

FEB 03 1989

S.

B. NO.

1799

A BILL FOR AN ACT

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT  
(MODIFIED).

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

1           SECTION 1. Findings and purposes. The Legislature  
2 finds that it is necessary to clarify chapter 92F, Hawaii  
3 Revised Statutes, by making substantive and procedural  
4 changes to better reflect the legislative intent of the  
5 original act. To avoid any confusion, the Legislature  
6 further finds as follows:

7           (1) That by empowering the office of information  
8 practices to adopt rules setting forth an administrative  
9 appeals structure for a direct appeal from an agency  
10 division's decision on a records request to the office,  
11 and the time limits for agency action, the Legislature  
12 intended that this direct appeal be as informal and  
13 expeditious as possible to encourage citizen participation  
14 without the cost and expense of hiring an attorney;

15           (2) That by providing the alternative forum of the  
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1 circuit court, any person can choose either a full  
2 evidentiary hearing in court with all the attendant rules  
3 of discovery, or the informal review by the office of  
4 information practices of an agency decision denying access  
5 to a record; and

6 (3) That the administrative appeal to the office of  
7 information practices, therefore, should be an informal  
8 dispute resolution procedure, in the nature of an  
9 arbitration, for example, and should be specifically  
10 exempt from the contested case definition and requirements  
11 under chapter 91, Hawaii Revised Statutes.

12 The purpose of this Act is to clarify the existing  
13 language of chapter 92F, Hawaii Revised Statutes, by  
14 making substantive and procedural amendments in order to  
15 better reflect the legislative intent and ensure smooth  
16 implementation of the law.

17 SECTION 2. Chapter 92F, Hawaii Revised Statutes, is  
18 amended by adding a new section to be designated and to  
19 read as follows:

20 "§92F-14.5 Alternative methods to appeal denial of  
21 access. (a) When an agency denies a person access to  
22 a government record, the person may appeal the agency  
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1 denial by exercising the option of either appealing to the  
2 office of information practices or appealing directly to  
3 the circuit court. A person may, therefore, appeal  
4 directly to the circuit court without having to exhaust  
5 the optional administrative remedy of review by the office  
6 of information practices.

7 (b) A decision to first appeal to the office of  
8 information practices for review of the agency denial  
9 shall not prejudice the person's right to appeal to the  
10 circuit court after a decision is made by the office of  
11 information practices. A direct appeal to circuit court  
12 from the agency denial, however, prevents any later appeal  
13 to the office of information practices."

14 SECTION 3. Chapter 92F, Hawaii Revised Statutes, is  
15 amended by adding a new section to be designated and to  
16 read as follows:

17 "§92F-14.6 Appeal to office of information  
18 practices. (a) Any person who has been denied access  
19 to a government record may appeal to the office of  
20 information practices not later than ninety days after  
21 notification of the denial in accordance with rules  
22 adopted pursuant to section 92F-42(a)(12).

1        (b) If the decision is to disclose, the office of  
2 information practices shall notify the person and the  
3 agency and the agency shall make the record available. If  
4 the denial of access is upheld, in whole or in part, the  
5 office of information practices in writing shall notify  
6 the person of the decision, the specific reasons for the  
7 decision, and the right to bring a judicial action under  
8 section 92F-15(a)."

9        SECTION 4. Chapter 92F, Hawaii Revised Statutes, is  
10 amended by adding a new section to be designated and to  
11 read as follows:

12        "§92F-23.5 Denial of access; appeal to office of  
13 information practices or circuit court. (a) When an  
14 agency denies an individual access to that individual's  
15 personal record, the individual may appeal the agency  
16 denial by exercising the option of either appealing to the  
17 office of information practices or appealing directly to  
18 circuit court.

19        (b) Any individual who has been denied access to a  
20 personal record may appeal to the office of information  
21 practices not later than ninety days after notification of  
22 the denial in accordance with rules adopted pursuant to  
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1 section 92F-42(a)(12).

2 (c) If the decision is to disclose, the office of  
3 information practices shall notify the individual and the  
4 agency and the agency shall make the record available. If  
5 the denial of access is upheld, in whole or in part, the  
6 office of information practices in writing shall notify  
7 the individual of the decision, the specific reasons for  
8 the decision, and the right to bring a judicial action  
9 under section 92F-27."

10 SECTION 5. Section 92F-15, Hawaii Revised Statutes,  
11 is amended by amending subsection (a) to read as follows:

12 "(a) A person aggrieved by a denial of access to a  
13 government record may bring an action against the agency  
14 at any time within ninety days after the agency denial to  
15 compel disclosure."

16 SECTION 6. Section 92F-18, Hawaii Revised Statutes,  
17 is amended to read as follows:

18 "[[]§92F-18[]] Agency implementation. (a) Each  
19 agency shall:

20 (1) Issue instructions and guidelines necessary to  
21 effectuate this chapter; and

22 (2) Take steps to assure that all its employees and  
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1 officers responsible for the collection,  
2 maintenance, use, and dissemination of  
3 government records are informed of the  
4 requirements of this chapter.

5 (b) Each agency shall compile a public report  
6 describing the records it routinely uses or maintains.  
7 The public reports shall be filed with the office of  
8 information practices on or before July 1, 1991, in  
9 accordance with a schedule set forth by the office and  
10 shall include:

- 11 (1) The name and location of each set of records;
- 12 (2) The authority under which the records are  
13 maintained;
- 14 (3) The categories of individuals for whom records  
15 are maintained;
- 16 (4) The categories of information or data maintained  
17 in the records;
- 18 (5) The categories of sources of information in the  
19 records;
- 20 (6) The categories of uses and disclosures made of  
21 the records;
- 22 (7) The agencies and categories of persons outside  
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of the agency which routinely use the records;

(8) The records routinely used by the agency which are maintained by[;];

(A) Another agency; or

(B) A person other than an agency;

(9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;

(10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;

(11) The agency procedures whereby an individual may request access to records; and

(12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

(c) Each agency shall supplement or amend the public report filed pursuant to this section or file a new report, on or before July 1st of each subsequent year, to

1 ensure that the information remains accurate and  
2 complete. The agency shall file the supplemental,  
3 amended, or new report with the office of information  
4 practices, which shall make the reports available for  
5 public inspection."

6 SECTION 7. Section 92F-25, Hawaii Revised Statutes,  
7 is amended to read as follows:

8 "[[]§92F-25[] Access and correction;] Correction  
9 and amendment; review procedures. (a) Not later than  
10 thirty business days after receipt of a request for review  
11 of an agency refusal to allow [access to, or] correction  
12 or amendment of[, ] a personal record, the agency shall  
13 make a final determination.

14 (b) If the agency refuses upon final determination  
15 to allow access to, or correction or amendment of, a  
16 personal record, the agency shall so state in writing and:

17 (1) Permit, whenever appropriate, the individual to  
18 file in the record a concise statement setting  
19 forth the reasons for the individual's  
20 disagreement with the refusal of the agency to  
21 correct or amend it; and

22 (2) Notify the individual of the applicable  
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1 procedures for obtaining appropriate judicial  
2 remedy."

3 SECTION 8. Section 92F-26, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 "[]§92F-26[] Rules. [Each agency] The office of  
6 information practices shall adopt rules, under chapter 91,  
7 establishing procedures necessary to implement or  
8 administer this part[.

9 Such procedures and rules, subject to the direction  
10 of and review by the attorney general in the case of state  
11 agencies and by the corporation counsel or county attorney  
12 of each county in the case of county agencies, shall be  
13 uniform, insofar as practicable, respectively, among state  
14 agencies and among the county agencies of each county.]  
15 which the agencies shall adopt, insofar as practicable, in  
16 order to ensure uniformity among state and county  
17 agencies."

18 SECTION 9. Section 92F-27, Hawaii Revised Statutes,  
19 is amended to read as follows:

20 "[]§92F-27[] Civil actions and remedies. (a) An  
21 individual may bring a civil action against an agency in a  
22 circuit court of the State whenever an agency fails to  
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1 comply with any provision of this part, and after  
2 appropriate administrative remedies under sections 92F-23,  
3 92F-24, and 92F-25 have been exhausted. The review by the  
4 office of information practices of a denial of access to a  
5 personal record under section 92F-23.5, however, is  
6 optional and without prejudice to the action under this  
7 section.

8 (b) In any action brought under this section the  
9 court may order the agency to correct or amend the  
10 complainant's personal record, to require any other agency  
11 action, or to enjoin such agency from improper actions, as  
12 the court may deem necessary and appropriate to render  
13 substantial relief.

14 (c) In any action brought under this section in  
15 which the court determines that the agency knowingly or  
16 intentionally violated a provision of this part, the  
17 agency shall be liable to the complainant in an amount  
18 equal to the sum of:

- 19 (1) Actual damages sustained by the complainant as a  
20 result of the failure of the agency to properly  
21 maintain a personal record, but in no case shall  
22 a complainant (individual) entitled to recovery  
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1 receive less than the sum of \$1,000; and

2 (2) The costs of the action together with reasonable  
3 attorney's fees as determined by the court.

4 (d) The court may assess reasonable attorney's fees  
5 and other litigation costs reasonably incurred against the  
6 agency in any case in which the complainant has  
7 substantially prevailed, and against the complainant where  
8 the charges brought against the agency were frivolous.

9 (e) An action may be brought in the circuit court  
10 where the complainant resides, the complainant's principal  
11 place of business is situated, or the complainant's  
12 relevant personal record is situated. [No action shall be  
13 brought later than two years after the date of the cause  
14 of action, which shall be the date of the last written  
15 communication to the agency requesting compliance.]

16 (f) No action shall be brought later than ninety  
17 days after notification of the agency's refusal to allow  
18 access to, or correction or amendment of, a personal  
19 record, or where applicable, the date of receipt of the  
20 final determination of the office of information  
21 practices."

22 SECTION 10. Section 92F-41, Hawaii Revised Statutes,  
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1 is amended by amending subsection (a) to read as follows:

2 "(a) There shall be within the department of the  
3 attorney general, for administrative purposes only, an  
4 office of information practices."

5 SECTION 11. Section 92F-42, Hawaii Revised Statutes,  
6 is amended to read as follows:

7 "[[]§92F-42[]] Powers and duties of the office of  
8 information practices. (a) The director of the office of  
9 information practices:

10 (1) Shall, upon request, review and rule on an  
11 agency denial of access to information or  
12 records, or an agency's granting of access;  
13 provided that any review by the office of  
14 information practices shall not be a contested  
15 case under chapter 91 and shall be optional and  
16 without prejudice to rights of judicial  
17 enforcement available under this chapter;

18 (2) Upon request by an agency, shall provide and  
19 make public advisory guidelines, opinions, or  
20 other information concerning that agency's  
21 functions and responsibilities;

22 (3) Upon request by any person, may provide advisory  
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- 1           opinions or other information regarding that  
2           person's rights and the functions and  
3           responsibilities of agencies under this chapter;  
4       (4) May conduct inquiries regarding compliance by an  
5           agency and investigate possible violations by  
6           any agency;  
7       (5) May examine the records of any agency for the  
8           purpose of paragraph (4) and seek to enforce  
9           that power in the courts of this State;  
10      (6) May recommend disciplinary action or criminal  
11           prosecution to appropriate officers of an agency;  
12      (7) Shall report annually to the governor and the  
13           state legislature on the activities and findings  
14           of the office of information practices,  
15           including recommendations for legislative  
16           changes;  
17      (8) Shall receive complaints from and actively  
18           solicit the comments of the public regarding the  
19           implementation of this chapter;  
20      (9) Shall review the official acts, records,  
21           policies, and procedures of each agency;  
22      (10) Shall assist agencies in complying with the  
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provisions of this chapter;

(11) Shall inform the public of the following rights of an individual and the procedures for exercising them:

(A) The right to access to records pertaining to the individual;

(B) The right to obtain a copy of records pertaining to the individual;

(C) The right to know the purposes for which records pertaining to the individual are kept;

(D) The right to be informed of the uses and disclosures of records pertaining to the individual;

(E) The right to correct or amend records pertaining to the individual; and

(F) The individual's right to place a statement in a record pertaining to that individual;

(12) Shall adopt rules that set forth an [internal] administrative appeals structure which provides for (A) agency procedures for processing records requests; (B) a direct appeal from the division

maintaining the record; and (C) time limits for  
action by agencies;

(13) Shall adopt rules that set forth the fees and  
other [changes] charges that may be imposed for  
searching, reviewing, or segregating disclosable  
records, as well as to provide for a waiver of  
such fees when the public interest would be  
served;

(14) Shall adopt rules which set forth uniform  
standards for the records collection practices  
of agencies; [and]

(15) Shall adopt rules that set forth uniform  
standards for disclosure of records for research  
purposes, which agencies shall adopt, insofar as  
practicable;

[(15)] (16) Shall have standing to appear in cases  
where the provisions of this chapter are called  
into question[.]; and

(17) Shall adopt, amend, or repeal rules pursuant to  
chapter 91 necessary for the purposes of this  
chapter."

SECTION 12. Statutory material to be repealed is

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1 bracketed. New statutory material is underscored.

2 SECTION 13. This Act shall take effect upon its  
3 approval.

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6 INTRODUCED BY:

Richard S. H. May  
By Request