

THE SENATE
FIFTEENTH LEGISLATURE, 1989
STATE OF HAWAII

S.B. NO.

1799
S.D. 1
H.D. 1

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

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

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

18 (3) That the administrative appeal to the office of
19 information practices, therefore, should be an informal dispute
20 resolution procedure, in the nature of an arbitration, for
21 example, and should be specifically exempt from the contested

1 case definition and requirements under chapter 91, Hawaii Revised
2 Statutes.

3 The purpose of this Act is to clarify the existing language
4 of chapter 92F, Hawaii Revised Statutes, by making substantive
5 and procedural amendments in order to better reflect the
6 legislative intent and ensure smooth implementation of the law.

7 SECTION 2. Chapter 92F, Hawaii Revised Statutes, is amended
8 by adding a new section to read as follows:

9 "§92F-14.5 Alternative methods to appeal denial of access.

10 (a) When an agency denies a person access to a government
11 record, the person may appeal the agency denial by exercising the
12 option of either appealing to the office of information practices
13 or appealing directly to the circuit court. A person may,
14 therefore, appeal directly to the circuit court without having to
15 exhaust the optional administrative remedy of review by the
16 office of information practices.

17 (b) A decision to first appeal to the office of information
18 practices for review of the agency denial shall not prejudice the
19 person's right to appeal to the circuit court after a decision is
20 made by the office of information practices. A direct appeal to
21 circuit court from the agency denial, however, prevents any later
22 appeal to the office of information practices."

23 SECTION 3. Chapter 92F, Hawaii Revised Statutes, is amended
24 by adding a new section to read as follows:

1 "§92F-14.6 Appeal to office of information practices. (a)
2 Any person who has been denied access to a government record may
3 appeal to the office of information practices not later than
4 ninety days after notification of the denial in accordance with
5 rules adopted pursuant to section 92F-42(a)(12).

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

13 SECTION 4. Chapter 92F, Hawaii Revised Statutes, is amended
14 by adding a new section to read as follows:

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

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

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

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

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

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

16 "~~[[~~\$92F-18~~]]~~ Agency implementation. (a) Each agency
17 shall:

- 18 (1) Issue instructions and guidelines necessary to
19 effectuate this chapter; and
20 (2) Take steps to assure that all its employees and
21 officers responsible for the collection, maintenance,
22 use, and dissemination of government records are
23 informed of the requirements of this chapter.

24 (b) Each agency shall compile a public report describing

1 the records it routinely uses or maintains[.] using
2 forms prescribed by the office of information
3 practices. The public reports shall be filed with the
4 office of information practices [and] on or before July
5 1, 1991, provided that each agency shall have filed
6 twenty-five per cent of its forms on or before
7 September 30, 1990, fifty per cent on or before
8 December 31, 1990, seventy-five per cent on or before
9 March 31, 1991 and one hundred per cent on or before
10 July 1, 1991. The public reports shall include:

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

- 1 (A) Another agency; or
- 2 (B) A person other than an agency;
- 3 (9) The policies and practices of the agency regarding
- 4 storage, retrievability, access controls, retentions,
- 5 and disposal of the information maintained in records;
- 6 (10) The title, business address, and business telephone
- 7 number of the agency officer or officers responsible
- 8 for the records;
- 9 (11) The agency procedures whereby an individual may request
- 10 access to records; and
- 11 (12) The number of written requests for access within the
- 12 preceding year, the number denied, the number of
- 13 lawsuits initiated against the agency under this part,
- 14 and the number of suits in which access was granted.
- 15 (c) Each agency shall supplement or amend the public report
- 16 filed pursuant to this section or file a new report, on or before
- 17 July 1 of each subsequent year, to ensure that the information
- 18 remains accurate and complete. The agency shall file the
- 19 supplemental, amended, or new report with the office of
- 20 information practices, which shall make the reports available for
- 21 public inspection."

22 SECTION 7. Section 92F-25, Hawaii Revised Statutes, is

23 amended to read as follows:

24 "[[]\$92F-25[[]] Access and correction;] Correction and

1 amendment; review procedures. (a) Not later than thirty
2 business days after receipt of a request for review of an agency
3 refusal to allow [access to, or] correction or amendment of[,] a
4 personal record, the agency shall make a final determination.

5 (b) If the agency refuses upon final determination to allow
6 [access to, or] correction or amendment of[,] a personal record,
7 the agency shall so state in writing and:

- 8 (1) Permit, whenever appropriate, the individual to file in
9 the record a concise statement setting forth the
10 reasons for the individual's disagreement with the
11 refusal of the agency to correct or amend it; and
12 (2) Notify the individual of the applicable procedures for
13 obtaining appropriate judicial remedy."

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

16 "[~~§~~92F-26~~§~~] Rules. [Each agency] The office of
17 information practices shall adopt rules, under chapter 91,
18 establishing procedures necessary to implement or administer this
19 part[.]

20 Such procedures and rules, subject to the direction of and
21 review by the attorney general in the case of state agencies and
22 by the corporation counsel or county attorney of each county in
23 the case of county agencies, shall be uniform, insofar as
24 practicable, respectively, among state agencies and among the

1 county agencies of each county.], which the agencies shall adopt,
2 insofar as practicable, in order to ensure uniformity among state
3 and county agencies."

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

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

15 (b) In any action brought under this section the court may
16 order the agency to correct or amend the complainant's personal
17 record, to require any other agency action, or to enjoin such
18 agency from improper actions as the court may deem necessary and
19 appropriate to render substantial relief.

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

24 (1) Actual damages sustained by the complainant as a result

1 of the failure of the agency to properly maintain the
2 personal record, but in no case shall a complainant
3 (individual) entitled to recovery receive less than the
4 sum of \$1,000; and

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

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

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

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

24 SECTION 10. Section 92F-41, Hawaii Revised Statutes, is

1 amended by amending subsection (a) to read as follows:

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

5 SECTION 11. Section 92F-42, Hawaii Revised Statutes, is
6 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 agency
11 denial of access to information or records, or an
12 agency's granting of access; provided that any review
13 by the office of information practices shall not be a
14 contested case under chapter 91 and shall be optional
15 and without prejudice to rights of judicial enforcement
16 available under this chapter;

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

21 (3) Upon request by any person, may provide advisory
22 opinions or other information regarding that person's
23 rights and the functions and responsibilities of
24 agencies under this chapter;

- 1 (4) May conduct inquiries regarding compliance by an agency
2 and investigate possible violations by any agency;
- 3 (5) May examine the records of any agency for the purpose
4 of paragraph (4) and seek to enforce that power in the
5 courts of this State;
- 6 (6) May recommend disciplinary action or criminal
7 prosecution to appropriate officers of an agency;
- 8 (7) Shall report annually to the governor and the state
9 legislature on the activities and findings of the
10 office of information practices, including
11 recommendations for legislative changes;
- 12 (8) Shall receive complaints from and actively solicit the
13 comments of the public regarding the implementation of
14 this chapter;
- 15 (9) Shall review the official acts, records, policies, and
16 procedures of each agency;
- 17 (10) Shall assist agencies in complying with the provisions
18 of this chapter;
- 19 (11) Shall inform the public of the following rights of an
20 individual and the procedures for exercising them:
- 21 (A) The right of access to records pertaining to the
22 individual;
- 23 (B) The right to obtain a copy of records pertaining
24 to the individual;
- 25 (C) The right to know the purposes for which records

- 1 pertaining to the individual are kept;
- 2 (D) The right to be informed of the uses and
- 3 disclosures of records pertaining to the
- 4 individual;
- 5 (E) The right to correct or amend records pertaining
- 6 to the individual; and
- 7 (F) The individual's right to place a statement in a
- 8 record pertaining to that individual;
- 9 (12) Shall adopt rules that set forth an [internal]
- 10 administrative appeals structure which provides for (A)
- 11 agency procedures for processing records requests; (B)
- 12 a direct appeal from the division maintaining the
- 13 record; and (C) time limits for action by agencies;
- 14 (13) Shall adopt rules that set forth the fees and other
- 15 [changes] charges that may be imposed for searching,
- 16 reviewing, or segregating disclosable records, as well
- 17 as to provide for a waiver of such fees when the public
- 18 interest would be served;
- 19 (14) Shall adopt rules which set forth uniform standards for
- 20 the records collection practices of agencies; [and]
- 21 (15) Shall adopt rules that set forth uniform standards for
- 22 disclosure of records for research purposes, which
- 23 agencies shall adopt, insofar as practicable;
- 24 [(15)] (16) Shall have standing to appear in cases

1 where the provisions of this chapter are called into
2 question[.]; and

3 (17) Shall adopt, amend, or repeal rules pursuant to chapter
4 91 necessary for the purposes of this chapter."

5 SECTION 12. Statutory material to be repealed is bracketed.
6 New statutory material is underscored.

7 SECTION 13. This Act shall take effect upon its approval.