusal to comply, in whole or in part, with a request for access under section —25, the court shall hear the matter de novo, may order the agency to disclose the records or account for the uses and disclosures thereof, and may order the production of any agency records or other information withheld from the requester. The court may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under section —26. The burden of proof is on the agency to establish the nondisclosability of a record.
- (d) In any action brought under this section in which the court determines that the agency has violated any provision of sections -21 to -31, the claimant shall be entitled to recover from the agency damages sustained as a result of the violation, but the claimant may not recover more than \$10,000 exclusive of any pecuniary loss. An officer or employee of an agency shall not be personally liable to the claimant for damages sustained as a result of a violation of this part.

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- (e) If an individual prevails in any action brought under this section, the court may assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.
- (f) If an agency fails to comply with the time limits of sections -25 and -27, the requester may bring an action pursuant to this section.
- § -33 Criminal penalties. (a) An officer or employee of an agency or authorized recipient of records under section 29(a) who willfully discloses or provides a copy of an individually identifiable record to any person or agency, or any confidential information as explicitly described by specific confidentiality statutes, with knowledge that disclosure is prohibited, shall be guilty of a misdemeanor, unless a greater penalty is provided for by law
- (b) A person who, by false pretenses, bribery, or theft, gains access to or obtains a copy of an individually identifiable record whose disclosure is prohibited to the person shall be guilty of a misdemeanor.
- § -34 Immunity from liability. (a) Anyone participating in good faith in the authorized disclosure of a government record, or the refusal to release information not required for disclosure under this chapter or confidential information pursuant to this or



any other chapter, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed by or result from such acts. Any such participant shall have the same immunity with respect to such participation in any judicial proceeding resulting from such act.

- (b) Any individual who assumes a duty or responsibility pursuant to this chapter shall have immunity from civil liability for acts or omissions performed within the scope of the individual's duty or responsibility. Nothing in this section shall limit the liability of the state agency, or agencies, or any private organization or persons for the conduct of individuals provided immunity herein.
- (c) An officer or employee of an agency shall not be personally liable to a claimant for damages sustained as a result of violation of part III of this chapter.
 - § -35 Agency implementation. Each agency shall:
 - (1) Issue instructions and guidelines necessary to effectuate this part; and
 - (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of personal records are informed of the requirements of this part and the requirements and procedures adopted by the agency pursuant to this part.

1	§ -36 Report of record-keeping policies and practices.
2	(a) Each agency shall compile a report each year describing the
3	personal records it maintains. The report shall be made available
4	to the ombudsman upon request. The report shall include:
5	(1) The name and location of each set of records;
6	(2) The authority under which the records are maintained;
7	(3) The categories of individuals concerning whom records
8	are maintained;
9	(4) The categories of information or data maintained in the
10	records;
-6	(5) The categories of sources of information in the records;
12	(6) The categories of uses and disclosures made of the
13	records;
1-1	(7) The agencies and categories of persons outside of the
15	agency which routinely use the records;
16	(8) The individually identifiable records routinely used by
17	the agency which are maintained by:
18.	(A) Another agency, or
19	(B) A person other than an agency;
20	(9) The policies and practices of the agency regarding
21	storage, retrievability, access controls, retentions,
22	and disposal of the information maintained in records;
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1	(10) The title, business address, and business telephone
2	number of the agency officer responsible for the
3	records;
4	(11) The agency procedures whereby an individual may request
5	access to personal records; and
6	(12) After the first year of operation under this part, the
7	number of written requests for access within the
8	preceding year, the number denied, the number of
9	lawsuits initiated against the agency under this part,
10	and the number of suits in which access was granted.
11	(b) The agency shall make the reports available for public
12	inspection.
13	PART IV. OFFICE OF INFORMATION PRACTICE; DUTIES
14	§ -41 Office of information practices. (a) There shall
15	be within the office of the governor an office of information
16	practices.
17	(b) The governor shall appoint, not subject to chapters 76
18	and 77, a director of the office of information practices who is
19	its chief executive officer.
20	(c) All powers and duties of the office of information
21	practices are vested in the director and may be delegated to any

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other officer or employee of the office.

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	(d)	The	director	may	employ	suc	ch other	e pe	rsonnel a	s		
nece	ssar	y ir	ncluding	but n	ot lim	ited	l to att	orne	eys and c	leri	ical	
staf	f.	All	employee	s sha	ll not	be	subject	to	chapters	76	and	77

- § -42 Powers and duties of the office of information practices. (a) With respect to part II, the director of the office of information practices:
 - (1) Shall review and rule on an agency denial of access to information or records, or an agency's granting of access.
 - (2) Upon request by an agency, shall provide advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;
 - (3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter.
 - (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any officer or employee of any agency;
 - (5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;

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- (6) May recommend disciplinary action to appropriate officers of an agency;
 - (7) Shall report annually to the governor and the state
 legislature on the activities and findings of the office
 of information practices, including recommendations for
 legislative changes; and
 - (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of part II.
 - (9) Shall adopt, amend or repeal rules pursuant to Chapter 91.
 - (b) With respect to part III, the office of information practices:
 - (1) Shall review and rule on an agency denial of access to information or records, or an agency's granting of access.
 - (2) Shall review the official acts, records, policies, and procedures of the officer designated for each agency pursuant to section -36 (a) (10);
 - (3) Shall assist agencies in complying with the provisions of this chapter;
 - (4) Upon request by an agency, shall provide an interpretive ruling concerning any question arising under part III;

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- (5) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies;
 - (6) May conduct inquiries regarding agency compliance by an agency and investigate possible violations by any officer, employee, contractor, recipient, provider, subcontractor, or agent of any agency;
 - (7) May examine the records of any agency for the purposes of paragraph (5) and seek to enforce that power in the courts of this State;
 - (8) May recommend disciplinary action or criminal prosecution to the appropriate officers of an agency;
 - (9) Shall receive complaints from and actively solicit the comments of the public regarding the effectuation of part III;
 - (10) Report annually to the governor and the state legislature summarizing the expressed complaints, comments, and concerns;
 - (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
 - (A) The right of access to records pertaining to the individual;

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1	(B) The right to obtain a copy of records pertaining to
2	the individual;
3	(C) The right to know the purposes for which records
4	pertaining to the individual are kept;
5	(D) The right to be informed of the uses and
6	disclosures of records pertaining to the
7	individual;
8	(E) The right to correct or amend records pertaining to
9	the individual; and
10	(F) The right to place a statement in a record
A	pertaining to the individual.
12	(12) Shall adopt, amend or repeal rules pursuant to Chapter
13	91.
1-1	(c) The office may bring an action against another agency,
15	other than for damages, to enforce this chapter.
16	SECTION 2. Chapter 92, part V, Hawaii Revised Statutes, is
17	repealed.
18	SECTION 3. Chapter 92E, Hawaii Revised Statutes, is repealed
19	SECTION 4. Chapter 314, Hawaii Revised Statutes, is amended
20	by adding a new section to be appropriately designated and to read
21	as follows:

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"§314- Private Donor Confidentiality. Private sources who make donations to the Hawaii public broadcasting authority and the amount of the donation made pursuant to sections 314-8(8) or 314-13 of this chapter shall remain confidential, unless the written consent of the donor(s) authorizes disclosure."

SECTION 5. Section 157-16, Hawaii Revised Statutes, is repealed.

["\$157-16 Divulging of information. No person obtaining any information pursuant to sections 157-14 and 157-15 shall divulge the information except as may be necessary or proper to administer and enforce this chapter or as the public interest may require."]

SECTION 6. Section 267-9, Hawaii Revised Statutes, is amended to read as follows:

"\$267-9 Accident reports by operators; confidential nature. The operator of (1) any vessel involved in a boating accident in the waters of the State, and (2) any vessel required to be registered, or registered, with the department of transportation and involved in a boating accident in any waters, shall file a written report with the department truthfully setting forth all relevant information required by the department; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

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The department shall transmit information of all boating accidents to the Coast Guard as may be requested by the agency for compilation, analysis, and publication of statistics.

The accident reports required by this section shall be used [only] to enable the department and the Coast Guard to make findings of causes of accidents and recommendations for their prevention and to compile information for use in making statistical reports[; except that]. They shall be available for public inspection, and [they] may [also] be used in the prosecution of the filing of false accident reports."

SECTION 7. Section 338-20, Hawaii Revised Statutes, is amended to read as follows:

"\$338-20 Adoption. (a) In case of the adoption of any person born in the State, the department of health, upon receipt of a properly certified copy of the adoption decree, or certified abstract thereof on a form approved by the department, shall prepare a supplementary certificate in the name of the adopted person, as fixed or changed by the decree, and seal and file the original certificate of birth with the certified copy attached thereto.

(b) The registrar of births shall show on the supplemental birth certificate the names of parents as stated in the adoption decree pursuant to section 578-14.

- (c) Any certified copy of final decree of adoption, or abstract thereof, of persons born in the State, rendered by courts of other states and territories subject to the jurisdiction of the United States, or courts of a foreign country, shall be considered properly certified when attested by the clerk of the court in which it was rendered with the seal of the court annexed, if there be a seal, together with a certificate of the presiding judge, chancellor, or magistrate that the attestation is in due form.
- (d) If no original certificate of birth shall be on file with the department, the department may require such evidence as it deems necessary to establish the facts of birth before preparing a supplementary certificate in the new name of the adopted person; provided that no such certificate shall be filed unless it shall be satisfactorily established that the adopted person was born in the State.
- (e) Such sealed documents may be opened by the department only for the limited purposes of and in compliance with 578-16 or by an order of a court of record. Upon receipt of a certified copy of a court order setting aside a decree of adoption, the department shall restore the original certificate to its original place in the files."

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SECTION 8. Section 578-14, Hawaii Revised Statutes, is amended to read as follows:

"\$578-14 Record of adoption. A certified copy of the decree of adoption, or a certified abstract thereof on a form approved by the department of health shall, after such decree has become effective, be sent to the department. The department shall cause to be made a new record of the birth in the name of the individual, as fixed or changed by the decree, with the names of the adoptive parents, and, upon request of both adoptive parents, or the sole adoptive parent if there is only one, that the name or names of either or both of the natural parents appear on the certificate with the name of a natural parent who consents to be named on the certificate, and shall then cause to be sealed and filed the original birth certificate of the individual with the decree or the abstract thereof, and such sealed package shall be opened only for the limited purposes of and in compliance with 578-16 or by order of a court of record. If the birth of the individual occurred outside of the State, and a record of such birth exists, the certified copy of the decree or the abstract thereof, shall be transmitted by the department of health to the birth registration authorities of the place of the individual's birth with a request that such authorities take appropriate action with respect to the record of the individual's birth. If

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the birth of the individual occurred outside of the State, or if the birth of an individual born in the State has not been registered with the department of health, or if other good cause exists, the clerk of the court shall, upon request, and with the approval of the family court, upon the finding of the court that such action is for the best interests of the individual involved, furnish to the adoptive parents, or to the individual, or to any proper person acting in their behalf, a certified copy or abstract of the decree of adoption, or a certificate of adoption in such form as is approved by the court. If the parental rights of a parent or the parents of a minor child have been judicially terminated under chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding."

SECTION 9. Section 578-15, Hawaii Revised Statutes, is amended to read as follows:

"\$578-15 Secrecy of proceedings and records. The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of human services or the director's agent, or by any proper person on a showing of good cause therefor, upon order of the court. Except in the case of an individual being adopted by a person married to the legal

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father or mother of such individual, or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided that the legal name of the individual and the name of each of the individual's legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. hearing of the petition shall be in chambers and shall not be open to the public. Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that such records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except for the limited purposes of and in compliance with 578-16 or upon order of the family court.

The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court."

SECTION 10. Chapter 578, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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"§578-16 Medical Information of Natural Parents. Where an adopted child seeks medical information of the natural parents in order to determine his or her potential genetic or other diseases or afflictions, whether physical or mental, he or she shall petition a licensed physician who shall file a request with the department of health.

The department of health shall prepare a standard form for the purposes described herein. Such a form shall include a request for medical information including but not limited to the gender of the responding natural parent, physical or mental symptoms of hereditary conditions, medical information relating to the natural mother's pregnancy, and similar medical history, if known, of their parents.

Upon the filing of such request the department of health shall send the information form to each natural parent. Each natural parent shall retain a licensed physician to fill out the requested information. The physician shall complete and sign the form certifying that the medical information submitted on the form is a true and accurate record of the natural parent's medical history. The physician shall return it to the department within the time designated.

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Upon receipt of the information form, the department shall forward to the requesting physician a copy of the form from which the confidential information identifying the natural parent has been removed. The information form shall become part of the sealed records of the adoption preceedings.

This statute shall not be construed or applied in such a manner as to reveal the identity of the natural parents absent their consent."

SECTION 11. Chapter 52, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

\$52-19 Department rules and regulations. In each county of this state, the police department shall establish rules and regulations pertaining to its administration, operations, functions and services which are not matters under the rulemaking authority of the police commission. The manner and method for enforcement of the criminal laws are included within this rulemaking requirement. The requirement does not apply to the police functions of criminal investigations prior to indictment.

The rules and regulations required herein shall be open to public inspection.



SECTION 12. Section 52-62, Hawaii Revised Statutes, is amended to read as follows:

"\$52-62 General powers of the commission. The police commission shall hold regular public meetings at a designated time and place. The commission shall elect its chairman, and a majority shall constitute a quorum for the transaction of business; provided that a vote of three members shall be necessary to validate the appointment or removal of the chief of police. In the absence of the chairman the remaining members shall elect an acting chairman. The commission shall adopt rules pursuant to Chapter 91 which may be necessary for the conduct of its business and regulation of the matters herein committed to its charge."

SECTION 13. Statutory material to be repealed is bracketed.

New statutory material is underscored.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 1988-1989, for the office of information practice.

SECTION 15. The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

H.B. W. 2002

SECTION 16. Part IV of Section 1 of this Act shall take
effect on July 1, 1988. Parts I-III of Section 1 of this Act
shall take effect on July 1, 1989. All other sections of this
Act shall take effect on its approval.
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