

THE SENATE
FIFTEENTH LEGISLATURE, 1989
STATE OF HAWAII

S.B. NO.

1799
S.D. 1
H.D. 1
C.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. Chapter 92F, Hawaii Revised Statutes, is amended
2 by adding a new section to read as follows:

3 "§92F-15.5 Alternative method to appeal a denial of access.

4 (a) When an agency denies a person access to a government
5 record, the person may appeal the denial to the office of
6 information practices in accordance with rules adopted pursuant
7 to section 92F-42(12). A decision to appeal to the office of
8 information practices for review of the agency denial shall not
9 prejudice the person's right to appeal to the circuit court after
10 a decision is made by the office of information practices.

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

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

3 "§92F-27.5 Alternative method to appeal a denial of access.

4 (a) When an agency denies an individual access to that
5 individual's personal record, the individual may appeal the
6 denial to the office of information practices in accordance with
7 rules adopted pursuant to section 92F-42(12). A decision to
8 appeal to the office of information practices for review of the
9 agency denial shall not prejudice the individual's right to
10 appeal to the circuit court after a decision is made by the
11 office of information practices.

12 (b) If the decision is to disclose, the office of
13 information practices shall notify the individual and the agency,
14 and the agency shall make the record available. If the denial of
15 access is upheld, in whole or in part, the office of information
16 practices shall, in writing, notify the individual of the
17 decision, the reasons for the decision, and the right to bring a
18 judicial action under section 92F-27."

19 SECTION 3. Section 92F-15, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) A person aggrieved by a denial of access to a
22 government record may bring an action against the agency at any
23 time within two years after the agency denial to compel
24 disclosure."

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1 SECTION 4. Section 92F-18, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[[§92F-18]] **Agency implementation.** (a) Each agency
4 shall:

- 5 (1) Issue instructions and guidelines necessary to
6 effectuate this chapter; and
7 (2) Take steps to assure that all its employees and
8 officers responsible for the collection, maintenance,
9 use, and dissemination of government records are
10 informed of the requirements of this chapter.

11 (b) Each agency shall compile a public report describing
12 the records it routinely uses or maintains[.] using forms
13 prescribed by the office of information practices. The public
14 reports shall be filed with the office of information practices
15 [and] on or before July 1, 1991. The public reports shall
16 include:

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

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1 (6) The categories of uses and disclosures made of the
2 records;

3 (7) The agencies and categories of persons outside of the
4 agency which routinely use the records;

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

7 (A) Another agency; or

8 (B) A person other than an agency;

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

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

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

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

21 (c) Each agency shall supplement or amend its public
22 report, or file a new report, on or before July 1 of each
23 subsequent year, to ensure that the information remains accurate

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1 and complete. Each agency shall file the supplemental, amended,
2 or new report with the office of information practices, which
3 shall make the reports available for public inspection."

4 SECTION 5. Chapter 92F, Hawaii Revised Statutes, is amended
5 by amending the title of Part III to read:

6 "PART III. DISCLOSURE [OR] OF PERSONAL RECORDS"

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

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

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

17 (1) Permit, whenever appropriate, the individual to file in
18 the record a concise statement setting forth the
19 reasons for the individual's disagreement with the
20 refusal of the agency to correct or amend it; and
21 (2) Notify the individual of the applicable procedures for
22 obtaining appropriate judicial remedy."

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1 SECTION 7. Section 92F-26, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[[§92F-26]] Rules. [Each agency] The office of
4 information practices shall adopt rules, under chapter 91,
5 establishing procedures necessary to implement or administer this
6 part[.

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

15 SECTION 8. Section 92F-27, Hawaii Revised Statutes, is
16 amended by amending subsection (e) to read as follows:

17 "(e) An action may be brought in the circuit court where
18 the complainant resides, the complainant's principal place of
19 business is situated, or the complainant's relevant personal
20 record is situated. No action shall be brought later than two
21 years after [the date of the cause of action, which shall be the
22 date of the last written communication to the agency requesting
23 compliance.] notification of the agency denial, or where
24 applicable, the date of receipt of the final determination of the
25 office of information practices."

1 SECTION 9. Section 92F-41, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

6 SECTION 10. Section 92F-42, Hawaii Revised Statutes, is
7 amended to read as follows:

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

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

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

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

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- 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 to appropriate
7 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

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

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1 (15) Shall adopt rules that set forth uniform standards for
2 disclosure of records for research purposes;

3 ~~[(15)]~~ (16) Shall have standing to appear in cases
4 where the provisions of this chapter are called into
5 question[.]; and

6 (17) Shall adopt, amend, or repeal rules pursuant to chapter
7 91 necessary for the purposes of this chapter."

8 SECTION 11. Each agency, as defined in Chapter 92F, Hawaii
9 Revised Statutes, shall file its public report describing the
10 records it routinely uses or maintains, in accordance with
11 section 92F-18, Hawaii Revised Statutes; provided that each
12 agency shall have filed with the office of information practices
13 twenty-five per cent of its public report forms on or before
14 September 30, 1990, fifty per cent on or before December 31,
15 1990, seventy-five per cent on or before March 31, 1991 and one
16 hundred per cent on or before July 1, 1991.

17 SECTION 12. Statutory material to be repealed is bracketed.
18 New statutory material is underscored.

19 SECTION 13. This Act shall take effect on July 1, 1989.