

# A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1  
2           SECTION 1. The Hawaii Revised Statutes is amended by adding  
3 a new chapter to be appropriately designated and to read as  
4 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. In a democracy, the  
11 people are vested with the ultimate decision-making power.  
12 Government agencies exist to aid the people in the formation and  
13 conduct of public policy. Opening up the government processes to  
14 public scrutiny and participation is the only viable and  
15 reasonable method of protecting the public's interest. Therefore  
16 the legislature declares that it is the policy of this State that  
17 the formation and conduct of public policy-the discussions,

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1 deliberations, decisions, and action of government agencies--shall  
2 be conducted as openly as possible.

3 In any society which acts to assist or to protect itself  
4 through governmental action, significant levels of records are  
5 created and maintained about individuals. While such record-  
6 keeping is necessary it also can be the subject of abuse.  
7 Therefore the legislature declares that it is the policy of this  
8 State that individual freedom and dignity--including the right to  
9 have personal and intimate details about oneself remain private  
10 and accurate--shall be preserved to the greatest extent possible.

12 This Chapter shall be applied and construed to promote its  
underlying purposes and policies, which are to:

- 13 (1) Provide for accurate, relevant, timely, and complete  
14 government records;  
15 (2) Enhance governmental accountability through a general  
16 policy of access to government records;  
17 (3) Make government accountable to individuals in the  
18 collection, use, and dissemination of information  
19 relating to them; and  
20 (4) Promote the public interest in disclosure whenever  
21 individual privacy interests do not outweigh disclosure  
22 interests.

23 § -3 Severability. If any provision of this chapter or  
its application to any person or circumstance is held invalid, the  
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1        invalidity does not affect other provisions or applications of the  
2        chapter which can be given effect without the invalid provision or  
3        application, and to this end the provisions of this chapter are  
4        leverable.

5                §    -4    General definitions.    Unless the context otherwise  
6        requires, in this chapter:

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

9                (1)    Maintained according to an established retrieval scheme  
10                or indexing structure on the basis of the identity of,  
11                or so as to identify, individuals; or

12                (2)    Otherwise retrievable because an agency is able to  
13                locate the record through the use of information  
14                provided by a requester without an unreasonable  
15                expenditure of time, effort, money, or other resources.

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

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

3 "Individual" means a natural person.

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

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

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

14 "Provider" shall be as defined in section 42-1.

15 "Recipient" shall be as defined in section 42-1.

16 "Research purpose" means an objective to develop, study, or  
17 report aggregate or anonymous information not intended to be used  
18 in any way in which the identity of an individual is material to  
19 the results.

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



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PART II. FREEDOM OF INFORMATION

§ -11 Affirmative agency disclosure responsibilities. (a)  
All government records are open to public inspection unless access is restricted or closed by law.

(b) 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

(4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;

(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 required by law to be public;

(8) Name, occupation, amount, purpose and current status of any person borrowing funds from a state or county loan program;

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1 (9) Certified payroll records on public works contracts;

2 (10) Information on contract hires and consultants employed  
3 by agencies such as the contract itself, the amount of  
4 compensation, the duration of the contract, and the  
5 objectives of the contract;

6 (11) Building permit information within the control of the  
7 agency;

8 (12) Water service consumption data maintained by the boards  
9 of water supply; and

10 (13) Roster of persons holding licenses or permits granted by  
11 an agency which may include name, business address, type  
12 of license held, and status of the license.

13 § -12 Duties of agency. (a) Except as provided in  
14 section -13, each agency upon request by any person shall make  
15 government records available for inspection and copying during  
16 regular business hours.

17 (b) Unless the information is readily retrievable by the  
18 agency in the form in which it is requested, an agency shall not be  
19 required to prepare a compilation or summary of its records.

20 (c) Each agency shall assure reasonable access to facilities  
21 for duplicating records and for making memoranda or abstracts from  
22 them. If a government record is not immediately available or a  
23 request for access is denied, the agency shall inform the

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1 requester of the right to make a written request for access under  
2 subsection (d).

3 (d) Not later than seven days after receiving a written  
4 request for access which reasonably identifies or describes a  
5 government record, the agency shall:

6 (1) Make the record available to the requester, including,  
7 if necessary, an explanation of any machine readable  
8 code or any other code or abbreviation;

9 (2) Inform the requester that the record is in use or that  
10 unusual circumstances have delayed or impaired the  
11 handling of the request and specify in writing the  
12 earliest time and date, not later than twenty-one days  
13 after receipt of the request, when the record will be  
14 available;

15 (3) Inform the requester that the agency does not maintain  
16 the requested record, and provide if known, the name and  
17 location of the agency maintaining the record; or

18 (4) Deny the request.

19 (e) Unless otherwise provided by law, whenever an agency  
20 provides a copy of a government record, it shall charge the rate  
21 specified in rules to be adopted by the office of information  
22 practices. The rules may also provide for a waiver of such  
23 charges when the public interest would be served. An agency may  
24 charge for the services of government personnel in searching for a  
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1 record, reviewing its contents, and segregating disclosable from  
2 nondisclosable information but may not charge for expenses  
3 incurred in establishing or maintaining the record.

4 (f) If a request for access to a government record is  
5 denied, in whole or in part, the agency in writing shall notify  
6 the requester of the specific reasons for its denial, and identify  
7 by name and position or of title the individual responsible for  
8 its denial. In addition, the agency shall inform the requester  
9 that review of a denial of access may be sought from the office of  
10 information practices and that a request for review must be filed  
or postmarked within fifteen (15) days with the office of  
12 information practices after notification of the denial.

13 (g) The office of information practices, within fifteen days  
14 after a request for review is filed, shall decide whether the  
15 denial of access will be upheld. If the decision is to disclose,  
16 the office shall immediately notify the requester and the agency,  
17 and the agency shall make the record available. If the denial of  
18 access is upheld, in whole or in part, the office in writing shall  
19 notify the requester of the decision, the specific reasons for the  
20 decision, and the right to bring a judicial action under this  
21 chapter.

22 (h) Each agency may adopt rules, pursuant to chapter 91, to  
23 protect its records from theft, loss, defacement, alteration, or  
deterioration and to prevent manifestly excessive interference  
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1 with the discharge of its other lawful responsibilities and  
2 functions.

3 § -13 Information not subject to duty of disclosure. (a)

4 This chapter shall not require disclosure of:

- 5 (1) Records or information compiled for law enforcement  
6 purposes but only to the extent that the production of  
7 such law enforcement records or information:
- 8 (A) Could reasonably be expected to interfere with  
9 enforcement proceedings;
  - 10 (B) Would deprive a person of a right to a fair trial  
11 or an impartial adjudication;
  - 12 (C) Could reasonably be expected to constitute on  
13 unwarranted invasion of personal privacy;
  - 14 (D) Could reasonably be expected to disclose the  
15 identity of a confidential source, including an  
16 agency, which furnished information on a  
17 confidential basis, and in the case of a record or  
18 information compiled by criminal law enforcement  
19 authority in the course of a criminal investigation,  
20 information furnished by a confidential source;
  - 21 (E) Would disclose techniques and procedures for law  
22 enforcement investigations or prosecutions or would  
23 disclose guidelines for law enforcement  
24 investigations or prosecutions if such disclosure

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1                   could reasonably be expected to risk circumvention  
2                   of the law; or

3                   (F) Could reasonably by expected to endanger the life  
4                   or physical safety of any individual;

5                   (2) Inter-agency or intra-agency advisory, consultative, or  
6                   deliberative material other than factual information if:

7                   (A) Communicated for the purpose of decision-making;  
8                   and

9                   (B) Disclosure would substantially inhibit the flow of  
10                  communications within an agency or impair an  
                    agency's decision-making processes;

12                  (3) Material prepared in anticipation of litigation which  
13                  would not be available to a party in litigation with the agency  
14                  under the rules of pretrial discovery for actions in a circuit  
15                  court of this State;

16                  (4) Materials used to administer a licensing, employment, or  
17                  academic examination if disclosure would compromise the fairness  
18                  or objectivity of the examination process;

19                  (5) Information which, if disclosed, would frustrate  
20                  government procurement or give a manifestly unfair advantage to  
21                  any person proposing to enter into a contract or agreement with an  
22                  agency including information involved in the collective bargaining  
23                  process;

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1           (6) Information identifying real property under  
2 consideration for public acquisition before acquisition of rights  
3 to the property; or information not otherwise available under the  
4 law of this State pertaining to real property under consideration  
5 for public acquisition before making a purchase agreement;

6           (7) Administrative or technical information, including  
7 software, operating protocols, employee manuals, or other  
8 information, the disclosure of which would jeopardize the security  
9 of a record-keeping system;

10          (8) Proprietary information, such as research methods,  
11 records and data, computer programs and software and other types  
12 of information manufactured or marketed by persons under exclusive  
13 legal right, owned by the agency or entrusted to it;

14          (9) Trade secrets or confidential commercial and financial  
15 information obtained, upon request, from a person;

16          (10) Library, archival, or museum material contributed by  
17 private persons to the extent of any lawful limitation imposed on  
18 the material;

19          (11) Information that is expressly made nondisclosable or  
20 confidential under federal or state law or protected by the rules  
21 of evidence; and

22          (12) Any information the release of which would constitute a  
23 clearly unwarranted invasion of personal privacy.

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1 (b) If an agency pursuant to subsection (a) of section -  
2 13 of this part grants a request to inspect or copy a government  
3 record to which paragraphs (8), (10), or (12) of said subsection  
4 (a) applies, the agency shall make reasonable efforts to notify  
5 the person to whom the record relates and provide the person an  
6 opportunity to object to disclosure of the record.

7 (c) If a person submits information to an agency that he  
8 affirmatively claims is not required for disclosure under  
9 paragraph (9) of subsection (a) of this section, the agency shall  
10 notify the person making the claim and provide the person with an  
11 opportunity to object prior to acting on any request for  
12 disclosure of the record, unless the person signs a written waiver  
13 of any notice and objection to disclosure.

14 (d) If, over objection, the agency grants the request for  
15 access, it shall inform the objector of the agency's decision and  
16 the right to seek review from the office of information practices  
17 prior to release of the information. The agency shall not release  
18 any of the information until a written decision of the office of  
19 information practices authorizing the release is received by the  
20 agency.

21 (e) If the office of information practices grants the  
22 request for access over objection, notice of the decision shall be  
23 given to each objector. If the agency denies a request for  
24 access, and the office of information practices affirms the  
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1 denial, and the agency is thereafter sued to compel disclosure as  
2 a result of such denial, the agency shall make reasonable efforts  
3 to inform each objector of the suit.

4 (f) The agency shall provide any reasonably segregable  
5 portion of the record to the person requesting it after deleting  
6 the undisclosable material.

7 § -14 Judicial enforcement. (a) A person aggrieved by a  
8 violation of section -11, -12 or -13 may bring an action  
9 against the agency to compel disclosure following the formal  
10 review and decision of the office of information practice to  
11 affirm the agency decision. In an action to compel the disclosure  
12 of a government record, the court shall hear the matter de novo.  
13 The court may examine the record at issue in camera to determine  
14 whether it or any part of it may be withheld. The agency has the  
15 burden of proof to establish justification for nondisclosure,  
16 unless the record is alleged to be nondisclosable under part III.

17 (b) If the complainant prevails in an action brought under  
18 this section, the court may assess against the agency reasonable  
19 attorney's fees and all other expenses reasonably incurred in the  
20 litigation.

21 (c) The court in the judicial circuit in which the request  
22 for the record is made, when the requested record is maintained,  
23 or where the agency's headquarters are located shall have  
24 jurisdiction over an action brought under this section.

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1 (d) If the agency fails to comply with the time limits of  
2 section -12, the requester may bring an action under this  
3 section.

4 PART III. DISCLOSURE OF PERSONAL RECORDS

5 § -21 Disclosures to the public. An agency shall disclose  
6 or authorize the disclosure of an individually identifiable record  
7 to any person where the disclosure is:

- 8 (1) The name, compensation (or salary range for employees  
9 covered by chapters 76 and 77), job title, business  
10 address, business telephone number, job description,  
11 education and training background, previous work  
12 experience, or dates of first and last employment of  
13 present or former officers or employees of the agency,  
14 provided that this provision shall not require the  
15 creation of a roster of employees;
- 16 (2) Pursuant to the prior written consent of the individual  
17 to whom the record refers;
- 18 (3) Information collected and maintained for the purpose of  
19 making information available to the general public;
- 20 (4) Information contained in or compiled from a transcript,  
21 minutes, report, or summary of a proceeding open to the  
22 public;
- 23 (5) Pursuant to federal law or a statute of this State that  
24 expressly authorizes disclosure;
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- 1 (6) Pursuant to a showing of compelling circumstances  
2 affecting the health or safety of any individual, in  
3 which case the agency shall make reasonable efforts to  
4 notify the individual to whom the record refers;
- 5 (7) Pursuant to an order of a court in which case the agency  
6 shall notify the individual to whom the record refers by  
7 mailing a copy of the order to the individual's last  
8 known address;
- 9 (8) Pursuant to a subpoena from either house of the state  
10 legislature or any committee or subcommittee, in which  
11 case the agency shall notify the individual to whom the  
12 record refers by mailing a copy of the subpoena to the  
13 individual's last known address;
- 14 (9) Information from motor vehicle registration file  
15 provided that the person requesting such files shall  
16 have a legitimate reason as determined by rules;
- 17 (10) For a research purpose as provided in sections -29  
18 and -30; or
- 19 (11) In any other case, not a clearly unwarranted invasion of  
20 personal privacy or where disclosure is required under  
21 Part II.

22 § -22 Clearly unwarranted invasion of personal privacy.

- 23 (a) Disclosure of an individually identifiable record shall not  
24 constitute a clearly unwarranted invasion of personal privacy if  
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1 the public interest in disclosure outweighs the privacy interests  
2 of the individual and disclosure of an individually identifiable  
3 record to which a privacy interest attaches shall be permitted  
4 where a compelling public interest is established involving public  
5 health, safety or welfare.

6 (b) The following are examples of information in which the  
7 individual has a significant privacy interest:

- 8 (1) Information relating to medical, psychiatric, or  
9 psychological history, diagnosis, condition, treatment,  
10 or evaluation, other than directory information  
11 concerning an individual's presence at any facility;
- 12 (2) Information compiled and identifiable as part of an  
13 investigation into a possible violation of criminal law,  
14 except to the extent that disclosure is necessary to  
15 prosecute the violation or to continue the  
16 investigation;
- 17 (3) Information relating to eligibility for social services  
18 or welfare benefits or to the determination of benefit  
19 levels;
- 20 (4) Information in an agency's personnel file, or  
21 applications, nomination, recommendations, or proposals  
22 for public employment or appointment to a governmental  
23 position, except information relating to the status of  
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any formal charges against the employee and disciplinary action taken or information disclosure under § -21(1).

(5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;

(7) 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

(8) Information comprising a personal recommendation or evaluation.

§ -23 Disclosures to agencies of government. (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:

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- 1 (A) Certified by the requesting agency as being
- 2 necessary to the performance of its duties and
- 3 functions; and
- 4 (B) Compatible with the purpose for which the
- 5 information in the record was originally collected
- 6 or obtained;
- 7 (2) The state archives for purposes of historical
- 8 preservation or administrative maintenance;
- 9 (3) Another agency, another state, or the federal
- 10 government, if disclosure is:
- 11 (A) For the purpose of a civil or criminal law
- 12 enforcement investigation;
- 13 (B) Specifically authorized by statute or compact; and
- 14 (C) Pursuant to agreement or written request;
- 15 (4) An agency for transmission to courts of this State,
- 16 another state, or the United States for presentence or
- 17 probationary purposes;
- 18 (5) A foreign government pursuant to executive agreement,
- 19 compact, treaty, or statute;
- 20 (6) A criminal law enforcement agency of this State, another
- 21 state, or the federal government if the information
- 22 requested is limited to an individual's name and other
- 23 identifying particulars, including present and past
- 24 addresses and present and past places of employment;
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(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.

(b) An agency receiving information pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the information as the originating agency.

§ -24 Prohibitions on disclosures not affected. Nothing in section -21 to -23 authorizes the disclosure of an individually identifiable record if disclosure is otherwise prohibited by 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:

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1 (1) Upon receipt of a written request to examine or copy an  
2 accessible record, the agency shall verify the identity  
3 of the requester; and

4 (2) The agency, if specifically requested, shall inform the  
5 requester of all disclosures of the record outside the  
6 agency as required in section -28(a)(2).

7 § -26 Limitations on individual access. (a) An agency is  
8 not required by section -25 to disclose:

9 (1) Information that may be withheld pursuant to section  
10 -13(a)(1) and (3) to (11) except to the extent  
11 that the information sought was submitted by the  
12 requester, but under appropriate safeguards designed  
13 to protect the integrity of the examination process,  
14 an individual may examine, but not copy, the  
15 individual's own test questions and answers in any  
16 examination used for licensing or employment unless  
17 such disclosure is impractical because it would  
18 compromise the examination.

19 (2) Information collected and used solely to evaluate  
20 the character and fitness of persons, but only to  
21 the extent that disclosure would identify the source  
22 of the information; or

23 (3) Information that does not relate directly to the  
24 requester, and, which if disclosed, would constitute  
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1 a clearly unwarranted invasion of another  
2 individual's personal privacy.

3 (b) This section shall not abridge any statute that  
4 authorizes an agency to withhold information from the parent or  
5 legal guardian of a child.

6 (c) If an individual requests an accessible record  
7 containing information the agency is not required to disclose  
8 under subsections (a) and (b), the agency shall provide any  
9 reasonably segregable portion of the record to the requester after  
10 deleting the undisclosable material.

§ -27 Correction and amendment of records; propagation.

12 (a) An individual may request an agency to correct or amend any  
13 incomplete or inaccurate information pertaining to the individual  
14 if it is contained in an accessible record and the record is  
15 available under section -25.

16 (b) Not later than seven days after receiving a request from  
17 an individual in writing to correct or amend an accessible record  
18 pertaining to the individual, an agency shall:

- 19 (1) Make the requested correction or amendment and inform  
20 the requester of the action;  
21 (2) Inform the requester that the agency does not maintain  
22 the record and, if it knows, provide the name and  
23 location of the agency maintaining it; or

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1 (3) Inform the requester in writing of its refusal to  
2 correct or amend the record as requested, the reason for  
3 the refusal, the procedures for review of the refusal by  
4 the office of information practices, and the name and  
5 position or title of the individual responsible for the  
6 refusal.

7 (c) Not later than thirty days after an individual requests  
8 review with the office of information practices of an agency's  
9 refusal to correct or amend the individual's record, the office of  
10 information practices shall make a final determination.

11 (d) If, after the review provided for by subsection (c), the  
12 office of information practices affirms the agency refusal to  
13 correct or amend the record in accordance with the request, the  
14 office of information practices shall order the agency to:

15 (1) Permit the requester to file with the record a concise  
16 statement of the requester's reasons for the requested  
17 correction or amendment and reasons for disagreement  
18 with the agency's refusal; and

19 (2) Notify the requester of the requester's right to bring  
20 an action pursuant to section -32.

21 (e) Whenever an agency discloses information to a third  
22 party about which an individual has filed a statement pursuant to  
23 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 corrections or amendments to all persons and agencies that have provided or received information concerning the disputed portions of the record within the preceding three years.

§ -28 Collection and maintenance of information. (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

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1 an agency is not required to maintain an accounting of  
2 disclosures made pursuant to section - 21(1) to  
3 (4) and -23(a)(2), (5), and (7);

4 (3) Collect information, whenever practicable, directly  
5 from the individual to whom the information pertains;

6 (4) Inform each individual from whom information is  
7 requested:

8 (A) Of the principal purposes for which the agency  
9 intends to use the information;

10 (B) Of the consequences to the individual of not  
providing the information; and

12 (C) Whether the information collected and the identity  
13 of the person providing it will be accessible to  
14 the individual to whom the information pertains;

15 (5) Collect and maintain all records used by the agency with  
16 the accuracy, completeness, timeliness, and relevance  
17 reasonably necessary to assure fairness in agency action  
18 affecting the individual to whom they pertain; and

19 (6) Establish reasonable safeguards to assure the integrity,  
20 confidentiality, and security of individually  
21 identifiable records; and

22 (7) Maintain no record describing how an individual  
23 exercises rights guaranteed by the First Amendment  
24 unless expressly authorized by statute, or by the  
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1 individual about whom the record is maintained, or  
2 unless pertinent to and within the scope of authorized  
3 law enforcement activity.

4 (b) The requirements of subsection (a)(5) do not apply to an  
5 agency or component thereof whose principal function is criminal  
6 law enforcement if the agency clearly identifies potentially  
7 inaccurate, untimely, incomplete, or irrelevant information to the  
8 users and recipients of information.

9 § -29 Disclosure of individually identifiable records for  
10 research purposes; limitations on redisclosure. (a) An agency  
may disclose or authorize disclosure of an individually  
12 identifiable record for research purposes only if the agency:

- 13 (1) Determines that there is a public benefit or purpose to  
14 the research;
- 15 (2) Determines that the research purpose cannot reasonably  
16 be accomplished without use or disclosure of the  
17 information in individually identifiable form and the  
18 additional risk to the individual privacy as a result of  
19 the disclosure will be minimal;
- 20 (3) Receives adequate assurances that the recipient will  
21 establish the safeguards required by section -  
22 28(a)(6) and will remove or destroy the individual  
23 identifiers associated with the records as soon as the  
purpose of the research project has been accomplished;
- 25

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- 1 (4) Secures from the recipient of the records a written  
2 statement of the recipient's understanding of and  
3 agreement to the conditions of this subsection; and  
4 (5) Prohibits any subsequent use or disclosure of the record  
5 in individually identifiable form without express  
6 authorization of the agency or the individual to whom  
7 the record pertains; and  
8 (6) Secures from the recipient a copy of the report or other  
9 work product of the research project which shall, if not  
10 otherwise prohibited by this Chapter, be made available  
to the public.

12 (b) A person or agency may use or disclose a research record  
13 only if:

- 14 (1) The person or agency reasonably believes that use or  
15 disclosure will prevent or minimize physical injury to  
16 an individual and the disclosure is limited to  
17 information necessary to protect the individual who has  
18 been or may be injured;  
19 (2) The record is disclosed in individually identifiable  
20 form for the purpose of auditing or evaluating a  
21 research program and:  
22 (A) The audit or evaluation is expressly authorized  
23 by law; and

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(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.

(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.

§ -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.

1 (b) The agency with which the contract or grant is  
2 established shall be responsible for assuring compliance with this  
3 part.

4 (c) For purposes of the civil remedies of section -32, a  
5 contractor, recipient, or provider is a separate agency and in  
6 that capacity is subject to injunctive or other relief, and shall  
7 be liable for damages, attorney's fees, and all other expenses  
8 reasonably incurred in the litigation.

9 (d) An official or employee of an agency may not obligate  
10 the agency to indemnify a contractor, recipient, or provider or  
11 subcontractor of any one of them, for losses suffered as a result  
12 of its liabilities under section -32.

13 § -32 Civil remedies. (a) Any individual aggrieved by a  
14 violation of sections -21 to -31, with respect to the  
15 individual's personal records or other confidential information  
16 may bring an action for relief as provided in this section.

17 (b) In an action brought under this section, the court shall  
18 hear the matter de novo, may order the agency to comply with this  
19 part and to cease the unlawful practice or procedure, and may  
20 provide any other appropriate relief.

21 (c) In any action brought under this section alleging an  
22 agency's refusal to comply, in whole or in part, with a request  
23 for access under section -25, the court shall hear the matter  
24 de novo, may order the agency to disclose the records or account  
25



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1 for the uses and disclosures thereof, and may order the production  
2 of any agency records or other information withheld from the  
3 requester. The court may examine the contents of any agency  
4 records in camera to determine whether the records or any portion  
5 thereof may be withheld under section -26. The burden of proof  
6 is on the agency to establish the nondisclosability of a record.

7 (d) In any action brought under this section in which the  
8 court determines that the agency has violated any provision of  
9 sections -21 to -31, the claimant shall be entitled to  
10 recover from the agency damages sustained as a result of the  
11 violation, but the claimant may not recover more than \$10,000  
12 exclusive of any pecuniary loss. An officer or employee of an  
13 agency shall not be personally liable to the claimant for damages  
14 sustained as a result of a violation of this part.

15 (e) If an individual prevails in any action brought under  
16 this section, the court may assess against the agency reasonable  
17 attorney's fees and all other expenses reasonably incurred in the  
18 litigation.

19 (f) If an agency fails to comply with the time limits of  
20 sections -25 and -27, the requester may bring an action  
21 pursuant to this section.

22 § -33 Criminal penalties. (a) An officer or employee of  
23 an agency or authorized recipient of records under section -  
24 29(a) who willfully discloses or provides a copy of an

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1 individually identifiable record to any person or agency, or any  
2 confidential information as explicitly described by specific  
3 confidentiality statutes, with knowledge that disclosure is  
4 prohibited, shall be guilty of a misdemeanor, unless a greater  
5 penalty is provided for by law.

6 (b) A person who, by false pretenses, bribery, or theft,  
7 gains access to or obtains a copy of an individually identifiable  
8 record whose disclosure is prohibited to the person or any  
9 confidential information as explicitly described by specific  
10 confidential statutes, shall be guilty of a misdemeanor.

11 § -34 Immunity from liability. (a) Anyone participating  
12 in good faith in the disclosure of a government record, or the  
13 refusal to release information under this chapter or other  
14 specific disclosure laws, or confidential information pursuant to  
15 this or any other chapter, shall have immunity from any liability,  
16 civil or criminal, that might otherwise be incurred or imposed by  
17 or result from such acts. Any such participant shall have the same  
18 immunity with respect to such participation in any judicial  
19 proceeding resulting from such act.

20 (b) Any individual who assumes a duty or responsibility  
21 pursuant to this chapter shall have immunity from civil liability  
22 for acts or omissions performed within the scope of the  
23 individual's duty or responsibility. Nothing in this section  
24 shall limit the liability of the state agency, or agencies, or any  
25

1 private organization or persons for the conduct of individuals  
2 provided immunity herein.

3 (c) An officer or employee of an agency shall not be  
4 personally liable to a claimant for damages sustained as a result  
5 of violation of part III of this chapter.

6 § -35 Agency implementation. Each agency shall:

- 7 (1) Issue instructions and guidelines necessary to  
8 effectuate this part; and  
9 (2) Take steps to assure that all its employees and officers  
10 responsible for the collection, maintenance, use, and  
11 dissemination of personal records are informed of the  
12 requirements of this part and the requirements and  
13 procedures adopted by the agency pursuant to this part.

14 § -36 Report of record-keeping policies and practices.

15 (a) Each agency shall compile a report describing the records it  
16 maintains. The report shall be filed with the office of  
17 information practice. The report shall include:

- 18 (1) The name and location of each set of records;  
19 (2) The authority under which the records are maintained;  
20 (3) The categories of individuals concerning whom records  
21 are maintained;  
22 (4) The categories of information or data maintained in the  
23 records;  
24 (5) The categories of sources of information in the records;

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- (6) The categories of uses and disclosures made of the records;
  - (7) The agencies and categories of persons outside of the agency which routinely use the records;
  - (8) The individually identifiable 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 personal records; and
  - (12) After the first year of operation under this part, 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.
- (b) The agency shall make the reports available for public inspection.

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1 (c) The agency shall, on an annual basis, update the reports  
2 to ensure that the information remains accurate and complete. The  
3 updates shall be filed with the office of information practice and  
4 be made available to the public.

5 PART IV. OFFICE OF INFORMATION PRACTICE; DUTIES

6 § -41 Office of information practices. (a) There shall  
7 be within the office of the governor an office of information  
8 practices.

9 (b) The governor shall appoint, not subject to chapters 76  
10 and 77, a director of the office of information practices who is  
its chief executive officer.

12 (c) All powers and duties of the office of information  
13 practices are vested in the director and may be delegated to any  
14 other officer or employee of the office.

15 (d) The director may employ such other personnel as  
16 necessary including but not limited to attorneys and clerical  
17 staff. All employees shall not be subject to chapters 76 and 77.

18 § -42 Powers and duties of the office of information  
19 practices. (a) With respect to part II, the director of the  
20 office of information practices:

- 21 (1) Shall review and rule on an agency denial of access to  
22 information or records, or an agency's granting of  
23 access.

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- 1 (2) Upon request by an agency, shall provide and make public  
2 advisory guidelines, opinions, or other information  
3 concerning that agency's functions and responsibilities;
- 4 (3) Upon request by any person, may provide advisory  
5 opinions or other information regarding that person's  
6 rights and the functions and responsibilities of  
7 agencies under this chapter.
- 8 (4) May conduct inquiries regarding compliance by an agency  
9 and investigate possible violations by any officer or  
10 employee of any agency;
- 11 (5) May examine the records of any agency for the purpose of  
12 paragraph (4) and seek to enforce that power in the  
13 courts of this State;
- 14 (6) May recommend disciplinary action to appropriate  
15 officers of an agency;
- 16 (7) Shall report annually to the governor and the state  
17 legislature on the activities and findings of the office  
18 of information practices, including recommendations for  
19 legislative changes; and
- 20 (8) Shall receive complaints from and actively solicit the  
21 comments of the public regarding the implementation of  
22 part II;  
23

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(9) Shall monitor agency adherence to the time limits imposed for action and recommend changes as appropriate; and

(10) 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, and make public, an interpretive ruling concerning any question arising under part III;

(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

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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) Shall monitor agency adherence to the time limits  
imposed for action and recommend changes as appropriate;

(11) Report annually to the governor and the state  
legislature summarizing the expressed complaints,  
comments, and concerns;

(12) 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;

(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;



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(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 right to place a statement in a record pertaining to the individual; and

(12) Shall adopt, amend or repeal rules pursuant to Chapter 91.

\*(c) The office may bring an action against another agency, other than for damages, to enforce this chapter.

SECTION 2. Chapter 92, part V, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 92E, Hawaii Revised Statutes, is repealed

SECTION 4. Chapter 314, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§314- Private Donor Confidentiality. Natural persons 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.

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1 ["§157-16 Divulging of information. No person obtaining any  
2 information pursuant to sections 157-14 and 157-15 shall divulge  
3 the information except as may be necessary or proper to administer  
4 and enforce this chapter or as the public interest may require."]

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

7 "**§267-9 Accident reports by operators; confidential nature.**  
8 The operator of (1) any vessel involved in a boating accident in  
9 the waters of the State, and (2) any vessel required to be  
10 registered, or registered, with the department of transportation  
11 and involved in a boating accident in any waters, shall file a  
12 written report with the department truthfully setting forth all  
13 relevant information required by the department; provided that  
14 the report need not be filed with the department where the  
15 operator is required by federal laws and requirements to report  
16 the accident to the Coast Guard.

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

20 The accident reports required by this section shall be used  
21 [only] to enable the department and the Coast Guard to make  
22 findings of causes of accidents and recommendations for their  
23 prevention and to compile information for use in making  
24 statistical reports[; except that]. They shall be available for

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1 public inspection, and [they] may [also] be used in the  
2 prosecution of the filing of false accident reports."

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

5 "§338-20 Adoption. (a) In case of the adoption of any  
6 person born in the State, the department of health, upon receipt  
7 of a properly certified copy of the adoption decree, or certified  
8 abstract thereof on a form approved by the department, shall  
9 prepare a supplementary certificate in the name of the adopted  
10 person, as fixed or changed by the decree, and seal and file the  
original certificate of birth with the certified copy attached  
12 thereto.

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

16 (c) Any certified copy of final decree of adoption, or  
17 abstract thereof, of persons born in the State, rendered by  
18 courts of other states and territories subject to the  
19 jurisdiction of the United States, or courts of a foreign  
20 country, shall be considered properly certified when attested by  
21 the clerk of the court in which it was rendered with the seal of  
22 the court annexed, if there be a seal, together with a  
23 certificate of the presiding judge, chancellor, or magistrate  
that the attestation is in due form.

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1 (d) If no original certificate of birth shall be on file  
2 with the department, the department may require such evidence as  
3 it deems necessary to establish the facts of birth before  
4 preparing a supplementary certificate in the new name of the  
5 adopted person; provided that no such certificate shall be filed  
6 unless it shall be satisfactorily established that the adopted  
7 person was born in the State.

8 (e) Such sealed documents may be opened by the department  
9 only for the limited purposes of and in compliance with 578-16 or  
10 by an order of a court of record. Upon receipt of a certified  
11 copy of a court order setting aside a decree of adoption, the  
12 department shall restore the original certificate to its original  
13 place in the files."

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

16 "§578-14 Record of adoption. A certified copy of the  
17 decree of adoption, or a certified abstract thereof on a form  
18 approved by the department of health shall, after such decree has  
19 become effective, be sent to the department. The department  
20 shall cause to be made a new record of the birth in the name of  
21 the individual, as fixed or changed by the decree, with the names  
22 of the adoptive parents, and, upon request of both adoptive  
23 parents, or the sole adoptive parent if there is only one, that  
24 the name or names of either or both of the natural parents appear

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1 on the certificate with the name of a natural parent who consents  
2 to be named on the certificate, and shall then cause to be sealed  
3 and filed the original birth certificate of the individual with  
4 the decree or the abstract thereof, and such sealed package shall  
5 be opened only for the limited purposes of and in compliance with  
6 578-16 or by order of a court of record. If the birth of the  
7 individual occurred outside of the State, and a record of such  
8 birth exists, the certified copy of the decree or the abstract  
9 thereof, shall be transmitted by the department of health to the  
10 birth registration authorities of the place of the individual's  
11 birth with a request that such authorities take appropriate  
12 action with respect to the record of the individual's birth. If  
13 the birth of the individual occurred outside of the State, or if  
14 the birth of an individual born in the State has not been  
15 registered with the department of health, or if other good cause  
16 exists, the clerk of the court shall, upon request, and with the  
17 approval of the family court, upon the finding of the court that  
18 such action is for the best interests of the individual involved,  
19 furnish to the adoptive parents, or to the individual, or to any  
20 proper person acting in their behalf, a certified copy or  
21 abstract of the decree of adoption, or a certificate of adoption  
22 in such form as is approved by the court. If the parental rights  
23 of a parent or the parents of a minor child have been judicially  
24 terminated under chapter 571 prior to the entry of the decree, a  
25

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1 certified copy of the decree shall be filed in the termination  
2 proceeding."

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

5 "§578-15 Secrecy of proceedings and records. The records  
6 in adoption proceedings, after the petition is filed and prior to  
7 the entry of the decree, shall be open to inspection only by the  
8 parties or their attorneys, the director of human services or the  
9 director's agent, or by any proper person on a showing of good  
10 cause therefor, upon order of the court. Except in the case of  
11 an individual being adopted by a person married to the legal  
12 father or mother of such individual, or unless authorized by the  
13 court, no petition for adoption shall set forth the name of the  
14 individual sought to be adopted or the name of either of the  
15 parents of the individual; provided that the legal name of the  
16 individual and the name of each of the individual's legal parents  
17 may be added to the petition by amendment during the course of  
18 the hearing thereof and shall be included in the decree. The  
19 hearing of the petition shall be in chambers and shall not be  
20 open to the public. Upon the entry of the decree, or upon the  
21 later effective date of the decree, or upon the dismissal or  
22 discontinuance or other final disposition of the petition, the  
23 clerk of the court shall seal all records in the proceedings;  
24 provided that upon the written request of the petitioner or  
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1 petitioners, the court may waive the requirement that such  
2 records be sealed. The seal shall not be broken and the records  
3 shall not be inspected by any person, including the parties to  
4 the proceedings, except for the limited purposes of and in  
5 compliance with 578-16 or upon order of the family court.

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

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

12 "§578-16 Medical Information of Natural Parents. Where an  
13 adopted child seeks medical information of the natural parents in  
14 order to determine his or her potential genetic or other diseases  
15 or afflictions, whether physical or mental, he or she shall  
16 petition a licensed physician who shall file a request with the  
17 department of health.

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

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

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

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

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

20       §52-19 Department rules and regulations. In each county of  
21       this state, the police department shall establish rules and  
22       regulations pertaining to its administration, operations,  
23       functions and services which are not matters under the rulemaking  
24       authority of the police commission. The requirement does not  
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1 apply to the police functions of criminal investigations prior to  
2 indictment. The rules and regulations required herein shall be  
3 open to public inspection.

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

6 "§52-62 General powers of the commission. The police  
7 commission shall hold regular public meetings at a designated  
8 time and place. The commission shall elect its chairman, and a  
9 majority shall constitute a quorum for the transaction of  
10 business; provided that a vote of three members shall be  
11 necessary to validate the appointment or removal of the chief of  
12 police. In the absence of the chairman the remaining members  
13 shall elect an acting chairman. The commission shall adopt rules  
14 pursuant to Chapter 91 which may be necessary for the conduct of  
15 its business and regulation of the matters herein committed to  
16 its charge."

17 SECTION 13. If any provision of this Act or its application  
18 to any person or circumstance is held invalid, the invalidity  
19 does not affect other provisions or applications of the Act which  
20 shall be given effect without the invalid provision or  
21 application, and to this end the provisions of this Act are  
22 severable.

23 SECTION 14. Statutory material to be repealed is bracketed.  
24 New statutory material is underscored.

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1           SECTION 15. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$300,000, or so much  
3 thereof as may be necessary for fiscal year 1988-1989, for the  
4 office of information practice.

5           SECTION 16. The sum appropriated shall be expended by the  
6 office of the governor for the purposes of this Act.

7           SECTION 17. Part IV of Section 1 of this Act shall take  
8 effect on July 1, 1988. Parts I-III of Section 1 of this Act  
9 shall take effect on July 1, 1989. Sections 2 and 3 shall take  
10 effect on July 1, 1989. All other sections of this Act shall  
11 take effect on its approval.