

# A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 amending Part V of Chapter 92 to read as follows:

3 "[]PART V.[] PUBLIC RECORDS

4 "§92-50 Purpose and construction. In a democracy, the  
5 citizens have the ultimate authority and responsibility.  
6 Government agencies exist to aid our citizens in the formulation  
7 and execution of public policy. Opening the records of agencies  
8 to public inspection enhances their proper operation by promoting  
9 informed citizen participation. Therefore, the legislature  
10 declares that it is the policy of this State to enhance  
11 government accountability by liberally granting access to  
12 government records.

13 This chapter shall be liberally construed to promote access  
14 to government records.

15 [§92-50 Definition. As used in this part, "public record"  
16 means any written or printed report, book or paper, map or plan  
17 of the State or of a county and their respective subdivisions and

boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual.]

§92-51 Definitions. As used in this Part:

"Agency" means any unit of State or county government and includes departments, divisions, boards, commissions and all instrumentalities of State or county government.

"Public record", as used in this part, means any written, printed, electronic, electromagnetic, aural, or otherwise maintained document, report, book, paper, map, photograph or plan which is the property of an agency and in or on which an entry has been made or is required to be made, or which any public officer or employee has received or is required to receive for filing.

[\$92-51] §92-52 Public records; available for inspection.

(a) All public records shall be available for inspection and duplication by any person during established office hours [unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which

H. B. NO.

2002  
H.D. 1  
S.D. 1

1 records in their offices may be withheld from public inspection  
2 when such records pertain to the preparation of the prosecution  
3 or defense of any action or proceeding, prior to its  
4 commencement, to which the State or county is or may be a party,  
5 or when such records do not relate to a matter in violation of  
6 law and are deemed necessary for the protection of a character or  
7 reputation of any person].

8 (b) Each agency shall provide reasonable access to  
9 facilities for duplication of its records but is not required to  
10 compile, summarize or otherwise modify its records to meet the  
needs of persons requesting inspection.

12 §92-53 Public records; exceptions to general rule. This  
13 chapter shall not require disclosure of:

14 (1) Records which, if disclosed, would constitute a clearly  
15 unwarranted invasion of personal privacy.

16 (2) Records pertaining to the prosecution or defense of any  
17 judicial or quasi-judicial action to which the State or  
18 any county is or may be a party, to the extent that  
19 such records would not be discoverable.

20 (3) Records which, by their nature, must be confidential in  
21 order for the government to avoid the frustration of a  
22 legitimate government function.

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1           (4) Records which, pursuant to State or federal law  
2           including an order of any State or federal court, are  
3           protected from disclosure.

4           §92-54 Rules. The attorney general shall draft model rules  
5           to effectuate this chapter. The model rules shall include  
6           procedures to assure that requests for inspection and copying of  
7           public records are handled promptly and rules for administrative  
8           appeal of a denial of access. The administrative appeals shall  
9           not delay or limit resort to judicial remedies. The rules may  
10           include procedures for the collection, categorization,  
11           maintenance, segregation and dissemination of public records;  
12           rules to protect public records from theft, loss, defacement,  
13           alteration or deterioration; and rules to prevent excessive  
14           interference with the agency's other responsibilities. Each  
15           agency shall adopt rules, pursuant to chapter 91, to effectuate  
16           this chapter. In so doing, the agency shall follow the model  
17           rules of the attorney general, to promote the uniform operation  
18           of this chapter unless the records or responsibilities of the  
19           agency require departures or additional rules.

20           [\$92-52] §92-55 Denial of inspection; application to  
21           circuit courts. Any person aggrieved by the denial [by the  
22           officer having the custody of any public record] of the right to  
23           inspect or to obtain copies of [extracts thereof] a public record  
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1 may apply to the circuit court of the circuit wherein the public  
 2 record is found for an order directing the [officer] agency to  
 3 permit the inspection of or to furnish copies of [extracts of]  
 4 the public records. The court shall grant the order after  
 5 hearing upon a finding that the denial was not for just and  
 6 proper cause. In addition, the court shall require the agency to  
 7 pay the reasonable attorney's fees and costs of prevailing  
 8 plaintiff.

9 §92-56 Limitations on disclosure of public records to other  
 10 agencies. An agency may disclose or authorize disclosure of  
 11 records to any other agency only to the extent that such records  
 12 are available to the public, unless such disclosure is authorized  
 13 by law. Such disclosure is authorized: to the state archives,  
 14 for purposes of historical preservation, administrative  
 15 maintenance, or destruction; to the legislature or any committee  
 16 thereof; pursuant to an order of a court of competent  
 17 jurisdiction; and to the federal government for the purpose of  
 18 auditing or monitoring an agency or program that receives federal  
 19 monies."

20 SECTION 2. Chapter 92E, Hawaii Revised Statutes, is amended  
 21 by amending the title to read as follows:

22 "FAIR INFORMATION PRACTICE

23 [(CONFIDENTIALITY OF PERSONAL RECORD)]"

1 SECTION 3. Section 92E-4, Hawaii Revised Statutes, is  
2 repealed.

3 ["§92E-4] Limitation on public access to personal record.  
4 No agency may disclose or authorize disclosure of personal  
5 records by any means of communication to any person other than  
6 the individual to whom the record pertains unless the disclosure  
7 is:

- 8 (1) To a duly authorized agency of the individual to whom  
9 it pertains;
- 10 (2) Of information collected and maintained specifically  
11 for the purpose of creating a record available to the  
12 general public;
- 13 (3) Pursuant to a statute of this State or the federal  
14 government that expressly authorizes the disclosure;
- 15 (4) Pursuant to a showing of compelling circumstances  
16 affecting the health or safety of any individual."]

17 SECTION 4. Section 92E-5, Hawaii Revised Statutes, is  
18 repealed.

19 ["§92E-5] Limitations on disclosure of personal record to  
20 other agencies. No agency may disclose or authorize disclosure  
21 of personal record to any other agency unless the disclosure is:

- 22 (1) Compatible with the purpose for which the information  
23 was collected or obtained;
- 24

H. B. NO.

2002  
H.D. 1  
S.D. 1

- 1           (2) Consistent with the conditions or reasonable
- 2                   expectations of use and disclosure under which the
- 3                   information was provided;
- 4           (3) Reasonably appears to be proper for the performance of
- 5                   the requesting agency's duties and functions;
- 6           (4) To the state archives for purposes of historical
- 7                   preservation, administrative maintenance, or
- 8                   destruction;
- 9           (5) To an agency or instrumentality of any governmental
- 10                   jurisdiction within or under the control of the United
- 11                   States, or to a foreign government if specifically
- 12                   authorized by treaty or statute, for a civil or
- 13                   criminal law enforcement investigation;
- 14           (6) To the legislature or any committee or subcommittee
- 15                   thereof;
- 16           (7) Pursuant to an order of a court of competent
- 17                   jurisdiction;
- 18           (8) To authorized officials of a department or agency of
- 19                   the federal government for the purpose of auditing or
- 20                   monitoring an agency program that receives federal
- 21                   monies." ]

22           SECTION 5. Statutory material to be repealed is bracketed.  
23   New statutory material is underscored.

          SECTION 6. This Act shall take effect on July 1, 1989.