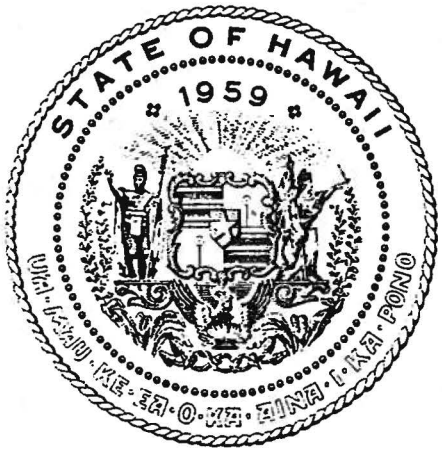

Report of the Governor's Committee on Public Records and Privacy

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Volume I
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Report of the Governor's Committee on
Public Records and Privacy

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

Public access to government records ... the confidential treatment of personal information provided to or maintained by the government ... access to information about oneself being kept by the government. These are issues which have been the subject of increasing debate over the years. And well such issues should be debated as few go more to the heart of our democracy.

We define our democracy as a government of the people. And a government of the people must be accessible to the people. In a democracy, citizens must be able to understand what is occurring within their government in order to participate in the process of governing. Of equal importance, citizens must believe their government to be accessible if they are to continue to place their faith in that government whether or not they choose to actively participate in its processes.

And while every government collects and maintains information about its citizens, a democratic government should collect only necessary information, should not use the information as a "weapon" against those citizens, and should correct any incorrect information. These have become even more critical needs with the development of large-scale data processing systems capable of handling tremendous volumes of information about the citizens of this democracy.

In sum, the laws pertaining to government information and records are at the core of our democratic form of government. These laws are at once a reflection of, and a foundation of, our way of life. These are laws which must always be kept strong through periodic review and revision.

Hawaii has adopted a set of statutes which are intended to address the issues surrounding government records. There is a statute which sets forth a broad public right of access to records (Section 92-50, et. seq., Hawaii Revised Statutes ("HRS")). There is a statute which protects the privacy of individuals about whom information is kept and which allows that information to be corrected (Chapter 92E, HRS). And there are a host of statutes which control access to specific records (For a list of such statutes, see Appendix D.) In spite of all of these enactments, however, the resulting state of the law leaves much to be desired.

Hawaii's current law has operated to keep most records which involve an individual confidential. It has, however, not done so through a balancing test which weighs competing interests but rather by the unintended interplay between statutes (Chapters 92 and 92E) written at different times for different purposes and without regard for each other. The results leave everyone involved (the public, the media, and government officials) uncertain as to the effect of the law in any particular instance and unlikely to agree on the interpretations made in specific cases. Repeated efforts to address this subject at the Legislature have produced little agreement or progress in resolving the dispute.

It was against this backdrop that in February 1987 Governor John Waihee appointed a Committee to review Hawaii's laws pertaining to records.

The Governor named the following members to the Ad Hoc Committee on Public Records and Privacy Laws:

* Robert Alm (Chairman), Director of Department of Commerce and Consumer Affairs.

* Dwane Brenneman, Vice-President and General Manager of Nissan Hawaii, and, Chairman of the Motor Vehicle Industry Board.

* Andrew Chang, Manager of Governmental Relations at Hawaiian Electric, and, formerly Managing Director of the City and County of Honolulu.

* David Dezzani, Esq., a partner in the law firm of Goodsill, Anderson, Quinn and Stiefel.

* Ian Lind, Coordinator of the Institute for Peace at the University of Hawaii, and, formerly Executive Director of Common Cause of Hawaii.

* Jim McCoy, News Editor and Assignment Editor at KHON-TV.

* Stirling Morita, Honolulu Star-Bulletin Reporter, and, President of the Hawaii Committee for Freedom of the Press.

* Justice Frank Padgett, Associate Justice of the Hawaii Supreme Court.

* Warren Price, III, Esq., Attorney General.

The group, while not intended to include all those who had expertise in this area, clearly brought to the Committee's work a wide variety of experiences and perspectives on government records.

The Governor charged the Committee to review the current law and the implementation of that law, to solicit public comment, to review alternatives to the current law, and to report back the findings of this work. With this mission, the Committee began its work.

The Committee intended that its activities and working style comply with the letter and spirit of the Sunshine Law. Agendas for meetings were filed with the Lt. Governor's Office and posted in accordance with Chapter 92, HRS. Meetings were open to the public. Minutes were kept. And copies of the materials that the Committee worked with were made available to interested parties.

The Committee, at its initial meeting, made a decision to begin its work by seeking the widest possible comment on this subject. This was done by running a series of newspaper ads seeking public comments and by holding public hearings on all islands (except Niihau and Kahoolawe). These hearings and calls for comment resulted in the submission of over 800 pages of materials. This amount of information, which substantially exceeded everyone's expectations, made the Committee's task of identifying issues much easier though the amount made its work much more time-consuming and detailed.

Based on the submissions, two aspects of the Committee's work were substantially clarified. First, there were only three alternative structures for a comprehensive records law presented: the current combination of Chapters 92 and 92E and the various specific records provisions; the three Uniform Acts recommended by the National Conference of Commissioners on Uniform State Laws (Information Practices Code, Health-Care Information Act, and Criminal History Records Act); and, the Federal Freedom of Information Act and Privacy Act. Chapters 2 through 4 will therefore contain a description of, and comments about, each of these three alternative statutory schemes.

The second aspect that was made very clear was the substantial number of issues and problem areas that were of concern to the public. These issues were in fact of such concern that the public felt they deserved to be separately addressed in any discussion of changes to the law in this area.

The raising of dozens and dozens of issues and problems challenged the Committee to find a way to present this array in a manner which gives each adequate explanation to each and yet still encourages addressing as many as possible by not making the task seem overwhelming.

One issue which deserves separate discussion is the "Privacy" provision of the Hawaii State Constitution. This provision, which was recommended by the 1978 Constitutional Convention and subsequently ratified, is the impetus for the adoption of Chapter 92E, HRS, and thus might be regarded as a source for many of the current problems. Allison Lynde, Esq., formerly with the William S. Richardson School of Law, and currently in private practice, has been researching the privacy provision and the intent behind it. In order to place that provision in its proper context for purposes of the Committee's work, Mr. Lynde submitted a paper on the subject which is incorporated as Chapter 5.

Chapter 6 is the presentation of the issues raised during the course of the Committee's work. In each case, the discussion includes the following items:

* A description of the issue, problem or concern;

* A citation to the record if the issue was raised at a public hearing or in submitted comments. In this context, however, it should be noted that committee members and interested parties were encouraged to supplement the record with issues which for some reason were not raised at the hearings or in the comments. Some discussion therefore occurs without citation to the record;

* Specific examples of the issues, where an example was available and where its use would assist understanding of the matter raised;

* The handling of the issue under current Hawaii law;

* The competing interests involved in balancing public access and privacy (or other countervailing considerations) with respect to any particular record. This is the core of the Committee's work and the center of any debate on records. For each issue, concern or problem, what is set forth is an objective discussion of the interests which should be balanced or weighed in making a decision on that issue. Viewed another way, this discussion

focuses on what interests are served and what interests are disserved by the way a particular record is handled. This section does not attempt to arrive at a particular conclusion but rather strives to provide a full discussion upon which the public policy decisions can ultimately be made.

There are then to be no ultimate conclusions to this report. This is, however, fitting because it is not the Committee's role to provide the final answers, but instead to provide the factual foundation and policy discussion that must underlie sound decision making. This the Committee believes firmly that it has done.

This report, however, does not stop with this volume. As noted earlier, it is the primary mission of the Committee to provide the fullest possible record for use by the Legislature and others. Therefore, while the issues are all summarized and discussed in this volume, the Committee is incorporating all of the information it received into the official record.

The appendices to this report are contained in four volumes. Volume I contains the following material:

* Appendix A: The "Privacy" Provision of the Hawaii Constitution (Art. I, Sec. 6).

* Appendix B: Chapter 92, Part V, Hawaii Revised Statutes (Public Records).

* Appendix C: Chapter 92E, Hawaii Revised Statutes (Fair Information Practice (Confidentiality of Personal Record)).

* Appendix D: Lists of Specific Hawaii Revised Statutes Provisions on Public Records, Confidentiality and Penalty.

* Appendix E: The Uniform Laws.

* Appendix F: The Freedom of Information and Privacy Acts.

* Appendix G: Notices of Public Hearings and the Calls for Comment.

* Appendix H: Minutes of the Public Hearings which are <u>the</u> record for all oral testimony.

* Appendix I: Agenda and minutes of the Committee's meetings.

Volumes II and III contain the following material:

* Appendix J: Complete set of written testimony and comments submitted.

Volume IV contains the following material:

* Appendix K: The reprinting and updating of "Sunshine Law Opinions," a review of court decisions, attorney general opinions, and corporation counsel opinions on public records (and meetings) issues prepared by Ian Lind.

* Appendix L: Reprints of all newspaper articles appearing since 1976 on the subjects of public records and privacy.

  This material provides a cross-check on the completeness of the record in terms of raising all of the significant issues.

* Appendix M: Miscellaneous articles submitted to the Committee for review.

And finally, the Committee would like to acknowledge the great assistance provided by a number of individuals to the Committee's work. Without their efforts, this report would simply not have been possible. In particular, the Committee acknowledges the work of its Staff Attorney Matthew Chung. The Committee also acknowledges the substantial contributions of its volunteer researcher Lisa Fukuda. And the Committee acknowledges the assistance of Karen Hirota and Chiyeko Takitani in taking minutes, typing drafts, proofreading, and preparing the final report.

The Committee also appreciates the efforts of the Legislative Information Systems Office, especially Dwight Kagawa, in creating the data base used to develop Appendix D's list of Statutes.

CHAPTER 2

CURRENT HAWAII LAW

As was discussed earlier, there were three basic structures suggested for Hawaii's records law; the current law, the federal law, and the uniform acts. Of the three, the first, and the most obvious choice, is simply to maintain the status quo--to retain the present law.

Current Hawaii law is essentially a patchwork of many laws. The statutes with the broadest impact are Chapter 92, Part V, HRS ("Public Records"), and Chapter 92E, HRS ("Fair Information Practice (Confidentiality of Personal Record)"). These two will be described in detail below along with a discussion of relevant case law and Attorney General Opinions. (In addition, Appendix K contains a more detailed discussion of court decisions, Attorney General opinions, and corporation counsel opinions.)

The remaining portion of current Hawaii law, and the portion which is most often overlooked, are the statutes pertaining to a particular record about which a specific decision on its treatment has been made by the Legislature. Whereas Chapters 92 and 92E are essentially general statutes which apply broadly to all records, this portion concerns specific records only.

Individual Records Statutes

Appendix D contains the full list of the statutes involved along with a brief description of the particular record involved. Because the list is so extensive, it is important to discuss the creation of this list of applicable statutes. To the Committee's knowledge, this is the first time that such a list has been created, and it should prove to be a good data base for long-term efforts to resolve records issues.

A search of the general index of the Hawaii statutes appeared as the most obvious method for locating the specific statutory provisions. The difficulty, however, is that the design of the index does not provide a complete answer to our question: what statutes make what records either open or closed to the public?

For example, a search for the word "confidential" in the HRS general index and its 1986 supplement reveals 48 statutes under the words "confidential information." Another search for the words "public inspection" lists some 20 statutes in the index. While the combined list of 68 statutes for the two-word sets appear large, our researchers desired a way to

cross check this list, and other lists of selected key words, such as "public records," "personal records," and "disclosure," to name a few, without having to literally read every section of the 12 volumes of HRS.

Fortunately, the Legislative Reference Bureau ("LRB") recently created a computerized information system, known as "Ho'ike." The Ho'ike System provides ready access into numerous data bases that include the status of bills and resolutions through the Hawaii Legislature, reference material in the LRB library and other Oahu based government libraries, as well as the 12 volumes of HRS, and the latest Session Laws of Hawaii. For example, a search for the word "confidential" in the HRS data base, revealed 96 documents. Each document represents a distinct statute section. When the user expands the search to include derivatives of the word "confidential," such as "confidentiality," the number of documents increased to 125. A search for the words "public inspection" reveals 58 separate documents. This contrasts to the 20 statutes listed in the HRS general index and supplement.

Through the use of more than 30 different word combinations that produced sets of documents for each word search in a sequence exclusive of those documents appearing in prior searches, our staff uncovered and reviewed more than 2,200 separate statute sections. (The actual total is larger because in many cases, the specific statute operated on records described elsewhere in the statute's chapter.) The staff reviewed each statute for any content that would answer the pertinent question, that is, whether a record is open or closed to the public. The specific lists in this report thus reflect statutes gleaned from the original list of more than 2,200 sections.

Appendix D contains the lists produced by this search in the form of three exhibits. Exhibit 1 lists those statutes which contain an explicit reference to "public records" or which discuss records in terms which bring them within the general definition of "public records" in Section 92-50, HRS. This list also includes those statutes which make a record "open to public inspection" or "available for public inspection," or which direct the government to "furnish, supply, or give to any person on request" the record sought. Also included are statutes labeling a record as "public document" or "public information."

Exhibit 2 lists those statutes that treat a record, document or type of information as explicitly "confidential" or "not open to public inspection." This list also includes any other key word combinations that prohibit or prevent public disclosure of information.

The final list, Exhibit 3, contains those statutes that presently impose either civil or criminal penalties for the unauthorized disclosure of confidential information or penalize a failure to disclose public information.

Public Records (Ch. 92, Part V)

In Hawaii, a "public record" is any written or printed report, book or paper, map or plan of the State or County, and their respective subdivisions and boards, which is their property or which any public servant received for filing. This includes any information contained or made thereon. Hawaii Revised Statutes ("HRS") Section 92-50. For example, a public record includes the transcript of an agency hearing. Attorney General's Opinion ("AG.Op.") No. 64-4*. And the registration statements and applications of charitable organizations, their reports, professional fund-raising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed with the Department of Commerce and Consumer Affairs are also public records. HRS Section 467B-8. For a list of records that are "public," subject to "disclosure," or otherwise "open to public inspection" under Hawaii law, see, Exhibit 1 of Appendix D.

Excluded, however, are records which invade the right of privacy of an individual. HRS Section 92-50. For example, a "public record" does not include personal information on a license application or license. A list of license holders, however, may be released. AG.Op. No. 85-23 . See also AG.Op.Nos. 84-13 (no release of home addresses and telephone numbers, but release of roster naming licensees allowed), and 75-7 (motion picture license application not public record, and not subject to inspection or review).

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* There was discussion within the Committee about the weight that should be accorded to these opinions. It is very clear that they have no binding effect on the Judiciary and that the weight they are given by the Courts depends primarily on their own merit. At the same time, the opinions have a largely binding effect on the executive branch. And since it is the executive branch that implements these laws, these opinions are of substantial importance to the Committee's work.

All "public records" are available for public inspection, except where the inspection violates some other state or federal law. This unavailability also applies to records that do not relate to a law violation and are deemed necessary to protect a person's character or reputation except where the records are open by rule of court. The Attorney General and the county counterparts may also refuse public inspection when the records are pertinent to the preparation of the prosecution or defense of any action by or against the state (or county) before its commencement. HRS Section 92-51.

Any person denied an inspection or copy of the record sought may petition the circuit court for an order granting access to the record, but only on a finding that the denial lacked just or proper cause. HRS Section 92-51. These records may also be discoverable as there is no absolute privilege (against disclosure) of governmental reports absent the creation of a specific statutory privilege. Tighe v. City & County, 55 Haw 420 (1974).

Prior to the enactment of HRS Chapter 92E in 1980, a 1976 legal opinion found five categories of public records that appeared exempt from public inspection when reading Sections 92-50 and 92-51 together:

(1) Records which invade the privacy right of individuals;

(2) Records beyond inspection under Federal law;

(3) Records retained by the Attorney General for a case;

(4) Records unrelated to a law violation and withheld to protect a person's character and reputation;

(5) Records beyond inspection under any other state law.

AG.Op.No. 76-3; see also, AG.Op.No. 86-16 (Specific disclosure statute, HRS Chapter 343D, intending public inspection of financial statements overrides general privacy statute prohibiting inspection.) For a list of public records which are "confidential," or "personal" or otherwise not open to public inspection, see, Exhibit 2 of Appendix D.

Personal Records (Ch. 92E)

The other side of the "public record" coin is individual privacy. Article VI, Section I, of the Hawaii Constitution provides that "[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right."

In 1980, the Hawaii legislature enacted H.B. No. 501 as Act 226, 1980 Haw. Sess. Laws 378, "to implement in part the 1978 amendment to the Hawaii State Constitution ... relating to the right to privacy." Id. at 378. Act 226 is now codified as HRS Chapter 92E, entitled "Fair Information Practice (Confidentiality of Personal Record)."

Chapter 92E created new twists to what appeared previously within the domain of a "public record," as defined in HRS Section 92-50. It does so by providing protection for a "personal record," which is defined as an individual's item, collection or information group maintained by any state or local agency. HRS Section 92E-1.

An "individual" is a natural person, id., and therefore corporations, partnerships, associations, cooperatives, or other similar entities are not covered by the law.

The term "agency" includes any public servant or entity, that is, an employee, officer, department, board or agency of the executive branch only. Excluded from the definition is the legislature, the city councils in the counties, and their respective employees and entities. Also excluded is the Judiciary branch of state government, its officers, employees and entities. HRS Section 92E-1(2).

Information within the definition of "personal record" has been interpreted to include, among other things, a person's educational, financial, medical or employment history, or references to the person's name, an identifying number, mark or symbol, or particulars assigned or unique to the person, such as his finger, a voice print, or photograph. A "personal" record includes a "public record" as defined under Section 92-50. HRS Section 92E-1(3). Recent legal opinions found personal records to also include such things as (1) home addresses and phone numbers, AG.Op.No. 84-13; (2) address, sex, birth date and physical features, AG.Op.No. 85-23; (3) racial ancestry or ethnicity, AG.Op.No. 84-14; "vital statistic" records, such as birth, death, marriage and divorce certificates and others created and maintained under HRS Chapter 338, AG.Op.No. 84-14.

Chapter 92E has been interpreted to "limit" access to and disclosure of records which contain "personal record." This is the area that committee members felt needed the greatest change. Both committee members and those who commented such as Hawaii County Deputy Corporation Counsel John Wagner (I(H) at 23-26)** urged that personal records should be limited to those in which there is a "reasonable expectation of privacy" such as those relating to highly intimate personal details. This may involve fleshing out the concept of personal privacy to determine what areas really should be private. It would remove the need, as one committee member put it, for agencies to act as "censors" by limiting their role in judging public value versus intrusion into personal privacy.

There is, however, a much different view that can be taken of this matter. It was raised by a committee member and in this view, the problem is not the definition of "personal record." That definition needs to be broad since it is what determines which records an individual has the right to review and correct, and that right is vital. In lieu of changing that definition, this view is that the addition of a good balancing test is what is needed. This will provide the public access but will do so without undermining the ability to review and correct records.

The current interpretation of the interplay between "personal record" and "public record," as well as the breadth to be given to the term "personal record" are currently pending before the Hawaii Supreme Court. The case is Painting Industry of Hawaii Market Recovery Fund v. Alm, S.C. No. 12094, and if the case is decided prior to the final preparation of this report, a discussion of the result will be added to this Chapter.*** For a complete set of the briefs and memoranda in this case, see the attachments to the testimony of the Director of Commerce and Consumer Affairs (III at 1).

In this context, it should be noted that there was also testimony to the effect that the problem is not the law at all, but rather that the interpretation of that law is the problem. Michael Lilly (I(H) at 33-35), Beverly Keever (II at 355; III at 338 and I(H) at 44-46), and Representative Rod Tam (II at 7 and I(H) at 53-54) all indicated their belief that the current law is being interpreted in too narrow a manner. In their view, a reinterpretation of current law could resolve all or most of the problem.

** For an explanation of the notation system, see Chapter 6 in this Volume at 60.

*** The decision was issued on December 3, 1987 and a discussion of the opinion is added to the end of this chapter.

Under the current law, if the record involved is determined to be personal record, an agency may not disclose by any means personal record information unless the disclosure is: (1) to the individual to whom the record pertains or his authorized agent, see, Section 92E-3; (2) information gathered and held to specifically create a record available to the general public; (3) pursuant to a statute of Hawaii or the federal government authorizing the disclosure; or (4) pursuant to a demonstration of compelling circumstances affecting the health or safety of any individual. HRS Section 92E-4.

The chapter also limits disclosure to any other agencies of a personal record except where the disclosure is (1) compatible with the purpose for collecting or obtaining the information; (2) consistent with the provider's expectation of use and disclosure that promoted the use or disclosure; (3) reasonably appears proper for the performance of the requesting agencies' duties and functions; (4) to state archives for the purposes of preservation, maintenance or destruction; (5) to an agency or instrumentality of any government within or under United States control or an authorized treaty or statute, for a civil/criminal law enforcement investigation; (6) to the legislature, or its committees; (7) pursuant to court order; or (8) to authorized officials of the federal government that audits or monitors a local agency program receiving federal money. HRS Section 92E-5. Federal agencies, however, are not considered within the "agencies" who may obtain personal records, HRS Section 92E-5, unless specifically authorized by other law or in law enforcement investigations. HRS Section 92E-5(5); AG.Op.No. 86-14.

The limits on disclosure contained in Chapter 92E, however, do not apply to any information in a personal record when the agency is ordered by a court to produce, disclose or allow access to the record, or through discovery rules or subpoena, or explicit disclosure statutes or rules. HRS Section 92E-13.

The law mandates access to the individual's own personal record in a reasonably prompt manner and intelligible form. Where necessary, the agency shall translate any codes or other abbreviations employed for internal agency use. HRS Section 92E-2.

After receiving a request, the agency shall allow the individual to review his personal record and furnish a copy within 10 or 30 days depending on the circumstances. The agency may obtain the additional 20 days if the individual receives a written explanation of the unusual circumstances causing the delay within the initial 10 working days after the request. HRS Section 92E-6.

The charge for copies of the record may include not only the reproduction cost, but also include certification cost and the costs of transcription (into readable form) and record search. HRS Section 92E-7.

If the record reveals factual errors, misrepresentations or misleading entries, the individual has the right to request a correction or amendment of the record. Within 20 days after receiving such a request, together with supporting evidence, the agency maintaining the record shall acknowledge receipt of the request and evidence and either correct or amend the record, or refuse to do so. In the latter case, the agency shall transmit the decision in writing including reasons for the refusal, and inform the individual of the agency procedures for review of the refusal. HRS Section 92E-8.

This right to review and correct would appear to be straightforward. It can, however, be quite complex. For example, a request to alter an information item on vital records must first be evaluated to determine whether the particular item (to which alteration is sought) is a personal record of the individual making the request. AG.Op.No. 86-14 at 42. Informers, witnesses and investigators or other "sources of information" whose identities may be contained on "personal records" are not the individuals "about" whom the records are maintained. Other information such as the ethnicity of the parents, may be personal records of the parents. Thus a mother may access the birth certificates of her children to "alter" or "correct" her "erroneous" ethnicity. Id. at 37-40. She may not, however, correct the marriage certificate of her parents (through the access or correction provisions of Chapter 92E). Id. at 41.

Individual access is subject to limits, however, and the agency may withhold disclosure of information that is: (1) a record maintained by the agency principally involved in crime prevention or criminal law enforcement, and the information consists of "criminal history record information" pursuant to HRS Section 846-1, or reports prepared compiled for criminal investigation or intelligence purposes, including reports of informers, witnesses and investigators; or other reports prepared during the various stages of a criminal proceeding, from arrest through confinement, correctional supervision and release. HRS Section 92E-3(1). The exemptions and limitations also preclude disclosure that (2) would reveal the source of information furnished to the agency under an express or implied promise of confidentiality; (3) consists of testing or examination material or scoring keys used solely to determine public employment qualifications, and licensing or academic requirements, where disclosure compromises the integrity of the process. HRS Sections 92E-3(2) to -3(5).

Agencies are required to adopt rules implementing the Chapter. HRS Section 92E-10. There was testimony that no agency has adopted such rules. See Beverly Keever (I(H) at 44-46). From the Committee's research, the Departments of Human Services (formerly Social Services and Housing), Labor and Industrial Relations, Education, and Commerce and Consumer Affairs have adopted such rules but the others have not as yet.

An agency who fails to comply with the provisions of Chapter 92E, face civil penalties as provided by Section 92E-11. After exhausting his administrative remedies under Sections 92E-6, -8 and -9, an individual can sue the agency in circuit court. HRS Section 92E-11(a). If the court finds a knowing or intentional violation of the provisions, the court can order compliance or enjoin improper agency action and assess money damages not less than $100.00, court costs and reasonable attorneys fees. If the individual's claim is frivolous, however, the court can assess the fees and costs of the agency against him. HRS Section 92E-11(b), (c) and (d). In any event, the individual has two years from the date of his last written request to the agency for compliance. HRS Section 92E-11(e).

Any agency employee or officer found responsible for a knowing or intentional violation of Chapter 92E or any rules implemented under its provisions may be disciplined by his director, including a suspension or discharge from his job. HRS Section 92E-12.

A final note on Chapter 92E, HRS, was suggested by Hawaii County Deputy Corporation Counsel John Wagner (I(H) at 23-26). As Wagner noted, the privacy provision of the Constitution basically provides that there be no infringement of privacy without a compelling state interest. Arguably Chapter 92E does not involve any showing of compelling state interest in the release of personal record information. The privacy provision will be the subject of discussion in Chapter 5, in this volume. At the same time, as a committee member noted, Chapter 92E is intended to do more than protect privacy. It discloses agency procedures and records. And as noted, it provides disclosure to individuals of records about themselves.

General Discussion

The current law was the subject of almost uniform criticism at the public hearings and in submissions to the Committee. And even the limited defense that it received had more to do with the results in a particular case rather than great satisfaction with the way it functioned.

Among the most critical of the current law are the State and County officials who must implement the current law. Director of Corrections Harold Falk (II at 17) called the law "vague, outdated and in certain areas, confusing." Falk, in particular, noted that electronic data processing requires a better law. Director of Health John Lewin, M.D. (II at 80) finds the current law difficult and believes that there needs to be clear-cut standards. Hawaii County Corporation Counsel Ron Ibarra (II at 137) also found the law confusing. Kauai Mayor Kunimura (II at 144) said that "[w]hat we would like to see is legislative relief from the present conflicting statutes or, alternatively, added protection to our agencies that are left with much discretion in determining which records can be disclosed." And the Director of Commerce and Consumer Affairs (III at 1) stated that "[t]he current public records and privacy laws are the cause of the difficult situation in which we all find ourselves today and there is simply no substitute for a substantial and dramatic revision of those laws."

Non-government witness also felt that change was in order. Beverly Keever (II at 335; III at 338 and I(H) at 44-46), for example, spoke of modernizing the law. And from a different perspective, John Jaeger (II at 353) feels that privacy is routinely violated by reporters, private detectives and others with assistance from State employees. Jaeger wants the law changed to provide controlled access to records with penalties for violating privacy. As Desmond Byrne (II at 317 and I(H) at 57-59) noted, the current situation creates the impression that knowledge, information or records are available only to insiders.

An argument for retention of the current law would, however, have at least two grounds. First, leaving the current law alone has the advantage of predictability. It has been the subject of a number of attorney general and corporation counsel opinions and increasingly of a number of circuit court decisions. As this body of law grows, the results should become more and more predictable to all parties involved. And as predictability is usually seen as a very desirable characteristic in law, the current law arguably should be retained.

Second, to the extent that privacy is seen as a critical need, retention of the current law clearly weighs heavily toward the interests of individual privacy. The current law does not contain a good general balancing test and instead appears to provide that once a record is determined to involve an individual person, the record most likely will be closed. This obviously hurts the other interests involved in access to the information but it clearly does protect individual privacy.

The weaknesses of the current law are manifest and were the subject of much of the testimony heard and the comment received by the Committee.

The most criticized feature of the current law is that it simply is not a cohesive law. Chapters 92 and 92E in particular are in obvious conflict. These two laws were written at different times, for different purposes, and no real effort appears to have been made to properly link them together.

As Gerry Keir (I at 217 and I(H) at 40-44) put it, the great sounding statements in Chapter 92, HRS, are undone by the overly broad definition of "personal records" in Chapter 92E, HRS. In his view, this concern with the personal aspect has been allowed to override other factors such as the fact that the person involved is a public official, that tax dollars are being used or that the public interest in access is substantial in a particular case.

An example of the conflict illustrates the point. Section 92-50 treats almost any information held by the state or county as a "public record." Chapter 92E, on the other hand, prevents disclosure of "personal record" information, such as an individual's financial, medical or employment history, except in limited situations. And by definition, "personal records" also includes "public records." The effect of this is to make public records to some degree a subset of personal records. It leads to the highly debatable result that a "public record" with its attendant rights of access may thus only include "non-personal record information," absent a specific statute requiring disclosure.

The result is that while the testimony suggested and the federal and uniform law formats provide a balancing of interests, Hawaii's law appears (and has thus far been held) to give primacy to personal privacy interests through the operation of Chapter 92E.

(Chairman's Note: As discussed earlier, the Hawaii Supreme Court has had under review a case involving the interpretation of Chapter 92E, HRS. The opinion was handed down just before this report went to the printer and after the Committee members had reviewed the draft chapters. What follows therefore is a brief discussion of the case as well as the chairman's view of its significance.)

On December 3, 1987, the Hawaii Supreme Court issued its opinion in Painting Industry of Hawaii Market Recovery Fund v. Alm, 69 Haw. Advance Sheet No. 12094, P.2d (1987). In essence, the Court held that it takes more than the presence of a person's name to make a record into a "personal record" and thus unavailable for public inspection under Chapter 92E, HRS.

The Supreme Court's opinion, while a brief seven pages, is worth looking at in detail for the analysis the Court used:

1. The Court began by determining whether the record involved (a settlement agreement in a contractor's disciplinary case) was a "public record." Under Section 92-50, HRS, this determination has two parts; (i) whether the record involved is one of the types of records covered by this section, and (ii) whether the record involved invades the right of privacy of an individual.

   The first question was answered in the affirmative as the Court found the settlement agreement was "filed" with the State and was therefore the type of record covered by the section.

   The second question was answered in the negative based on the Court's review of the legislative history of this provision. The Court found that the records which invaded privacy rights were, for example, "examinations, public welfare lists, unemployment compensation lists, application for licenses and other similar records." Essentially the Court held the settlement agreement didn't fit into that category since most of the information was otherwise public and the remaining item simply dealt with whether violations of law had occurred.

(**Comment**: It should be noted that if either question had been answered differently, if either the records had been found not to be public records or if the records invaded the privacy of individuals, the analysis would have stopped and access would have been denied.)

Having determined that the record was a "public record," the Court then turned to the second stage of the analysis.

2. The next step in the Court's analysis was to determine whether the record was a "personal record" under Chapter 92E, HRS. This is a critical question because the Court emphasized in the headnotes that personal records are not subject to public disclosure. See also Sections 92E-4 and 92E-5, HRS.

   The Court began by noting that Chapter 92E is intended to implement the constitutional right of privacy by regulating access to "personal record."

   The Court then turned to two questions in determining whether the settlement agreement was about any person and therefore a personal record: (i) whether the presence of an individual's name makes it a personal record, and (ii) whether personal information is otherwise involved?

   On the first question the Court said that the presence of an individual's name was not enough by itself to make that record one which is about the individual or to make it a "personal record." In so ruling, the Court declined a literal reading of Chapter 92E on the basis that such a reading would be "absurd and unjust."

   On the second question, the Court examined the scope of information which qualifies for protection under the privacy provision. The Court held that records which involve "highly personal and intimate information" were to be protected. In defining that concept, the Court used Chapter 92E's "personal record" definition and the illustrations provided in that law, i.e., medical, financial, educational or employment records. Such records were found not to be involved in this case.

(Comment: As somewhat of an aside, the Court in framing the issue, and in discussing the "personal record" aspect of the case, placed emphasis on the fact that the essential party involved was a corporation. How much this impacted the reasoning is difficult to say but it is worth noting since corporations have no privacy rights under Chapter 92E which applies only to natural persons. See Section 92E-1, HRS.)

There will clearly be a good deal of discussion about this opinion the coming days and months. Whatever it finally comes to stand for, the following items seem clear in its aftermath:

1. Chapter 92E, HRS, has been sustained as a valid interpretation by the Legislature of the constitution's privacy provision;

2. Chapter 92E, HRS, will not be applied mechanically to cover any record which has an individual's name on it; and

3. Chapter 92E, HRS, will instead protect "highly personal and intimate" information such as medical, financial, educational and employment records.

CHAPTER 3

FEDERAL FREEDOM OF INFORMATION AND PRIVACY ACTS

The federal system presents a second basic approach to a comprehensive public records law. Public access to information within the federal government stems from two statutes. One opens access to public information in nearly all its various forms, including rules, opinions, orders, records and proceedings. 5 USC Section 552. This statute is more commonly known as the "Freedom Of Information Act," or "FOIA." The second limits access to records of the individual citizen. 5 USC Section 552a. This section is more commonly known as the "Privacy Act." These statutes are described in greater detail below. See, Appendix F in this Volume.

Freedom of Information Act

The structure of FOIA begins with the proposition that all records are available unless specifically exempt. 5 USC Section 552(a). FOIA directs that each agency shall publish in the Federal Register:

> (a) a description of its organization and established places where the public may make submittals and requests, and obtain information or decisions, from which employees or members, and the methods to do so;
>
> (b) statements of general function, how functions are directed and determined, including the essence and requirements of all available formal and informal procedures;
>
> (c) rules of procedure, descriptions of forms or where forms are obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
>
> (d) substantive rules of general application and statements of general policy or interpretations of general application formulated and adopted by the agency; and (e) each change to the above. Id. Section 552(a)(1).

Each agency shall also make available for public inspection and copying (A) complete final opinions and orders in cases; (B) statements of policy and interpretations adopted by the agency and not published in the Federal Register; and (C) administrative staff manuals and instructions affecting members of the public. This shall not apply, however, if the materials are published promptly and copies offered for sale. To prevent

clearly unwarranted invasions of personal privacy, an agency may delete identifying details when making available or publishing items (A-C) above. The deletions, however, must be fully justified in writing. "Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published." Id. Section 552(a)(2). Any agency with more than one member shall also make publicly available the record of the final votes of each member in every agency proceeding. Id. Section 552(a)(5).

Following a request for records, other than those available under items (a-e) and (A-C) above, which reasonably describes the records and is made according to the rules stating the time, place, fees and procedures to be followed, each agency shall make the records promptly available to any person. Id. Section 552(a)(3).

Each agency is also required to publish by rule a schedule of fees for processing requests, as well as procedures and guidelines for waiver or reduction of said fees. The rules provide for differing charges, depending on whether the requesting party is a commercial user, a noncommercial user such as a university or news media, or all other users. Disclosure of the information in the public interest warrants reduced or no charges. The statute strictly controls what comprises the charges for document search, duplication or review. Id. Section 552(a)(4)(A).

If any dispute arises concerning the withholding of a requested record, FOIA provides for taking the dispute to the federal district courts. The complaint is heard de novo, or . "anew." The court may examine the agency records in private to determine what parts are properly withheld under the exemptions of FOIA, id. Section 552(b), and as discussed further below. The agency carries the burden to justify its action. The court can enjoin the agency from withholding the records and order production. The court may also assess attorney's fees and other reasonable litigation costs to the substantially prevailing complainant. Id. Section 552(a)(4)(B-E).

Should the court find against the agency, under certain conditions, the statute mandates a further proceeding to determine whether a disciplinary action is warranted against the employee or officer primarily responsible for the withheld records. Id. Section 552(a)(4)(F).

Definite time limits exist for responses to requests for records and for appeals of denial of requests. For most

records noted above, the agency has ten days to respond to the request, give the reasons for the determination made, and inform the requester of the right of appeal to the agency head. If therequester then appeals a denial of his request, the agency must determine the appeal within twenty days of its receipt. If the denial is upheld in whole or in part, the agency will then inform the appealing party of the provisions for judicial review noted above. Id. Section 552(a)(6). "Unusual circumstances" provide a basis for extending the time limits for no longer than ten working days. This may mean records are located in an office other than the one processing the request; voluminous amounts of records are involved; or, there is a need to consult another agency with a substantial interest in the request or its subject matter. Id.

If the agency fails to comply with the time limit provisions for most requests, the law treats this failure as an exhaustion of the requester's administrative remedies. Id. Section 552(a)(6)(C). These circumstances would then permit the filing of a court action to resolve the delay, or ultimately, the failure to produce the records. Any notice of a denial of a request shall give the name and title of the agency person responsible for the denial. Id.

Despite the foregoing, FOIA specifically denies public access to certain kinds of information. The exemptions include matters: (1) kept secret in the interest of national security or foreign policy as authorized by an Executive Order, and properly classified under the order; (2) related solely to agency internal personnel rules and practices; (3) specifically excluded from disclosure by statute that leaves no discretion on disclosure, or establishes particular criteria for withholding or refers to particular matters to be withheld; (4) trade secrets and commercial or financial information that is privileged or confidential; (5) inter-agency or intra-agency memorandums or letters available only through litigation between the agencies; (6) personnel, medical or similar files where disclosure clearly constitutes an unwarranted invasion of privacy; (7) records or information compiled for law enforcement purposes when the production could (a) interfere with the enforcement purpose; (b) jeopardize the right to a fair trial; (c) reasonably amount to an unwarranted invasion of personal privacy; (d) result in disclosure of a confidential source or the information furnished by the source; (e) disclose techniques, procedures and guidelines for law enforcement investigations or prosecutions if the disclosure might cause circumvention of the law; or (f) could endanger the life or physical safety of any person. For item (7)(a) above, FOIA authorizes the agency to treat the records as not subject to the statute. Id. Section 552(b)(1-7).

Other exemptions from FOIA include matters available to the agency regulating or supervising the examination, operation or condition of financial institutions, or geological or geophysical information and data, including maps concerning wells. Id. Section 552(b)(8 and 9).

The statute treats a failure by the agency to comply with the time limit provisions as an exhaustion of the requester's administrative remedies. On a showing of exceptional circumstances and due diligence by the agency, however, the court can allow additional time to the agency. Any notice denying a request for records shall state the names and the titles or positions of each person responsible for the denial. Id. Section 552(a)(6)(c).

Certain other records are treated as "not subject" to the requirements of FOIA. The included records appear as very specific examples of records treated elsewhere within the statute. For example, this includes records maintained by the Federal Bureau of Investigation relating to foreign intelligence or counterintelligence, or international terrorism. So long as the records exist as classified information as provided in Section 552(b)(1), and remain as classified information, the FBI may treat the records as "not subject" to the requirements of FOIA. Id. Section 552(c)(1-3).

Two additional rules round out the statute. The statute prohibits withholding of information or limiting the availability of records to the public, except as specifically stated in this section, and the statute does not authorize the withholding of information from Congress. Id. Section 552(d). Furthermore, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt" under Section 552(b). Id. Section 552(b).

In addition to the foregoing, a recent amendment to FOIA requires each agency to submit an annual report to Congress. The required data includes (1) numbers of denials of requests for records and the reasons for each determination; (2) the numbers of appeals under subsection (a) subsection (6), the results, and the reason for each appeal resulting in a denial of information; (3) the names and title of each responsible party within the agency for the denial; number of disciplinary actions taken against an agency office or employee for improper withholding of records; a copy of every rule made by the agency and a copy of the agency's fee schedule and total fees collected under FOIA. Id. Section 552(e).

Privacy Act of 1974

In the enactment of the Privacy Act of 1974, Congress found that "the right to privacy is a personal and fundamental right protected by the Constitution of the United States." Furthermore, "the privacy of the individual is directly affected by the collection, maintenance, use, and dissemination of personal information by federal agencies...." Act of Dec. 31, 1974, P.L. 93-579, Section 2, 88 Stat. 1896 (Section 3 of this Act is codified as 5 USC Section 552a). Congress further found that increasing use of computers and sophisticated information technology greatly magnified the potential harm to individual privacy, and endangered an individual's financial opportunities and his exercise of constitutional rights, thus making necessary congressional regulation of the collection, maintenance, use, and dissemination of information by government agencies to protect an individual's privacy. Id.

The purpose of the Privacy Act is to provide certain safeguards against an invasion of an individual's personal privacy by requiring federal agencies to permit the individual to (1) determine what records pertaining to him are collected or used by such agencies; (2) prevent the unanticipated use of those records without his consent; (3) permit individual access to such agency records, and permit correction and amendment, (4) assure collection or use of personal information for a necessary and lawful purpose, with current and accurate information with adequate safeguards to prevent misuse; and (5) provide civil remedies for willful and intentional misuse of the information resulting in violation of an individual's rights. Id.

The Privacy Act defines "record" as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, or criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph; ...." 5 USC Section 552a(a)(4). The term "individual" as used in the act, means a citizen of the United States or lawful, permanent alien. Legal entities such as corporations, partnerships or associations, are apparently excluded from this definition. The act also distinguishes a "statistical record" as a "record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual," except as provided by the Census Act, 13 USC Section 8 (relating to Census records). Id. Section 552a(a)(6). With regards to disclosure of a record, a "routine use" is defined as the use of such record for a purpose

which is compatible with the purpose for which it was collected." Id. Section 552a(a)(7).

The apparent general rule applied under the Privacy Act provides that "no agency shall disclose any record...by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains...." Id. Section 552a(b).

As exceptions to the general rule, however, the statute permits disclosure of the record (1) to the officers and employees within the agency maintaining the record who need the record in the performance of their duty; (2) as required under the Freedom of Information Act; (3) for a routine use of the record within a system of records; (4) to the Bureau of the Census for implementing a census, survey, or related activity; (5) to a recipient who provides the agency adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record transfers in a form that is not individually identifiable; (6) to the national archives and records administration as a record which warrants continued preservation or for evaluation to determine whether the record has such value; (7) to another agency of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law and the head of the requesting agency in writing specifies the particular portion desired of the record and the relevant law enforcement activity; (8) to a person on a showing of compelling circumstances affecting the health or safety of an individual if on disclosure notification is transmitted to the individual's last known address; (9) to either House of Congress or their appropriate committees, subcommittees, or joint committees; (10) to the comptroller general, while performing his duties for the general accounting office; (11) pursuant to lawful order of the court; or (12) to a consumer reporter agency under 31 USC Section 3711(f) (relating to claims against the U.S. Government). Id.

Except for disclosures under items (1) and (2) above, the Privacy Act requires that each agency accurately account for each disclosure of a record by date, nature and purpose, as well as the name and address of the person or agency receiving the disclosure. The law also requires the agency to retain the accounting for the longer of five years or the life of the record; make the accounting available on request of the individual named in the record, except for law enforcement activities noted above in (7); and inform any relevant party of any correction or notation of dispute to the disclosed record. Id. Section 552a(c).

Under the law, any individual can gain access to his record or to any information pertaining to him contained in the system of records maintained by any federal agency. The individual may review his record with any persons he chooses to accompany him, except that the agency may require a written statement authorizing discussion of the individual's record in the accompanying person's presence. Id. Section 552a(d)(1).

The individual may further request an amendment of his record. The agency must respond in writing within ten days and promptly, either correct the inaccurate, irrelevant, untimely or incomplete portions of his record, or inform the individual of the agency's refusal to amend the record, the basis for the refusal, the established procedures for review of the refusal by the agency head or designated officer, along with the official's relevant name and business address. Id. Section 552a(d)(2).

Related provisions of this subsection permit the individual to file a statement of his reasons for disagreeing with the agency refusal, and notification provisions for judicial review of the determination by the agency head. After filing of the statement of disagreement, any subsequent disclosure of the disputed record shall clearly note the dispute on the relevant portion of the record, provide a copy of the statement, and if the agent feels necessary, copies of the agency statement for refusing to make the requested amendments. Despite the foregoing, the agency can deny access to any information compiled in reasonable anticipation of a civil action or proceeding. Id. Section 552a(d)(3-5).

The remaining subsections of the Privacy Act obligate federal agencies to insure against the public's perception of government as a "Big Brother." These duties include maintaining only such information about individuals that is relevant and necessary to accomplish the required purpose of the agency, maintaining individual records in an accurate, relevant, timely and complete manner necessary to assure individual fairness, and maintaining no records describing how any individual exercises his rights guaranteed by the First Amendment. Other duties are also described. Id. Section 552a(e).

Other subsections concerning promulgation of rules on procedures used by the public to exercise their rights under this act, and civil and criminal penalties for violations of provisions of this act, are left to the reader's perusal. Id. Section 552a(f and g); See, Appendix F in this Volume.

General Discussion

Despite the restrictions of the Privacy Act, access to public records at the federal level reflects a commitment to openness in spite of substantial cost. Unlike Hawaii Law, the FOIA provisions control the privacy provisions with some exceptions. Absent a clear exception, such as classified national security information, the public has access to whatever record the agency regulations describe. Any "personal information" can be blacked out of any document to protect privacy and enable release of the balance.

The obvious advantage is the public's ability to obtain full and accurate information about the operations of government agencies. Each agency must describe virtually all documents within its use and possession. Once published, the public need only request the document. The agency then carries the burden of search, review, copying and delivery to the requester. A second advantage is the clear procedure to redress denial of requests for information. The law describes specific requirements for denial of requests at each level of review, and imposes sanctions (from administrative discipline to civil damages, attorneys fees and costs, to criminal penalties) for unwarranted refusals to produce records. Following the last administrative step, the federal district courts gain jurisdiction of the controversy.

At the hearings both Representative Rod Tam (II at 7) and Desmond Byrne (II at 317) specifically favored adoption of these laws. Honolulu Managing Director Jeremy Harris (II at 116) pointed out an additional advantage as the substantial body of appellate case law built by the federal courts in the interpretation of FOIA and the Privacy Act.

Managing Director Harris also however pointed out a major disadvantage to these laws, and that is the system's expense. A system that is based on providing partial (i.e. segregable) information with other material being blacked out will require substantial staffing and substantially greater levels of administrative recordkeeping. These costs will not only be at initial stages of implementation but will instead be ongoing if the system is to be maintained.

The flip side of the "substantial body of appellate case law" is the even more substantial levels of trial court litigation that gives rise to the case law. This is not surprising in a system based on crossing out words or paragraphs. Such a system raises as many questions as it answers and the deletion choices are often going to be challenged. There is no way to know whether it produces more litigation than any other system, but it clearly leads to litigation and the attendant cost of "going to court" must be kept in mind.

CHAPTER 4

UNIFORM ACTS

The National Conference of Commissioners on Uniform State Laws has approved and recommended for enactment in all the states three acts relating to records. They are: (1) The Uniform Information Practices Code ("Code"); (2) The Uniform Criminal-History Records Act ("Criminal Act"); and (3) The Uniform Health-Care Information Act ("Health Act"). See, Appendix E in this Volume.

The Code is the generic or more general act relating to records. The design allows for change. The Code also admits that records relating to law enforcement and to health-medical records could be treated in greater detail. Appendix E at 4-5.* The drafters may have thus anticipated the formulation of the latter two Criminal and Health Acts some five and six years after formulation of the Code.

As indicated by their titles, the Criminal and Health Acts follow a subject matter approach to records. While treating these subjects in greater detail than the Code, they also raise substantive issues in their areas which are beyond the scope of this report. While discussed generally below, the reader is directed to the acts themselves for a full review of their content. See, Appendix E.

As the reader will see from the details provided below, the Code can work together with other uniform acts or it can stand alone with existing specific disclosure and confidentiality statutes. The Code presents an alternative to existing general public records and privacy laws that honors existing record choices, and offers a balance of the public's need to know versus individual privacy when determining access to records where the legislature has not spoken.

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* This and all subsequent references to pages in Appendix E refer to the existing page numbers of the Code only. This chapter shall refer to the Health and Criminal Acts generally without page numbers.

Uniform Information Practices Code

The Code is comprised of five articles as follows:

Article I:	General Powers and Definitions
Article II:	Freedom of Information
Article III:	Disclosure of Personal Records
Article IV:	Office of Information Practices
Article V:	Exemptions

Articles I-III and V comprise the major provisions of the code and will be discussed first. Article IV is an optional provision that will be discussed last.

The Code presents its purpose or general policy in Article I. The policy intends to accommodate two fundamental public interests: government accountability through openness and individual privacy for records maintained by the government. A general policy of access to those records and a specific policy of accountability to individuals in the collection, use and dissemination of information relating to them serves the public interest in open government. The Code serves the second interest and protects individual privacy whenever the public's interest in disclosure does not outweigh an individual's interest in privacy. Appendix E at 6 (Section 1-102).

Article I also presents general definitions used in the Code. Section 1-105 defines five types of records held by the government. The definitions, however, are not exclusive and appear to overlap.

A "government record" means information maintained by an agency in written, oral, visual, electronic or other physical form. A "personal record" means any item or collection of information in a government record which refers to a particular individual, whether or not the information is maintained in individually identifiable form. An "individually identifiable record" (hereinafter "individual record") is a personal record that identifies or can readily be associated with the identity of the individual to whom it pertains. A "research record" is an individually identifiable record collected solely for a research purpose and not intended for use in its individual form to make any decision or take any action directly affecting the natural person to whom the record pertains. Finally, an "accessible record" means a personal record, except a research record, that is (1) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of or so as to identify individuals; or (2) is otherwise retrievable by the agency using information provided by the requester without an unreasonable use of time, effort, money or other resources. Appendix E at 7-8.

The word "agency" is defined as a unit of government in the state, any political subdivision, any government entity such as a department, board or office, an officer or other instrumentality of state or local government, including a corporation owned, operated or managed by or on behalf of the state, but does not include the legislature or the judiciary. The definition also excludes express mention of the term "employee." Id.

The Code also distinguishes an "individual" from a "person," two terms that are usually synonymous. The former means a "natural person." The latter "person" means an individual as well as any other legal entity, such as a corporation, government agency, estate, or trust. Any "person" benefits from the general public's right of access to government records extended under Article II; specifically, Section 2-102 (a). Appendix E at 8-9. On the other hand, only the individual or natural person has a right of access to his personal or other individual records, absent some exception in Article III. Appendix E at 20 (Section 3-101).

Article II of the Code focuses on the agency duties to the general public. Section 2-101 requires affirmative disclosure of the "law of the agency" to the public. Appendix E at 9-10. Procedural and substantive rules of general application, policy statements, and interpretations adopted by the agency shall be disclosed as well as final opinions and orders resulting from adjudication of cases. While the agency cannot maintain a "secret law," on the other hand, it is not required to make or formalize its rules or decision-making processes. Furthermore, because information requests under this section are not subject to the procedures indicated in Section 2-102 following immediately below, production of the record must be immediate. Id.

Section 2-102 of Article II sets forth agency duties when reviewing a request by any person for government records. Recalling that there are five definitions of records under this Code, this section makes clear that as to "government records," the agency shall make such records available to any person for inspection and copying except as restricted by Section 2-103. The information, however, must be readily retrievable in the form as requested. There is no obligation on the agency to compile, summarize, or otherwise create a "new" record. Appendix E at 9-14.

This section also specifies agency alternatives on receipt of a request for (government) records. The commentary makes clear that only a written request for access under subsection (d) of Section 2-102 triggers the administrative and judicial review mechanisms of Article II. Id. at 12.

(commentary). Within seven days following receipt of an appropriate request for records, the agency shall: (1) make the record available; (2) indicate that the record is unavailable and when the record will be available within 21 days of the request; (3) indicate that the agency does not maintain the record and who does maintain such record if known; or (4) deny the request. Id. at 10-11.

If the agency denies the request, Section 2-102(f) provides for a written agency response specifying reasons for the denial and identifying the individual responsible. Furthermore, the agency shall inform the requester of his right to a review of the denial by the agency head. If the agency head then upholds the denial, he shall render a written decision specifying his reasons and further inform the requester of his right to judicial review of his request under the Code.

Section 2-103 lists 12 categories of government records that are exempt from the disclosure requirements of Article II. These exemptions are as follows: (1) law enforcement information where disclosure would materially impair an ongoing investigation, intelligence operation or law enforcement proceeding, reveal confidential informants, techniques or activities, or endanger individual life; (2) inter or intra-agency material (other than facts) where intended for decision-making and disclosure would inhibit or otherwise impair such decision-making; (3) litigation materials not subject to pretrial discovery; (4) licensing, employment or academic exam materials where disclosure compromises the fairness or objectivity of the process; (5) information that threatens to compromise or frustrate government contracts if disclosed; (6) information identifying real property or otherwise related to the property prior to public purchase; (7) administrative or technical information such as software or employee manuals, where disclosure would jeopardize the security of a record-keeping system; (8) proprietary information marketed under exclusive legal right and either owned by or entrusted to the agency; (9) trade secrets or confidential commercial and financial information obtained on request by the agency; (10) library, archival, or museum material contributed by private persons who impose lawful limitations on disclosure; (11) expressly non-disclosable information under federal or state law or protected by the rules of evidence; or (12) an individually identifiable record not disclosable under Article III of this Code. Id. at 14-15.

Despite the foregoing, if the agency chooses to disclose government records enumerated above in items (9-12), the agency shall reasonably attempt to notify the person to whom the record pertains and provide an opportunity to object prior to the disclosure. Concerning item (9) above, the agency

shall notify the person making the claim of a trade secret. If despite objection the record is released, the agency shall inform each objector of its decision and his right of review with the agency head. If the head chooses to release, he shall also notify the objector of his decision. If the head denies a request, because the information is within (9-12) above, and the agency is sued because of the denial, the original objectors shall also be informed of the suit. Id. at 15 (Section 2-103 (b-e)).

The above prohibitions are not absolute. Any reasonably segregable portion of the record shall be provided to the requester after deleting the undisclosable material. Id. at 15.

The remaining sections of Article II concern judicial enforcement and employee discipline. A person may apply to the courts to compel the agency to disclose either the law of the agency or a government record. In the latter case, the court shall hear the matter de novo, or "anew." This section provides for in camera inspection of the record by the court as to what may be withheld. The court then may assess reasonable attorney's fees and related litigation expenses against the agency if the requester-complainant substantially prevails in his action. Id. at 19 (Section 2-104). Employee discipline, including suspension or discharge, for knowing or willful violations of the provisions of Article II provides an alternative deterrent mechanism to the usual civil damage and criminal provisions that are rarely applied. Id. at 19-20 (Section 2-105).

The Code treats the disclosure of personal records in Article III. Despite its length involving some 16 subsections, six general areas appear and can be described as follows: Public and agency access (Sections 3-101, -102, -103, -104); individual access (Sections 3-105, -106, and -107); research (Sections 3-109 and -110); public contracts (Section 3-111); remedies (Sections 3-112, -113, and -114); and agency record-keeping practices (Sections 3-108, -115, and -116). Appendix E at 21-37.

The general rule under Article III prohibits disclosure of an individual record to any person other than the individual to whom the record pertains unless the disclosure is:

(1) The name, compensation, job title, business address business telephone number, job description, education and training background, previous work experience or dates of first and last employment of present or former officers or employees of the agency;

(2) Pursuant to prior written consent of the individual referred to in the record;

(3) Of information collected and maintained to make information available to the public;

(4) Of transcripts, minutes, reports or summaries of a proceeding open to the public;

(5) Pursuant to federal law or state statute expressly authorizing disclosure;

(6) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual, with agency notice to the individual in the record;

(7) Pursuant to court order with agency notice to the individual in the record revealing the order;

(8) Pursuant to legislative subpoena with agency notice to the individual in the record by mailing the subpoena;

(9) For a research purpose as provided in Sections 3-109 and -110; or

(10) In any other case, not a clearly unwarranted invasion of personal privacy. Id. at 21-22.

While most of the foregoing exceptions are self-explanatory, item 10 is perhaps the most significant as a "catch-all" category. It relies on the case by case application of a balancing test elaborated in Section 3-102 and summarized below.

A clearly unwarranted invasion of personal privacy occurs by disclosure of an individual record if the public interest in disclosure is outweighed by the individual privacy interest. Id. at 22 (Section 3-102(a)). The subsection provides the following examples of information containing a significant individual privacy interest, such as medical history information, criminal investigation information, public welfare eligibility information, agency personnel files or personnel appointments, private sector employment history, income tax or other tax information, individual finances or financial history, regulatory license investigations, and personal recommendations or evaluations. Any formal charges or proceedings involving an employee or licensee, however, removes the privacy protection.

The commentary to Section 3-102 indicates that the foregoing examples also identify closely related information

that is public and subject to disclosure. Segregation of the private from the public parts then becomes necessary. Id. at 23-24. The commentary makes clear that the Code is not intended to override existing "confidentiality" statutes or other statutes that prohibit disclosure.

When considering disclosure of individual records to another government agency, Article III specifies limited circumstances permitting such disclosure. Another agency may obtain the records if they certify the necessity of the record to the performance of its duties and disclosure is compatible with the original purpose in obtaining the record. Because of its general record-keeping function, the state archives is always permitted disclosure of another agency's records. When reviewing the remaining agencies who may obtain another agency's records, either a statute, agreement, civil or criminal law enforcement function, authorized audit or review function comes in to play. Any agency reviewing the information received, however, is subject to the same restrictions on disclosure of that information as the originating agency. Id. at 24-25 (Section 3-103). Article III also explicitly states a prohibition previously alluded to in the commentary, namely, that nowhere is the disclosure of an individually identifiable record authorized if that disclosure is otherwise prohibited by law. This clarifies that the Code is clearly subordinate to other independent law prohibiting disclosure of records. Id. (Section 3-104).

An individual's access to his own records is also treated under Article III. Any individual or his authorized agent may examine or copy any "accessible record" pertaining to him. In addition to the procedures established in Section 2-102, this Chapter at 31, the agency shall verify the identity of the requester and if specifically asked, inform him of all disclosures of the record outside the agency, a requirement of Section 3-108(a)(2). Appendix E at 26 (Section 3-105).

Individual access, however, is not absolute under Article III. The agency may withhold information exempt from the duty of disclosure by Article II, Section 103(a), except for 2-103(a)(2 and 12). Another exception to this discretionary "withholding" is information submitted by the requester. If that information, however, involves his own test questions and answers in any examination used for licensing or employment, the individual may examine but not copy these items. This safeguard helps to protect the integrity of the examination process. Id. at 26-28 (Section 3-106).

The agency under this section may also withhold information collected and used solely to evaluate a person's fitness or character but only insofar as the disclosure might

identify the information source; or information not directly related to the requester and if disclosed, constitutes a prohibited invasion of another individual's privacy. Any existing state law authorizing an agency to withhold information from a parent or legal guardian of a child is not affected by this section. Finally, any nondisclosable material under this section shall be segregated from the otherwise accessible record prior to its disclosure to the requester. Id. at 27.

If an individual finds any incomplete or inaccurate information pertaining to him in an accessible record under section 3-105, he may request a correction or amendment by the agency maintaining the personal record. Id. at 28-29 (Section 3-107). The procedure by which an individual corrects or amends an accessible record, as well as the duties imposed on the receiving agency, are very similar to those procedures described in Section 2-102. In this chapter. The major differences are a shorter time period (30 days) for the agency to make a final determination following its review of the initial agency refusal to correct or amend the record. If the agency thereafter stands by its initial refusal, the agency shall permit the requester to file with the record a statement of his reasons for the requested change and his reasons for disagreement with the agency's refusal. The agency shall also notify the requester of his right to bring a civil action as described in Section 3-112 of this Article. Id. at 28.

When the agency discloses information to a third party about which the agency received the above described statement, the agency shall identify the disputed information, furnish a copy of the individual's statement, and furnish a statement of the agency's response to the request for correction or amendment and transmit a copy of this response to the individual. The agency shall also attempt to provide corrections, amendments, or statements of disagreement to any and all persons who either provided or received information concerning the disputed portions of the record within the preceding three years. Id. at 29.

As noted previously, the Code distinguishes a "research record" from the broader class of "government records." Appendix E at 7 (Section 1-105); and at this chapter. An agency may authorize disclosure of an individually identifiable record for research purposes only if the agency determines that the research requires use or disclosure of the individually identifiable record and the additional risk to privacy is minimal. Secondly, the agency must receive adequate assurances that the recipient will safeguard the integrity, confidentiality and security of these records as required by Section 3-108(a)(6), Appendix E at 30, and remove the individual identifying information from the records on completion of the

research. As further conditions to the release of the record, the agency shall secure a written understanding and agreement to the terms of subsection (a) of Section 3-109 from the recipient. Finally, any subsequent use or disclosure of the record in individually identifiable form is prohibited without express authorization of the agency or the relevant individual. Id. at 31 (Section 3-109(a)).

Conversely, a person or agency may use a disclose and research record if they reasonably believe that disclosure will prevent or minimize physical injury and a limit disclosure to information necessary to protect the individual. Secondly, the research record may be disclosed in individually identifiable form for the purpose of auditing or evaluating a research program, the audit or evaluation is expressly authorized by law, and the auditors/evaluators agree not to subsequently use or disclose the record in individually identifiable form. Id. at 31-32. Thirdly, if the record complies with a search warrant or subpoena as provided in Section 3-110(a), disclosure is permitted. Id.

Section 3-110 sets forth the sole purpose for which a court may issue a search warrant or subpoena for a research record: to assist investigation of the researcher/record recipient or personal agency maintaining the record for alleged law violations. Consequently, the seized or subpoenaed research record may be used as evidence only in a proceeding involving the aforementioned parties.

Article III also establishes any contractor, grant recipient, or related subcontractors performing any agency functions that require the maintenance of individually identifiable records as subject to Sections 3-101 and -102 with respect to those records. For purposes of civil remedies under Section 3-112, and discussed further below, the contractor or recipient is treated as a separate agency and thus subject to injunctive or other relief, as well as liability for money damages, attorney's fees or other expenses incurred in the litigation. The section also prevents the agency from indemnifying the contractor, recipient or subcontractor for losses suffered under Section 3-112. Id. at 33 (Section 3-111).

Violations of Article III (Sections 3-101 through -111) relating to personal records may be relieved by court action filed pursuant to Section 3-112. Id. at 34. The standard of review, the burden of proof, and the provision for in camera inspection by the court are the same remedies as provided by Section 2-104. This Chapter at 33. This section, however, also provides for an award of money damages against the agency in addition to any actual pecuniary loss. The section also relieves the involved agency officer or employee from personal liablity for the violation.

If the agency employee or officer willfully discloses an individual record to any person or agency not entitled to receive it, with knowledge that disclosure is prohibited, the agency is then entitled to indemnification from the employee or officer. The award of reasonable attorney's fees and other litigation expenses against the agency is also provided for in the same as in Section 2-104.

Article III also contains a section identical to Section 2-105, this Chapter at 33, which provides for employee discipline in the event of a willful violation of any provision of Article III. Appendix E at 35 (Section 3-113). As a final remedy, Article III provides for criminal penalties against the agency officer or employee, or authorized research recipient, who commits an offense with the same elements that would entitle the agency to a civil indemnification. Compare, Id. at 35 (Section 3-114(a)), with, Id. at 34 (Section 3-112(e)). An additional offense is created for anyone who obtains an individual record by the use of false pretenses, bribery or theft or otherwise obtains a disclosure prohibited to him. Appendix E at 36 (Section 3-114(b)).

Rounding out Article III are three sections relating to agency recordkeeping. The agency shall collect and maintain only that information about individuals necessary to accomplish its legally authorized purpose. The agency shall also maintain a record of all disclosures of individual records to recipients outside the agency during the preceding three years, including the recipient's identity and the date of each disclosure. The agency, however, is not required to maintain an accounting of disclosures made pursuant to Sections 3-101 (1) through (4), and Sections 3-103(a)(2), (5), and (7); Id. at 29-30 (Section 3-108). This section also imposes duties on the agency concerning from whom information is gathered, information provided to that individual, sets standards to ensure fairness an agency action affecting the individual to whom the records pertain, and establishing safeguards to assure the integrity, confidentiality, and security of individual records. Id.

Any agency or component principally involved in criminal law enforcement are exempt from the provision requiring an accurate, complete, timely and relevant collection of information that assures fairness, if the agency clearly identifies potentially inaccurate, untimely, incomplete or irrelevant information to its users or recipients. Id.

Each agency is further directed to issue instructions and guidelines concerning how the agency intends to comply to the provisions of Article III, and assure the education of its employees and officers concerning Article III's requirements and the agency's procedures adopted pursuant to the Article. Id. at

36 (Section 3-115). The last section of Article III calls for an annual report describing the personal records maintained by each agency. The report shall also be available for public inspection. Id. at 37 (Section 3-116).

If the agency, however, is exempted under Article V of this Code, Appendix E at 40-41, such an exemption would include instructions and guidelines referred to above. The exemption provision, Id. at 40-41 (Section 5-101), intends to relieve smaller agencies with limited resources from the obligations of the Code when the public benefits from full compliance is minimal and outweighed by the benefit to the agency resulting from the exemption. Id. at 36 (comment).

Article IV is an optional provision that creates an Office of Information Practices. While not necessary to the effectiveness of the Code, the office can function as a centralized record agency that: (1) monitors general agency compliance; (2) advises agencies about compliance responsibility; and (3) informs the public of its rights under the Code and how to exercise those rights. Id. at 38-40. While the oversight responsibilities for Article II and Article III are separately enumerated, the comment suggests that the division of the oversight function between two agencies is the least workable format to monitor compliance. Separation of this function would tend to institutionalize rather than resolve the tension between freedom of information and privacy. A singular office with responsibilities for both areas is preferred because of this inherent tension and the need for a sound resolution of the interests. Id. at 40.

Practically speaking, separation of the oversight responsibilities will lead to differing applications of discretionary choices between disclosure and nondisclosure, analagous to separate scales that lack a uniform standard of measurement. A singular agency, on the other hand, should have a consistent application of the balance between disclosure and nondisclosure that would provide predictability between the articles. The comment even goes so far as to state that judicial enforcement of Articles II and III is preferred to two separate oversight offices.

Uniform Criminal-History Records Act

The Uniform Criminal-History Records Act ("Criminal Act") creates a central databank of criminal-history records in the state, and governs the dissemination of those records from this databank to law enforcement agencies, the courts, and the general public. The criminal act also selects what are "reportable events" that create the criminal-history record, a substantive issue beyond the scope of this report. Hawaii

already has an established criminal justice data center and numerous specific statutes directing the disclosure or confidentiality of criminal records. The reader is thus invited to compare current Hawaii law, especially HRS Chapter 846, with the full text of the Uniform Act in the appendix to determine whether adoption is necessary under the circumstances. Appendix E.

Uniform Health-Care Information Act

The Uniform Health-Care Information Act ("Health Act"), like the Criminal Act, attempts to centralize the law on dissemination of all health records. By analogy to the Code discussed previously, the "health care provider" assumes the role of the "agency" under the Code in providing access to patient records, permitting corrections, amendments, or disagreements to those records, and sanctions for unauthorized disclosure. The major difficulty with the detailed discussion of the Act here, however, is the definition of "health care provider" which includes all licensed, certified, or otherwise legally authorized health professionals. The Act thus directs rules for records of the private practitioner, regardless of his receipt of any public moneys, as well as the publicly employed practitioner. Any discussion of the merits of legislation controlling private record practices is clearly beyond the scope of this report and is left to the reader for his own perusal. Id.

General Discussion

In evaluating the Code, there are essentially two issues which must be addressed: what are the merits of the Code as a comprehensive records law; and, what are its advantages or disadvantages over the other alternatives (current Hawaii law or the FOIA/Privacy Acts?).

A very positive feature of the Code is the consolidation of two fundamental public interests, open government and individual privacy, within the same law and operating on the same issue: the disclosure of government records, or records held by the government. Problems over how to construe two different substantive laws (public records and privacy) enacted at different times with different intents do not affect the Code. Such problems clearly exist with the present Hawaii law involving HRS Section 92-50 and HRS Chapter 92E. This problem is less prevalent with the federal FOIA and the Privacy Act.

The Code's method of resolving or otherwise reducing the tension between open government and privacy is unique among

the laws. First, two lists are created, one designating records available for public inspection, and a second list of confidential records. All other records that do not fit within either category then fall into a balancing test to determine whether the public interest in disclosure outweighs the individual interest in privacy. And even where a personal record is involved, if the release does not involve a "clearly unwarranted invasion of privacy," such information can be released. Furthermore, any existing statutes addressing the confidentiality of records would remain intact, as would any specific disclosure statutes. Finally, this balancing process provides a strong argument that where the public interest requires disclosure, the "compelling state interest" test in the Hawaii Constitution has been met.

The existing choices, as a combination of the two lists in the Code and existing specific statutes, may in fact comprise a very large percentage of government records. In this manner, the Code eliminates much of the uncertainty that may exist under the present law. A clearer law should promote less litigation. The legislature then becomes the forum for interested parties to lobby for access or privacy of a particular record (and its inclusion on a list), rather than the courts.

Agency compliance with the Code, while more demanding than the existing Hawaii law, appears far less onerous than with federal law. Similar to FOIA, the Code requires disclosure of the "law of the agency." Unlike FOIA, however, the agency need not describe all known records available within the agency. The Code also provides a balancing test with a number of examples of records or information which fall on each side of the line. The examples should enable the agency to quickly resolve most requests for most records or information.

Judicial review under the Code is similar to FOIA. The key, however, appears as the discretion permitted the courts: the more specific the law concerning public versus private records, the more predictable the judicial outcome. Again the lists favor the Code and limits the type of issues likely to be presented to a court. In contrast, the Hawaii law leaves greater room for a court's interpretation because of the two statute format and the lack of specificity in the laws governing record disclosure and confidentiality.

Another advantage of the Code is the five part definition of a "record." The definitions recognize not only the public versus personal distinction, but also differences in the ultimate use of the record. The term "research record" under the Code would appear to reduce the disputes over access and distribution of such information. Both the public interest in legitimate research and the private interest in limited

disclosure are served. Existing Hawaii law, outside of some specfic record statutes, make no provisions for such records.

Despite the above advantages, no state has adopted the Code. This may be due more to local politics and the existing laws in other states than to the merits of the Code provisions. This is, for example, likely to be the case in a state without HRS Chapter 92E, and without a constitutional right of privacy. In such a state, the Code with its recognition of privacy interests might seem a step towards restrictive rather than open, laws. If the option in Hawaii was to simply repeal the constitutional provision on privacy added in 1978 as well as HRS Chapter 92E, some might prefer that to any of the options presented in this report.

Along these lines, it should be noted that the American Bar Association (ABA) has not endorsed the Code. When it was first proposed to the ABA in 1981, the American Newspaper Publishers Association (ANPA) and the Reporters Committee for Freedom of the Press spearheaded opposition to its adoption based on their concern about the privacy provisions. Consideration of the Code by the ABA was therefore postponed and it has never been voted on. Ironically for Hawaii, the part of the Code which ANPA and the Reporters Committee opposed is the one part of the Code that Hawaii has essentially adopted through HRS Chapter 92E. Whether the attitude of the press will be different in Hawaii's circumstances remains to be seen.

One further weaknesss of the Code is the failure to provide protection from lawsuit for the disclosing agency, officer, or employee. Some form of limitation of liability from damages caused by a disclosure in good faith compliance with the Code is an issue which must be considered. Without such protection, the agencies can be expected to resolve access questions in favor of privacy in order to avoid any possibility of lawsuits. Obviously, this result defeats the purpose of the Code.

CHAPTER 5

PRIVACY IN HAWAII

by Allison Lynde, Esq.

(This chapter was written by Allison Lynde, Esq., for use by the Committee in creating a full record of the background of the current public records and privacy laws. It is excerpted from Mr. Lynde's forthcoming article entitled, "Hawaii's 1978 Constitutional Convention: 10 Years After." Mr. Lynde is a member of the Hawaii Bar and a former Assistant Professor of Law at the William S. Richardson School of Law. He now presently teaches at Hawaii Pacific College.)

I. Description and Convention History of Right to Privacy

The 1978 Hawaii Constitutional Convention ("convention") amended Article I (Bill of Rights) of the State Constitution to create a new Section 6 which reads as follows:

> The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

The then-existing Section 5 dealing with the right to privacy was retained and renumbered as Section 7, which reads as follows:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

In 1968, Section 5 had been amended to include the prohibition against "invasions of privacy" but in general remained patterned after the federal 4th Amendment. The right to privacy was discussed at the 1968 convention primarily in the context of electronic surveillance and wiretapping in criminal cases. Standing Committee Report ("SCR") 55, however, seemed to

take a broader view: "the proposed amendment is intended to include protection against indiscriminate wiretapping as well as governmental inquiry into and regulation of those areas of a person's life which are defined as necessary to insure man's individuality and human dignity." Proceedings of the Constitutional Convention of Hawaii of 1968, Vol. 1 at 234.

The 1978 convention, however, recognized "there has been confusion about the extent and scope of the right," citing State v. Roy, 54 Haw. 513, 517, 510 P.2d 1006 (1973), which implied the right did not encompass the concept of a right to personal autonomy and was limited to "governmental use of electronic surveillance techniques." Proceedings of the Constitutional Convention of Hawaii of 1978 ("Proceedings"), Vol. 1 at 674. In order to "alleviate any possible confusion over the source of the right and the existence of it," the 1978 convention amended the constitution to include "a separate and distinct section on the right to privacy." Proceedings, Vol. 1 at 1024.

SCR 69 (Committee on Bill of Rights, Suffrage and Elections) identified three elements to the right:

1. The "common law right of privacy or tort privacy." This includes the right to tell the world to "mind your own business." Examples given include "invasion of ... private affairs, public disclosure of embarrassing facts, and publicity placing the individual in a false light." Proceedings, Vol. 1 at 674.

2. The "ability of a person to control the privacy of information about himself." While there is often "a legitimate need for government or private parties to gather data about individuals" there is the danger of abuse in the use and/or dissemination of such data. Accordingly "the right to privacy should insure that at the least an individual shall have the right to inspect records to correct misinformation about himself." Id.

3. The "right to personal autonomy." Characterizing this as "perhaps the most important aspect of privacy," the committee stated that this is the right to "control certain highly personal and intimate affairs of [the individual's] own life." The committee noted that "[w]hether an individual's desire to engage in a particular activity is protected by this aspect of the right to privacy ... will remain a matter for the courts." Examples given include "certain marital, sexual and reproductive matters...." Id.

The proposed amendment was subjected to vigorous debate in the committee of the whole and later at second reading. The convention overwhelmingly rejected attempts to expand it to cover reporters' sources, to add language granting public right of access to public records, and to strike the section in its entirety. Although the "reporter's sources" proposal was narrowly defeated 32-40 in the committee of the whole, a similar change was resurrected and failed at second reading without a rollcall. A motion at second reading to strike the section in its entirety was defeated 30-60-12. Other proposed changes failed without a rollcall. Proceedings, Vol. 2 at 623, 628, 649; and Vol. 1 at 357 and 366. Various delegates voiced concerns that the amendment would hamper investigative news reporting and criminal law enforcement or hamper access to public records. Proceedings, Vol. 2 at 608-649; Vol. 1 at 355-366. In debate on the reporter sources proposal, committee chair Weatherwax noted it was the consensus of the committee that this should be a statutory privilege. Id. Vol. 2 at 616. On the public access proposal, Weatherwax stated his opinion that questions regarding public access and privacy be left to the courts. Id. at 624.

Committee of the Whole Report ("CWR") 15 noted that the addition of Section 6 would give the constitution two provisions related to privacy. It clarified the intent of the convention as to the difference in applicability of the two sections. Renumbered Section 7 was to be construed in the light of the language in Katz v. United States, 389 U.S. 347 (1967), regarding reasonable expectation of privacy. Privacy as used in this sense is not a fundamental right but a test of whether the prohibition against unreasonable searches and seizures applies. Proceedings, Vol. I at 1024. Section 6, on the other hand, was adopted to:

> insure that privacy is treated as a fundamental right for purposes of constitutional analysis. Privacy as used in this sense concerns the possible abuses in the use of highly personal and intimate information in the hands of government or private parties but is not intended to deter the government from the legitimate compilation and dissemination of data. More importantly, this privacy concept encompasses the notion that in certain highly personal and intimate matters, the individual should be afforded freedom of choice absent a compelling state interest. This right is similar to the privacy right discussed in cases such as Griswold v. Connecticut 381 U.S. 479 (1965), Eisenstadt v. Baird, 405 U.S. 438 (1972), Roe v. Wade, 410 U.S. 113 (1973), etc.

Id.

The convention adopted Section 6, along with the rest of the revisions to Article I, by a vote of 84-9 with 9 excused. Proceedings, Vol. 1 at 462. Both daily newspapers and the Hawaii Prosecuting Attorneys Association urged the electorate to reject the amendment. Advertiser 11/6/78 at A16. ("This proposal could take that [right] to a point where it would interfere with other rights and needs in our society ... [it might] excessively hinder police in criminal investigations and serve as a 'right to secrecy' in situations where public disclosure is now normal and beneficial.") See also, Star-Bulletin 11/3/78 at A18. The amendment, however, was duly ratified by the electorate on November 7, 1978 by a vote of 131,241 to 120,982, the third lowest margin of passage of the 34 proposed amendments. Advertiser 11/8/78 at A1.

II. Implementation

Section 6 expressly mandates the state Legislature to implement the right to privacy: "The legislature shall take affirmative steps to implement this right." SCR 69 cited with approval the Federal Privacy Act of 1974 and indicated the convention's intent was to protect against actions by both government and private parties. Proceedings, Vol. 1 at 675.

Noting its intent to implement "in part" Section 6, the Legislature passed Act 226 in 1980. The Act creates Chapter 92E of the Hawaii Revised Statutes ("HRS"), entitled "Fair Information Practice." In general, the statute prohibits any executive agency from public disclosure of a "personal record" with very limited categorical exceptions. HRS Section 92E-4 allows disclosure in only four circumstances: to an agent; of information gathered for the purpose of creating public records; pursuant to statute; and pursuant to compelling circumstances affecting health or safety.

"Personal record" is very broadly defined to include "any item, collection, or grouping of information about an individual that is maintained by an agency." Id. Section 92E-1. An individual has rights of access to his own records and correction of any inaccuracies in them with certain exceptions. Id. Sections 92E-2, -3, -6, -7, -8, -9. Inter-agency transfer of personal records is prohibited with exceptions. Id. Sections 92E-2,-3,-5. Civil remedies are available to force compliance and to obtain damages for knowing or intentional violations of the statute; attorney fees may be available against the agency in any case in which the complainant substantially prevails or against the complainant if the charges are frivolous. Id. Section 92E-11.

As interpreted by executive agencies, Chapter 92E has been applied to prohibit the release of the following kinds of records: exact salaries of government officials; which police officers were recommended for disciplinary actions; who owns particular motor vehicles so owners could be notified of car defects; who obtained state-backed Hula Mae mortgages; the names of applicants for government jobs; state inspection records concerning pre-schools in the wake of an alleged abduction and rape; Department of Human Services internal reports on a prison shakedown; milk inspection records; ambulance run records requested by Hawaii Kai residents to determine if their services were adequate; Department of Commerce and Consumer Affairs settlement agreement regarding a disciplinary action involving a contracting company sought by the painting trade industry association as part of its monitoring of its recovery fund; and the resume' of a city department head in the face of criticism that he was unqualified for the position. Star-Bulletin 3/28/84 at A1; Id. 3/18/85 at A3; Id. 3/5/85 at A3; Id. 2/7/87 at A3. The law has been criticized as "being used to protect government from citizens" and calls for changes to it have come from Common Cause, American Civil Liberties Union ("ACLU"), media attorneys and the daily newspapers. Star-Bulletin 3/28/84 at A1; Id. 11/24/84 at A1; Advertiser 12/19/84 at H2. ACLU did, however, praise the use of the law to deny Selective Service access to the names of drivers in order to track down non-registrants. Star-Bulletin 3/28/84 at A1.

To date, Chapter 92E stands as the only significant piece of legislation implementing Section 6 and it has not been modified in substance since its passage. The Legislature has enacted a handful of other measures treating certain governmental records as confidential. See, e.g., Act 170, SLH 1981 (general excise tax returns), codified as HRS Section 237-34; Act 241, SLH 1982 (reports concerning elderly abuse or neglect), codified as HRS Section 349C-8; Act 161, SLH 1986 (reports identifying persons with sexually transmitted diseases), codified as HRS Chapter 325.

III. Judicial Interpretation

A. Federal right to privacy.

The leading modern case establishing a constitutional right to privacy is Griswold v. Connecticut, 381 U.S. 479 (1965), in which the Supreme Court held invalid a state law prohibiting the use of contraceptive devices, as applied to "aiders and abettors" who operated a birth control clinic. The Court stated that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance .... Various guarantees create zones of privacy." Id. at 484. The Court cited the First,

Third, Fourth, Fifth, and Ninth Amendments as examples of these zones of privacy. The Court found that the subject law had a destructive impact on the marriage relationship which lay "within the zone of privacy created by several fundamental constitutional guarantees .... Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship." Id. at 485-86.

Eisenstadt v. Baird, 405 U.S. 438 (1972), invoked the equal protection rational classification standard to overturn appellee's conviction for distributing contraceptives at a public meeting. The state law prohibited the giving of contraceptive devices or information to unmarried persons while permitting a doctor to prescribe such devices for married persons. The Court recognized that the right of privacy existed apart from marriage, explaining: "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusions into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Id. at 453.

Roe v. Wade, 410 U.S. 113 (1973) struck down as violative of the due process clause a state criminal abortion law which prohibited procuring or attempting an abortion except for the purpose of saving the mother's life. The Court observed that its earlier decisions made "it clear that only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy." Roe at 152. These cases indicated the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education. Id. at 152-53. The Court found the source of the right to be founded in the Fourteenth Amendment's concept of personal liberty and that such right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy ... but that this right is not unqualified and must be considered against important state interests in regulation ...." Id. at 152-53. Where "fundamental" rights are concerned, as hers, regulation limiting these rights may be justified only by a "compelling state interest." Id. at 155. Since the law excepted from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, it violated the due process clause of the Fourteenth Amendment. Id. 164.

Brest and Levinson observe that, "Since Griswold, a wide variety of laws impinging on personal autonomy or privacy have been challenged under the due process clause ... For the

most part, the Supreme Court has not been hospitable to these claims." Brest & Levinson, Processes of Constitutional Decisionmaking, Cases & Materials, second ed., 1983 at 683. The right to privacy cases have been criticized for, among other things, the absence of a textual or historical basis and the allegedly arbitrary definition accorded "liberty." J. Ely, Democracy and Distrust: A Theory of Judicial Review (1980) at 38-41; R. Bork, Neutral Principles and Some First Amendment Problems, 47 Ind.L.J. 1, 7 (1971.)

B. Hawaii's right to privacy.

There are two leading cases interpreting Section 6. 1/

In State v. Mueller, 66 Haw. 616, 671 P.2d 1351 (1983), the Hawaii Supreme Court held that in construing the right to privacy in the personal autonomy sense under Section 6, "a freedom that is protected thereunder must still be one 'ranked as fundamental' in the concept of liberty that underlies our society." Id. at 630. Thus, the court held the state constitutional right, in the words of CWR 15, "is similar to the [federal] privacy right discussed in cases such as Griswold v. Connecticut, Eisenstadt v. Baird, Roe v. Wade, etc." Id. at 625.

In Mueller, the defendant was charged under the penal code, HRS Section 712-1200, for prostitution. She moved to dismiss the charge, asserting her constitutional right to privacy regarding sex for hire conducted in the privacy of her own home. First, the court analyzed whether the activity was protected under the federal right of privacy. The court reviewed the cited federal cases on the right to privacy and concluded that sex for hire at home is not basic to ordered liberty. "Our review of Supreme Court case law in the relevant area leaves us with a distinct impression to the contrary, for we perceive no inclination on the part of the Court to exalt sexual freedom per se or to promote an anomic society." Id. at 628. The court went on to find a rational basis for the prostitution law in the "need for public order." Id. at 628-29.

1/ On December 3, 1987, the Hawaii Supreme Court issued its latest opinion interpreting Section 6 of Article I of the Hawaii Constitution, and HRS Chapter 92E. Painting Industry of Hawaii Market Recovery Fund v. Alm, 69 Haw. Adv. Sh. No. 12094, P.2d (1987). For a discussion of this case, please refer to Chapter 2 of this Volume at 7.

Significantly, the court declined to interpret the Hawaii constitution as affording a broader right of privacy than that of the federal constitution. In a brief discussion on this point, the court relied heavily on the reference in CWR 15 to the Griswold, Eisenstadt, and Roe cases. Thus, no purpose to "lend talismanic effect" to phrases contained in the convention reports such as the right to "be left alone," "intimate decision," "personal autonomy," or "personhood" was inferred from the State provision "any more than it can from the federal decisions." Id. at 630. The case therefore stands for an interpretation of the Hawaii right of privacy as coextensive with the federal right.

The second leading Hawaii case is Nakano v. Matayoshi, 68 Haw. 142, 706 P.2d 816 (1985), where it was held that the people of Hawaii have a legitimate expectation of privacy under Section 6 where their personal financial affairs are concerned.

Nakano sued individually and as representative of a class of Hawaii County employees required to make certain financial disclosures to the County Board of Ethics by Hawaii County Code Section 2-91.1. That code section implemented Article XIV of the Hawaii constitution which directs that "each political subdivision [to] adopt a code of ethics which shall apply to appointed and elected officers and employees" and include provisions for disclosure of personal finances. Id. at 144-45. Plaintiff alleged the code's provisions violated, among other things, his Section 6 right to privacy.

Citing CWR 15, the Hawaii Supreme Court recognized the convention's intent to use privacy in an "informational" and a "personal autonomy" sense. Id. at 149. The court quoted from Whalen v. Roe, 429 U.S. 589, 598-600 (1977) as follows: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." The court noted that it had dealt with privacy in the "personal autonomy" sense in Mueller, supra. The "informational" sense was the issue in the present case, and with respect to privacy in that sense, "we can only conclude from the committee reports cited earlier that the people of Hawaii have a legitimate expectation of privacy where their financial affairs are concerned." Id. However, the privacy interest of the county employees here was not "protected to the same extent as that of other citizens" for the simple reason that Article XIV clearly qualified that right. Id. at 149-50.

Because the plaintiffs here were individuals whose constitutional right of privacy was qualified by another constitutional provision, there was no occasion for the court to analyze in depth the nature and scope of the privacy right in

the "informational" sense. Nakano, however, is significant in providing recognition of privacy in the two senses described with the potential for differing standards of judicial deference for these interests in future cases. Further, Nakano clearly recognized a general right of privacy for personal financial affairs.

C. Other cases.

In State v. Lester, 64 Haw. 659, 649 P.2d 346 (1982), the Supreme Court intimated that Section 6 was not applicable in criminal cases. But see, State v. Bayaoa, 66 Haw. 21, 656 P.2d 1330 (1983) (court assumes for argument that Section 6 applies to prisoners). In State v. Ortiz, 4 Haw. App. 143, 150 n. 8, 662 P.2d 517 (1983), the Intermediate Court of Appeals flatly stated that Section 6 has no effect in search and seizure cases. This conclusion appears correct in light of the clear language of the convention committee reports.

The only federal case to touch upon Section 6 is Jech v. Burch, 466 F.Supp. 714 (D. Hàw. 1979), where the court held that parents have a right, protected by the 14th Amendment right of privacy, to give their child any name they wish. Stating that the federal test is rational relationship, the court noted Section 6, implying sub silentio that the state test might be different. (This is apparently due to the "compelling state interest" language in Section 6, Id. at 720 n. 14.) Finding no rational relationship of the state law requiring children to bear their father's name to any conceivable legislative purpose, the court struck down the offending statute. Id. at 721.

IV. Comment

The convention history of Section 6 indicates that the convention intended the right of privacy to be implemented in at least three senses: (a) the "common law of privacy or tort privacy;" (b) in the "informational" sense; and (c) in the "personal autonomy" sense. Each of these is discussed below.

A. "Common law of privacy or tort privacy."

The examples given of this aspect of privacy in SCR 69 include (1) invasion of private affairs, (2) public disclosure of embarrassing facts, and (3) publicity placing the individual in a false light. Although not identified in the report as such, these categories correspond to those set forth by Prosser as the different interests protected by the tort law of privacy. See generally, W. Prosser, Law of Torts, fourth ed., 1971, chapter 20. The first aspect is what Prosser calls "intrusion," where relief is available for any intrusion upon the plaintiff a "physical solitude or seclusion," including such

conduct as an improper search of his shopping bag in a store, eavesdropping by ear or electronic means, or peering into his windows. Id. at 807-08.

The second aspect is what Prosser calls "public disclosure of private facts" where an action may lie even though there may be no defamation. This conduct would include public disclosure of a debt owed, identity of a reformed prostitute, or medical pictures of intimate anatomy. Id. at 809-10.

The third aspect covers what Prosser calls "false light in the public eye." Here, examples include publishing the face of an honest taxi driver next to a story on dishonest taxi drivers in the city or inclusion of the plaintiff's photograph and name in a "rogue's gallery" of convicted criminals when he is not one. Id. 812-13. None of these aspects has been judicially recognized in Hawaii as yet. However, "violation of privacy" akin to the tort of "intrusion" is a misdemeanor under Penal Code (HRS) section 711-1111.

Prosser identifies a fourth tort privacy interest, which he calls "appropriation." This is conduct appropriating for the defendant's benefit the plaintiff's name or likeness to advertise a product, for example, without his consent. This tort was recognized for the first time in Hawaii in Fergerstrom v. Hawaiian Ocean View Estates, 50 Haw. 374, 441 P.2d 141 (1968). Significantly, this tort interest is not mentioned in the standing committee report. This leads to the conclusion that the convention committee knew quite well what the tort interests in privacy were and that the tort of appropriation was the only such interest recognized in Hawaii.

A fair conclusion, then, as to the convention's intent on the tort right of privacy is that the three interests identified in SCR 69 should be judicially recognized as aspects of the constitutional right to privacy when the proper cases and controversies come before the state courts. This conclusion is buttressed by the clear language of the standing committee and committee of the whole reports that the privacy right was to be enforced as against private parties as well as government. It is unlikely, however, that the intent was to exalt these rights above other ordinary tort interests. But contrast this to New York Times v. Sullivan, 376 U.S. 254 (1964) which greatly extended the common law privilege of "fair comment" in defamation actions to confer a constitutional privilege based on the First Amendment which extended to false statements of fact made without malice. See, Prosser, supra, at 819-20. If this had been the intent, it is likely the reports and convention debate would have reflected this with specificity. Indeed, there was no debate on the tort aspects of privacy and no mention of them in the Committee of the Whole Report.

It is important to note that State v. Kahlbaun, 64 Haw. 197, 638 P.2d 309 (1981) held that, in construing the state constitution, "the debates, proceedings and committee reports do not have binding force on this court and its [sic] persuasive value depends upon the circumstances of each case." Thus, it remains unclear to what extent the courts may feel bound to recognize the tort interests of privacy set forth in the standing committee report or to identify them as aspects of the constitutional right.

B. Privacy in the "informational sense."

This aspect of privacy is the most appropriate for legislative action. SCR 69 identified this aspect as the "ability of a person to control the privacy of information about himself." It stated that, "at the least, an individual shall have the right to inspect records to correct misinformation about himself." Proceedings, Vol. 1, at 674. The report acknowledged that there are legitimate needs for "government or private parties to gather data about individuals" and that, as far as governmental interests were concerned, these interests would be deemed "compelling" in certain instances. Examples given included law enforcement and protecting the lives of citizens, and the committee explicitly did "not envision closing off access to court records or public records already subject to 'sunshine' laws but feels that this amendment would be useful in prohibiting abuse, misuse or unwarranted revelations of highly personal information." Id. at 675.

CWR 15 was written after substantial debate by the convention on the scope of the right with respect to public records, sunshine laws, and reporter sources. It is therefore probably entitled to more weight as a definitive reflection of the convention's intent. It stated that "[p]rivacy as used in this sense concerns the possible abuses in the use of highly personal and intimate information in the hands of government or private parties but is not intended to deter the government from the legitimate compilation and dissemination of data." Id. at 1024.

Thus it seems quite clear that the intent of the convention was to prohibit abuses of only "highly personal and intimate information," whether that information be in the hands of government or private parties and further that there was no intent to disturb existing laws on public access to records.

In this context, Chapter 92E seems deficient in several respects. First, the definition of personal records seems overly broad and not limited to only "highly personal and intimate information." Second, the use of limited categorical exceptions to non-disclosure seems inconsistent with the intent

not to disturb existing public access laws and a desire to pinpoint only "abuse, misuse or unwarranted revelations." Third, the statute subjects only governmental agencies to confidentiality requirements when the convention clearly intended to also cover private dissemination. Fourth, agency interpretations of the law seem inappropriate where they result in prohibiting disclosure where public health and safety or other legitimate public interests may outweigh the individual right to privacy (examples include the automobile recall cases, preschool records following alleged crimes, and the like).

The Legislature recognized when it passed Act 226 (codified as Chapter 92E), that the National Conference on Uniform State Laws was in the process of finalizing the Uniform Information Practices Code ("Code"). The Code could serve as a useful starting point for revision of Chapter 92E. It sets forth more precise definitions of personal records. Code Section 1-105. It states a policy of liberal access to governmental records and limits non-disclosure of personal records to certain discrete exemptions. Id. Sections 2-102, 3-101. It erects a general balancing test with a presumption in favor of release, but with a case-by-case application of the "clearly unwarranted invasion of personal privacy" standard. Id. Section 3-101(10). It establishes an Office of Information Practices to monitor compliance, advise agencies on responsibilities, and inform the public of its rights. Id. Section 4-101. The uniform law could also include records maintained by the private sector such as insurance, banking and credit institutions. See, Prefatory Note to Code. Some aspects of the uniform law were incorporated into S.B. 613 which passed the Senate but was not reported out of committee in the House. Senate Journal, Regular Session 1985, at 1150-51. Another comparative provision, specifically mentioned in SCR 69, is the Federal Privacy Act of 1974, now codified as 5 U.S.C. 552a, which applies to records maintained by the federal government.

Finally, there should be a review of all statutes which affect the confidentiality of records with the purpose of promoting uniformity and adherence to the constitutional standard. A review of the sections listed under "confidential information" in the index to the Hawaii Revised Statutes reveals over 30 separate provisions. Of course, the Legislature is free to impose a more restrictive confidentiality standard than called for by the constitution (for example by covering reports which may not simply be limited to highly personal and intimate affairs). But in so doing, it should consider the competing right of public access.

C. Privacy in the "personal autonomy" sense.

There are both judicial and statutory implications to privacy in the "personal autonomy" sense.

1. Judicial implications.

SCR 69 stated that "Whether an individual's desire to engage in a particular activity is protected by this aspect of the right to privacy, (the right to personal autonomy) will remain a matter for the courts." Proceedings, Vol. 1 at 675. CWR 15 referred to the Griswold, Eisenstadt and Roe cases as guidance for interpretation. The Hawaii Supreme Court opinions, particularly in Mueller and Nakano, implicitly find the state right coextensive with the federal right. The court, however, may not wish to tie itself permanently to the federal right to privacy, which has been severely criticized as a kind of return to substantive due process and may be modified with changing balances on the U.S. Supreme Court. See, Brest and Levinson, supra. In any case, it seems clear that the convention did not intend there to be any lockstep approach to defining the state right, and referred to the federal precedents as examples only.

2. Statutory implications.

The Hawaii Supreme Court's requirement that only "fundamental" rights are protected by the state right to privacy may insure the continued validity of several Penal Code provisions: for example, marijuana possession, HRS Section 712-1249. (The court upheld the criminalization of marijuana possession prior to ratification of Section 6 in State v. Kantner, 53 Haw. 327 (1972), (but see Levinson, J. dissenting on the grounds of the right to privacy) and State v. Baker, 56 Haw. 271 (1975), followed in State v. Bachman, 61 Haw. 71 (1979)); prostitution, HRS Section 712-1200 (State v. Mueller, supra); and nudity in public places, HRS Section 712-1214. Of course, this does not mean the Legislature could not find a statutory right to privacy covering these kinds of conduct. The Penal Code does not prohibit consensual, atypical sexual activity. See, HRS Vol. XII (Chapter 707) at 170. Nor does it make private possession of pornographic materials a criminal offense, following Stanley v. Georgia, 394 U.S. 557 (1969). HRS Section 712-1214 at commentary. Private "social" gambling is not an offense. HRS Section 712-1231. The abortion statute seems consistent with Roe since it allows for termination of the pregnancy only of a nonviable fetus. It imposes penal sanctions for knowing violations. HRS Section 453-16.

The Legislature may for policy reasons wish to review the Penal Code in light of Section 6, and in particular the criminalization of marijuana possession. See, Gray v. State, 525 P.2d 524, 527-28 (Alaska 1974.) Construing a state constitutional provision virtually identical to section 6, the court held that the amendment "clearly ... shields the ingestion of food, beverages or other substances." See also, Ravin v. State, 537 P.2d 494, 511 (Alaska 1975)("possession of marijuana by adults at home for personal use is constitutionally protected....") But it seems clear that unless the Hawaii court finds any conduct forbidden by the aforesaid Penal Code provisions as "fundamental" or implicit in the concept of "ordered liberty," there will be no legal compulsions to modify the present provisions.

Other possible areas of examination for the Legislature include a gay rights bill and creation of a statutory provision to protect reporters' sources. Although the latter subject was a major topic of debate at the convention, there is nothing to suggest that a state constitutional right of privacy is necessary to protect these sources. In a recent, and apparently typical case, the U.S. Magistrate refused to order a newspaper reporter to reveal sources of his cocaine stories, on grounds among others, of the First Amendment. Advertiser 2/21/85 at A8; Star-Bulletin 2/21/85 at A1.

CHAPTER 6

CURRENT ISSUES AND PROBLEMS

During the course of the Committee's work, literally hundreds of issues and problems were raised by the general public, by the media, and by public officials. A few issues arose on their own in the community during this period as well. This extensive record is in its entirety a plea by the community and its public officials to have policy in the area of records made clear.

The extensive record necessitates a careful organization of the issues raised. There is much that needs to be addressed but the task is without doubt a manageable one. It is important, therefore, to set forth the issues in a way that encourages action by the Legislature. It is the Committee's hope that once the appropriate structural framework (the current law, the model acts or the federal laws) is selected, this chapter can serve as a "menu" of those items which need to be incorporated into the records law(s) of the State. This will not, of course, be a totally comprehensive list of issues. It does, however, clearly represent those items about which the public and the agencies expressed the most concern.

At the outset, it should be noted that access to records involves both general public access to records and an individual's access to records about that individual. One Committee member recommended use of the term "disclosure" when general public access is involved and "access" when individual access is involved. This report deals primarily with general public access issues and no attempt has been made to make the terminology standard. Nonetheless, greater precision in terminology should be a feature of any revision to the current law.

It should also be noted that while the discussion presents the current handling of the records and as much discussion as possible of the reasons for handling records in different ways, there are no assumptions made as to what should be the final result. Every issue represents a choice to be made. And the choices are not simply between open or closed, especially if either the federal law or the uniform act is chosen as a model. These laws also provide for information which may be open if the agency finds in that particular case that the public interest outweighs the privacy interest involved.

COMMON THREADS

Open Government
Personal Privacy
Guarding the Guardians
Process Integrity

Before proceeding to the specific issues, it is important to examine certain fundamental threads which run throughout the material which the Committee examined.

These threads are in essence fundamental notions about government, how it should function and how it should interact with the public. These threads are not new and will to many seem quite obvious. They are nonetheless quite useful and the treatment which any particular record receives is likely to be the result of how these threads interact with regard to any particular record.

The first fundamental thread is that in a democracy, government and its processes and its records must be open. The often-quoted "a government of the people, by the people and for the people" is a meaningless statement if the people don't know and can't find out what their government is doing and how their government is doing it. It is this fundamental commitment to democracy and desire for an **open government** which lie at the heart of Hawaii's public meetings and public records laws.

The second fundamental thread is that there are facets of our lives which should be private. In essence, this is part of that element of democracy which provides limits on government's intrusion into lives, whether done by government for its own purposes or for the purposes of others using governmental power and resources. This concept of **personal privacy** has been found by the U.S. Supreme Court to exist in the U.S. Constitution. It was also made explicit through the 1978 amendments to the Hawaii State Constitution. The contours and limits of this zone of privacy are of course the more difficult issue, but it is the notion of privacy which underlies the widespread view that medical records or the names of rape victims should not be made public.

The third thread is somewhat related to the first but has in recent years become important enough to stand on its own. As was stated often during the course of this work, the fitness and quality of government and its officials cannot be measured if the workings of government are hidden from view. Essentially, the notion is that while we may have created government as a guardian of the public good and of our

liberties, there must always be someone **guarding the guardians**. Structurally, it has always been felt that a combination of legislative oversight and judicial review would be sufficient. But the question of whether that is sufficient continues to arise. Events such as Watergate have thrust the media into this role to a significant degree, but it is a role by no means limited to the media.

The last thread is less related to fundamental rights and more to the fact that governments were meant to function and, therefore, must be allowed to do so. There are cases in which the way a record is handled can either lend support to or alternatively undermine the particular function of government involved. For example, if the minutes of public meetings were to be kept from the public, the concept of open meetings would be severely undermined. Or if the records of an ongoing criminal investigation were open to the public, the investigation might be compromised. Decisions about records must, therefore, also take into account the degree to which that decision affects the **integrity of the process**.

Again, while there will be many, many factors to be discussed in the remainder of this Chapter, it is important to keep these four fundamental threads in mind since each record decision likely involves one or more of them. And it will also allow for greater brevity and less repetition in the discussions.

ISSUE DISCUSSION

We now move to a discussion of the issues and problems which were raised during the course of the Committee's work. In order to make the discussion manageable, the material has been grouped in subjects. The groups are the following:

The Larger Questions
General Access Issues
Records Infrastructure
Statewide Fair Access Questions
Penalty Questions
Miscellaneous Coverage Issues

Judiciary Issues
Legislature and Public Records

Internal Government Processes
Government Employees
Public Works, Public Contracts, and Public Funds
Rosters and Mailing Lists

Business and Professional Regulation
Education and Child Care
Health
Law Enforcement
Natural Resources and Development Controls
Taxation
Miscellaneous Information and Records

Open Meetings Law

General Miscellaneous Issues

Under each group there will be a list of the issues or problems raised followed by a discussion of those issues or problems. Each discussion will cite, if appropriate, to the testimony or submission from which it was drawn. The notations will have the volume number of the report and the number of the page on which the testimony or comment appears.

A summary of the oral testimony received at the public hearings is contained in the minutes of those hearings. These minutes constitute Appendix H of Volume I. Because there are a number of appendices in that initial volume both the volume number and appendix letter are referenced in the notations. For example, if the notation reads "Robert Alm (I(H) at 25)," the minutes involved would be found on page 25 of Appendix H in

Volume I. All of the written comment and testimony received by the Committee is contained in Volumes II and III of the Report, both volumes of which comprise Appendix J. For example, if a notation reads "Robert Alm (III at 15)," the testimony involved is found on page 15 of Volume III.

It should also be noted that not every issue or comment has a citation. The members of the Committee and interested observers were invited to review a list of the subjects raised and to supplement the list as appropriate. Items or comments raised in this manner will thus have no citation.

Each issue will then be discussed in terms of what the current law is with respect to that issue, what considerations ought to play a part in the decision on how to handle that issue, and examples of the material at issue if that would aid in the discussion.

The Larger Questions

Accurate, Relevant, Timely, and Complete Records
Limitations on Record-Keeping
Missing Records
Data Banks and Computer Matching
Retroactivity of Amendments

The material received by the Committee focused largely on disputes over specific records or specific procedures. These will be discussed in the succeeding sections. The Committee also, however, heard testimony on certain larger questions which impact records and records laws across the board.

As the Committee was reminded on a number of occasions, the quality of the records is just as important as the accessibility of records. The reason is simple: unless the record itself is well-maintained, access is not meaningful. One clear way to assist in ensuring that records are handled properly is to adopt a standard calling for **accurate, relevant, timely, and complete records**. This standard is contained in the federal law and its adoption was suggested by Beverly Keever (II at 355; III at 338; and I(H) at 44-46).

In reviewing the standard, it should be fairly obvious what is called for by "accurate" and "complete" records. Less obvious perhaps is the importance of "timely" records. It should, however, be readily apparent that unless the record is produced on a relatively contemporaneous basis, it is far less use to the public or the agency. It is also far less likely to be accurate.

The most intriguing and perhaps far-reaching portion of the standard, however, is the requirement that the record be "relevant." More than anything else, this provides some limits to government by imposing boundaries on the information which should be acquired. Specifically, the standard would not allow for the collection of extraneous pieces of information, even if that information were otherwise noteworthy or interesting.

If the federal law were adopted, this standard would presumably come with it. On the other hand, it could (and perhaps should) be adopted in whatever structure is chosen, perhaps as part of a "purpose clause" or otherwise applicable to the entire records law and thus to all records. Having such a standard against which to measure the record-keeping activities of the State would be useful for both government and the public. And as noted earlier, it would ensure the presence of a meaningful record once access has been obtained.

On a related subject, the need to place some type of limits on record-keeping was raised by Representative Rod Tam (II at 7; I(H) at 53-54) and Terry Boland of Common Cause (II at 152; I(H) at 46-47). Both made the point that government record-keeping should be limited to what must be collected.

While it was not directly stated on the Committee record, the material which was leaked during the 1986 election and which contained a reference to former Congressman Cecil Heftel is obviously the kind of record-keeping which is under question. This material was apparently the report of the debriefing of an informant on drug use and trafficking in the State. The report apparently contained a variety of names and allegations.

In particular, the retention of "unverified" or "wrong" data was criticized. The suggestion was made that information which could not be confirmed or which was found to be inaccurate should be discarded.

The counter argument is that much of this information, at least as to law enforcement records, is neither assumed to be accurate or inaccurate. It is, so the argument runs, simply collected as part of the intelligence-gathering efforts of law enforcement agencies in the fight against drug-related or other crimes. Seen from this point of view, the problem that occurred last year was the impermissible disclosure of a record rather than the creation of that record.

This is obviously a very difficult issue, and in making a decision on it, it should be clear that there are at least two options to leaving current procedures in place.

One way to address this would be to add to an overall list of record-keeping requirements that "unverified information" must be discarded. On the surface, this is simply of an extension of the concept of "accurate" records which was discussed above and its adoption should not be controversial. This "simple extension" would, however, have a couple of major consequences which need to be addressed or at least considered.

First, there are a substantial number of records which government simply accepts for filing and does not attempt to independently verify. These records are maintained only to provide notice and information to the public. An example is the material filed by corporations with the Department of Commerce and Consumer Affairs' Business Registration Division, such as annual exhibits. A requirement that information be "verified" would pose major problems.

Second, there is information in most investigative files that is not verified such as "leads" that were not productive and other material which while not accurate is integral to investigation as a whole. Further, a certain amount of criminal intelligence data must be maintained in order to identify patterns when they emerge or to identify an individual whose name keeps recurring and therefore becomes a candidate for more intensive investigation. Without accepting the validity of the accusations raised in last year's campaign, the informant's report arguably falls into the category of intelligence-gathering. It should, however, be obvious that if such information is to be held, that consideration must be given to accompanying such records with strong penalties for the release of such information to prevent a recurrence of last year's incident. A discussion of penalties will, however, come later.

Another way to address the question of limits on record-keeping is by the adoption of the standard discussed earlier -- "accurate, relevant, timely, and complete" records. While it will still allow for the retention of unverified information, that information should only be that which is relevant to the agency's functions. What will be prevented is the accumulation of material that is irrelevant to that agency's functions, such as the collection of materials on the personal lives of public figures which certain federal law enforcement agencies engaged in for many years.

Another related point is the problem of <u>missing records</u>. This was raised by Henry Smith (I(H) at 20) in terms of Department of Hawaiian Home Lands (DHHL) records of transfers and exchanges of land which he believes are lost. Without those records, there is no way to determine exactly what happened to the land.

The point raised here is to some extent addressed by the "accurate, relevant, timely, and complete" standard, especially the last portion. Complete records would obviously alleviate any concern as to the problem of "missing" documents.

On the other hand, the setting of such a standard does not answer all problems. As in the case of DHHL records, if some are missing, the consequences can be substantial. It may, therefore, be appropriate for agencies and the Legislature to undertake a careful review of the laws relating to the destruction of government property in order to ensure that they can be used to prosecute any cases involved the destruction of such essential public records. At the same time, the entire issue of archival storage by agencies needs to be explored. Among the questions which should be explored are the adequacy of funding and personnel, as well as the need for greater standards or uniformity.

Another of the larger issues raised results from the dramatic changes which have occurred in data processing technology. As the government's ability to work with large quantities of information increases, so do the opportunities to abuse that ability. The Committee heard from a number of people who raised concerns about data banks and computer matching.

The basis of the concerns raised is two-fold. First, there is the concern about "big brother," that the creation of large data banks on citizens is a fundamental threat to our freedom. Second, there is the concern about the presence of mistakes in the data bases which could have very unfortunate consequences for innocent people. As Mrs. Jennie Doss put it, "In the age of Big Brotherism and the computers much mischief, black balling, mistakes and lies can be done in record-keeping." (II at 345) John Jaeger worried that "[p]erhaps with the new computers, we have actually gone beyond the point of no return." (II at 353)

Beverly Keever testified that the ability of agencies to match data bases circumvents normal barriers between agencies and records (II at 355; III at 338; and I(H) at 44-46). In her view, Hawaii needs safeguards in this area.

Desmond Byrne suggested that Hawaii needs a data bank law such as in the United Kingdom in order to register and control these banks (II at 317; and I(H) at 57-59). It was not entirely clear whether this applies to data banks in government or outside of government but the recommendation is to delineate what is collected, why it is collected, who can receive it and under what conditions, and how is it updated. The federal laws require agencies to disclose their "systems" of records which is the first step but the concerns raised here go beyond that point.

It is worth noting that according to the Wall Street Journal, computer matches by the federal government have tripled since 1980. See, Appendix M in Vol. IV. That article also noted that there were major problems with mistaken identity and that mistakes in input are common.

On a related matter, Senator William Cohen of Maine has introduced legislation in Congress which provides procedures for any matching of files between federal agencies, for the return of files, and to block "fishing expeditions" by requiring approval by a neutral board prior to any match. The bill would also prohibit the use of very sensitive information such as income tax records, census records, and records relating to political activity or religion. The bill would also require that agencies verify any matched information prior to taking action involving the information.

The Director of Corrections Harold Falk noted that the capabilities we have in this area require that we find better means of monitoring and safeguarding data (II at 17).

The last of the larger questions is one that must be addressed if there is to be any major change to Hawaii's records laws. The question is what to do with the records assembled under the current law or alternatively, whether there will be a **retroactive effect to the new law or amendments**.

On one hand, the new laws could be looked at as a definitive statement of public policy that should apply to all records whenever they were assembled or created. Not only does this have a strong appearance of fairness, it also has the substantial advantage of being much simpler to implement than the alternative of separating old and new records.

On the other hand, consideration must be given to the expectation of privacy that has been created in those who submitted records with the knowledge that they would be treated confidentially. If the law applied retroactively, these prior understandings and expectations would become inoperative. Of course there will also be cases where there are unreasonable or unjustifiable expectations and understandings of confidentiality with regard to records.

General Access Issues

Balancing Test to Determine Access
Access to Personal Records
Access for Research Purposes
Restrictions on Access to Archive Material
Release of Segregable Information
Release With Condition of No Further Release
Access to Electronic or Computerized Records

The focus now shifts to the community's desire for a much different law on government records. The set of issues presented in this section deal with those general provisions on access which were found to be either deficient or non-existent under current law. And while the primary discussion of current law in this report is intended to be Chapter 2, this set of issues more than any other will necessitate discussion of and comparison with Hawaii law.

As was discussed earlier, a major criticism of current law is the failure to provide a clear link between the public records and confidentiality provisions in the law. Speaker after speaker at our hearings called for this deficiency to be remedied and in almost every case what they sought was the provision of a **balancing test to determine access**.

The overwhelming sentiment expressed to the Committee was for a test which provides for maximum public access to records with a narrow range of exceptions. In fact, as one Committee member said, it should not so much be a balancing test as a presumption of openness. Speaking in support of this balance or presumption were Neil Abercrombie (I(H) at 50-51), Martha Black of the American Association of University Women (II at 147; III at 334; and I(H) at 54-55), Terry Boland of Common Cause (II at 152 and I(H) at 46-47), Jahan Byrne (II at 332 and I(H) at 47), Maria Hustace (II at 351 and I(H) at 30-31), Beverly Keever (II at 355; III at 338; and I(H) at 44-46), Gerry Keir (II at 217 and I(H) at 40-44), Dorothy Murdock of the League of Women Voters (II at 233 and I(H) at 31), Jim Setliff (I(H) at 32), John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57), Representative Rod Tam (II at 7 and I(H) at 53-54), and Ronald Taylor of Equifax Services (II at 153).

There are a number of reasons advanced employing such a balancing test or presumption of openness. Without going into great detail, the major reasons are as follows:

* The records belong to the people and government is only a custodian of those records on the people's behalf;

* A lack of access leads to distrust in government;

* A lack of access leads to ignorance about government and its activities;

* Whenever public funds are used, public access should follow;

* Records which advance the rule of law should be open;

* Every issue on records need not be addressed specifically in law;

* Any additional costs in manpower or frustration for public employees will be far outweighed by increases in accountability and responsiveness;

* "Personal" and "private" should not be synonymous as the former covers a number of items about which there should be no expectation of privacy;

* The rights of free speech and free press by necessity include a right to know;

* "It is self-evident that those who choose to act in the public arena must bear public scrutiny." (Black, II at 147; III at 334 and I(H) at 54-55)

In terms of what type of material should weigh on the other side of the balancing test or in terms of what exceptions that would be allowed, the speakers focused on items which were highly personal or intimate in nature. Examples included medical records, juvenile records, and the names of rape or child abuse victims. The discussion of the treatment of these specific types of records will occur in later portions of this chapter, and the scope of any exceptions could well follow from the decisions made about those items. Nonetheless, the testimony strongly favored a set of exemptions that is as narrow as possible.

It was also argued, however, that even where exceptions from public access were made, there should still be a "window" which would allow access in appropriate cases. This was raised both by John Simonds (II at 224 and I(H) at 56-57) and Mrs. Pansy Aila (II at 314).

And it was strongly argued that where access is to be denied, the burden of proof that such denial is appropriate rests firmly with the government. If a strong test is adopted, this burden is probably inherent in the structure of the law but

if imposed, should be made explicit to avoid confusion. See Keever (II at 355; III at 338 and I(H) at 46-47).

As was stated at the outset, the testimony overwhelmingly favored use of this balancing test with the far greater openness that it will bring. It should be noted, however, that this will create a new and perhaps uncomfortable situation, at least for some people. As John Simonds recognized in his remarks (II at 224 and I(H) at 56-57): "We sense a danger at times of a community that prefers the comfort of closely held information shared by a few insiders to the general openness of records, meeting, decisions, and documents." That sentiment without doubt exists and to some extent represents a faith in government that approaches blind faith. A strong argument can be made that the public's view in this context has and will continue to vary depending upon events. Perhaps one key to resolving community ambivalence on the subject of access to government records is to ensure that the exceptions to public access are carefully tailored to match community desires.

Two alternative formulations of the balancing test were suggested. Harry Kanada, Administrator of the Adult Probation Division (II at 4), proposed a formula under which all records not made specifically confidential would be accessible but that there would be a second determination to be made based on who was seeking access. There would be three classifications: those with a right to know (by statutory authorization, for example); those with a need to know (physicians, financial institutions, etc.); and, those who want to know (such as the public for general or personal motives). Under this system, certain types of personal information, such as medical or financial information, would only be available to those who have a right to know or a need to know. The most obvious concerns with this proposal would probably be differentiating between the second and third categories, and the argument that the "public interest" is in fact in the "need to know" category.

The other formulation was raised by Dr. Frederick Shepard (II at 412) who was concerned that while information acquired by the government might be available to other agencies (such as those involved with law enforcement), it would be highly objectionable if non-public agencies had access to such information. In fact, it was felt that all conceivable roadblocks should have to be overcome in such cases.

It was implicit in the record that the current provisions on individual <u>access to personal record</u> (or something similar) should be maintained. There was essentially no controversy about providing such access to review and correct such records. And in fact, Neil Abercrombie (I(H) at 50-51) felt that the right to correct should have very broad application.

Two items were, however, raised in conjunction with this right of access. First, Honolulu Managing Director Jeremy Harris (I at 116) noted that current law gives the agency ten days to respond to individual requests. Harris said that what is needed is either a longer period or more clarification as to the circumstances under which the agency can take a longer time to respond.

The other item was raised by Beverly Keever (II at 355; III at 338 and I(H) at 44-46), who noted that the ability to review and correct personal record is only as good as the knowledge of what records exist on an individual. As will be discussed later, there is a pressing need to have complete list of the records kept by agencies. And as discussed earlier, having the term "complete" made part of a standard for record-keeping will also assist by assuring that the records reviewed are in fact the full set pertaining to that individual.

Another access issue which is not addressed by current law but which the Committee received testimony about was the need to assure <u>access for research purposes</u>. Particularly strong in this regard was Professor Mari Matsuda of the Richardson School of Law (II at 114 and III at 200). In her view, "[i]t would be a loss to the goal of informed democratic debate should vital empirical and qualitative evidence become unavailable under the guise of privacy controls. I believe it possible to protect individual privacy while allowing scholars access to government."

Honolulu Managing Director Jeremy Harris noted that the County has made provision for allowing such access but only under strict conditions. Specifically, the County suggested that agreement needs to be reached on the authority to see files, the limitations on use of the material, the deletion of individual identification prior to use, prior review by the agency, insurance against misuse where the agency desires, and a strong set of sanctions where appropriate.

A member of the Committee noted that it is a loss to the community that research using government data cannot be undertaken. There was no testimony against such access and it is difficult to see how bonafide research, done under strict conditions, could be a threat to individual privacy.

On a related point, concerns were raised about <u>restrictions on access to archive material</u>. As Professor Matsuda noted, some records over a hundred years old are still difficult to obtain (II at 114 and III at 200). The problem is the conditions which can accompany material given to the archives -- conditions which require that the material be held confidentially until some specified time in the future. There

are at present no limits on the time periods which can be specified.

Acting State Archivist Ken Kiyabu urged that something like the Georgia Records Act of 1972 be adopted by Hawaii (II at 14). The goal of that type of law is to provide for the removal, by statute, of any access restrictions over a period of time. The Georgia law apparently removes restrictions on all records after 75 years, on some records after 20 years, and otherwise makes provision for access for research purposes.

At the same time, it should be clear that the release of archive material about a living person may in fact invade privacy, and restrictions that protect such release may need to be recognized.

As a member of the Committee pointed out, the basic philosophy should be openness and while a general provision on restrictions applied to archive material may well be appropriate, the provision should be tailored to Hawaii's situation.

Another access issue which was raised was the ability to release partial records by blacking out or excising portions of the records which cannot be released. This ability to provide for the **release of segregable information** is at the heart of the federal records laws and there was sentiment expressed to provide for the practice here. Gerry Keir of the Honolulu Advertiser was one who spoke in favor of the practice (II at 217 and I(H) at 40-44). John Wagner of the Hawaii County Corporation Counsel's Office at a minimum wants the law clarified as to whether such blacking out or sanitizing of the records is permissible. (I(H) at 23-26)

If this is to be implemented, however, there were three considerations raised which should be addressed. First, as was noted in Chapter 3, the federal records laws have substantial workload consequences for the agencies involved. Therefore, to the extent that provision is made for a system like the federal government's sufficient staffing resources need to be in place to respond to such requests.

A second consideration is that if there is to be excising of materials from records, it must be done on a consistent basis. What would clearly be necessary are standards which provide what material must be excised with as little discretion as possible left to the person performing the task of excising the records.

A third consideration was raised by Jeremy Harris (II at 116) and that is that there needs to be a provision which requires segregation or excising of a file only if it is practicable to do so. Stated alternatively, at a certain point, the difficulty of excising material can become so severe that the agency should be allowed to refuse to segregate the information.

Another general access issue which was raised before the Committee was whether it would be permissible to **release records with the condition of no further release** by the recipient. As an initial matter, there would seem to be no reason to allow this situation to occur, as the release of a record to someone else is akin to waiving a privilege. Once it's gone and in the public domain, it makes no sense to attempt to place restraints on its use. This view was expressed by Desmond Byrne based on an experience he had with a particular record (II at 317 and I(H) at 57-59).

On the other hand, there are a number of releases of information which should not change the character of the information. For example, confidential material provided by one agency to another, provided to the Legislature, or provided to a researcher should not necessarily change character and become public through that transfer.

The key may, therefore, be whether it is a release to a member of the public (in which case further restrictions seem inappropriate) or it is a release to another agency or to some other party operating under substantial conditions, like a researcher (in which cases restrictions seem not just appropriate but essential to the integrity of the underlying records).

The final general access issue which was raised to the Committee was the issue of **access to electronic or computerized records**. This issue is really a demand by the public that our records laws reflect modern technology and that records which are made available to the public be available in the most useful form from a technological point-of-view. In one sense, this should not be an issue since the crucial determination is whether the record should be public or not. If it is determined to be public, the form should not be relevant. If that view is accepted, it would be a matter of amending the definition of "records" to cover electronic, computerized, or videotaped material as part of that definition. Speaking in favor of this were Gerry Keir of the Honolulu Advertiser (II at 217 and I(H) at 40-44) and Beverly Keever (II at 355; III at 338 and I(H) at 44-45). Lt. Governor Benjamin Cayetano noted that election data is now available on magnetic tape.

Three additional issues must be considered while looking at this issue. First, the reproduction costs will likely be higher than photocopying so the copying charge system will have to be adjusted. Second, the question will arise as to whether records maintained manually must be converted solely because there is a request for them in computerized form. And thirdly, there is the question of what specific technology to use in terms of computerized material. In other words, if someone requests information in computerized form, can they specify that they want it for use on a particular vendor's equipment, such as IBM or Wang?

The recognition that records are now maintained in other forms, besides the manual file, is probably long overdue and the Committee heard no opposing testimony. This will, however, be complex in terms of implementation, and the issues raised above deserve attention.

Records Infrastructure

Aids for Identifying and Locating Records
Departmental Records Guides
Administrative Rules Index
State Register
Code of State Regulations
Superintendant of Documents/Government Publications Office
Annual Reports
Providing Assistance and Training to Agencies
Attitudes of Government Employees
Assignment of a Lead Agency to Enforce Records Laws
Internal Appeals Process
Regular Review of Records Accessibility
Clearance Procedures for Release of Records
Burden Imposed in Review of Records for "Personal Record"
Copying Charges and Fees
Adoption of Rules to Implement Records Laws

While the Committee received comment on the treatment of specific types of records and information and on the way the laws should provide for the review of specific records or information, a substantial body of comment concerned the administrative structure which accompanies whatever law is in place.

The overwhelming body of testimony urged that significant attention be given to building a strong infrastructure to support the records provisions. There was a clear sentiment that unless the infrastructure issues could be addressed, the changes made to the records laws would be substantially less meaningful.

Assuming that the effort to revise Hawaii's records laws is a serious one, the concept of "infrastructure" is particularly appropriate. Many of the items that will be discussed are foundational elements which need to exist if a public records law is to be effective. The "infrastructure" concept, however, also carries with it a sense of urgency. Many of these foundational elements simply must be in place from the very outset if the revision is to have its full impact.

It is clear that there is currently an almost total absence of records infrastructure in the State. Most of the proposals that follow will therefore be new matters, at least for Hawaii.

One of the most obvious needs is the provision of aids for identifying and locating records, and, in particular, there is a need for departmental records guides. Without such guides or aids, even if access is obtained, the number of records that would need to be reviewed discourages anyone from doing so. William Sollner (I(H) at 21) stated that this situation is the result of the failure to organize information to ease access. The federal records laws requires agencies to disclose their record-keeping systems, and a similar requirement is what is proposed here.

As discussed by Beverly Keever (II at 355; III at 338 and I(H) at 44-46) and Desmond Byrne (II at 317 and I(H) at 56-57), departments should maintain lists or guides which delineate what records are maintained and whether those records are open to the public or not (as well as the legal basis for that status). This latter point was also raised by John Ishihara of the Legal Aid Society (II at 86 and III at 329). It was also suggested that these lists or guides need to be kept updated and that perhaps a loose-leaf format would be the best.

All of the individual department lists or guides could then be gathered in one central office where the record delineations could be cataloged and indexed. This will obviously require that the departmental lists or guides employ a standard format, which will need to be developed. Beverly Keever provided a portion of Utah's list as an example (II at 355 and III at 338), and it should not be difficult to create one for Hawaii.

In this context, Honolulu Managing Director Jeremy Harris points out that the city has rules which provide guidelines to determine what should be confidential; require segregation of public and non-public files; separate storage; the creation of lists of confidential records; and, a certification by the Corporation Counsel on confidential files (II at 116). He agreed that the lists are very important and also felt that the custodians of the records should be identified.

The guides would substantially ease the access process. Such guides would also reduce the likelihood that secret files could be maintained.

There would, however, be some costs involved in this proposal though most would be in terms of staff time associated with the inventory and delineation of current files. Director of Health John Lewin, M.D., said his department may have to look at establishment of a records office (II at 80), and in larger departments that may well be the case.

On a related point, there is a strong need to find ways for the public to keep better track of the rulemaking activities of agencies. Lt. Governor Benjamin Cayetano stated that an administrative rules index would be of major assistance and that the lack of such an index poses a major problem (II at 10). The question then becomes who would be responsible to create and maintain the index. The most obvious answer is the Revisor of Statutes should be responsible and the Revisor has indicated that such an index may be created in the future.

In this same context, there are two publications which it was suggested that the State consider. Both were suggested by Desmond Byrne (II at 317 and I(H) at 57-59) and would be counterparts to federal publications. The State Register would contain draft rules, notices of hearings, final rules including a discussion of the comments submitted to the agency, and various other notices of regulatory action. The Code of State Regulations like its federal counterpart would be a publication containing all of the rules adopted.

Another federal institution which was raised by Desmond Byrne Id. as an example that Hawaii might choose to emulate is the Office of the Superintendent of Documents/and the Government Printing Office (GPO). The GPO serves not only as a printer but also as a clearinghouse for all federal publications. It provides easy access for the public and ensures that a sufficient number of copies of publications are made. It also makes the publication of documents a routine process for agencies.

The Hawaii process stands in stark contrast to the federal process. The printing of government publications is done by everyone from the prisons to private industry to the departments themselves. No lists are routinely available of publications even in such very heavy publishers as the Department of Education and the Department of Business and Economic Development. And, even though Chapter 93, Hawaii Revised Statutes, provides that the State library system shall have within it a state publications distribution center, this is clearly not the equivalent of the GPO. For example, each agency is to provide fifteen copies of its reports, and these must cover library (i.e. depository) needs first.

There are issues which would of course have to be addressed before a State version of the GPO could be created. The most obvious is whether the State is willing to commit the resources necessary to establish such an office. The resources would need to include staff, equipment and physical facilities. A second issue would be where to place such a unit within State government. The most appropriate is probably the Department of Accounting and General Services, but there are alternatives including the Department of Corrections.

As with any complex subject, the handling of records questions demands that agency personnel act with a basic knowledge of the records laws. There appears to be a very real need for agency personnel to be trained in the requirements of the law, especially those who handle the request at the counters or otherwise in the "front lines." This need to provide assistance and training to the agencies will only be exacerbated if the records laws have changed to any significant degree. The need for training applies both to new employees and to current staff. And it undoubtedly needs to be accompanied by other elements, such as departmental records guidelines, in order to ensure that the same understanding on access is shared at all levels of the agency.

As to who should be responsible for providing the training and other assistance to agencies, the most likely candidates are either the Attorney General's Office or whatever agency is assigned as a lead agency in the area of records.

On a related note, some of those who testified felt that the current attitude of government employees is a major problem that must be dealt with no matter what laws are on the books. Particularly strong in this regard was Desmond Byrne (I(H) at 57-59) who said "[a]nd I see Hawaii, basically in government, as very secretive and not very open, as though it belongs to the civil service and government, and it does not belong to the people." He feels that government is not service oriented and that no matter what laws are on the books, things will start to get obstructive. Mark Coleman of Pacific Business News (II at 288) recounted his experiences with "rude and uncooperative" employees, and Maria Hustace (II at 351) spoke of some employees as "rude, arrogant and secretive."

There was also concern expressed with the attitude that the public should only receive the "bare minimum." For example, items that are not completed, such as drafts, are almost never released even when such release would in no way impede government process.

Two different, though not conflicting, suggestions were made as to how to address this issue. Representative Rod Tam (II at 7 and I(H) at 53-54) suggested that an Administrative Directive issue from the Governor counseling employees on the need to ensure respectful and timely delivery of services, on the importance of employee attitudes to the delivery of information, and on the ownership of records not being that of the employees. Desmond Byrne (II at 317) also noted the need for direction from the Governor and emphasized the need for prompt replies as a matter of practice.

John Simonds of the Honolulu Star-Bulletin (I(H) at 56-57) on the other hand emphasized the need for training in records laws so that employees emphasize assistance to those seeking access.

And if, as was noted earlier, there are problems under the current law, then training will become even more critical should the law change. And if the law changes, a good training program could assist in getting off to a good start.

As was obvious from the discussion on training, there is a strong need to have some agency or group given the assignment of a lead agency to enforce records laws. Not only should that agency arrange the training program, it would be the appropriate agency to provide the standard format for department record guides and to undertake an informal review of disputes.

Under current law, the Attorney General has the primary role in the interpretation of the records laws. That role could be expanded. In some proposed bills which have been discussed in prior sessions, the Office of the Ombudsman has been suggested as a lead agency. Current Ombudsman Wayne Matsuo has in the past objected to that proposal both on workload grounds and on the propriety of the assignment of functions to his office. Another option would be to create a new office solely to handle records issues. This last option would have the advantage of providing staffing whose sole responsibility would be questions involving records. And if it were placed in the Governor's Office, like the Office of Affirmative Action, it would be in a position to have great impact on the departments.

It is unlikely that there is any scenario under which a lead agency could be created without providing additional resources to the agency. If a new office is established, it should probably start with a staff of three to five members and defer permanent decisions until long-term workload decisions can be met. It would also provide a clear place to take complaints about the handling of records short of going to court.

It should also be noted that Arthur Ross of the Honolulu Prosecutor's Office (II at 132) agreed that there was a need to designate a lead agency to enforce violations and suggested that either the Prosecutor's Office or the Attorney General's Office be assigned, armed with criminal and civil powers. That suggestion does not necessarily conflict with the earlier ones as what is suggested by the Prosecutor's Office is an assignment of a lead enforcement agency as opposed a lead implementation agency. And especially if a new office were created, the legal work would likely be done by others in any event.

Another part of the possible infrastructure is an internal appeals process on records disputes. Current State law provides for an intra-departmental review in the case of Chapter 92E questions. Other than that, and in all other records cases, the only avenue of appeal is the courts. That is obviously very expensive and has a chilling effect on challenges.

Both Martha Black of AAUW (II at 147; III at 334; and I(H) at 54-55) and John Ishihara of Legal Aid (II at 86 and III at 329) argued that what is needed is an appeal and dispute resolution mechanism that does not involve the courts. Ishihara favors a three-member board, a process used in New York and some other states. Or the lead agency if one is designated could take on the role depending upon the other roles assigned to that agency.

In any event, the goal remains the same, to get a neutral review of a records question without the necessity and expense of going to court.

Another feature which has been suggested to be part of the records infrastructure is a regular review of records accessibility. This concept flows from comments made by John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57) in which he recommended that the Ombudsman or Corporation Counsel be asked to conduct reviews of access and convenience. Regardless of where it is assigned -- and it could be assigned to the lead agency if one is selected -- the review should check on barriers which may exist (intended or unintended), any clumsiness in the handling of records, and any other problems that may turn up. Another problem which probably should be reviewed is the question of materials which are confidential in one record but open in another.

Another issue which arose in terms of records infrastructure is the current practice of using clearance procedures for the release of records. On one hand, especially on records which fall under Chapter 92E, HRS, there must be a check as to whether the requesting party meets the law's qualifications for access. Or where the material is highly

sensitive or confidential, the clearance procedures must be very precise.

On the other hand, clearance procedures should not be a method of discouraging access or otherwise burdening access unreasonably. Both Mahealani Ing of the Native Hawaiian Legal Corporation (II at 281 and I(H) at 37-39) and Mark Coleman of Pacific Business News (II at 288) indicated that they had experienced seemingly unnecessary clearance procedures.

One reason for such clearance procedures is the lack of understanding most employees have of the records laws. Another is the fear that many employees have of violating the provisions of Chapter 92E, HRS, with its attendant penalties. If training is provided to employees, if the penalties provisions are reexamined, and if a new law which provides a better balance is added, unnecessary clearance procedures may fall on their own.

The final issue to be raised as part of the infrastructure area is the adoption of rules to implement the records laws As was discussed in Chapter 2, one of the criticisms of Chapter 92E, HRS, is that most agencies have not complied with the mandate in that law to adopt rules implementing its provisions.

No one statute can ever hope to address the variations which exist in each agency on a subject like access to records. As a result, rules will probably be an important part of the implementation of any new law. It is to be hoped that the momentum which would be created by the adoption of a new law would help to ensure that rules were adopted if required. The law could, however, specify a time period within which rules must be adopted. A period of nine to eighteen months would not seem unreasonable. It would also mean that work would have to begin immediately on the new rules so any failure to do so by a department would be obvious.

There are many instances in which the public wants more than just access to the record. They want to retain photocopies of the record for their own use. Current laws allows for this and it is inconceivable that any new law would do otherwise. What is at issue are the copying charges and fees which agencies can assess the person who requests the records.

As an initial matter, it is clear that copying charges must not serve as a barrier to effective access. It should also be clear that even the goal of recovering fees for services rendered is of secondary importance. In fact, it may even be appropriate, as one Committee member noted, to give agencies the power to waive fees in appropriate instances.

As to the amount of the fee, current law provides a copying charge of $.50 per page which can be adjusted (within limits) by the departments. Some departments have dropped the charge to $.25 per page. At least one witness, Desmond Byrne (II at 317), argued that the charge should be much lower since commercial photocopying is more in the $.05 to $.10 range. He also believes that there should be a consistent statewide policy and that the fee should be as low as possible.

It can also, however, be argued that direct comparison between state rates and private rates may not be appropriate. Most State offices have nowhere near the economies of scale (in both labor and equipment) that private copy services possess.

Lt. Governor Benjamin Cayetano (II at 10) and Desmond Byrne (II at 317 and I(H) at 57-59) also noted that wherever possible self-service copying should be permitted. Presumably this could range from having coin-operated machines in government buildings to allowing the public to bring in portable machines to allowing documents (in some cases) to be borrowed for copying on other machines.

Lastly, current law provides that the agency can charge not just for the copying but also for the searching necessary to retrieve the document. Honolulu Managing Director Jeremy Harris (II at 116) argued that this authority should be retained. He also suggested that it be clarified that the charges are to cover the cost associated with the time the employee spends on the search (i.e. wages) and that if segregable information is to be released, the costs associated with the segregation can be assessed.

An issue which arises in the context of the current law is the burden imposed in the review of records in order to isolate "personal records." This issue is on one level easy to dismiss as the cost of the government doing business. And as one Committee member noted, the fact that the term "burden" is used at all indicates a problem with governmental attitudes.

On the other hand, this issue is also reflection of the breadth of the definition of "personal record" in Chapter 92E, HRS. This was essentially the point made by Hawaii Corporation Counsel Ron Ibarra (II at 137) and Deputy Corporation Counsel John Wagner (I(H) at 23-26). The breadth of the definition makes it likely that records must be heavily sanitized to eliminate personal records or not released. It is not clear in the current law that blacking out or sanitizing is permitted, and even if it is, the burdens imposed may be significant.

Therefore, to the extent that a more balanced statute and clearer authority in how documents are handled can be provided in any new law in this area, this issue can be addressed to a large degree.

Statewide Fair Access Questions

Adequacy of Public Notices
Availability of Records Outside of Oahu
Handling of Telephone Calls from the Neighbor Islands
Lack of Confidentiality in Satellite Office Settings
Collecting Data by County

As was discussed earlier, the Committee held hearings on all neighbor islands except Niihau and Kahoolawe. At hearings in Hilo, Kona, Wailuku, Kaunakakai, Lanai City, and Lihue, the Committee heard the same message again and again: people on the neighbor islands face tremendous obstacles in obtaining access to most records. In fact, for neighbor islanders the question is not quality of access but whether they have any access at all.

This is obviously not a new problem and frustrations are long-standing in this area. The sense of "second class" treatment is what is presented and that is not something which can be allowed to persist. In an island state, differences in access are inevitable, but to the greatest extent possible, these differences should be limited.

In the following pages, five specific issues raised during the hearings will be discussed. There are undoubtedly other concerns, however, and it may be appropriate to create a mechanism to continue to work on this problem. One proposal that deserves consideration is the adoption of a "Neighbor Island Equal Access Act." In its initial form, this Act could set forth the goals of equal and fair access and create a temporary commission to review the subject in greater detail and recommend specific proposals which seem most effective in providing improved access.

One of the first complaints that the Committee received was about the notices for the Committee's own hearings. Essentially the issue concerns the adequacy of public notices. Those who spoke with the Committee said that publication of a notice in the two major daily newspapers from Honolulu does not provide adequate notice. There is no dispute that the two papers reach all parts of the State though their readership is significantly lower on the neighbor islands. Instead what the neighbor islanders said was, if you want to reach us, there are better ways of doing so.

The two most obvious alternatives are the use of neighbor island newspapers and the posting of notices. Both raise questions that require further exploration, but if the

goal is to provide real notice, that exploration should be undertaken. There are a couple of threshhold issues which will only be briefly discussed. The first issue is whether any special effort should be made to make notice more available on the neighbor islands. The answer should be yes especially as to State agency decisions because the final decision will likely be made in Honolulu, and the opportunity for neighbor islanders to present their views is already limited. The other issue is whether additional notice should only be required in cases where there is to be a hearing on the specific island involved. Again the answer is probably yes, at least as an initial matter.

The use of neighbor island newspapers would obviously increase the level of notice but among the questions which must be addressed are the following: Are there generally accepted island-wide or regional newspapers on each island? Do they publish on a frequent enough schedule to accommodate the time requirements under which agencies must operate? What are the cost implications for agencies?

The idea of posting notices was raised primarily on Molokai and Lanai as the most effective way to get notice out. Among the questions that must be addressed are the following:

(1) Should this apply only to Molokai and Lanai?

(2) Can the facilities of the U.S. Post Office (the primary suggestion on both islands) be used for this purpose?

(3) Who will ensure that the notice is posted in time and manner which comply with legal requirements?

It should be noted that the Committee's experience was that neighbor islanders have comments they wish to make and are appreciative of the opportunity to participate. The lack of effective notice, however, undermines the effort to seek those views, and this matter should be addressed.

A much more difficult problem is raised in terms of the availability of records outside of Oahu. The root of this problem, of course, is that most records are maintained on Oahu. Neighbor islanders at this time must, therefore, travel to Honolulu to review the records. The problems of expense in time and money are clear.

The most obvious answer -- that of having multiple sets of records -- is not a realistic solution. For example, such records would be misleading if they were not kept in absolutely identical shape, an almost impossible task. The expense of maintaining such a system would be staggering. And there would

still need to be one original record and for any official purpose, that original record (presumably kept on Oahu) would still have to be checked. This is, however, not to suggest that agencies should not consider greater decentralization of record-keeping, if appropriate.

There are, however, a number of steps which should be considered. One obvious area to explore is access through computer terminals to any computerized records in Honolulu as well as electronic bulletin boards. Other items which deserve consideration are using FAX machines to send documents to the neighbor islands; giving neighbor islanders a reduced rate on photocopying; ensuring that forms, instructions and publications are routinely available, even if the original records cannot be located on the neighbor islands; and establishing special procedures for expediting neighbor island requests. As this list indicates, there is much that could be done if the policy decision to improve access to neighbor islanders is made and the resources are provided. The policy decision can be made immediately but the provision of resources must be preceded by careful planning and study.

A final point on the availability of records is that the counties themselves may have similar problems internally with the availability of records especially Maui County because it covers three islands. Whatever solutions are proposed at the State level should, therefore, be considered by the counties as well.

On a related point, the handling of telephone calls from the neighbor islands is also the subject of strong feelings and frustration. The essence of the concern is that a neighbor islander calling an Oahu office is paying for a long distance call and should be given special consideration on that basis. At a minimum, such calls should not be placed on "hold."

It should be clear that if priority were given to neighbor islanders that there is discrimination involved. The justification for granting that priority is obvious, the inability to get to the office in Honolulu with substantial expense, but it is discrimination nonetheless. In this context, it is worth noting that the Business Registration Division of the Department of Commerce and Consumer Affairs currently will perform certain research tasks on the phone only for neighbor islanders. This policy was attacked by a Kailua, Oahu resident and the Office of the Ombudsman took the view that a rule or statutory basis for the discriminatory treatment would be necessary. A rule was adopted and the practice continues. It does, however, suggest the value of providing this type of priority in a statute if it is deemed to be important.

Another option is to look to toll-free numbers for use by neighbor islanders. Such a system would at least ensure that any delays on the phone would not cost the caller money. More importantly, the use of such a system means that distance from the capital of the State does not cost any citizen their right of access. And in an islsnd state, that last point is a significant one.

Another issue which was raised was the lack of confidentiality in satellite office buildings. Apparently, the problem is that some of the State's neighbor island offices are small, sometimes a single room, and the normal physical barriers which might exist in the Honolulu offices of the agencies are absent.

This lack of confidential settings has a number of effects, including the following:

(1) Documents which should be kept very secure are by necessity in areas accessible to others;

(2) Conversations which should be private must take place in settings where they can be overheard; and

(3) Confidential information which should be provided may not be for fear that in these settings it will not remain confidential.

This situation could probably best be addressed through a combination of actions. Current office space use should be reviewed on the basis of confidentiality needs. This basis may not have ever played a role in the assignment of space and with better use of existing space some problems may be eliminated. Increased sensitivity to this problem is in the same vein. If the agencies are sensitive to this problem, it is likely that a number of small but important steps could be taken to increase the sense of confidentiality. And lastly, the State's facilities managers could attempt to create some space, if it does not already exist, where confidential conversations could be held. If space were at a premium, as it is in most State office buildings, perhaps space that could be used on a rotating basis by all agencies would be sufficient.

The last issue raised is a more subtle one. The collection of data by county is probably not a major issue for most people because most people live in the county which comprises 80 to 90 per cent of the whole in most categories. But to neighbor islanders, this kind of information can be very important in terms of applying for various types of public funding, such as grants. It is also important in terms of

allowing neighbor islands to review the activities of government and those over which government has control in order to ensure that each island receives fair treatment.

This is, in one sense, a question which relates to the quality of records. It is also, however, an access question in the sense that without the county-based numbers, access to the general information may not be of much value.

The obvious issues which must be dealt with are:

(1) Which data is already kept on this basis?

(2) How difficult would it be to keep all State government data on this basis?

(3) Whether there is a particular set of records over which there is major concern.

There is likely to be some expense attached to changes in record-keeping as well as administrative burden, and it will probably be essential to handle any changes with a strong sense of priorities.

One last note. Unlike most sections, this one has not included references to those who raised these issues. That is because most were raised at the Molokai and Lanai hearings by individuals who did not make an official appearance before the Committee but whose views were reflected in the report on those hearings (I(H) at 11-13). Others whose thoughts are reflected in this section are Henry Smith (I(H) at 20), William Sollner (I(H) at 21), Maria Hustace (II at 351 and I(H) at 30-31), Beverly Keever (II at 355; III at 338; and I(H) at 44-46), John Burgess (I(H) at 28), and Tom Warling (I(H) at 15-16).

Penalty Questions

Penalties for Release of Confidential Information
Penalties for Refusal to Release Public Information
Immunity for State

In the development of most laws which impose requirements, whether on the public or on government agencies, the issue of sanctions or penalties for failure to meet those requirements arises. Penalties or sanctions arise out of a sense that without such sanctions, the law will not be followed. Or they arise out of sense that if the law is not followed, anyone who suffers as a consequence should be compensated. It is, however, clearly possible to enact a law without penalties or sanctions.

Assuming, however, that penalties or sanctions are desired, it is very important that the form of those penalties or sanctions be carefully considered because of the effect that they have on the laws implementation. No better example of this exists than the current Chapter 92E, HRS. Among the sanctions in that chapter is dismissal of an employee who knowingly releases a record. This possibility has led to a restrictive, but safe interpretation that in any doubtful case the record should be kept confidential. As Gerry Keir noted (II at 217), the chapter was written to encourage denial of access in order to avoid the sanctions in the law. It has ended up with an almost classic case of the tail wagging the dog as the penalty provision is controlling the overall implementation of the law.

Assuming that penalties or sanctions are to be part of the new records laws, there are a number of factors to be considered in designing a set of penalties and sanctions. Among the decisions to be made, are the following:

* Should the sanctions be criminal, civil, or administrative? Or should they be some combination of the above? In making the decision, it needs to be kept in mind that criminal penalties lead to narrower interpretations in order to protect individuals subject to the sanctions. This narrow or strict interpretation will be applied both by the court in criminal trials and by agency personnel in order to avoid application of the sanctions.

* Who should be subject to the penalty? Is it to be the employees themselves or should the agencies instead be subject to some form of sanction. If, for example, the employees themselves were not subject but instead the State could be sued for damages, the situation would be more akin to other types of laws where the State itself assumes liability for the acts of its employees.

* What types of records should be "protected" by the penalties? The penalties could apply across-the-board to all records or to only some records. One way to avoid the problems encountered by a stiff sanction designed to protect some records is to create a general sanction to apply to all records and then to have more stringent penalties apply to specific records. For example, rather than have a stringent penalty apply to the release of law enforcement records in order to protect against last year's "smear" document, the law applying to the Office of Narcotics Enforcement could be amended to provide stringent penalties for the release of its records. While this does run counter to the notion of consolidating records provisions into one law, it does avoid the problem of trying to develop appropriate sanctions in general statutes. As Director of Labor and Industrial Relations Mario Ramil's testimony (II at 81) demonstrates, precedent already exists for such treatment.

* Should the State be subject to damage actions? An alternative to the penalty provisions is to not focus on the act of releasing or not releasing information but to instead focus on the impact of the release. This avoids the problem of the employee focus in the current Chapter 92E, HRS, and instead focuses on ensuring that someone harmed by the release could recover damages.

* Should the records statutes provide any kind of sanctions at all? Actions for invasion of privacy can already be brought with or without any penalty provisions in the records law and perhaps that should be considered sufficient.

The testimony before the Committee focused on the penalties for release of confidential information. There was, in particular, a focus on the release of the "smear document" during the 1986 election campaign and overall testimony which favored strong sanctions for violations of privacy rights. Testimony to that effect was received from Probation Administrator Harry Kanada (II at 4), Honolulu Managing Director Jeremy Harris (II at 116), Deputy Prosecutor Arthur Ross (II at 132), John Jaeger (II at 353), and Mrs. Pat Wilson (II at 431).

On a different note, Marcia Reynolds of the Big Island Press Club (and a reporter for the Hawaii Herald-Tribune (II at 148) repeated her opposition to previous efforts to make the release of law enforcement and other confidential information a misdemeanor. In her view, this has such a chilling effect that the one time was attempted earlier (See Act 145, Session Laws of Hawaii 1974), was repealed within a year (See Act 120, Session Laws of Hawaii 1975).

If penalties are to be imposed for the release of this information, the penalties could range from termination of the employee who releases information to fines to criminal sanctions to damage suits against the State. In doing so, as noted earlier, consideration should be given to the impact that the penalty and sanction structure has on interpretation and administrative practice.

The other side of the coin -- the notion of penalties for failure to release public information -- did not receive much discussion. There is reason why the concept of compensation for harm caused could not apply in this context as well. There could also be some statutory fine which along with an ability to recover attorneys fees would serve as an incentive to provide public access.

And finally, it was suggested that there should be immunity to the State when material is released. This was raised by Kauai Mayor Tony Kunimura (II at 144) in the form of a desire for a good faith defense or immunity in Chapter 92E cases. Clearly if the goal is to have information available to the public, the current fears generated by Chapter 92E's penalties need to be alleviated to some degree. Immunity or at least a defense based on good faith is one way to do so.

As a final thought, the focus on penalties is a reflection of a belief that the law will not be followed without some form of compulsion. On the other hand, the results of imposing very strong sanctions on a general basis have not worked well. Perhaps it would be preferable at this point to significantly deemphasize penalties. Alternatively, penalties could be deemphasized at least in the general records law(s), leaving that instead to statutes relating to specific records.

One provision that could be added in lieu of sanctions would be one providing that in unclear cases, the person who is the subject of the record could be contacted and allowed to intervene in any case involving those records.

Miscellaneous Coverage Issues

Differing Treatment of Identical Information
Confidential Material in Third Party Hands
Privacy Protections for Other-Than-Natural Persons
Material Confidential Under Federal Law
Effect on County Rules and Regulations

There were a few issues raised which did not fall neatly into categories but related generally to the coverage of the records laws. The first of these was raised largely to demonstrate the problems with our current records laws. The differing treatment that identical information receives is one of the clearest indications of the current situation. For example, the home address of individuals is generally regarded as personal record information and is not released by most agencies, but as former Congressman Neil Abercrombie (I(H) at 50-51) pointed out, such information is routinely available on voter registration lists. The same situation applies to Social Security numbers. Probably the only way to change this illogical situation is to amend the laws. What is needed is greater flexibility in dealing with information such as would be provided by a balancing test. Under such a test, recognition of the fact that the information is already in the public domain would be possible.

Another issue is raised by the cases where confidential material is now in third party hands. This was an issue raised by Deputy Prosecutor Arthur Ross (II at 132) who is concerned that records which come into his office's files for one purpose on a confidential basis are being given by the courts to other parties. This is occurring in spite of the fact that those other parties could not have obtained the files in the first instance.

There are three aspects to this issue which deserve discussion:

(1) The inability to get the information directly is a relevant factor;

(2) The status of the information in the third party's hands; and

(3) The ability of others to intervene in the suit.

Under current law, the fact that the person could not get the information directly is probably not relevant as the law provides only a few factors for the determination as to access which do not include the inability to obtain the information directly. If the law were changed to provide a balancing test, then such a fact might become relevant. In either case, however, the primary determination will continue to be the requesting party's right to the records, whether their own records or those of someone else.

The question of the status of confidential material once it is transferred was discussed in an earlier section. As was noted at that point, the transfer probably doesn't change the material's character if another agency is involved but if the transfer is to a private individual, it has probably passed into the public domain.

The last point is similar to one raised at the end of the last section and would essentially provide that anyone who was the subject of records to be transferred would be notified and given an opportunity to object. This point was specifically suggested by Mr. Ross as a way of providing some protection to the rights of those individuals.

The next issue to be discussed is privacy protections for other-than-natural persons; e.g., the privacy protection that a corporation or other legal structure should receive. The current privacy law in Chapter 92E, HRS, provides protection only to natural persons. There was very little comment on this issue generally though there was comment on the issue of trade secrets, which will be discussed in a later section.

It is somewhat difficult to see how notions of personal privacy could be automatically applied to business entities. If the purpose of privacy protections is to protect certain personal material from public view, such as medical records or other highly intimate material, the privacy protections are simply inapplicable in the case of a corporation or other business entity.

Another issue raised was the handling of material which is confidential under federal law. This was a subject raised by three officials from agencies who have substantial relationships with federal agencies: Major General Alexis Lum, Adjutant General (II at 77); William Paty, Chairman of the Board of Land and Natural Resources (II at 84); and Edward Yuen of the University of Hawaii (II at 112). All urged that any protections currently provided be continued.

The Supremacy Clause of the U. S. Constitution would undoubtedly preserve any current status that the records have under federal law. Nonetheless, it seems appropriate to recognize that fact by providing explicit protection to material which is required to be kept confidential under federal law.

The last issue is the State law's **effect on county rules and regulation**. It is beyond dispute that State law governs with full force. Honolulu Managing Director Jeremy Harris (II at 116) explicitly recognized this impact. Therefore, if the records laws are changed, there will be a corresponding impact on county law.

Judiciary Issues

Exclusion of Judiciary from Records Law
Ability to Review and Correct Judicial Record
Access to Judicial Records
Confidential Judicial Proceedings
Alternate Dispute Resolution Procedures
Judicial Discovery Rules
Attorney Disciplinary Process
Judicial Selection Process
Will and Probate Records
Divorce Decrees
Family Court Records
Juvenile Justice Information
Child Support Records
Paternity Claims
Grand Jury Records

The Committee received substantial comment on the applicability of the records laws to the judiciary and to judicial proceedings and records. In the case of the judicial branch, the issues begin with the most basic, the exclusion of the judiciary from the records law. Under current law, the Judiciary is exempt from the provisions of Chapter 92E, HRS.

This should not, however, be the subject of major controversy as all of the comment was to the same effect. Administrative Director of the Courts Janice Wolf (II at 1) stated that there was no reason for the exclusion of the Judiciary from the law and that the exclusion produces confusion. As she noted, all court records are in fact open except where specific statutes close the proceedings as in the case of many family court hearings and records. Expressing agreement on this issue were Honolulu Managing Director Jeremy Harris (II at 116) and Steve Goodenow (II at 308).

The only possible justifications for such an exclusion might be a separation of powers concern by the Legislature or an assumption that applying the records laws would add confusion to the process given the courts' extensive rules and procedures. With the comments of the Administrative Director, these should no longer be of concern.

It should, however, be made very clear that taking this step is not intended to close any judicial records now open, and especially not the records of judicial proceedings. The application of this law to the Judiciary should effect primarily administrative records.

Even if the records laws of the State do apply with full force to the Judiciary, there will always be differences because of judicial procedures. Nothing demonstrates this better than the issue of the ability to review and correct judicial records. This was raised by Elena Jeck West (I(H) at 21-22) who feels that the decision in a case in which she was a party is wrong and should be changed.

The ability to review and correct records comes out of Chapter 92E, HRS. If the agency will not correct that record, individuals are allowed to file a statement setting forth their views. In the context of a judicial case, the record is established through a series of proceedings and filings. The total record provides the views of all parties, and once all appeals are exhausted, the record is complete. The notion of correcting the record through an additional process simply does not apply in specific judicial proceedings.

Another issue which demonstrates some of the unique aspects of the judiciary is the question of access to judicial records. As a general rule, judicial records are totally open, outside of the family court area. This is not the subject of any dispute.

In exceptional cases, however, the court may seal a document for the protection of one or more of the parties. Disputes over access to these materials should be raised within the context of the case itself.

The Committee heard from Patricia Stanback (II at 415 and I(H) at 33). who filed a medical malpractice action on behalf of her son and was then denied access to certain reports filed with the court. Without knowing what was involved in the case, it is difficult to comment, but it should be noted that the court order provides that her child can have access to the reports upon reaching the age of majority.

On a related note, the issue of confidential judicial proceedings has been in the news recently. As a general matter, this concept seems totally incompatible with our view of the way our court system should function. As Steve Goodenow (II at 308) noted, the potential abuses of secret court proceedings far outweigh the individual's right of privacy. Thus while the desire to keep private such cases as those involving sexual assault is understandable, the consequences have been judged too dangerous for our democratic system.

It was argued however, in one of the recent cases that there is an "anomaly" in the law because records that would be confidential before an agency become public in the courts. This means as a practical matter that in order to seek judicial

review, a person must forego the confidentiality of the records in the case. That, however, has always been the case. The courts are open to all to seek relief, but in doing so, the grievance and matters related to that grievance are in the public domain. Whether the person is willing to live with that scrutiny is, therefore, part of the decision that must be made prior to seeking judicial relief.

An interesting, and still developing, issue surrounds the dramatic increase in the use of arbitration and mediation as alternate dispute resolution procedures in an effort to avoid the use of the courts. These procedures are designed to be less formal and to promote candor between the parties. Arbitration and mediation are not typically public, and mediation in particular could not function in public. There has to this point been very little discussion or dispute about this state of affairs. But as arbitration substitutes more and more for courtroom proceedings will there be a call to open up the process?

Clearly this is not an issue which is ripe for resolution at this time. In the debate that will take place in the future on this subject, there are a couple of additional points to consider. First, there is arbitration which is mandated by the courts and arbitration which takes place by agreement of the parties. Is only the former touched by public records concerns? Second, what kind of structural demands (such as openness) can these alternate dispute resolution procedures meet without undermining the procedures themselves?

The next issue is clearly beyond the scope of any revision to the records laws, but as it was raised by three individuals, it should be at least noted. The dispute concerns judicial discovery rules and especially the question of access to the files of the prosecutor's offices. Both Honolulu Deputy Prosecutor Arthur Ross (II at 132) and Hawaii County Prosecutor Jon Ono (II at 140) feel that access is already too broad and burdensome and that no further requirements ought to be added. On the other hand, Leila Christensen (II at 344) felt that discovery requests were not always honored, and if honored, were not always timely. Obviously there is substantial dispute here, even as to the current state of affairs.

Another area which has been the subject of comment is the attorney disciplinary process. This is a relatively closed process which is conducted pursuant to Supreme Court rule. The Court does release the names of attorneys who are suspended or disbarred, and the Office of Disciplinary Counsel does release statistics on the process but otherwise the process is not public. This was not the subject of much discussion before the Committee, but this is one aspect of the Judiciary's procedures

which might be impacted by extending the records laws to the Judiciary.

A related area which is even more closed is the judicial selection process. This personnel process for the selection of judges is established by the State Constitution. Nothing other than the final result is ever made public. As one of the Committee members noted, any change in that system would discourage candidates of the caliber that are needed on the bench. And even a strong advocate of public access as former Congressman Neil Abercrombie (I(H) at 50-51) felt this process should remain closed. At least one member of the Committee, however, disagreed and felt that the process is so critical to the public that it must be open, even if the consequences of openness are substantial.

The Committee also received comments on the availability of the records of specific types of judicial proceedings. Will and Probate Records which are currently open should remain open. See John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57). In a like manner, divorce decrees which are currently open should remain open. See John Simonds (Id.), Steve Goodenow (II at 308), Mrs. Jennie Doss (II at 345), Gordon Tamashiro (II at 424), and Mrs. Pat Wilson (II at 431).

In stark contrast, the very strong sentiment was that family court records should remain largely closed. See Simonds (Id.), Deputy Prosecutor Arthur Ross (II at 132), Leila Christensen (II at 344), and Malulani Orton (II at 409). Both Simonds and Ross did believe that there should be a "window" into these records when there was a very strong public interest at stake. More specifically, juvenile justice records should remain closed. See Simonds (Id.), Ross (II at 132), and Mrs. Jennie Doss (II at 345). The same for child support records. See Honolulu Managing Director Jeremy Harris (II at 116), Mrs. Pansy Aila (II at 314), Joan Kaaiai (II at 354), and Gordon Tamashiro (II at 424). And finally, the same for paternity claims. See Harris (II at 116), Aila (II at 314), Doss (II at 345), and Tamashiro (Id.).

In all of these family court records, the basic sense was that these are highly intimate and personal matters in which public interest is not a significant factor. As noted, there was some sentiment that a window be created where public interest becomes a significant interest.

The last area raised with the Committee in terms of the judiciary was grand jury records. As Marcia Reynolds of the Big Island Press Club (II at 148) noted, where there are multiple defendants in a grand jury indictment, the file is not released

until all defendants are served which may not occur for some time. This is not an easy issue as the public interest conflicts directly with the rights of the individuals involved. This is, however, a case in which the ability to sanitize records could make a critical difference.

Legislature and Public Records

Application of the Law to the Legislative Branch
Access to Legislative Information
Legislative Access to Information

The Committee also heard testimony about the Legislature and public records. This testimony was much more limited than that applying to any other branch of government and the basic theme seemed to be that the legislative process was fairly open in terms of records.

The beginning point, of course, is the application of the law to the Legislative Branch. There did not seem to be any argument that the law does apply to the Legislature. Senate President Richard Wong (II at 6 and III at 198) supported application as did Honolulu Managing Director Jeremy Harris (II at 116).

President Wong did note that in applying the public records law to the Legislature, he believed that certain documents were internal papers and memoranda and were, therefore, not public records. These documents are the committee reports being circulated for signature and the worksheets of the Ways and Means Committee. He did acknowledge that this is a disputed area but believes strongly that these documents must not be public record.

The question of access to legislative information is really a question of how the public can find out what is taking place at the Legislature. It is an access issue but to a significant degree, it is a matter of creating an effective form of access.

There is a Legislative Information Office which can provide callers with up-to-date information about what is occurring. And the Legislative Reference Bureau's computer system ("Ho'ike") can provide a substantial amount of information to anyone who is linked to that system. Providing access may, therefore, be a matter of making these resources available to the general public. For example, toll-free access to the Information office for neighbor islanders and terminals linked to Ho'ike at public libraries would be the two most obvious steps that could be taken.

However, as one of the Committee members pointed out, it is very difficult to keep totally up-to-date during the session. Partly, this is because the long and late hours which the Legislature keeps and the large number of bills acted upon

mean that there is a delay in getting the material on computer. And partly, this is because the pace of action at critical periods is hard enough to follow at the Legislature, and impossible at a distance.

And as noted earlier, there is the question of access to certain internal documents of the Legislature; draft committee reports and budget worksheets. The Legislature believes these are internal papers and should not be subject to release even though they have in fact been released in some cases. While there has been litigation on this subject, there has been no definitive judicial ruling on the issue.

The final issue raised concerned **legislative access to information**. Under the current provisions of Chapter 92E, the Legislature is entitled to obtain information which is not public. The limits of this authority have never been tested, but the Honolulu Corporation Counsel has taken the view that this does not apply to legislators as individuals but rather is an authority that flows from the full Legislature or from committees. In this context, it should be noted that Section 84-12, HRS, prohibits legislators from making any personal use of information acquired by virtue of their official position.

This authority has not been the subject of significant dispute but to the extent that highly personal material is sought, this is a potential area for future debate.

Internal Government Processes

Internal Correspondence and Memoranda
Departmental Procedural Manuals
Attorney-Client Privilege
Withholding of Documents in Preparation for Legal Action
Attorney Work Product
Potential Real Estate Purchases
Collective Bargaining Material
Access to Opinions of State Experts

One of the areas of greatest tension in any review of public records law involves the internal processes of government and the records that accompany such processes. On one hand, government is a public institution and therefore must be accountable to the public. This requires access if any real effort is to be made to monitor the actions of government officials.

On the other hand, the public also has a right to expect public institutions to perform efficiently and effectively. And in order to do so, public institutions like all institutions have certain needs -- to freely communicate internally, to be able to confidentially formulate strategy and then take actions in a competitive environment, and to obtain and receive best possible professional advice.

This dilemma, to be both a public institution open enough to be monitored and an institution which is capable of efficient and effective action, will exist regardless of what decisions are made on government records. There is no question, however, that decisions about records can have a substantial impact on the functioning of government.

The first issue concerns the availability of internal correspondence and memoranda and raises all of the problems that were just discussed. These materials are not currently viewed as public records by government officials under Chapter 92, HRS, though there are records which the courts have opened up on an individual basis. This view was espoused by Honolulu Managing Director Jeremy Harris (II at 116) and undoubtedly reflects the views of most agencies. The ability to share views internally and to have those views be candidly expressed is critical. If, however, this material is likely to be made public, its character is likely to change dramatically. If officials are worried more about how others will later read their work than they are about making the tough recommendation or taking the strong stand, the internal communication could become so wishy-washy as to be of little value.

On the other hand, as one of the Committee members pointed out, these internal communications demonstrate the decision-making process of the government and thus are important to those wishing to monitor the actions of government.

On a somewhat related point, the status of departmental procedural manuals is also the subject of dispute. Here, however, the question is complicated even further by the rule-making requirements of Chapter 91, HRS. Under Chapter 91, agencies must adopt as rules any policies and guidelines which impact on the public. The line between a manual which applies only to internal matters and matters which should be in rules can be a very difficult one to establish. During the course of the Committee's work, a dispute arose between the Department of Human Services (DHS) and the Legal Aid Society of Hawaii (LASH) (II at 86 and III at 329) over such a manual. DHS, through its Deputy Attorney General, argued that the manual dealt only with internal matters and that it only involved implementation not interpretation. LASH, on the other hand, argued that the manual should have been adopted as rules. The dispute has to some degree been resolved by the manual being provided to LASH by DHS. Nonetheless, the basic dispute is still unresolved.

On the more basic issue of the manuals, however, there still remains the need to balance the interference with the functioning of government and the need to monitor the functioning of government. It does appear that in the case of manuals, there may be somewhat less concern about their release than about release of the memoranda discussed previously, only because these manuals presumably deal with more general subjects. Nonetheless, the basic arguments from the previous section still apply.

The next issue is that of attorney-client privilege. As Hawaii Corporation Counsel Ronald Ibarra (II at 137) notes, communications between his office and the departments advised by his office are privileged. The Attorney General's Office shares this view, a fact which Desmond Byrne (II at 317 and I(H) at 57-59) found troubling. In Mr. Byrne's view, the Attorney General's Office should represent individual citizens in addition to (or in lieu of) the agencies.

This question is essentially settled by statute (Section 28-4, HRS) and unless that is changed, the attorney-client privilege runs between the Attorney General and the departments and agencies of the State. Communications between the two are therefore privileged. On the other hand, the agencies (as the clients) are free to waive this privilege and to release any and all advice provided it by the Attorney General's Office.

It should be remembered in discussing this issue that the attorney-client privilege, while codified in Chapter 626, HRS (Rule 503), is not so much a creation of statute as it is a judicial creation. Its presence is considered crucial to the proper functioning of our legal system. Any changes to that provision should therefore be handled with great care.

On a closely related issue, there has been substantial dispute over the withholding of documents in preparation for legal action. This is an exception to the current public records law which is contained in Section 92-51, HRS. The issue raised before the Committee arose out of a dispute between the Hawaii Corporation Counsel and the Native Hawaiian Legal Corporation (NHLC). The former was represented by both Corporation Counsel Ronald Ibarra (II at 137) and Deputy Corporation Counsel John Wagner (I(H) at 23-26). The latter by Mahealani Ing (II at 281 and I(H) at 37-39).

The view of NHLC, which appears consistent with a literal reading of the statute, is that once the action is commenced, material should be available without the need to rely on formal judicial discovery procedures. In NHLC's view, it is very clear that material cannot be withheld during litigation.

The Corporation Counsel's view is not entirely clear but appears to focus on the following points: that this is an important provision to retain even if the records laws changes; that abuse of this provision is possible if records are sent to the attorneys just to hide them; and that those seeking such records should have to use judicial discovery rules.

Without attempting to settle the particular dispute in the Big Island case, it is worth noting that neither side disputes the value of the provision. If the provision is to be continued, however, what happens when litigation is commenced and whether judicial discovery procedures must be used to get information should be clarified.

Finally, as one of the Committee members noted, if the document withheld is normally one which would be a public record, it should not be withheld. At a minimum, there should be a limit on the withholding of such documents. In the case of these records, they would presumably be available no later than when the litigation is commenced and judicial discovery rules will not need to be employed.

On a related note is the treatment to be accorded attorney work-product. Attorney work-product are the records created by the attorney such as notes on the case or prepared at the attorney's direction in preparation for trial. Under the Rules of Evidence, this material is priviledged. This material

is tied to the attorney-client privilege, and its confidentiality is viewed as critical to the judicial system. At this point, there appears to be no dispute that such material is confidential as was pointed out by Deputy Prosecutor Arthur Ross (II at 132). It may, however, be appropriate to codify the acceptance of the work product rule within the records laws.

In this context, one Committee member raised the possibility that the last two concepts could be read together; that the only documents that could be withheld pending litigation are those considered attorney work-product. This interpretation will likely face substantial opposition as interfering with the sound preparation of legal action.

The Committee was presented with two issues which involve the need for confidentiality by the agency at early stages though not a later stage. The first of these is discussions relating to potential real estate purchases or eminent domain cases. If for no other reason than the protection of public funds, information of this kind must remain confidential until a specified decision has been made and the purchase or eminent domain cases commenced. Honolulu Managing Director Jeremy Harris (II at 116) also believes that appraisals, engineering, and feasibility studies should also remain confidential.

Once the decision is made, however, the decision should be a matter of public record. If eminent domain is involved, it will of course be a public judicial process. One Committee member argued that in all other cases, the tentative accord should be public so that it can be reviewed by others.

The second issue involves collective bargaining material. In most cases, each side must be able to keep its position confidential if bargaining is to be a meaningful activity. In this context, Harris (II at 116) would also add strike plans.

Once the negotiations are complete, the contract itself is a public document as are the costs associated with it since both must be presented to the Legislature.

In both of these cases, real estate purchases and collective bargaining, the current law does not provide a clear exemption. They have always been handled on a confidential basis but it would probably be preferable to provide explicit authority for such treatment.

The final issue involves access to the opinion of State experts. It was raised by Earl Neller, an archaeologist with the Office of Hawaiian Affairs (II at 376 and I(H) at 55). It is his view that the public should have full access to opinion of State experts and should be able to find out what the experts are working on. He indicated that his experience is that State administrators require that such access be cleared by them and that they otherwise intimidate and coerce State experts.

This is a difficult issue to address because these opinions appear in many forms and their treatment probably depends on the form in which it is provided to the agency. To the extent that the opinions of State experts are contained in internal memoranda, the discussion that began this section is applicable. To the extent that the opinions arise in another form, they may be completely public. Another way to approach the same concerns is to view Neller's concerns not in terms of State experts as a class but in terms of historic preservation as a subject. That will be done in a later section.

Government Employees

Personnel Records of Public Employees
Salaries and Compensation of Public Employees
Employee Rosters
State and County Contract Hires
Temporary Hires
Personnel Hiring Process
Testing Materials
Retirement Amounts for Former State Employees
Ethics Decision When Violations Found

The Committee heard a good deal of testimony on the subject of records relating to government employees. As was often stated, these are public officials being compensated with public dollars. There is, therefore, a strong interest in ensuring that this money is well spent. There is also a need to reduce any potential for corruption and most importantly to allow for a meaningful review of actions and policies. Most government employees recognize that the "rules of the game" are different for public sector workers and as one of the Committee members noted, there is less expectation of privacy for those who work in government. See Nakano v. Matayoshi, 68 Haw. 142, 706 P.2d 816 (1985) which upheld financial disclosure requirements for certain county employees.

At the same time, it is important to focus on the areas of major concern. There are, after all, 61,750 public employees working for either the State (48,600) or county governments (13,150). And as Marcia Reynolds of the Big Island Press Club (II at 148) noted, there is a strong basis for confidentiality because of individual privacy rights. Stated another way, while individuals who accept public employment must also expect a greater degree of scrutiny, they do not by accepting public employment surrender all of their rights to privacy. And while the public wants an accountable government, the public is not well served by a situation in which government service becomes so onerous that qualified individuals will not apply.

The major issue which was raised concerns the personnel records of public employees. It is clear that under current law very little information is available from these files. In fact, the only items which appear in every case to be public are name and position.

And there is sentiment to keep it that way. Kauai Mayor Tony Kunimura (II at 144), Joan Kaaiai (II at 354), Gordon Tamashiro (II at 424), and Mrs. Jennie Doss (II at 345) all favored treating these records confidentially. Mrs. Doss linked the privacy of these records to the privacy of similar records in the private sector.

As Kaaiai noted, this privacy is waivable, a point also made by Honolulu Managing Director Jeremy Harris (II at 116) and Steve Goodenow (II at 308). Thus, for example, if an employee wants certain financial information made available to a prospective lender, the employee could waive any applicable privacy rights. This waiver practice is currently provided for by all agencies.

The major sentiment was, however, for opening the records to a greater degree than under current law. Besides Harris and Goodenow, others who favored access to more information were Gerry Keir of the Honolulu Advertiser (II at 217 and I(H) at 40-44), Beverly Keever (II at 355; III at 338; and I(H) at 44-46), Terry Boland of Common Cause (II at 152 and I(H) at 46-47), Representative Rod Tam (II at 7 and I(H) at 53-54), Martha Black of the American Association of University Women (II at 147; III at 334; and I(H) at 54-55), John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57), Marcia Reynolds (II at 148), Reverend Frank Chong (II at 313), Desmond Byrne (II at 317 and I(H) at 57-59), Jahan Byrne (II at 332 and I(H) at 47), Ah Jook Ku of the Honolulu Community Media Council (II at 221 and I(H) at 39), James Setliff (I(H) at 32), and Mrs. Pat Wilson (II at 431). Most sought the release of only certain additional records though Mrs. Wilson suggested that everything be open partially with the expectation that the "bad eggs" would go elsewhere.

It should also be noted that Goodenow, Reynolds, and Chong felt that the records of appointed and elected officials should be subject to much greater scrutiny than those of civil service employees.

There was wide variety in the types of information which it was felt should be available to the public. Briefly, the information desired and the proponents are as follows:

* Employee Name: Harris and Keever (though most who commented undoubtedly assumed the availability of this information);

* Job Title: Harris, Keever, and Reynolds (with the same note as the foregoing);

* Business Address and Phone Number: Harris and Reynolds;

* Job Descriptions: Harris and Reynolds;

* Employment and Appointment Dates: Reynolds, Setliff, and Ku;

* Work Experience: Keever, Reynolds, and Chong (for appointed and elected officials);

* Training: Keever and Reynolds;

* Background: Black, Keever, and Chong (for appointed and elected officials);

* Qualifications: Boland;

* Resume: Harris (if qualifications are at issue) and Reynolds (for appointed and elected officials);

* Education: Reynolds;

* Financial Interests and Outside Income: Boland, Setliff, and Chong (for appointed and elected officials). In this context, it may be appropriate to consider an alternative. If information about all government employees who work at a second job had to be collected, the task would be substantial. If, instead, there are particularly positions or groups of positions about which there is concern, the financial disclosure provisions of the ethics law (Chapter 84, HRS) could be amended to include that group. The material would then not be available through the personnel records but rather through the records of the Ethics Commission;

* Behavior: Boland;

* Discipline or dismissal where breach of public trust is involved: Goodenow;

* Organization Affiliations: Chong (for appointed and elected officials);

* Mental Illness History: Simonds;

* Involvement in Family Court Matters: Simonds;

* Welfare Receipt History: Simonds; and

* Salaries and Compensation: Which will be discussed in the next section.

Obviously, if the full list were required to be available for every public employee, the notion of confidentiality would definitely be secondary. Focusing, however, on the basics; name, job, qualifications, and

compensation seem to be the primary concerns. And whatever the final list includes, it could be specified as public in the law so as to avoid any confusion and to make clear to all public employees what level of confidentiality they have surrendered by virtue of their job choice. Any information not specifically cited as public would be treated as confidential. Currently, that would include religious affiliation, payroll deduction information, medical reports, internal performance reports, home addresses and phone number, and examination scores.

The information which attracted the most attention was the salaries and compensation of public employees. There was strong sentiment that more information in this area should be available expressed by Representative Rod Tam (II at 7 and I(H) at 53-54), John Simonds (II at 224 and I(H) at 56-57), Beverly Keever (II at 355; III at 338; and I(H) at 44-46), Marcia Reynolds (II at 148), Desmond Byrne (II at 317 and I(H) at 57-59), Jahan Byrne (II at 332 and I(H) at 47), Ah Jook Ku (II at 221 and I(H) at 39), and James Setliff (I(H) at 32). As was expressed by a Committee member, the public has a right to know what public employees are making, at least in part, to judge whether it is worth the expense.

One way to handle this would simply be to provide that the salary or compensation paid to an employee is public. There are, however, alternatives. If the focus is the salaries of appointed or high level positions, and that appeared to be the case from much of the testimony and comment, then perhaps the formula should allow the specific salaries of most employees to be confidential while providing the information which is more important. For example, providing the actual salaries of all "exempt and/or excluded employees" would mean that the salaries of all appointed positions and all managerial positions would be public. That could be supplemented by providing the "salary ranges" for all other employees. For example, a Clerk-Typist II is in Salary Range 8 and, therefore, has under the current contract a salary of $13,260 to $20,040 a year depending upon seniority.

Late in the course of the Committee's work, the issue of employee rosters arose because of a collective bargaining matter. In September, the Hawaii Labor Relations Board determined that the Teamsters Union would have the opportunity to challenge the United Public Workers for the right to represent Bargaining Unit 10. When the Teamsters sought a list of employees in that unit, the Board denied the request on the grounds that it violated Chapter 92E, HRS.

The situation that resulted has some aspects of a "Catch 22," you have the right to challenge your opponent in a free election, but we will not give you a list of the voters. It would seem only fair that the two go together, they certainly do in the normal election situation.

Assuming this situation is one which should be changed in future cases, provision could be made in the records laws or a specific provision could be made in the collective bargaining law. The latter has the advantage of specifically addressing the problem without becoming involved unintentionally in other situations.

There was also interest in ensuring that information on state and county contract hires is available to the public. This information is generally assumed to be public. James Wallace (I(H) at 16-17), who raised this issue, said that he just wanted to be sure that it was public.

This is an area of potential concern since contract hires avoid the normal civil service hiring mechanisms or bidding processes and thus there is justification for monitoring the actions of public officials. At a minimum, the names, salaries, and scope of services should be available in all cases, though a strong argument can be made that these contracts should be completely open.

Many of these same concerns apply to temporary hires and again the public has a right to know how much they are making, what they are doing, and at some point why the positions are being filled on that basis.

There was also discussion of the need to preserve confidentiality in the personnel hiring process. Privacy interests seem particularly strong in this case and materials such as lists of applicants have been held confidential. Particularly sensitive in this regard are testing materials used in evaluating applicants. These material must remain confidential in order to preserve the integrity of the examinations. This was discussed by Honolulu Managing Director Jeremy Harris (II at 116), and his comments are generally applicable to all other governmental agencies. There must, however, be some access for unsuccessful applicants to obtain sufficient information to challenge a process that they feel is unfair. This is a matter of due process and is worked on with different agencies often by allowing the individual applicant to review the examination material.

There was also some discussion of the availability of the retirement amounts of former employees. According to Director of Finance Yukio Takemoto (III at 615), this material is confidential. On the other hand, "News 7 Hawaii" (II at 287) wanted to know about the amounts involved with retired elected officials. This material appears to be highly personal information involving individual finances. In addition, the formulas for determining contributions are statutory. Finally, very little, if any, discretion exists for retirement officials in handling of individual accounts. Under these circumstances, it would seem that there should be some greater reason for obtaining this information that appears in this record before such information is released. On the other hand, the argument can be made that retirement pay, like salary, should be public record for all government employees.

The last issue raised was the availability of ethics decisions, especially when violations are found. The current ethics process is keyed on advising employees in a confidential setting. When opinions are released, information which would identify the individual involved is removed. The goal of the process is to encourage advance consultation and to modify behavior prior to violations taking place. Advisory opinions are not, therefore, findings of violations but rather advice to employees.

Gary Kubota of the Maui Association of Editors and Reporters, and a reporter of the Maui News) (II at 234 and I(H) at 1) expressed the view that more than just the "deleted opinion" (the opinion with identifying material removed) should be available. He also said that while confidentiality may protect the innocent, it also protects the guilty. He felt that the process should be more open when violations are proven.

As one of the Committee members pointed out, this is an area in which the public should be able to get more information on the actions of public officials. If changes are made in this area, however, it should probably be to the ethics laws themselves rather than to any records law. In this context, it should be noted that the ethics laws are not identical between the State and the four counties. The State Ethics law, for example, allows for the release of information when violations are found. See Section 84-32, HRS.

Public Works, Public Contracts, and Public Funds

Public Works Contracts - Payroll Records
Public Works Contract Performance Reports
Bid Documents and Results
Government Spending Information
Information on Loan Program Recipients
Consultant Reports

The Committee heard extensive testimony about access to those parts of the government process that involve the use of public funds. The reasons for this are obvious. The ability to make decisions on the expenditures of large amounts of funds carries with it the potential for abuse and therefore the need for monitoring agency conduct. Also when public funds go to one person or company, there are usually others who did not receive the funds and who may question either the award or its implementation. And finally, governmental programs carry out important public goals and if those goals are not being met, it is important to discover the reasons.

The issue which received the most discussion was the question of access to public works contracts-payroll records. Representatives of both the construction industry and the construction-related trade unions testified that there is widespread violation of law taking place in the implementation of these contracts. Specifically, it is alleged that taxes are not being paid, labor laws are not being followed, and false reports are being filed with State agencies. The unions and the trade association want access to the payroll records in order to monitor problems in the industry. They understand that the State lacks sufficient manpower to police these contracts and are, therefore, volunteering to do so. Problems would then be reported to the State for follow-up action.

Those who spoke in favor of providing access to this information were Etsuo Shigezawa of the Hawaii Construction Industry Association (II at 305 and I(H) at 29-30), Joseph Bazemore of the Hawaii Building and Construction Trades Council, AFL-CIO (II at 199), Walter Oda of the Fair Trade Practices Committee of the Painting Industry of Hawaii (II at 226 and I(H) at 48-50), and former Congressman Neil Abercrombie (I(H) at 50-51).

In further justifying access, they noted that these were public contracts using public funds, and that no one was forced to bid on them. Those who did bid should expect scrutiny and the legitimate companies have nothing to fear. In fact, they noted that such information used to be public and only

recently has it been withheld. Furthermore, such information is available at the federal level and in other states such as California.

Shigezawa cited three goals for the industry: compliance with the law, uniform and consistent enforcement, and fair competition. All of those who spoke, emphasized that the unfair competition is harming local businesses as well as creating a situation in which many legal requirements are being ignored.

The information sought is the following: employee names, job classifications, rates of pay, daily and weekly log of hours worked, payroll deductions made, and actual wages paid.

Earlier indications from the Attorney General's Office suggested that there are strong privacy concerns in cases relating to the employment records of the individual employees. It is possible, however, that a new records law could contain a good balancing mechanism and that public interest could be held to outweigh privacy rights in this instance. Alternately, however, the law could simply specify that these records would be public.

In a closely related matter, Joseph Bazemore (II at 199 and I(H) at 35-37) wants all "public works contracts performance reports" to be available to the public, and of course to the industry. These reports, like the payroll records, would then be used to help monitor industry problems.

In attempting to determine what document Bazemore is referring to, the closest appears to be a "project visitation report" which is used by Department of Accounting and General Services personnel. There does not appear to have been any request for it in the past and, therefore, the question of whether it is a public record has never arisen.

Nonetheless, viewing it simply as a government inspection report, there are arguments which could be made on both sides. Keeping the material confidential fits with the internal memoranda notions discussed earlier, especially with the need to ensure candor in the rendering of opinions by agency staff. On the other hand, these are public works projects and if there are problems, the public has a right to know. Part of this issue may be a question of timing. Releasing such reports during the period when the work is ongoing may be disruptive as it makes each report a potentially major source of confrontation between the State and its contractors rather than being a source of monitoring and guidance.

It is also not clear from the inspection form whether the form is even provided to the project contractor or whether it is simply a report on the efforts of the inspector. Assuming this document is to be made public, an argument can be made that the project contractor should have the opportunity to review the report and either respond or take corrective action prior to its public release.

In any case, further exploration of these reports, their purposes and their current handling, is probably appropriate.

The next issue raised was the availability of bid documents and results. There was, however, very little dispute over this issue. It is agreed that the documents and results are available though not until the time of award since the premature release of information might undermine the purpose of the bid process. See Comptroller Russel Nagata (II at 13) and Honolulu Managing Director Jeremy Harris (II at 116). Both also noted that even after award, there may be some material that should remain confidential either because it involves trade secrets (Nagata and Harris) or personal information (Harris). As Harris noted, however, the burden is on the bidder to establish that any material should be confidential.

Also raised was the availability of government spending information. The basic thrust is that anytime taxpayer money is spent, the taxpayers have a right to see how it was spent. See Joseph Bazemore, Hawaii Building and Construction Trades Council, AFL-CIO (II at 199 and I(H) at 35-37). See also Kelly Aver (I(H) at 2), who felt such information should be available to monitor abuse. To some degree, this is covered by issues discussed above under such headings as government employees, public works and bid results. There is also, however, a desire to ensure that all State and county purchasing information is available. See James Wallace (I(H) at 16-17). As a Committee member put it: "Government should never stop short of complete openness in this area." If for no other reason, taxpayers need the assurance of knowing that this information is accessible. Moreover, it is unlikely that personal information should be much of a concern and vendors who do business with the State should not have an expectation of privacy as to that sale.

The issue of the availability of information on loan program recipients is one that surfaced in the media during the course of the Committee's work but had been the subject of substantial comment from the beginning.

Those that seek access are essentially asserting that these are taxpayer funds and that taxpayers should be able to see how those funds are spent. In addition, however, since most

of these programs have more applicants than funds, there is also a strong interest in assuring that no special treatment has been given to anyone and that the process has been fair in all respects. See Jonathan Kekahu (I(H) at 19), who related his experience with a Department of Hawaiian Home Lands (DHHL) program where the funds were exhausted in a matter of days. John Simonds (II at 224 and I(H) at 56-57) also supported access to loan information. Kekahu felt that the name of the recipient and the purpose of the loan should be public. Simonds felt the name and occupation of the recipient should be public. As to which loan programs should be open, Kekahu's testimony covers only the DHHL mortgage loan program. Simonds wants all State loans to be open, including the Hula Mae program.

While practice is not entirely uniform, current law is that this information is not available to the public. The reasons asserted are basically threefold:

(1) That the information involved personal (especially financial) information about individuals;

(2) That the records involved may include trade secrets and proprietary informations; and

(3) That some of the information relates solely to internal management functions of the agency.

In commenting on this area, Director of Agriculture Suzanne Peterson (III at 325) and Deputy Director of Business and Economic Development Murray Towill (III at 193 expressed concern about the disclosure of trade secrets, of internal staff notes, and of certain financial material contained in the applications such as tax documents, financial statements, and credit reports. These were matters which it was felt were entitled to protection, both under current law and in any future laws. Towill also did express concern that some of the other matters such as terms of the loan, collateral, status, and enforcement may involve personal matters.

One way to approach this area is to specify that certain information (name, occupation, amount of loan, and purpose of loan) should be public. Other material would then fall under general standards as to personal information and public record, or under a new balancing test if one is adopted. Most of the items over which concern was expressed are contained in the application, and applications have generally not been viewed as public records. This may also help to provide a useful distinction. As to loan status, repayment and enforcement efforts, it clearly is a policy choice. This is personal information but it is also taxpayer money which if not repaid, is not serving its function.

The last issue raised concerns consultant reports. The problem raised concerned a report which was left in a draft stage for an extended period of time (ten months). This was raised by Desmond Byrne (II at 317 and I(H) at 57-59) and he also felt that the amounts paid to consultants should be disclosed. The latter point appears covered by the earlier discussion of contract hires, or if not, the discussion would be identical. On the former point, the amount of time an item is left in draft state is an administrative function, and it would be very difficult to legislate a solution on that point.

Rosters and Mailing Lists

Access to Government Data Bases for Commercial Purposes
Voter Registration Lists
Motor Vehicle Registration Lists
Driver's License Records
Hawaii Public Broadcasting Donor Lists
Rosters of Professional and Vocational Licensees

Government records, especially certain licensure records, can, of course, provide rosters or lists. These lists can cover broad pools of citizens, such as registered voters or licensed drivers. It can also encompass persons who share a common economic characteristic such as owning a motor vehicle or individuals who have taken some specific action such as donating funds to the Hawaii's public television station. These lists obviously have value for others besides the agency which amasses the records.

The general issue which was raised with the Committee is the access to government data bases for commercial purposes. Back in 1963, Governor John Burns issued an administrative directive prohibiting agencies from providing mailing lists for commercial solicitation purposes. Essentially, the view taken is that obtaining a license from the State does not mean that a person has thereby agreed to be on various mailing lists. As Honolulu Managing Director Jeremy Harris (II at 116) pointed out, these lists can easily be assembled using computers but that does not mean they should be made available. Over the years, however, some information has been made available: name and license number in the case of professional and vocational licenses; and from the county, street names, addresses, Tax Map Key numbers, and zoning information. What has not generally been available has been names and addresses in useful sets based on common characteristics.

G. A. "Red" Morris (II at 239 and I(H) at 52-53), who testified on an item which will be discussed shortly, attached to his testimony an Illinois study done on access to government data bases. That study found that the release of a list with names, addresses, dates of birth, type of vehicle owned, and driving record was innocuous. That study found that there were public policy reasons for release including safety recalls and insurance rating. The study also found no reason why such information should not be released to the direct mail industry. The study also make the following general observations:

(1) Separating commercial from non-commercial uses may raise constitutional issues;

(2) The providing of lists should not be used for revenue-generating purposes;

(3) Social security numbers should not be released; and

(4) The use of the rosters should be carefully monitored including the use of "seeded" names to detect abuse of the list.

Moving now to the specific lists which are available or which are sought to be available, the next issue concerns voter registration lists. There is no dispute that this information should be public. The integrity of the election process is fundamental to our democracy and having these lists available to the public is the best way to avoid fraud and abuse in the process.

The issue is not access to the list, it is access to some of the information on those lists that has caused some concern. As noted by former Congressman Neil Abercrombie (I(H) at 50-51), one item which is available through these lists is home address. This information is typically withheld in most other situations as being personal information. In the context of voter lists, however, it is critical information and the recent voter registration problems were essentially discovered because of problems with the addresses.

On the other hand, social security numbers are available through these lists. As noted by Lt. Governor Benjamin Cayetano (II at 10), this has been the subject of concern. He noted that the level of information provided to the public is up to the counties under Chapter 11, HRS. The case for releasing social security numbers is certainly less compelling. This information is otherwise completely private, and thus there can be no cross-checking in any case as there can be with addresses.

The next issue which was raised concerns the motor vehicle registration lists. This material is being sought by Red Morris (II at 239 and I(H) at 52-53) on behalf of R. L. Polk and Co., for use in mailing motor vehicle recall information. Polk is seeking the information solely for recall purposes and is willing to assure the State that no commercial use of this data will be made. The use for recall purposes seems entirely appropriate, and Hawaii is now the only State in the nation that does not release this information for this purpose though some states do prohibit its use as a general mailing list.

Morris also discussed the Illinois report which suggested that the information involved in this case should be released without too many, or any, restrictions. This position

was supported by John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57), Hardy Hutchinson of the Hawaii Automobile Dealers Association (II at 197), Pamela Grycner (II at 349), and Lee Wolff (II at 432).

Morris also contrasted this situation with the accessibility of real estate information at the Bureau of Conveyances and at the Real Property Tax Offices of the counties. As he noted, a person can find out about someone's home but not their car. In terms of access to personal information, that situations seems very much incongruous.

The Committee has been informed that this matter may be in the process of being resolved on an administrative level by the Department of Transportation.

On a somewhat related issue, there was substantial interest in the availability of **drivers license records**. At this point, this information is not available because it contains personal information though there is some ability to release it if certain conditions are met. This view was expressed by Kauai Mayor Tony Kunimura (II at 144).

A number of individuals spoke for release of this information generally including John Simonds of the Honolulu Star-Bulletin (Id.), Gordon Tamashiro (II at 424), and Earl Payne of Hawaii Insurance Information (III at 202), who wants to use it to start a data bank on auto accident information. On the other hand, Mrs. Jennie Doss (II at 345) wants at least the date-of-birth information deleted if it is released. In this context, the Illinois study that was attached to Red Morris' testimony would suggest release of these records. Most states already do.

And as was the case with the voter registration records, the concern is to some degree a reflection of the type of information in the file, such as Social Security number, rather than the release of a list of drivers.

There was also discussion of the **Hawaii Public Broadcasting Authority's (HPBA) donor list**. This information is currently unavailable because of concerns about privacy rights though commercial outfits have tried to acquire the list in the past. There would appear to be very little public interest in the list of donors, though there would be obvious commercial interest.

On the other hand, donations to HPBA reduce the level of support which must be borne by the taxpayer and there is clearly a strong public interest in ensuring a strong donor base. If donating to HPBA subjects one to various commercial

solicitations, some donors may drop out. Under these circumstances, it may be appropriate to consider specific statutory protections for the privacy of these records. At a minimum, a system similar to the mail order preference system could be established. This would allow the donor to indicate whether it was acceptable to the donor to have his or her name provided to others.

Access on a more limited scale was raised in connection with the rosters of professional and vocational licensees by Cheryl Oyama of the Hawaii Dental Hygienist Association (III at 201). She believes that professional associations should have access to these rosters in order to be able to contact the licensees for educational and professional purposes.

One issue that would need to be addressed in this regard is whether the rosters could or should be provided with conditions. In other words, could the professional associations distribute the rosters freely or should they be bound by some form of confidentiality limits.

Business and Professional Regulation

Trade Secrets and Proprietary Information
Business Registration Records
Licensing Information

Professional and Vocational License Information
on Employment and Discipline

Testing Materials
Liquor License Files
Financial Institutions Files
Labor Department Records
Foreign Trade Zone Records
Medical Claims Conciliation Panel Records

Businesses and professions in this State are subject to substantial levels of regulation, both at the point of entry into business or practice, and on an ongoing basis. As part of this process, a good deal of information must be provided to the regulatory agencies. It is the status of that information that is the principal issue here.

At one level, it can be argued that if the public interest requires licensure, then the licensing file should be open to the public. This is not an unwarranted invasion of privacy, so the argument runs, because no one has to apply for these licenses. The theory basically is that if one seeks a privilege granted by government (a license to engage in a business or profession), one has waived his or her right to privacy at least as to matter connected with that license. Further, because these licenses carry the potential for great economic benefit, it is essential that the public be able to monitor the activities of the regulatory agencies to ensure that regulation is both fairly applied and effective.

The other view begins with the notion that the right to engage in a business or profession should not require such a surrender of privacy. This view would hold that one of the reasons why regulatory agencies exist is to provide a compromise between the public's right to insist on qualified and competent businesses and professionals and the privacy right of the individuals involved. Thus while entry into a business or profession may require providing substantial amounts of very personal and sensitive information, the regulatory agency is the only one to review that material, and the agency must keep it confidential. The monitoring of the agencies under this view primarily comes from the courts and the Legislature.

One area which is not explicitly covered by current law is the area of trade secrets and proprietary information. This material is protected under federal law as well as under judicial rules of evidence but in agency practice, its protection is less well-established.

There is no dispute that this material is entitled to protection. In fact, a strong argument can be made that if agencies require such information to be submitted, then agencies have a legal obligation to protect that information. The failure to do so might even be considered a "taking" of property under the Fifth Amendment and compensable. See testimony of Jackie Mahi Ericson of Hawaiian Electric, Inc. (III at 203).

There are, however, two aspects of the trade secret area that deserve special attention. First, as one of the Committee members noted, this area needs to be defined explicitly and carefully. Trade secrets should not just become a term for everything a business doesn't want public. The term has been defined by judicial decisions and it should not be difficult to define this area for Hawaii. The major concepts seem to be a pattern, recipe, formula, process, device, or compilation of information which is used in business and which provides a competitive advantage.

The second aspect that deserves special attention is the interaction between trade secrets and public hearings. The prime example of this is the Public Utilities Commission's proceedings involving utility companies. As Ericson noted, there is a very real tension between the protection of trade secrets information and the need to provide information which allows others to respond knowledgeably and usefully, which educates the public, and which triggers public input. This is not a problem which can be solved in the law (other than by providing a good definition) and is instead a potential problem to watch for if protection is provided.

Those who commented in favor of providing protection to trade secrets included Ericson, Director of Labor and Industrial Relations Mario Ramil (II at 81), Deputy Director of Business and Economic Development Murray Towill (III at 193), Honolulu Managing Director Jeremy Harris (II at 116), and the Department of Commerce and Consumer Affairs (III at 1).

The next issue discussed was the business registration records maintained by the Department of Commerce and Consumer Affairs (DCCA). These include the basic charter and amendments, as well as annual exhibits for all corporations and partnerships. These files are currently open, and it was undisputed that they should remain open. Those who commented included Elijah Jackson (II at 229), Mark Coleman of Pacific

Business News (II at 288), Steve Goodenow (II at 308), Pamela Grycner (II at 349), and Lee Wolff (II at 432).

Some of those who commented did want to see changes in the current process. Grycner wants reservations of corporate or partnership names to be open. Coleman would like a cross-index of owners, officers, and directors. And one Committee member wants lists of the stockholders of new corporations, and residence addresses of directors. All are administrative issues which can be handled by the DCCA.

Jackson wants a list maintained of those members of the public who review any particular file. This is a feature of some other laws (for example, Chapter 84 requires a list of who reviews financial disclosure records) and could be added here. There are, however, a couple of concerns. First, the heavy volume of requests will make this requirement a substantial extra burden. Second, and more important, is the concern that the need to provide one's name can have a chilling effect on the use of public records. It would at least suggest that such additional requirements should be added cautiously.

The next issue raised was the question of access to licensing information. Initially, the comments dealt with professional and vocational licensing by the DCCA but the comments apply generally to all licensing by the State and counties and were, therefore, consolidated. Under current law, license applications are confidential. This determination precedes the adoption of Chapter 92E and is a long-standing exception to the public records provisions of Chapter 92. In spite of this history, opinion on this issue was quite divided.

Favoring the opening of all licensing information were Gerry Keir of the Honolulu Advertiser (II at 217 and I(H) at 40-44), John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57), Honolulu City Council Member Gary Gill (II at 136), and Steve Goodenow (II at 308). Cheryl Oyama of the Hawaii Dental Hygienists Association (III at 201) wants professional organizations to have access to addresses. Goodenow, a current member and former Chairman of the Board of Private Detectives and Guards, believes that the public's right to ensure evenhandedness in licensing and otherwise monitor government outweighs privacy rights. Denying public access in Goodenow's view makes the government, rather than the public, the ultimate arbiter of facts.

On the other hand, Honolulu Managing Director Jeremy Harris (II at 116), Earl Thomas, Jr. (II at 430), Mrs. Pat Wilson (II at 431), and the Department of Commerce and Consumer Affairs (III at 1) all urged continued treatment of this material as confidential. Thomas' view was that if government

demands the submission of personal information in the licensing process, it should maintain that information as confidential. And the DCCA comments provide examples of what might be in licensing records, such as financial statements, credit reports, medical reports, franchise agreements, lines of credit, military discharges and lease agreements. As the DCCA comments note, "[w]hat needs to be carefully considered is whether the ability to engage in a profession or trade in this State should be conditioned on not only meeting a usually stringent set of conditions but also on having a great deal of personal information about oneself placed into the public record."

This is clearly a policy decision and the arguments on both sides are strong. If the decision is to release such information, the issue of retroactivity of amendments should be carefully considered. License applications have traditionally been considered confidential and licensees arguably have a valid expectation of privacy in the material currently on file with agencies.

On a closely-related issue, there was discussion of professional and vocational license information on employment and discipline. This material is at least partially a matter of public record, especially the material on discipline. Employment data is far more dependent on the requirements of the particular licensing law. For example, a real estate salesman must work for a real estate broker so their business location can be determined. But for many license categories, there is no requirement that the agency know about employment. In any case, while disciplinary information is within an agency's control and, therefore, can be kept current, employment data will always be only as good as the information provided to the agency by the professionals themselves.

Those who commented on this were Deanna Hammersley of the Kona Board of Realtors (I(H) at 27-28), Gordon Tamashiro (II at 424), Mrs. Jennie Doss as to disciplinary information (II at 345), and Mrs. Pat Wilson, also as to disciplinary information (II at 431).

In a related issue, the handling of testing materials used in the licensing process was discussed. Clearly, this material must remain confidential if the licensing process is to be meaningful. There is some need to make this material available to failed applicants but this is to some degree dependent on whether the pool of questions is large enough or the revision process frequent enough to permit full access or whether ad hoc arrangements need to be made. This is probably not an issue which can be addressed across-the-board and instead will have to be handled on a case-by-case basis by the agencies with regard for the due process rights of the applicants.

The next issue which was raised concerns the liquor license files. Current law provides for a public hearing and through the notice and hearing some information is available. On the other hand, the application itself appears, like other license applications, to be treated as confidential at least until the time of licensure. Once the license is issued, the application is public record but certain personal information such as a credit report remains confidential. It is to this application that those who commented seemed to want early access. Mark Coleman of Pacific Business News (II at 288) wanted more than what appears in the public hearing notice and John Simonds of the Honolulu Star-Bulletin wanted the entire file open from that outset.

As one of the Committee members indicated, the public, especially the neighbors, needs to know about these licenses. Especially given some of the unsavory incidents and characters that have been involved in this business over the years, these applications need as much scrutiny as possible.

There was substantial comment on the files on financial institutions maintained by the DCCA. The discussion seemed to focus on two types of documents. Mark Coleman of Pacific Business News (II at 288) and Honolulu City Council Member Gary Gill (II at 136) wanted the applications to be open. Under rules adopted by the DCCA this last year, these applications will, in fact, be open for review and comment prior to licensure. This will not, of course, open past applications.

The other set of documents which are sought are the reports on the examinations of institutions. Desmond Byrne (II at 317 and I(H) at 57-59) believes that the financial statements which are currently published are inadequate, that State regulation in this area represented a paternalistic approach to government, and that the impact of some earlier failures (such as THC Financial or Manoa Finance) would have been lessened if the examination reports had been released. A Committee member felt that this was an area in which there was a need to maintain public confidence and, therefore, that information about those running the institution and about any fraudulent activities discovered should be released.

From the DCCA's point of view, this information must remain confidential in order to work with the federal regulators. The regulation of financial institutions is a matter of ongoing supervision rather than "spot" inspections and this requires a continuing candor between the institution and the regulators. This matter is currently totally confidential by statute and the DCCA believes that treatment should continue.

Another set of records that received comment was the employment data maintained by the Department of Labor and Industrial Relations (DLIR). As DLIR Director Mario Ramil discussed (II at 81), individual information under the employment security law, the workers compensation law, and the fair employment practices laws are all treated as confidential. The material can be released at the claimant's request, if the claimant appeals the case or to other agencies with the condition that it be held confidential by the receiving agency.

The DLIR will, however, release aggregate data. A Committee member would also like the DLIR to address inquiries on a general basis such as whether a group of strikers will receive unemployment benefits. This involves individual information, but the request can be answered in the aggregate.

Another set of records which was the subject of discussion is the files of the foreign trade zones. Current federal law requires that these files be treated confidentially because they contain a great deal of private commercial information. The agency would not want this to be changed.

The last set of records in this area which were discussed were the records of the medical claims conciliation panels (MCCP). At this point the claims, hearings, and results are all treated as confidential, though findings of negligence are turned over to State regulatory officials for further action.

The MCCP process is essentially an informal review of medical tort claims which must precede the filing of a law suit. The key to its success has been this informality and there has always been strong opposition to formalizing a part of it. Opening up any part of the process, including the final result, would raise the stakes of the proceeding and end its current usefulness.

As a Committee member noted, however, public interest in malpractice litigation and in frivolous suits is growing. Francis Dann, M.D., of the Hawaii Federation of Physicians and Dentists (II at 216) wants everything to be confidential except the final result. Gordon Tamashiro (II at 424) wants the claims to be open. Mrs. Jennie Doss (II at 345) wants the results to be open so that the public can make informed choices. And Mrs. Pat Wilson (II at 431) wants findings of liability to be open.

Education and Child Care

Public School Student Records
Public School Test Information
DOE Report on Drug Abuse in the Schools
Access to Child Care Center Abuse Complaints

The areas of education and child care are obviously of paramount concern to the people of this State. One need only look to the amount of public funds given to education or the individual funds given to child care providers to appreciate the importance of these areas. In terms of records, however, there are few issues, only one of which appears to involve substantial dispute.

Public school student records and public school test information received some discussion. As Superintendent of Education Charles Toguchi noted (II at 78), both are available to the parents and the student and, in the case of student records, a correction right is also provided. This was supported by Mrs. Jennie Doss (II at 345). Overall, however, these records are confidential as to the public.

There was no dispute about that level of confidentiality though a member of the Committee felt that some information should be available if the child is otherwise in the news, and some information should be available to colleges to confirm any portion of the records about which they have concern.

At the Maui hearing, concern was raised about the unavailability of a Department of Education (DOE) report on drug abuse in the schools. From what the Committee has been able to determine, the original survey form and methodology were found to be flawed by the DOE. The DOE held a public information hearing this fall to describe the problems encountered in the survey and what conclusions it was possible to draw from the survey. The Committee has also been informed that a revised survey is in progress with the result due in mid-December.

The final issue, and the one that caused the most discussion, is the issue of access to child care center abuse complaints. This is not a new issue but rather a new wrinkle on an old issue. Essentially, it was raised in an effort to reduce the access to information on certain complaints.

At one time, complaints of abuse at child care center were not available to the public. After the problems involving a Windward preschool, the Legislature passed a bill which required that all complaints be open to the public. At the Committee's hearings, representatives of the child care industry came forward to say that the pendulum has swung too far and needs to swing back, at least a little. What the centers want is to have complaints that are proven spurious or unfounded to be removed from the files. The principal testimony in this regard was provided by Jim Denzer of the Hawaii Child Care Centers (II at 201 and I(H) 31). According to Denzer, the child care industry appreciates the need for investigations and accepts that the records will generally be open. At the same time, these complaints can have a tremendous impact on the teachers involved and if the complaints are proven to be unfounded, they should not sit in the public record to harm professional careers. Denzer gave as examples three teachers who were the subject of complaints which were established as spurious within a couple of days. However, because of the consequences of the complaint, one has left the profession and the other two won't physically touch children under any circumstances. Closing the complaint won't reduce the effects of the investigation process but it will reduce the "reputational harm" which can result.

Clearly, there is a strong public interest in stopping any abuse occurring at child care centers. This was the intent behind the current law and it remains as valid today as then. However, there is also a strong public interest in ensuring the availability of good teachers and if the system makes them pay too high a price to be in the profession, that interest in not well served.

Supporting a change in the law to remove spurious or unfounded complaints were Denzer, Janet Lee (II at 373), Representative Rod Tam (II at 7), Leila Christensen (II at 344), and Philip J. Harder (II at 350). Former Congressman Neil Abercrombie (I(H) at 50-51) testified that while as a general matter he believes unsubstantial allegations should remain private, in the child abuse area, it is a very close question.

Representing another point of view was Gerry Keir of the Honolulu Advertiser (II at 217 and I(H) 40-44) who recognized the problem raised by the centers but questioned how the investigations can be evaluated if the files are closed. In other words, how can we monitor the regulators without this information?

As one of the Committee members noted, this law was carefully constructed by the Legislature in the wake of the earlier problems. It may well be that it should be changed again, but that is a judgement for the Legislature to make and they should do so with the knowledge that there are consequences such as that which Keir points out.

Health

Public Health Records
Medical Records
Mental Health Records
AIDS Tests
Blood Tests
Medical Examiner Records
State and County Hospital Rate Information
Statistics on Substance Abuse and Mental Illness
Ambulance Response Reports
Birth Certificates
Records of Natural Parents of Adopted Children
Death Certificates
Marriage Certificates

The areas of health and health care were the areas in which there probably was the greatest consensus among those who participated in the Committee's work. For obvious reasons, health and health care information is considered to be among the most sensitive and private about an individual, and there was a strong feeling that this information must remain confidential. There were, however, some specific exceptions that were sought to this general prohibition, most for very particular or limited purposes. And there were a couple of general types of information that were sought which may avoid the strong privacy concerns raised in this area.

The first issue raised concerned the availability of public health records. These are currently not available and testimony from John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57) and Leila Christensen (II at 344) supported this treatment. Simonds does support providing a "window" into these records when there is a strong public interest.

In a similar vein, any medical records in the State's possession for any reason are currently treated as confidential and there is strong sentiment to keep them confidential. Those who supported this view include Francis Dann, M.D. of the Hawaii Federal of Physicians and Dentists (II at 216 and I(H) at 33), Honolulu Managing Director Jeremy Harris (II at 116), John Simonds (Id.), Mrs. Jennie Doss (II at 345), and Malulani Orton (II at 409). Mrs. Doss does believe that there should be some exception for health and safety purposes.

In a related matter, Beverly Keever (II at 355; III at 338; and I(H) at 44-46) wants the law to provide that an individual shall have full access to his or her own medical

records in the doctors or health care facilities files. The status of such records is somewhat unclear in Hawaii. New York has a law which essentially provides access to all medical records, except in cases where the physician feels that the information would harm the patient or if the records are of treatment for mental illness. The physician may also withhold personal notes attached to the files. The New York law does provide some procedural steps that can be taken by the individual to ensure fair access.

The next issue concerned mental health records and there was total agreement that these should be treated as confidential. See the testimony of John Simonds (II at 224 and I(H) at 56-57), Mrs. Jennie Doss (II at 345), Mrs. Pansy Aila (II at 314), Gordon Tamashiro (II at 424), and Mrs. Pat Wilson (II at 431). Simonds, Doss, and Wilson did favor some access under urgent circumstances (Wilson) or, when necessary, protect public from criminal acts (Doss).

The issues involving AIDS tests and blood tests were also the subject of unanimous views. All who commented wanted such records closed. Those who commented included Mrs. Pansy Aila (II at 314), Malulani Orton (II at 409) who noted that only with confidentiality will people take the AIDS test, Gordon Tamashiro (II at 424), and Mrs. Pat Wilson (II at 431) who did believe that the records should be open under urgent circumstances, where organ or blood donation is involved, or at birth and marriage.

The medical examiner records were the next issue discussed. This material is maintained by the counties and at this point is considered public record. This status is what was sought by "News 7 Hawaii" (II at 287) on the basis that the public has a right to know what happened to their loved ones. It should, however, be noted that at least one Committee member has experienced difficulty in obtaining these reports, at least in sensitive cases.

The Committee also heard comment at its Kauai hearing on the lack of State and county hospital rate information. Based on the information received by the Committee, these rates are adopted as administrative rules and are thus available to anyone who asks for them. As Ben Aranio noted (I(H) at 18-19), this information is essential in determining whether there is a need for other services to be provided.

Another issue raised at the Kauai hearing was the lack of statistical information on substance abuse and mental illness. According to information received by the Committee, the Department of Health's Health Surveillance Program is able to generate information on a number of health care problems in

this State including substance abuse. Nonetheless, this program has limited resources and can certainly not provide every kind of statistic or number that the public desires. Tom Warling (I(H) at 15-16) sought this type of information for use in preparing funding requests. He believes that such information should be available from the Department of Health and was disappointed that the numbers he received were not useful.

Ambulance response reports were also the subject of comment. These reports have been sought by communities seeking to determine whether the ambulance service they are receiving meets acceptable standards. The difficulty has been that these reports also contain the name of the individual who was transported as well as medical information and other personal information about that individual. For these reasons, the record as a whole has not been released.

According to the information received by the Committee, the response time information has been released by the Department of Health thus addressing the principal issue raised by those seeking data. As to whether the reports themselves should be released, one member of the Committee felt that those who use the services of the ambulance have placed themselves in the public arena and that these reports should, therefore, be public. This is, however, a highly debatable point and there should be no question that the material sought is very personal.

The next issue raised involves access to birth certificates. It is the Committee's understanding that beyond the newspaper's vital statistics publication, access is on a need-to-know basis. Among those arguing for open records were John Simonds (II at 224 and I(H) at 56-57), Steve Goodenow (II at 308), Mrs. Pansy Aila (II at 314) who noted the importance of this information for genealogical research, Mrs. Jennie Doss (II at 345), and Gordon Tamashiro (II at 424).

There was some comment about the newspaper's vital statistics list. Both Joan Kaaiai (II at 354) and Malulani Orton (II at 409) want publication only with consent. Present Department of Health practice is to publish all names but to publish the address only with consent.

There was sentiment for keeping the current practice which closes such records with some exceptions. See testimony of Kaaiai (II at 354), Orton (II at 409), and Mrs. Pat Wilson (II at 431).

The issue basically revolves around whether a birth certificate contains, or is itself, highly personal informations. Arguments can certainly be made on both sides, that there is nothing particularly intimate in these certificates or that a person's parentage and racial background are potentially very sensitive matters.

A much more complex issue was raised in terms of access to the records of the natural parents of adopted children. This issue was raised by Senator Anthony Chang (I(H) at 60), who was not seeking across-the-board access but instead is looking for a way to address certain health-related problems. Specifically what is involved are diseases or conditions in which a genetic-link has been established and where it is important for the child's natural parents to be located. The same point was raised by Malulani Orton (II at 409) who felt that at that point the original birth certification should be available.

Certainly one resolution to this problem is to provide the original birth certificate. That does, however, totally undermine the barriers set up during the adoption process. But in the case of genetically linked conditions, maybe these barriers should be removed since it is certainly not the child's fault that he or she has the disease or condition involved. On the other hand, it is possible to create a system in such cases where a neutral party (a public health official, a court-appointed guardian, a judge, etc.) who would actually see the original certificate and make the necessary contact with the natural parent. The barriers would thus remain in place, but the medical information or whatever else was needed could be passed on through the intermediary.

The other element that would clearly need to be established if this were permitted is the standard that would be used to provide the original certificate. Does it need to be a life-and-death situation, or at least a serious medical problem? At a minimum it should be a strict enough standard to be in keeping with the protection provided to adoption records.

If it is determined that providing this access is permissible, the system should be set up to work in reverse as well. In other words, if the natural parent should discover a condition which is likely to be manifested in the adopted child, so one way to communicate that information should be provided.

The remaining issues concerned death certificates and marriage certificates. Current practice is that both are not public unless there is a need-to-know. Most of those who commented, however, though that both should be open, and included John Simonds (II at 224 and I(H) at 56-57), Steve Goodenow (II at 308), Mrs. Pansy Aila (II at 314) who noted the

importance of these certificates for genealogical research, and Gordon Tamashiro (II at 424).

On the other hand, Joan Kaaiai (II at 354), Malulani Orton (II at 409), and Mrs. Pat Wilson (II at 431), who likes the current system, all would favor the current approach or at least that access be granted only with the consent of the party involved.

Again, the key may be to look at whether information that is on those certificates is highly intimate. The one area that would particularly seem to raise those kind of problems is the cause of death notations on the death certificate.

And again, while the basic information is printed in the vital statistics column of the newspaper, there was discussion that this should only be with consent. See Joan Kaaiai (II at 354) as to marriage certificates and Malulani Orton (II at 409) as to marriage and death certificates.

On the other hand, there would certainly seem to be some reason to question the concept of the privacy rights of deceased persons. And if the death certificate only contains facts about the deceased, there would seem to be no other privacy interests involved.

Law Enforcement

Traffic Abstracts
Traffic Accident Reports
Police Records
Presentence, Probation, and Parole Reports
Victim-Witness Kokua Reports
Prisoners
Pardons and Commutations
Criminal History Information
Criminal Justice Research Documents
Police Commission Record of Complaints
Police Department Rules of Practice
Administrative Investigation Records
Records of Complaints Filed
Disposition of Complaints
Land Use Investigations
Settlements

No area of records law generates stronger concern and debate than the area of law enforcement records. There can be no question that law enforcement agencies must operate with a substantial degree of independence and confidentiality. At the same time, it is the very latitude that such agencies need, and receive, that makes monitoring of their actions important. It is the tension between the need to provide for law enforcement, which is essential in any society, and the need to ensure that the enforcement is fair, effective, and yet in no way comprises our democratic institutions that makes these issues so difficult.

As a general rule, it seems clear that law enforcement investigative records need to be kept confidential. Among the reasons for such treatment are the protection of sources; the protection of investigative techniques; the potential quality (or more to the point, the lack thereof) of the materials in the file; the need for the freedom to speculate or infer or deduct in the reports without concern about who will read the reports; and, perhaps most importantly, the need to protect the privacy and reputational rights of persons whose names have arisen in investigations but against whom there is not sufficient evidence to suggest that they have violated criminal statutes. Among those favoring such treatment were Jeremy Harris (II at 116), who took the position that all records of the Honolulu Police Department and the City Prosecutor's Office are exempt from the public records law; Hawaii County Prosecutor Jon Ono (II at 140), who felt such records should be confidential except to the extent they come out through court proceedings; Arthur Ross (II at 132), who also noted the availability of records through the judicial process; Steve Goodenow (II at 308), who emphasized the strong privacy rights involved; and Mrs. Pansy Aila (II at 314).

At the same time, there were complaints that some aspects of the current system were too secretive, as will be discussed below. As one of the Committee members noted, perhaps what should be looked at is not a categorical exemption but rather a standard which closes records only where there is actual reason to believe that disclosure would disrupt a legitimate law enforcement function. This standard, borrowed from federal law, could provide a test to balance interests in a particular case.

A third option would be to focus on the items which follow as being the most critical current issues and have the law answer those directly. This option could, and perhaps should, be adopted in concert with either of the earlier two options.

What follows, therefore, are a set of law enforcement-related records and other matters which must be blended into whatever law is in place.

The first item raised was the subject of traffic abstracts. There was a substantial difference of opinion both as to the current law in this regard and as to whether these records should be open or closed. Looking first at the question of current law, there is no question but that these abstracts are public record. See Section 287-3, HRS. The differences in current treatment probably stem from the fact that these records had been unavailable to the public until recently when the Traffic Violations Bureau acknowledged that these were public records. For details, see testimony of Jahan Byrne (II at 332 and I(H) at 47).

The more difficult question is whether such material should be public. Among those arguing for confidentiality were Matthew Crawford (I(H) at 2), who does not want insurance companies to get this information because they use it to justify raising rates without examining the underlying circumstances; Mrs. Pansy Aila (II at 314); and Gordon Tamashiro (II at 424).

On the other side was Byrne, who correctly noted that the information in the abstracts is simply a compilation of official record information. And as a Committee member noted, there are no highly intimate details involved here unless intimate means nothing more than embarassing.

Also favoring release was Earl Payne of Hawaii Insurance Information (III at 202), who is in the process of trying to establish a central data bank of such information in part because he finds the current system slow, cumbersome, and inconvenient.

The next records which were discussed were the traffic accident reports. While there appears to be some confusion about the availability of these reports, Honolulu Managing Director Jeremy Harris (II at 116) states the current law to be that access is limited to the parties involved or to those to whom the parties give authority to review the reports, such as attorneys and insurance companies.

John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57), and James Smith (I(H) at 3-7) both wanted these to be public record. Smith even stated that they were public record and that he had gotten the material from Maui County. From what the Committee has been able to determine, Smith appears to have gotten a report that had been made as to accidents at a specific intersection and not access to the various specific individual accident files.

The next subject raised concerns police records and police reports. This is obviously a very broad subject and Jeremy Harris' testimony (II at 116) provides an extensive list of what kind of general records and information are maintained by police departments, including the following: Criminal Investigation Division (CID) reports, crime analysis records, lists of undercover officers, lists of informants, applications for permits to carry firearms, complaints from the public, communications with the Federal Bureau of Investigation, medical reports, psychological testing results, exams for recruits, safe house records, and so on. Harris argues strongly for confidentiality on the grounds that release would impair the effectiveness of the police, would threaten the safety of certain individuals, would reveal police techniques and operations, and would invade the privacy of a number of individuals. Kauai Mayor Tony Kunimura (II at 144), Mrs. Pansy Aila (II at 314), and Mrs. Jennie Doss (II at 345) all agreed that police reports should remain closed: And James Wallace (I(H) at 16-17) felt that police records were so sensitive that even police commissioners should not have routine access to internal police records.

Steve Goodenow (II at 308) also felt that police reports should be closed where no charges were filed but also felt that there should be some sort of independent panel to check on selective enforcement.

On the other hand, James Setliff (I(H) at 32) wanted to see a copy of the report on a complaint that he filed. And Malulani Orton (II at 409) wanted the parents of preschool children to be able to see police reports of prior child abuse incidents. Both are essentially raising issues of limited purpose access. What Setliff raises is the issue of whether, as a complainant, he should have access to records relating to his

complaint, and is understandable in terms of a desire to examine the work done to pursue a matter which he raised. This does not, of course, make the impacts of any access any less disagreeable from the police point of view. As to Orton's point, the State's child care center abuse complaint files are probably a better source anyway and those files are, at this point, a matter of public record.

The next issue involves presentence, probation and parole reports. These reports prepared by professionals to assist the court and agencies in evaluating the appropriate sanction for an individual or the fitness of the individual to remain on probation, or the qualifications of the individual for or fitness to remain on parole. The presentence and probation reports are prepared by the Adult Probation Division of the Judiciary . The parole reports are prepared by the Hawaii Paroling Authority which is administratively attached to the Department of Corrections.

At this point only the prosecutor, the defense, and the court (or other applicable body) have access to the reports. The content of the reports is discussed in court or other hearings but the report itself is unavailable. And while these reports are provided to the court, they are sealed and not part of the case file.

The interests in confidential treatment and in public access are both strong and the comments received demonstrated the dilemma. Gary Kubota of the Maui Association of Editors and Reporters (and a reporter for the Maui News) (II at 234 and I(H) at 1) argued for access but did not have a solution for the potential loss of sources that might result. And even as strong an advocate of public access as former Congressman Neil Abercrombie felt such reports should remain confidential.

The privacy interests include the privacy right of the individuals about whom the report is written; the need to have these reports provide the fullest possible background on the individual which in turn often necessitates the use of hearsay; the need to protect the sources of information; and the need to ensure that the professionals who perform the evaluation are encouraged to make recommendations with complete candor.

The interests of the public are equally obvious and include the right of the public to know why a particular sanction or treatment is being imposed on a convicted criminal; and the need to know how good a job of sentencing the judges are doing. At the same time, the public shares an interest in an effective evaluation process and thus for at least some confidentiality.

In the final analysis, this comes down to a question of which interests are given the edge. Since the sentence or other decision is the result of an examination of all aspects, a compromise in the form of partial release is unlikely to accomplish much more than to increase questions or doubts. The only other possibility might be to create a summary sheet which could be released.

The next issue involves the victim-witness kokua program reports which are prepared by the prosecutors' offices. This program, as its name indicates, assists victims and witnesses from the complaint stage all the way through the end of the process. The program provides counseling, arrangements for court appearances, keeps the victim or witness informed of the status of the case, and other related activities. These records and reports are obviously closely tied to the work of the prosecutors' offices. And Arthur Ross of the Honolulu Prosecutor's Office (II at 132) argued that these reports should be given confidential status both because of the relationship to the office's work and because they contain confidential information from other sources.

The specific concern expressed involved civil cases which arise out of criminal cases where the victim-witness kokua report is sought. The problem is that material which would otherwise be unavailable, such as a presentence report, may be in the file and thus released to someone who could not have gotten the report directly.

The next issue was a concern as to whether the names of prisoners are publicly available. This was raised by Frank Slocum (II at 414) and from what the Committee has found, the Department of Corrections will confirm the status of any prisoner upon request. This does not appear to be the source of any dispute since the conviction and sentencing would be matters of public record. This would include those who sentences involved detention in psychiatric facilities.

There was, however, some concern expressed about the fact that contact between prisoners and the media is limited, and must usually be initiated by the prisoner. One of the members of the Committee felt that this is a subject that is worth reviewing.

On a related issue, the status of information about pardons and commutations was also raised by Frank Slocum (II at 414). The power to pardon and commute sentences is granted to the Governor by Article V, Section 5 of the State Constitution. The Legislature is given the power to regulate certain aspects by law. Neither the Constitution nor the statutes contain any specific provisions on the handling of records in this area.

An argument can be made that these should not be public because the individuals involved have already been publicly punished, and the pardon or commutation process is an attempt to bring that to an end. Under this reasoning, further publicity runs contrary to the purpose of the action taken.

On the other hand, this gubernatorial power is an extraordinary power, and its use needs to be carefully monitored by the public. In particular, the public needs to be able to inquire as to the reasons for the exercise of this power.

It is the Committee's understanding that Governor Waihee views pardons a matter of public record. The Legislature may, nonetheless, wish to clarify the treatment of these records.

The next subject raised concerns criminal history record information. This information is collected in this State by the Hawaii Criminal Justice Data Center and the issue essentially is the extent of access to that Center's records.

As Director of Corrections Harold Falk noted (II at 17), there is some access to this information though it is limited. The principal statute involved is Chapter 846, HRS, and it provides for some release of conviction data though it appears to limit the Center's general obligation to confirming conviction information upon specific request. This matches Deputy Prosecutor Arthur Ross' (II at 132) view of the data center.

On the other hand, there was some sentiment in favor of the release of more information. Steve Goodenow (II at 308) believes that all conviction data should be released. Janet Lee (II at 373) wants access to whatever report was given to the Department of Human Services that caused the termination of a child care center's employees. Some employers would like to be able to obtain such records on individuals being considered for various sensitive positions. Whether the Legislature would like to open the center's records to that extent is of course a policy decision for the Legislature to make.

The next issue involves criminal justice research documents. As Director of Corrections Harold Falk stated (II at 17), his agency releases documents and statistics for use by others after names and other identifying information have been removed. In this context, it is worth noting that the Hawaii Criminal Justice Data Center law contains a specific provision for "research, evaluative, and statistical activities" and sets the basic ground rules for such access. See Section 846-9(4), HRS. This is the type of provision which many argue should be incorporated in any general records law, as was discussed earlier. In this context, it is worth noting that Director Falk expressed no concern about the research exemption.

Another issue which was raised and which has obviously long been the subject of substantial discussion and debate is access to the police commission records on complaints.

The reasons in favor of access are in many respects tied to the same reasons which led to the creation of the police commission to handle citizen complaints about police conduct. As was discussed at the outset, the substantial powers given to the police demand careful monitoring. The citizen complaint process provides both a check on the police and a deterrent to police misconduct. And access to this process allows the public to ensure that the commission is doing its job. Most controversial in this context seems to be a 1978 decision by the Honolulu Police Commission to stop disclosing the names of officers subject to investigation. See testimony of Ah Jook Ku of the Honolulu Community Media Council (II at 221 and I(H) at 40-44).

On the other side, this is clearly an issue about which the City feels very strongly. Honolulu Managing Jeremy Harris (II at 116) feels that it is a matter of due process that the names of police officers not be released. The basic reason is that officers do not receive an adjudicatory hearing and, therefore, no right to confront and cross-examine witnesses. The Commission's actions can have serious consequences, both immediately to the officer's reputation (if the report was released) and ultimately to the officer's position in the department. As a last point, Harris notes that complainants often also wish for anonymity.

There was also concern raised about the lack of access to the police department's rules of practice. This was raised by Jahan Byrne (II at 332 and I(H) at 47), who has sought copies of rules pertaining to roadblock procedures, personnel drug testing procedures and the Internal Affairs Division complaints procedure. In all cases, they were denied to Byrne on the basis that these rules were a matter of internal management and would only be released at the discretion of the police department. There is substantial support for the allowing matters of internal management to remain confidential. At the same time, Chapter 91, HRS, requires rules to be adopted after public hearing and to be available to the public. And in the case of roadblocks, there is a specific statute which requires the adoption of rules. See Section 286-162.5, HRS.

This issue does not appear to have any easy resolution. While agencies may have certain internal procedures which are not necessarily a matter of public record, rules are rules and must be a matter of public record under Chapter 91, HRS.

The next issue relates to administrative investigation files. From the point-of-view of the agencies involved, these are simply another type law enforcement records and like those of the police department must remain confidential. As law enforcement records, these files contain everything from raw allegations and hearsay to direct physical evidence, and based on privacy considerations, some of these materials should never be released. Further, these files contain the candid evaluations of evidence and individuals by investigators and other personnel. This material, if released, could also compromise confidential sources of information. This view of administrative investigation files was supported by the Department of Commerce and Consumer Affairs (III at 1) and by Honolulu Managing Director Jeremy Harris (II at 116). In addition, both former Congressman Neil Abercrombie and Mrs. Pat Wilson suppported the closing of material which is unsubstantiated or where the person complained about is exonerated.

Some suggestion has also been made that it makes a difference whether the file is open or closed. However, given that the concerns go to personal privacy, to keeping unsubstantiated allegations confidential, and to keeping sources and techniques confidential, the fact that a file has been closed does not change the considerations.

The view that these records should be open reflects first and foremost a belief that governmental activities need to be monitored to ensure that government is doing its job and to ensure that there is no favoritism in governmental actions. Fundamentally, this is also a question of the public's right to know what goes on in government.

So ultimately, this will need to be a policy decision which the Legislature must address. There are, however, alternatives to a decision which either opens such records entirely or closes such records entirely. These basically involve access to complaints and access to dispositions.

At this moment, in large part because of privacy concerns, records of complaints filed are kept confidential by most agencies. In the case of the Department of Commerce and Consumer Affairs (III at 1), these complaints include complaints about health-care professions. There is thus a substantial element of public safety at issue in these cases. What would be needed to provide for the release of such material would be an explicit requirement to do so. An alternative would be the adoption of a balancing test which would allow the privacy rights of the individuals complained about to be balanced with the public interest in the release of the complaint material. The latter approach has the advantage of allowing for the

withholding of complaint information in appropriate cases, and especially in those cases in which it appears that the complaint cannot be substantiated.

The other possible alternative is to provide access to information about the disposition of complaints involving violations of State laws and county ordinances. This would have the advantage of providing for public dissemination of information on violations of law while protecting those who are exonerated from public embarrassment.

As one Committee member noted, this requirement could be extended to the Judicial Discipline Commission, the Office of the Disciplinary Counsel, and the Medical Claims Conciliation Panel.

In any event, the release of information about violations in State laws would give the public access to information about a case but not the case file itself. This would avoid the concerns raised initially in terms of material in the investigative file which should not be released while still protecting the public from those who have been found to violate State law.

The next issue raised concerns land use investigations. Chairman of the Board of Land and Natural Resources William Paty (II at 84) believes that such investigation files should remain confidential for the same reasons as applied to administrative investigation files.

The last issue concerns the treatment of settlement agreements. Both Michael Lilly (II at 155 and I(H) at 33-35) and Gary Kubota of the Maui News (II at 234 and I(H) at 1) believe that settlements should be a matter of public record. In Lilly's view, public scrutiny of settlements assures that the actions of government are reviewed, improves government operations, reduces public distrust, and maintains open government interests. In Kubota's view, the public should know the dollar amounts involved and why they are being paid.

Settlement agreements in private litigation are often confidential. This encourages the use of settlements because it avoids on-the-record fact-finding and usually involves a minimum of legal admissions. Many parties, in fact, insist on confidentiality with settlements. With a concern for judicial economy, it is therefore public policy to encourage the use of settlements in the private sector.

The question that arises then is whether that policy carries over with respect to litigation involving the government. On one hand, the concerns of judicial and administrative economy are equally present in the public sector. On the other hand, this is not private litigation but is instead litigation brought in the name of the State (or against the State) and settlements of such actions should be closely scrutinized.

The current privacy law, Chapter 92E, HRS, creates an even more interesting twist. That law keys on persons and protects personal records. Because there is often a person involved in the settlement, Chapter 92E may serve to make confidential the entire settlement agreement. That issue is currently on appeal to the Hawaii Supreme Court in Painting Industry of Hawaii Market Recovery Fund v. Alm. The full set of briefs is attached to the testimony of the Department of Commerce and Consumer Affairs (See III at 1).

In the final analysis, this is an area where public policy needs to be established. The value and importance of settlement agreements is a factor to be reviewed. So is the need for economies in the administrative process. So are the types of cases where settlements appear to arise. Once the ground rules on settlements are clear, everyone will adjust to the revised law with whatever impact it has on litigation.

Natural Resources and Development

Environmental Agency Findings
Health-Related Environmental Tests
Land Ownership, Transfer, and Lien Records
Leases of State Land
Water Service Consumption Data
Historic Preservation Documents
Planning Commission Records
Building Permit Information

The areas of natural resource management and development controls are obviously of critical importance in Hawaii. It is also obvious that anyone who seeks to participate meaningfully in the process must have access to information about the environment and about plans to alter that environment. And in this area, perhaps as much as any, it is not only access but the timing of that access that is critical.

The environmental agency findings under Chapter 343, HRS, are open for public inspection. And this has been held to include material such as financial statements and disclosures which under most other circumstances would not be available. This treatment of material is supported by John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57) and there appeared to be no dispute about such records. It should be noted that one of Chapter 343's major functions is to create a public record of disclosures about environmental impacts.

The next issue involves health-related environmental tests. More than anything else it was the tests of water for the presence of chemicals that was on the minds of those who commented. James Setliff (I(H) at 32); Al Jook Ku (II at 221 and I(H) at 39), who noted an earlier incident in which the court ordered the release of this information; John Simonds (II at 224 and I(H) at 56-57); Gordon Tamashiro (II at 424); and Bill Dougherty (III at 324).

The Department of Health (DOH) is the agency which currently handles most of these tests. It is the present view of the DOH that the results of these tests will be released to the public. The only problem that the DOH is having is that the volume of testing (and results) makes the paperwork involved in releasing a significant administrative burden. Nonetheless, that issue becomes one of timing rather than access and is thus perhaps of less concern at this moment.

The concern over the results of environmental testing is likely to continue for the forseeable future. The Legislature may want to both make clear that such records are public and provide the DOH with sufficient resources to both conduct a full testing program and disseminate the results in a timely fashion.

The next issue relates to the records of land ownership, transfer, and liens. These records are currently public and there was no dispute that they should remain open. This result is, to some extent, mandated by the degree to which these records are tied to the court system. John Simonds (II at 224 and I(H) at 56-57) supported a continuation of the current system and Mrs. Pansy Aila (II at 314) stressed the critical nature of these records to the land claim process.

As one of the Committee members pointed out, ownership can still be hidden through land trusts and shell corporations. Nonetheless, the greatest potential problems which the current system faces are those that come with routine access; missing records and misfiled records.

This particular records system also is symbolic of another problem and that is what happens when the number of filings exceeds the capacity of the personnel and the record-keeping systems. This will be an increasing challenge to all State and county agencies which maintain large data bases and requires that all agencies look at creative applications of technology and to serious re-evaluations of their internal processes.

As a final note, and as a demonstration of how important a general change in the overall records laws is, is the fact that these records could probably be considered "personal records" because they contain the property owners name, etc. Clearly this will not happen, but it as surely as any other example demonstrates the problem.

On a related matter, the records involved in the leases of State land are generally a matter of public record. John Simonds (II at 224 and I(H) at 56-57) supported this view, as did Henry Smith (I(H) at 20) though he believed that some of the Department of Hawaiian Homes Lands (DHHL) leases were unavailable or least that the policies on availability were not clear.

From the information that the Committee has received, the lease agreements at DHHL are in fact not available to the public. The justification for this treatment is that DHHL leases include ancestral and other family records necessary to establish eligibility and that they also include loan

application and other financial data received in connection with the loans that in almost every case accompany the lease. In conjunction with family records, the DHHL files may even contain adoption information which is unavailable to the lessee (much less the public) but which is essential to the eligibility determination.

The next issue raised concerned water service consumption data. At this time, the boards of water supply are county agencies and the handling of these records may thus vary between the counties. In Honolulu, this has been considered personal information and will only be released to the consumer. In fact, even a landlord was turned down when the data was sought on individual consumers. Given the increasing importance of the water supply in this State, it may at some point be necessary to provide the public with access to this information. It is also somewhat questionable that this is highly intimate or personal information which demands privacy protection. And finally, even if there is some personal privacy involved, this should not extend to, and Chapter 92E, HRS, does not apply to, commercial or business consumption data.

The next issue involves historic preservation program documents. This issue was raised by Earl Neller (II at 376 I(H) at 55). He was formerly with the Department of Land and Natural Resources and is now with the Office of Hawaiian Affairs. Neller wants the public to have access to all documents which relate to historic preservation. In this category, he would place the following documents: research scope-of-work documents, research designs, preliminary reports, draft reports, interim reports, and interagency or intragency memoranda and letters. He wants this information available free of charge and on all islands. He also wants there to be full access to field work while in progress.

Neller made clear that he has had his differences with the current managers of the State's historic preservation program. What he seeks, at least in the area of historic preservation, is an absolutely open government process. This would be unlike any other governmental program where internal agency documents are normally protected from disclosure. And whether historic preservation is the proper program to receive that kind of treatment is a policy choice to be made by the Legislature.

The next issue is planning commission records. According to Kauai Mayor Tony Kunimura (II at 144) and James Smith (I(H) at 3-7), these county records are essentially open. If the public is to be able to provide useful input in the planning process, these records must be open from an early enough stage to be meaningful. There was no dispute on this

point and it was raised largely to ensure that the current situation does not change.

The last set of records discussed was those relating to building permits. This has been a surprisingly complex subject. The permit itself, once granted, is public record and that is not in dispute. What is in dispute is the availability of the application and the file prior to the granting of that permit.

Those who want full access included John Simonds (II at 224 and I(H) at 56-57), James Setliff (I(H) at 32), and Mahealani Ing of the Native Hawaiian Legal Corporation (II at 281 and I(H) at 37-39). As a Committee member noted, access to the application is necessary if community associations or neighbors are going to be able to support or challenge projects. The courts have opened up such files on at least one occasion but have never called this material public record.

The application is not available in Honolulu prior to issuance of the permit. To some extent, this is clearly based on the general view that "applications" are not public record. It may also have something to do with the fact that many of these involve personal residences.

However, as one of the Committee members noted, the applications for building permits do not appear to be on the same level in terms of personal information as applications for professional licenses. And while these may involve residences, they still involve structures not personal matters.

It should be noted that Kauai Mayor Tony Kunimura (II at 144) indicated that this material was open. Whether that means that the permits are open (like Honolulu) or whether the applications are open prior to the permit decision (unlike Honolulu) is not clear.

Taxation

Income Tax Records
General Excise Tax Records
Real Property Tax and Exemption Information

The functioning of government depends on the revenues received through our system of taxation. It would be hard to call this the most popular aspect of government, and yet it would be hard not to see it as one of the most essential. Taxation affects every member of the public and the information which must be shared with the tax collector opens the life of every person who files a return to substantial scrutiny. The handling of these records is, therefore, of critical importance to more members of the public than the handling of any other record.

There was no dispute as to the treatment that income tax records should receive under any records laws. All who commented, agreed that these records must remain confidential. As Director of Taxation Richard Kahle (II at 109) noted, this treatment is required by Chapter 92E, HRS, by specific provision in the tax code, and by virtue of the State's agreement with the Internal Revenue Service. Director Kahle also noted that this is essentially a self-assessment system and in that context confidentiality is a critical element to its success. It should, however, be noted that information on liens or non-payment does become public record.

Supporting this view were John Simonds of the Honolulu Star-Bulletin (II at 224 and I(H) at 56-57); Steve Goodenow (II at 308), who noted that unlike Chapter 92E, HRS, this privacy right applies to both individuals and corporations; Mrs. Pansy Aila (II at 314); Joan Kaaiai (II at 354); Gordon Tamashiro (II at 424); and Mrs. Pat Wilson (II at 431). There was some sentiment (Simonds and Wilson) for opening these records under some circumstances but there was no suggestion as to what those circumstances might entail.

General excise tax records on the other hand did not generate a unanimous reaction. Director Kahle (II at 109) stated that a file with the names and identification numbers is available along with the delinquencies. All other portions of these records are, however, confidential. This view was supported by Gordon Tamashiro (II at 424) and Joan Kaaiai (II at 354) and Mrs. Pat Wilson (II at 431). On the other hand, Pamela Grycner (II at 349) and Lee Wolff (II at 432) felt that these records, including the applications, should be available for review. No reasons were, however, put forth for this public treatment of these records.

The only distinction between general excise tax records and income tax records is that the former relates solely to businesses and professions and thus individual privacy is less of a concern. Nonetheless, the general excise licenses do involve substantial numbers of individuals. And in any event, like the income tax system, the general excise tax system is a self-assessment system in which confidentiality is a crucial element.

At the same time, it must be noted that the general excise tax records are the major piece of information available on thousands of businesses who do not file with the Department of Commerce and Consumer Affairs.

In contrast to the prior tax systems, the real property tax and exemption information is accessible to the public. This difference of treatment is not surprising because a property tax does not measure otherwise private information such as income and expenses, but instead measures publicly observable accessible items like land and structures.

Furthermore, the property tax system relies on an assessment process that includes notice and an opportunity to appeal. Access to these records is critical if there is to be a successful appeal since a comparison with comparable lots is often the best way to prove the case.

As one of the Committee members noted, land in Hawaii is a precious resource and knowledge about its ownership is, therefore, especially critical. The openness also serves to ensure equal application of the real property tax law to all citizens. That Committee member also noted that there was some talk about closing exemption information. Such a development would of course substantially undermine the current ability to ensure equal application of the law and the absence of special favors.

All who commented favored leaving the current system, with its openness, in place. This group included Kauai Mayor Tony Kunimura (II at 144); James Wallace (I(H) at 16-17) who wants access to ensure fairness between property owners; William Sollner (I(H) at 21), who had used this information in a successful appeal of property rates; Deanna Hammersley of the Kona Board of Realtors (I(H) at 27-28), who wants this information for professional reasons including the evaluation of appraisals; John Simonds (II at 224 and I(H) at 56-57); and, Mrs. Pansy Aila (II at 314), who has used this information to help establish a claim to Kuleana lands.

Miscellaneous Information and Records

Affidavit for Voter Registration or Absentee Ballot
Name Change Records
Social Security Numbers
Credit History
Private Loan and Financing Information

In addition to the broad categories of records discussed previously, there are a few that did not fit neatly into one of the categories, and there are three pieces of information which are part of records and which deserve separate discussion.

The first records to be discussed are the affidavits for voter registration or absentee ballot. As Lt. Governor Benjamin Cayetano notes (II at 10), the handling of these records is left for the counties to determine. And at this point, the counties are treating this material as public record.

The primary reason for keeping these public is the prevention of voter fraud. Both the initial registration process and the absentee voting process are subject to abuse. The former we have regrettably witnessed in recent years in two State House elections. The latter has been of concern but thus far there has not been a proven instance of abuse. Nonetheless, if the public (including the media, other candidates, representatives of the political parties and others) does not have access, we will lose the best method we have to watch out for and report potential voter fraud problems. This is especially important since neither the counties nor the State can realistically hope to do the field work to monitor the registration system and must, therefore, rely on interested observers and those with a stake in the outcome.

There was, however, another view presented reflecting the mechanical problems that can be created by this system. Hawaii County Council Chairman Stephen Yamashiro (II at 141) wants to keep the actual affidavits confidential. In the case of voter registration, the material would be public as part of the official list of registered voters. In the case of absentee affidavits, they would simply not be public record. There are major administrative problems being experienced because of competition to review the file and the disruptive effect of these searches.

Reconciling administrative burdens with the need for vigilance in the area of potential voter fraud is difficult since the latter is fairly rare while the former is ever present. Nonetheless, the magnitude of the threat that voter fraud represents may make it in the end a very simple choice.

The next records discussed were the **name change records**. The process of changing one's name is handled by the Lt. Governor's Office. As Lt. Governor Cayetano noted (II at 10), the petitions are confidential by statute. Once the order is signed, the file is sent to the archives and is then subject to that office's access policies. Part of the name change process does, however, involve placing a legal notice in the newspapers and filing with the Bureau of Conveyances so there is clearly public notice of what is taking place. And this seems appropriate because as one of the Committee members noted, should people be able to change identities without the public being able to find out what is going on? Thus while the decision to change names may involve very intimate, personal reasons, a strong argument can be made that the present system best balances public and private interests.

The next three issues involve not records but what are most often pieces of records. However, because these items recur in many records or because they are of special concern, they will be separately discussed here.

The next issue is the availability of **social security numbers**. In the view of the Attorney General's Office, this is personal information and should not be public. These numbers are, therefore, not available from state agencies. These numbers do, however, also appear on voter registration lists and are, therefore, routinely available.

One of the Committee members argues that these numbers are innocuous on their faces, that they have appeared in a number of public records over the years, and that they are useful in cross-checking information between files.

On the other hand, if historical treatment is ignored and the issue looked at solely on the merits, a strong case not to release can be made. Lt. Governor Benjamin Cayetano (II at 10) has expressed concern about the release of these numbers. And in the Illinois study which G. A. "Red" Morris attached to his testimony (II at 239), social security numbers were among those items which it was felt should not be released. That study cites the federal law which requires that these numbers not be disclosed except under certain circumstances. And while cross-checking is possible using these numbers (as was noted above), a case can be made that agencies should not be parties to that cross-matching by providing these numbers to private parties.

Even though these numbers are currently available, there is no reason why the Legislature, if it chooses, could not prohibit future release. This will largely depend on whether these numbers are viewed as innocuous or whether they are seen as personal information which should no longer be available.

The other two pieces of information are credit history and private loan and financing information. In both cases, this is information which is sometimes required to be turned over to the State as part of applications for licenses, loans, or other State programs. In most cases, this information is needed when one of the program or license's requirements is financial integrity or capability.

There is also no dispute that this is very personal information and should probably not be made routinely available. Honolulu Managing Director Jeremy Harris (II at 116) notes that credit history is confidential under City rules. And L. Yonemoto (II at 312) notes that if loan and financing information, or financial status information, is routinely available, it could lead to personal humiliation. This has not been a major problem in the past because this material is usually part of an application and applications have been held confidential under current law.

The Legislature may wish to either review the imposition of financial integrity or capability requirements, or alternatively to provide protection to the information that is received.

Open Meetings Law

Minutes of Meetings
Transcripts of Public Meetings

It was not in the Committee's mandate to review the open meeting law, even though urged to do so by some who appeared before the Committee. Such a review may be due but if it is to be done, it should be about open meetings from the beginning and held out to the public as such. Nonetheless, there were two issues raised which while they concern open meetings, also present records questions. These issues will, therefore, be discussed.

The first issue concerned the minutes of meetings. These are clearly public under Chapter 91, HRS. Nonetheless, James Smith (I(H) at 3-7) wanted it emphasized how important access to these minutes are, especially in cases where the agencies are following poor procedures.

Hawaii County Council Chairman Stephen Yamashiro (II at 141) believes that there should be some changes made to the current law because the requirement that the minutes be ready within thirty days of the meeting presents logistical problems. Chairman Yamashiro suggested three possible solutions to the current situation: exempting committees from the minutes requirement; allowing the use of recordings as a substitute for written minutes; and, providing a sixty-day period for use in preparing minutes.

All three of these suggestions will likely be opposed as a watering down of the current sunshine law, though the use of electronic recording as a substitute for written transcripts and records is increasing. On the other hand, minutes are an important way of ensuring the accountability of councils, boards, and commissions. As a Committee member noted, minutes are a way for people who couldn't attend to find out what transpired, especially those on other islands. In fact, there was a suggestion that the charges for copies of the minutes should be minimized to encourage access and that minutes be posted (or otherwise available) on each island to ensure access.

The second issue was raised by Kelly Aver (I(H) at 2) and James Smith (I(H) at 3-7) and involves the requirement that there be transcripts of public hearings. Essentially the recommendation appears to be that verbatim transcripts be made for each public hearing and meeting. This would, in Aver's view, create a more accurate record of the meeting and,

therefore, a more effective Sunshine Law. In Smith's view, it would assist those who were not there to learn exactly what transpired at the meeting or hearing.

As Hawaii's law is currently structured, boards and commissions prepare minutes and contested case hearings are the subject of transcripts. Public hearings can run the spectrum in terms of formality and thus the type of record prepared.

There can be no doubt that if a transcript were prepared of each meeting and hearing, the records would be the best possible. There can also be no question that the costs of such a requirement would be substantial. Additionally for every meeting or hearing in which there is strong public interest, there are probably ten or even a hundred that are routine and uneventful. An across-the-board transcript requirement would, however, mean the ten or the hundred would have to be transcribed and stored in order to get at the one critical transcript. The resulting stack of paper is arguably a very wasteful result.

The existing minutes format should provide the crucial information in a useful form and at substantial less cost. Nonetheless, a transcript requirement could be imposed and if the resources were provided, all agencies would no doubt comply.

General Miscellaneous Issues

Ex Parte Communications
Financial Disclosures on Public Employees, Including Judges
Custody of Medical Records for Out-of-Business Hospitals
Private Sector Personnel Records
Ombudsman's Office
Welfare Recipient's Privacy Rights
Administrative Rules Prior to 1981
Annual Reports
Blue Book

Finally, the Committee was presented with a variety of issues which clearly involve records but which do not necessarily involve the present or future public records and privacy laws. Nonetheless, these are issues which should be raised for possible action by the Legislature and other parties.

The issue of ex parte communications, that is conversations between the decision-maker and any of the parties outside of the hearing and outside of the presence of the other parties, is clearly a kind of records problem. These communications are essentially a threat to the integrity and validity of the public record since they represent off-the-record material which will never appear on that record and yet might form the basis for the decision.

As to what can be done to prevent such communications; heightened sensitivity by decision-makers, penalties for engaging in such communications either in the specific laws involved or Chapter 92, HRS, and, providing that engaging such communication constitutes grounds for removal of board members under Chapter 26, HRS, seem to be the best steps that could be taken.

Financial disclosures of public employees, including judges, was another issue which arose. This material, to the extent that it is currently submitted, is available to the public at the offices of the State Ethics Commission. The more crucial question is who should be required to submit such disclosures. At this point, legislators and top appointees in the executive branch are required to do so, judges are not. Proposals to include the judges have been considered by the Legislature in the past but none have passed thus far. As noted earlier, the requirement of such disclosures has been upheld in Nakano v. Matayoshi, 68 Haw. 142, 706 P.2d 816 (1985).

The issue of the custody of medical records by out-of-business hospitals involves a requirement that these records be maintained for a specified period after the hospital closes. The issue was raised by Harold Lauritzen for Shizuo Onishi, of the Aiea General Hospital Association (II at 146 and I(H) at 30). Essentially, the Association is managing such records now and finding the task burdensome. The Association uses its current funds for charitable purposes and feels that the amount it spends in storage costs for the former hospital's files could be better spent.

The current requirement (Section 622-58, HRS) is an obvious effort by the Legislature to ensure that the records of hospitals that go out of business are preserved for the benefit of patients and others. If the hospital or its successors are not responsible, the only other likely candidate is the State. As to whether the State should accept such a burden, it does appear to be a questionable use of public resources since the records retention requirement itself is not unreasonable to impose on those conducting a business and profession with such impact on the public. The only possible argument for State involvement is that the State should "back-stop" its own records requirements. This then will be a policy choice for the Legislature to make, though if the decision is to have the Department of Health take over these records, sufficient resources should be provided to make such an undertaking possible.

The next issue concerns private sector personnel records. It was raised by Kin Hylton (II at 352), who essentially would like to have the right to review and correct files, such as provided by Chapter 92E, applied to the private sector in the personnel area.

The value of a system which allows an individual the right to review and records about them is obvious. Whether the Legislature wants to mandate it for all private sector employees is a more difficult problem.

The Legislature could presumably find the authority to enact such a law. In fact, requirements that credit reporting agencies use a similar type of review-and-correct system provide a precedent. On the other hand, there were no examples of actual problems in this area and the imposition of such a system should be preceded by findings that the problems are of such a magnitude as to require that imposition.

Another issue concerns the Ombudsman's Office. All agencies are required by law to cooperate with that office. The agencies are also obliged to share records and other material with the Ombudsman's Office, even if that record would otherwise

be confidential. There has always been some concern that the records would not have the same status with the Ombudsman that they have with the agency. The Ombudsman, on the other hand, has always taken the view that the records were protected, presumably by Section 96-9, HRS.

This issue could be addressed in a number of ways. The Legislature could simply agree with the Ombudsman's view that this is already handled by current law. Or the Legislature could enact a records law which, among other things, provides a general requirement that a receiving agency apply the same confidentiality requirements as the receiving agency. Or finally, the Legislature could amend Chapter 96, HRS, to make clear that confidential "records" received by the Ombudsman shall be handled in a like manner.

Another issue raised was the privacy rights of welfare recipients. This issue was raised by Kirk Cashmere of the Legal Aid Society (II at 102). Essentially what is involved is that while the welfare system is supposed to be confidential, the current process undermines that confidentiality. Specifically, because the applicant must get verifications from employers, landlords or relatives, the applicant's involvement with welfare system becomes unknown. And that knowledge has led to humiliation and specific adverse effects.

Cashmere makes a number of suggestions for changes which can be accommodated on an administrative level. Basically, these are:

(1) Training Department of Human Services (DHS) employees on minimizing the level of third party verification needed;

(2) Creating a "good cause" exemption from the verification requirements;

(3) Worker assistance in making certain inquiries on behalf of clients; and

(4) Use of a verification form that does not identify the welfare program.

Whether any or all of these suggestions are workable is a question for DHS to address.

Another issue concerns administrative rules in effect prior to 1981, the year Hawaii switched over to a new rulemaking format and structure. All agencies were required to revise all their rules to comply with the new law. It appears that while most have, there may be some who have not. This state of

affairs is particularly difficult for the Lt. Governor's Office which is required to maintain the rules because the Office cannot be sure that their files are completely accurate.

The Committee understands that the Lt. Governor is considering legislation which will automatically repeal any rules that have not complied with the new requirements by a set date. Such legislation would both clear the books of old, outdated rules and would ensure that all remaining rules are in compliance with current requirements.

The last issue involves annual reports submitted by the departments. Desmond Byrne (II at 317 and I(H) at 57-59) believes that all departments should be required to submit them on an annual basis and that they should include both quantitative and qualitative data. Byrne believes that these reports are a substantial assistance to information collection and should be required of each department.

Current law allows the executive branch to use the budget and accompanying documents in lieu of annual reports. Most departments do, however, produce some form of annual report though the form and content vary.

Unless the Legislature chooses to specify, in detail, what the format and content of these reports should be, this will continue to be a matter of executive prerogative.

It should, however, be very clear that the reports themselves are public record and should be routinely available. The preceding discussion, which goes far more to the quality of the report, does not in any way change that status.

On a related point, the possibility of having a "Blue Book" produced in Hawaii was raised by Desmond Byrne (II at 317 and I(H) at 57-59). This is essentially a book of facts and figures about a particular state, and is produced on a regular basis by some other states. The volume may include such items as biographies of top state officials; the State Constitution; overviews of the legislative branch including its history, structure and accomplishment; similar overviews of the executive and judicial branches; statistical information on the State; election results; State symbols; and, historical information about the State.

Hawaii has some of this material covered by such publications as the Department of Business and Economic Development (DBED) Data Book, the election results released the Lt. Governor's Office, and a variety of material produced by DBED and by the Legislative Reference Bureau (LRB). Nonetheless, there is clearly no single reference book that would provide the information available in the Blue Books.

The issue that must be resolved is whether there is enough interest in such a publication to justify the effort and expense that would be involved in its production. It may be most appropriate in these circumstances to have the Legislative Reference Bureau study the experience in other states including the demand for such books, the costs involved, and the degree to which such books can be self-supporting.

APPENDIX A

THE "PRIVACY" PROVISION OF THE HAWAII CONSTITUTION (ARTICLE I, SECTION 6)

RIGHT TO PRIVACY

Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right. [Add Const Con 1978 and election Nov 7, 1978]

Case Notes

Parents' right to give their child any name they wish. 466 F. Supp. 714.

Right of privacy does not encompass sex for a fee in a private apartment. 66 H. 616, 671 P.2d 1351.

APPENDIX B

CHAPTER 92, PART V,
HAWAII REVISED STATUTES
(PUBLIC RECORDS)

CHAPTER 92
PUBLIC AGENCY MEETINGS AND RECORDS

[PART V.] PUBLIC RECORDS

Note

This part, enacted as Part IV, is redesignated.

§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan 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. [L 1975, c 166, pt of §2]

FAIR INFORMATION PRACTICE

Attorney General Opinions

Applications for licenses are not "public records." Att. Gen. Op. 75-7.
Referred to generally. Att. Gen. Op. 76-3.

Hawaii Legal Reporter Citations

Inspection of public records. 79 HLR 79-0117.
Inspection of building permit application and all related materials, including building plans and specifications. 79 HLR 79-0543.

§92-51 Public records; available for inspection. All public records shall be available for inspection 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 records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person. [L 1975, c 166, pt of §2; am L 1976, c 212, §4]

Attorney General Opinions

Referred to generally. Att. Gen. Op. 76-3.

§92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

APPENDIX C

CHAPTER 92E,
HAWAII REVISED STATUTES
(FAIR INFORMATION PRACTICE
(CONFIDENTIALITY OF
PERSONAL RECORD))

[CHAPTER 92E]
FAIR INFORMATION PRACTICE
(CONFIDENTIALITY OF PERSONAL RECORD)

SECTION

Cross References

Right to privacy, see Const. Art. I, §6.

[§92E-1] Definitions. As used in this chapter:

"Agency" means every office, officer, employee, department, division, bureau, authority, board, commission, or other entity of the executive branch of the State or of each county, but excludes:

(1) The legislature and the council of each county, including their respective committees, offices, bureaus, officers, and employees; and

(2) The judiciary, including the courts, and its offices, bureaus, officers, and employees.

"Individual" means a natural person.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. "Personal record" includes a "public record," as defined under section 92-50. [L 1980, c 226, pt of §2]

Revision Note

Definitions restyled.

Attorney General Opinions

Items of information on public agency records are "personal records" of the person to whom the information pertains. Att. Gen. Op. 84-14.

[§92E-2] Individual's access to own personal record. Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1980, c 226, pt of §2]

[§92E-3] Exemptions and limitations on individual access. An agency is not required by this chapter to grant an individual access to personal records, or information in such records:

(1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the enforcement of criminal laws or any activity pertaining to the prevention, control, or reduction of crime, and which consist of:

(A) Information which fits or falls within the definition of "criminal history record information" in section 846-1; or

(B) Information or reports prepared or compiled for the purpose of

criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or

(C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.

(2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.

(3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.

(4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.

(5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1980, c 226, pt of §2]

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

(1) To a duly authorized agent of the individual to whom it pertains;

(2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;

(3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;

(4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual. [L 1980, c 226, pt of §2]

Attorney General Opinions

List containing only names of holders of professional and vocational licenses and type of license held may be made available to public. Att. Gen. Op. 84-13.

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

(1) Compatible with the purpose for which the information was collected or obtained;

(2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;

(3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;

(4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;

(5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign

government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;

(6) To the legislature or any committee or subcommittee thereof;

(7) Pursuant to an order of a court of competent jurisdiction;

(8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal monies. [L 1980, c 226, pt of §2]

[§92E-6] Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92E-3. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1980, c 226, pt of §2]

§92E-7 Copies. The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form, duplication, and searching for the record. [L 1980, c 226, pt of §2; am L 1983, c 91, §1]

§92E-8 Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

(1) Make the requested correction or amendment; or

(2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1980, c 226, pt of §2; am L 1983, c 91, §2]

Attorney General Opinions

Right to correct personal records includes alteration of a birth certificate under section 338-15. Att. Gen. Op. 84-14.

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

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

(1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's

disagreement with the refusal of the agency to correct or amend it; and

(2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1980, c 226, pt of §2; am imp L 1984, c 90, §1]

Attorney General Opinions

This section and section 92E-11, rather than chapter 91, govern review of agency decisions on amendment of birth certificates; where entry on agency record was "personal record" of individual, that person has right to file statement of disagreement. Att. Gen. Op. 84-14.

[§92E-10] Rules and regulations. Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this chapter.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county. [L 1980, c 226, pt of §2]

§92E-11 Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this chapter, and after appropriate administrative remedies under sections 92E-6, 92E-8, and 92E-9 have been exhausted.

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

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

(1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of $100; and

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

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

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance. [L 1980, c 226, pt of §2; am L 1983, c 91, §3]

[§92E-12] Violations; disciplinary action against employees. A knowing or intentional violation of any provision of this chapter, or of any rule adopted to implement or administer this chapter, by any employee or officer of

an agency shall be cause for disciplinary action, including suspension or discharge, by the head of the agency. Any person may file a complaint, with the head of the applicable agency, alleging such a violation. [L 1980, c 226, pt of §2]

[§92E-13] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this chapter, including section 92E-3, shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

(1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or

(2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1980, c 226, pt of §2]

APPENDIX D

SPECIFIC PUBLIC RECORDS CONFIDENTIALITY AND PENALTY STATUTES (EXHIBITS 1-3)

Report of the Governor's Committee on
Public Records and Privacy

APPENDIX D. SPECIFIC PUBLIC RECORDS, CONFIDENTIALITY AND PENALTY STATUTES

This Appendix sets forth the specific statutes which address the treatment of government records. As discussed in Chapter 1 of the report, this list of records is divided into three exhibits. The first exhibit sets forth all provisions which result in a public record. The second exhibit sets forth those provisions which provide that records remain confidential. And the third exhibit sets forth those which provide a penalty for the improper handling of records.

From the outset, there was a strong desire to have a useful index created for these provisions. However, because these lists are by definition limited in subject matter, the task of creating such an index proved difficult. The format selected will hopefully prove useful to anyone who wishes to determine what treatment is given to various types of records.

The Index which follows is the Table of Contents from the Hawaii Revised Statutes ("HRS"), annotated in the left margin to show which chapters contain a provision or provisions dealing with records and in which exhibits these provisions are found. For example, a page might appear as follows:

EXHIBIT 1 2 3			
	TITLE 1 GENERAL PROVISIONS		
	Chapter		**Section**
X	9	**Foundation on Culture and the Arts**	9-1

The "X" means that Chapter 9, HRS, contains a provision which creates a public record and no provisions relating to confidentiality or penalties. A brief description of the statute or statutes involved are found in the indicated exhibit(s), in this case Exhibit 1, with each exhibit setting forth the statutes in numerical order.

As the statutes are already organized by subject matter within the HRS volumes, it should not prove difficult to find any provisions which are of interest or concern.

A few caveats when using this Appendix. These Exhibits intend to supplement the existing HRS indexes, not replace them.

Each HRS section in these Exhibits is paraphrased from the official text. Unrelated text is omitted. Also where possible, the reader is referred back to the official sections for specific language, especially when the statutes describes specific types of information as required for a license or permit application.

Finally, the lists refer to existing language in the "blue" HRS volumes and the "gold" 1986 Supplement. The reader should update any statute with the 1987 Session Laws of Hawaii. For example, the 1987 Legislature passed Act 347 (H.B. 410), Relating to Insurance, which repeals HRS Chapters 294, 431, 431A, 431D, 431F, 431H, 431J, 432, 433, 434 and 435. The Act recodifies these Chapters into a new comprehensive Insurance Code, effective July 1, 1988. Thus, the sections contained in these Exhibits remain valid for prior years up to the effective date.

EXHIBIT
1 2 3

x
x x

TABLE OF CONTENTS

Constitution of the State of Hawaii
Hawaii Rules of Evidence (HRS Chapter 626)

STATE STATUTES

DIVISION 1. GOVERNMENT

TITLE 1

GENERAL PROVISIONS

TITLE 2

ELECTIONS

EXHIBIT
1 2 3

TITLE 3

LEGISLATURE

EXHIBIT 1 2 3

TITLE 4

STATE ORGANIZATION AND ADMINISTRATION, GENERALLY

TITLE 5

STATE FINANCIAL ADMINISTRATION

EXHIBIT
1 2 3

EXHIBIT
1 2 3

TITLE 6

COUNTY ORGANIZATION AND ADMINISTRATION

SUBTITLE 1. PROVISIONS COMMON TO ALL COUNTIES

EXHIBIT
1 2 3

SUBTITLE 2. GOVERNMENT OF HAWAII, KAUAI, MAUI

SUBTITLE 3. HONOLULU GOVERNMENT

EXHIBIT
1 2 3

TITLE 7

PUBLIC OFFICERS AND EMPLOYEES

EXHIBIT
1 2 3

TITLE 8

PUBLIC PROCEEDINGS AND RECORDS

EXHIBIT
1 2 3

TITLE 9

PUBLIC PROPERTY, PURCHASING AND CONTRACTING

EXHIBIT
1 2 3

x

x

x

x

x

x x

x

TITLE 10

PUBLIC SAFETY AND INTERNAL SECURITY

EXHIBIT
1 2 3

TITLE 11

AGRICULTURE AND ANIMALS

EXHIBIT
1 2 3

TITLE 12

CONSERVATION AND RESOURCES

SUBTITLE 1. PUBLIC LANDS

EXHIBIT
1 2 3

EXHIBIT
1 2 3

SUBTITLE 4. FORESTRY AND WILDLIFE; RECREATION AREAS; FIRE PROTECTION

SUBTITLE 5. AQUATIC RESOURCES AND WILDLIFE

EXHIBIT
1 2 3

TITLE 13

PLANNING AND ECONOMIC DEVELOPMENT

EXHIBIT
1 2 3

EXHIBIT
1 2 3

x x

x

x

x x

x x x

x

x x

x

x*

TITLE 14

TAXATION

EXHIBIT
1 2 3

TITLE 15

TRANSPORTATION AND UTILITIES

EXHIBIT
1 2 3

TITLE 17

MOTOR AND OTHER VEHICLES

EXHIBIT
1 2 3

x x

x

x x

TITLE 18

EDUCATION

EXHIBIT
1 2 3

EXHIBIT
1 2 3

TITLE 19

HEALTH

EXHIBIT 1	2	3	Chapter			Section
				Part VI.	Excessive Noise (Repealed)	
				Part VII.	Pigeons	322-121
				Part VIII.	Aviary Game Birds	322-141
			323	Hospitals and Medical Facilities		323-1
x				Part I.	General Provisions	323-1
				Part II.	Hospitals and Medical Facilities Survey and Construction (Repealed)	
				Part III.	Planning for Health Care Facilities and Services (Repealed)	
				Part IV.	Therapy	323-51
			323D	Health Planning and Resources Development and Health Care Cost Control		323D-1
				Part I.	General Provisions	323D-1
x				Part II.	State Health Planning and Development Program	323D-11
				Part III.	Subarea Health Planning Councils	323D-21
				Part IV.	State Medical Facilities (Repealed)	
x				Part V.	Certificate of Need	323D-41
				Part VI.	General Administration	323D-61
			324	Medical Research; Morbidity and Mortality Information		324-1
x	x	x		Part I.	Maternal and Perinatal Studies	324-1
x	x	x		Part II.	Mental Health and Mental Retardation Studies	324-11
x	x	x		Part III.	Cancer Studies	324-21
x	x	x		Part IV.	Health Surveillance	324-31
			325	Infectious and Communicable Diseases		325-1
x	x			Part I.	General Provisions	325-1
x				Part II.	Vaccination and Immunization	325-31
x	x	x		Part III.	Congenital Syphilis	325-51
x	x	x		Part IV.	Tuberculosis	325-71
x*	x			Part V.	Hepatitis	325-91
			326	Hansen's Disease		326-1
			327	Medical and Research Use of Bodies		327-1
				Part I.	Uniform Anatomical Gift Act	327-1
				Part II.	Donation of Eyes after Death (Repealed)	
x				Part III.	Unclaimed Bodies	327-31
				Part IV.	General Provisions	327-51
			327C	Death		327C-1
			328	Food, Drugs, and Cosmetics		328-1
x	x	x		Part I.	Hawaii Food, Drug, and Cosmetic Act	328-1
				Part II.	Cold Storage of Food	328-41
				Part III.	Frozen Food Products	328-61
x				Part IV.	Enrichment of Bread and Flour	328-71
				Part V.	Drug Abuse, Control (Repealed)	
				Part VI.	Drug Product Selection	328-91
			328A	Water, Furnishing Potable (Repealed)		
			328E	Intoxicating Compounds		328E-1
			*(NEW)	Part VI.	Sexually Transmitted Diseases	325-101

EXHIBIT
1 2 3

EXHIBIT
1 2 3

TITLE 20

SOCIAL SERVICES

EXHIBIT
1 2 3

EXHIBIT
1 2 3

TITLE 21

LABOR AND INDUSTRIAL RELATIONS

EXHIBIT
1 2 3

EXHIBIT
1 2 3

DIVISION 2. BUSINESS

TITLE 22

BANKS AND FINANCIAL INSTITUTIONS

EXHIBIT
1 2 3

TITLE 23

CORPORATIONS AND PARTNERSHIPS

EXHIBIT
1 2 3

TITLE 24

INSURANCE

EXHIBIT 1	2	3	Chapter		Section
				Accident and Sickness Insurance	431-461
x				Group and Blanket Disability Insurance	431-511
				Life Insurance and Annuities	431-531
				Group Life Insurance	431-571
				Industrial Life Insurance	431-601
				Property Insurance	431-631
				Surety Insurance	431-636
x				Unfair Practices and Frauds	431-641
x				Mergers, Rehabilitation, Liquidation	431-651
x				Rates of Casualty, Vehicle, and Surety Insurers	431-691
x	x			Rates of Property and Marine and Transportation Insurers	431-711
				Mass Merchandising of Motor Vehicle Insurance	431-751
x				Medicare Supplement Policies	431-771
			431A	Readability of Insurance Contracts	431A-1
x	x		431D	Insurance Company Insolvency	431D-1
x	x		431F	Hawaii Life and Disability Insurance Guaranty Association Act	431F-1
x*	x*	x*	431H	Insurance Information Protection Act	431H-1
x			432	Title Insurance and Title Insurers	432-1
x			433	Mutual and Fraternal Benefit Societies	433-1
x	x	x	434	Insurance by Fraternal Benefit Societies	434-1
x			435	Credit Life Insurance and Credit Disability Insurance	435-1
x			435C	Hawaii Medical Malpractice Underwriting Plan	435C-1
			435E	Physicians and Surgeons Cooperative Indemnity	435E-1
				Part I. Cooperative Indemnity	435E-1
x				Part II. Trust Agreements	435E-11
				Part III. Board of Trustees, Members	435E-31
x				Part IV. Unfair Competition and Deceptive Acts or Practices	435E-41
			*(NEW)	Chapter 43IJ: Captive Insurance Companies	43IJ-I

TITLE 25

PROFESSIONS AND OCCUPATIONS

Chapter		Section
436	Abstract Makers (Repealed)	
436D	Acupuncture Practitioners (Repealed)	
436E	Acupuncture Practitioners	436E-1
437	Motor Vehicle Industry Licensing Act	437-1
437B	Regulation of Motor Vehicle Repairs	437B-1
438	Barbering, Practice of	438-1
439	Beauty Culture	439-1
440	Boxing Contests	440-1
440G	Cable Television Systems	440G-1
441	Cemeteries and Mortuaries	441-1
442	Chiropractic	442-1
443	Collection Agencies (Repealed)	
*(NEW)	Chapter 436M: Alarm Businesses	436M-I
*(NEW)	Chapter 43]J: Captive Insurance Companies	43]J-I

EXHIBIT 1	2	3	Chapter		Section
			443A	Collection Agencies	443A-1
				Prohibited Acts and Practices	443A-12
x			444	Contractors	444-1
			445	County Licenses	445-1
x				Generally	445-1
x				Auction	445-21
				Ball or Marble Machines	445-41
				Billiards and Bowling Alleys	445-51
x				Beef or Pork	445-61
x				Food Products	445-71
x				Laundry, Etc.	445-81
				Lodging or Tenement Houses, Hotels, Boarding-houses, and Restaurants	445-91
x				Milk	445-101
				Outdoor Advertising	445-111
x				Pawnbrokers	445-131
x				Peddlers	445-141
				Peddling Cake (Repealed)	
				Poisonous Drugs	445-151
x				Public Shows	445-161
				Secondhand Dealers	445-171
x				Solicitors	445-181
x				Steam Laundries, Honolulu	445-191
x				Surety, Bail Bond	445-201
x				Tobacco, Cigars, and Cigarettes	445-211
x				Vehicles and Drivers for Hire	445-221
x				Scrap Dealers	445-231
			446	Debt Adjusting	446-1
			446D	Degree Granting Institutions (Repealed)	
			446E	Unaccredited Degree Granting Institutions	446E-1
x			447	Dental Hygienists	447-1
x			448	Dentistry	448-1
			448A	Escort Agencies (Repealed)	
x			448E	Electricians and Plumbers	448E-1
x			448H	Elevator Mechanics	448H-1
x			449	Escrow Depositories	449-1
x			450	Fumigation	450-1
			451	Gasoline, Fuel, and Motor Oil (Repealed)	
x			451A	Hearing Aid Dealers and Fitters	451A-1
x			452	Massage	452-1
			453	Medicine and Surgery	453-1
x		x		Part I. Generally	453-1
x				Part II. Emergency Medical Service Personnel	453-31
x			454	Mortgage Brokers and Solicitors	454-1
x			454D	Mortgage and Collection Servicing Agents	454D-1
x			455	Naturopathy	455-1
x			456	Notaries Public	456-1
x			457	Nurses	457-1
x			457B	Nursing Home Administrators Act	457B-1
			457G	Occupational Therapy Practice	457G-1

EXHIBIT 1	2	3	Chapter		Section
			458	Opticians, Dispensing	458-1
x			459	Optometry	459-1
x			460	Osteopathy	460-1
x	x		460J	Pest Control Operators	460J-1
x			461	Pharmacists and Pharmacy	461-1
x	x	x	461J	Physical Therapy Practice Act	461J-1
			462	Photography (Repealed)	
x			462A	Pilotage	462A-1
x			463	Private Investigators and Guards	463-1
x			463E	Podiatrists	463E-1
x			464	Professional Engineers, Architects, Surveyors and Landscape Architects	464-1
x			465	Psychologists	465-1
x			466	Public Accountancy	466-1
x			466J	Radiologic Technology	466J-1
x			467	Real Estate Brokers and Salesmen	467-1
			467A	Rental Agencies (Repealed)	
x			467B	Solicitation of Funds from the Public	467B-1
x			468	Solicitors; Business of Taking Orders	468-1
x			468B	Bonding of Solar Energy Device Dealers	468B-1
x			468E	Speech Pathologists and Audiologists	468E-1
			468J	Travel Agencies (Repealed)	
x			468K	Travel Agencies	468K-1
x			469	Undertakers, Embalmers, Funeral Directors	469-1
			470	Vendors, Itinerant (Repealed)	
x			471	Veterinary Medicine	471-1

TITLE 26

TRADE REGULATION AND PRACTICE

Chapter		Section
476	Credit Sales	476-1
477	Disclosure of Finance Costs (Repealed)	
477E	Fair Credit Extension	477E-1
478	Interest and Usury	478-1
479	Insurance Companies, Freedom of Choice of	479-1
480	Monopolies; Restraint of Trade	480-1
	Part I. Antitrust Provisions	480-1
	Part II. Antitrust Exemption	480-31
481	Fair Trade Regulations	481-1
	Part I. Unfair Practices Act	481-1
	Part II. Sale of United States Surplus Goods	481-21
481A	Uniform Deceptive Trade Practice Act	481A-1
481B	Unfair and Deceptive Practices	481B-1
481C	Door-to-Door Sale	481C-1
481F	Sale of Fine Prints	481F-1
481G	Office Machine Products Dealerships	481G-1

EXHIBIT
1 2 3

Chapter		Section
482	Trademarks, Prints, Labels, and Trade Names, Registration and Protection of	482-1
482C	Copyrights in Sound Recordings	482C-1
482E	Franchise Investment Law	482E-1
483	Uniform Joint Obligations Act	483-1
484	Uniform Land Sales Practices Act	484-1
485	Uniform Securities Act (Modified)	485-1
486	Measurement Standards and Uniform Packaging and Labeling	486-1
486A	Weight of Bread	486A-1
486D	Petroleum Product Accounting Act	486D-1
486E	Fuel Distribution	486E-1
486H	Gasoline Dealers	486H-1
486K	Hotels	486K-1
486M	Metal and Gem Dealers	486M-1
486N	Health Clubs	486N-1
487	Consumer Protection	487-1
487A	Language of Consumer Transactions	487A-1
488	Prepaid Legal Services	488-1

TITLE 27

UNIFORM COMMERCIAL CODE

Chapter			Section
490	Uniform Commercial Code		490:1-101
Article 1	General Provisions		490:1-101
	Part 1.	Short Title, Construction, Application and Subject Matter of the Chapter	490:1-101
	Part 2.	General Definitions and Principles of Interpretation	490:1-201
Article 2	Sales		490:2-101
	Part 1.	Short Title, General Construction and Subject Matter	490:2-101
	Part 2.	Form, Formation and Readjustment of Contract	490:2-201
	Part 3.	General Obligation and Construction of Contract	490:2-301
	Part 4.	Title, Creditors and Good Faith Purchasers	490:2-401
	Part 5.	Performance	490:2-501
	Part 6.	Breach, Repudiation and Excuse	490:2-601
	Part 7.	Remedies	490:2-701
Article 3	Commercial Paper		490:3-101
	Part 1.	Short Title, Form and Interpretation	490:3-101
	Part 2.	Transfer and Negotiation	490:3-201
	Part 3.	Rights of a Holder	490:3-301
	Part 4.	Liability of Parties	490:3-401

EXHIBIT
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DIVISION 3. PROPERTY; FAMILY

TITLE 28

PROPERTY

EXHIBIT
1 2 3

x

TITLE 29

DECEDENTS' ESTATES

TITLE 30

GUARDIANS AND TRUSTEES

EXHIBIT
1 2 3

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TITLE 30A

UNIFORM PROBATE CODE

EXHIBIT
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TITLE 31

FAMILY

EXHIBIT
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EXHIBIT
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DIVISION 4. COURTS AND JUDICIAL PROCEEDINGS

TITLE 32

COURTS AND COURT OFFICERS

TITLE 33

EVIDENCE

EXHIBIT
1 2 3

x* x*

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x

TITLE 34

PLEADINGS AND PROCEDURE

*Chapter 626 sections found at first page of each exhibit.

EXHIBIT
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TITLE 35

APPEAL AND ERROR

TITLE 36

CIVIL REMEDIES AND DEFENSES AND SPECIAL PROCEEDINGS

EXHIBIT
1 2 3

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DIVISION 5. CRIMES AND CRIMINAL PROCEEDINGS

TITLE 37

HAWAII PENAL CODE

EXHIBIT
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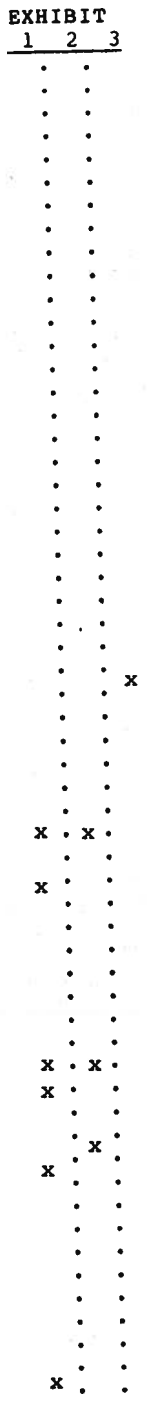

TITLE 38

PROCEDURAL AND SUPPLEMENTARY PROVISIONS

EXHIBIT
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x x x

Report of the Governor's Committee on
Public Records and Privacy

APPENDIX D: SPECIFIC PUBLIC RECORDS,
CONFIDENTIALITY AND PENALTY STATUTES

Exhibit 1 - Public Records

Statute Section	Description of Record and Party With Possession
	I. HAWAII CONSTITUTION
Article VII, Section 12	Special purpose revenue bonds authorized and issued: report on cumulative amount of these bonds provided to legislature in November of each year by governor.
Article XVII, Sec. 2	Full text of proposed constitutional amendments made "available for public inspection" at least thirty days prior to submission for vote of electorate at every public library, office of the clerk of each county and the chief election officer. The convention shall also make the full text "available for inspection" at every polling place on election day.
	II. HAWAII RULES OF EVIDENCE
Hawaii Revised Statutes	Chapter 626: Part V. Privileges
Rule 501	No person has the privilege to refuse to be a witness, disclose any matter, produce any object or writing, or prevent another from doing the same, except as required by the United States Constitution, Hawaii Constitution, a federal act or Hawaii statute, these rules of evidence or rules adopted by the Hawaii Supreme Court.
Rule 502, et seq.	See, Exhibit 2 in this Appendix re: confidentiality.
	III. HAWAII REVISED STATUTES
	TITLE 1
	GENERAL PROVISIONS
Chapter 5:	Emblems and Symbols
5-11	"Calabash cousin to the people of Hawaii:" A permanent record with names of all persons receiving certificates conferring said title kept with state public archives.

Statute Section	Description of Record and Party With Possession
Chapter 6E: Historic Preservation Part II. Monuments and Memorials	
6E-33	"Captain Cook Memorial Collection" maintained in public archives; comptroller may distribute limited number of free copies of publications in collection to libraries, museums and other places of reference "open to the public" in the United States and other countries.
Chapter 9: Foundation on Culture and the Arts	
9-3	Annual report submitted by Foundation on Culture and the Arts to the Governor and the Legislature before February 1; to include total number and amount of gifts received, payroll disbursements, contracts entered into and other information. Foundation shall also maintain a register of the location of ethno-historical and cultural materials either developed by or received by the Foundation as gifts and donations in public archives, libraries, and other institutions "accessible to the public."
Chapter 10: Office of Hawaiian Affairs	
10-15	Board of Trustees to prepare and "make public" the annual report of the Office of Hawaiian Affairs Annual Report with description of activities, income and expenditures.
Chapter 11: Elections, Generally Part II. Registration	
11-14	General county register shall contain the name and address of each voter registered in the county, with additional information required by section 11-15 at discretion of clerk; said register shall "at all times during business hours, be open to public inspection, and shall be a public record." (b) Voter affidavits and the register may be copied, and the clerk may release voter lists, tabulating cards or computer tapes with data furnished in the affidavit, pursuant to county ordinance. Subsec. (b).
11-15	Voter registration applications (affidavit) for state elections and elections of board of trustees of Office of Hawaiian Affairs filed with clerk of each county.

Statute Section	Description of Record and Party With Possession
11-15	(d) Voter affidavit approved or accepted for registration by clerk shall be numbered, filed, and made "open to public inspection and examination."
11-20	(b) Notice of intent to transfer (voter) registration mailed by county clerks based on change of name information. Notice shall contain information as described by this section.
11-24	A list of all registered voters in each precinct by name and residence shall be "available for inspection" at the county clerk's office prior to election day, and at the precinct polling place on election day.
Part III. Boards of Registration	
11-44	Books of record with day to day minutes of all proceedings of county boards of (voter) registration shall be kept by them.
Part V. Parties	
11-62	Petition for formation of new political party filed with chief election officer is "public information upon filing."
11-63	Rules and amendments of existing political parties filed with chief election officer is "public record."
11-64	List of names and addresses of officers of central committee and of respective county committees submitted to chief election officer and respective county clerks.
11-65	Notice of intention to disqualify political party served by chief election officer on chairman of the State Central Committee, or in his absence, on any officer of the Central Committee, and published in newspaper.
Part VII. Conduct of Elections	
11-97	The voter register, records related to the register, or to any election, possessed by the voter registration, precinct officials, the chief election officer or the clerk shall be "open to the inspection of any voter" except for voted ballots and other sealed election materials. See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
Part VIII. Ballots	
11-120	Official ballots, specimen ballots and other materials sent to precinct officials by chief election officer or county clerk with record kept of number of ballots sent to each precinct.
Part IX. Voting Procedures	
11-137	Forfeiture of right to vote and record of proceeding made by chairman of precinct officials.
11-139	Voting assistance by reason of blindness, disability or inability to read or write required by voter shall be written into record book by precinct officials with other information.
Part X. Vote Disposition	
11-152	See, Exhibit 2 in this Appendix re: confidentiality.
11-153	Where tabulation of ballots show number different from poll book, precinct officials shall note fact on form to chief election officer or county clerk, who shall then produce a list of all precincts showing difference and amount of difference as a "public record."
11-154	All records and supplies of precincts shall be delivered by precinct officials to either chief election officer or county clerk. Tabulated ballots placed in sealed containers; disposition controlled by rules and regulations.
Part XII. Expenses B. Election Campaign Contributions and Expenditures	
11-195	All required reports filed under subpart B (Election Campaign Contributions and Expenditures) of Part XII (Election Expenses), Chapter 11 (Elections), shall be "open for public inspection" in the office of the Campaign Spending Commission.
11-199	(c) Each candidate and campaign treasurer shall report amount and identity of each donor making contributions in excess of $100. ... (e) Each committee and party shall disclose the identity of, the source, and the recipient of all earmarked funds.
11-216	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
11-220	Agreement concerning campaign expenses, maintenance of records, books, and other information, and other terms and conditions furnished in writing by candidate to campaign spending commission to receive contribution from Hawaii election campaign fund. Eligibility also requires a certification of facts such as a limitation of campaign expenses. Record may also include persons making qualifying campaign contributions.
Chapter 13D: Board of Trustees, Office of Hawaiian Affairs	
13D-3	Voter registration list for election of the board of trustees of the Office of Hawaiian Affairs maintained by the county clerks as a separate list.
Chapter 16: Voting Systems Part III. Paper Ballot Voting System	
16-27	Totally blank and questionable ballots counted and recorded by precinct officials.

TITLE 3

LEGISLATURE

Chapter 23: Auditor	
23-9	Legislative Auditor to submit report to the legislature on audits and examinations done for the prior fiscal year and the current fiscal year, together with findings and recommendations concerning agency expenditures. "All reports shall be available for public inspection."
Chapter 25: Reapportionment	
25-8	Record of its meetings and hearings kept by reapportionment commission and advisory councils, with the written reports submitted to the legislature.

Statute Section	Description of Record and Party With Possession

TITLE 4

STATE ORGANIZATION AND ADMINISTRATION, GENERALLY

Chapter 26: Executive and Administrative Departments
Part I. Organization, Generally

26-1	Lieutenant Governor ("L.G.") to record all legislative and gubernatorial acts, certify state documents, and maintain an official file of rules and regulations of state agencies under Chapter 91. Lieutenant Governor's designee to authenticate documents in his absence shall be written and filed in the office of the governor with a certified copy filed with public archives.
26-6	Department of Accounting and General Services shall manage the preservation and disposal of all records of the state, audit financial accounts of all state agencies for legality and accuracy, and report to the governor and legislature as to the finances of each state agency, among other duties required by this section.

Part II. Other General Provisions

26-38	Each department head may prescribe regulations for the custody, use and preservation of records.

Chapter 27: State Functions and Responsibilities
Part VI. Review

27-36	Legislative Auditor to submit written status report to the legislature on implementation of parts 2 through 5 of HRS Chapter 27.

Chapter 27C: State Information Service

27C-2	State information service in the governor's office to assist public desiring information from state agencies and circulate information concerning state government, among other things.

Chapter 28: Attorney General
Part I. Department, Generally

28-3	The Attorney General shall file his opinions with the Lieutenant Governor, the public archives, the Supreme Court Library, and the Legislative Reference Bureau within three days of issuance, which opinions filed with the first three shall be "available for public inspection."

Statute Section	Description of Record and Party With Possession
Chapter 30: Gubernatorial Transition	
30-5	Revised budget report prepared by governor-elect shall be made "available to the general public" by the Director of Finance.

TITLE 5

STATE FINANCIAL ADMINISTRATION

Chapter 37:	Budget
Part IV.	The Executive Budget
37-68	Each state agency shall submit program and financial plans, budgetary requests and performance reports to the Director of Finance (Budget and Finance) as prescribed by rule.
Chapter 39:	State Bonds
Part IV.	State Debt Limit Statement and the Determination of Total Outstanding Indebtedness, the Exclusions therefrom, and Certification thereof.
39-92	Statement evidencing power of the state to issue general obligation bonds issued by Director of Finance annually and following each issuance of general obligation bonds. Statement shall include total principal and interest payable in current fiscal year and each subsequent fiscal year on all outstanding general obligation indebtedness, along with other information required by statute, including supporting schedules. Distribution of certified statement and schedules limited to governor and presiding officers of legislature, except that each member of legislature shall also receive copies of certified statements only.
39-93	Annual statement of total outstanding indebtedness of state and exclusions therefrom as of July 1 set forth by Director of Finance. Statement shall include total principal amount of outstanding indebtedness, separately stating outstanding principal amount of general obligation bonds less other bonds, such as reimbursable general obligation bonds, revenue bonds, and other bonds as specified by statute. Distribution of statement the same as under section 39-92.

Statute Section	Description of Record and Party With Possession
Chapter 39A: Special Purpose Revenue Bonds	
Part I. General Provisions	
39A-1	Report on special purpose revenue bonds transmitted by governor to legislature annually with information required by statute, such as amount of subject bonds authorized and issued.
Part II. Assisting Not-for-Profit Corporations That Provide Health Care Facilities to the General Public.	
39A-35	Project agreement concerning use of such revenue bonds entered into by Department of Budget and Finance at time of issuance of special purpose revenue bonds.
39A-49	Each project party with agreement with Department of Budget and Finance shall make "available to the public" all financial records relevant to use of or savings resulting from use of special purpose revenue bonds ...; and as directed by department rules.
Part III. Assisting Manufacturing Enterprises	
39A-75	Project agreement required as described in section 39A-35 above.
39A-89	Project party to make records "available to the public" as previously described in section 39A-49.
Part IV. Assisting Processing Enterprises	
39A-115	Project agreement required as similarly noted in section 39A-35.
39A-129	Project party shall make "available to the public" all relevant financial records as similarly described in section 39A-49 above.
Part V. Assisting Industrial Enterprises	
39A-155	Project agreement required as similarly described in section 39A-35.
39A-169	Project party to make all financial records "available to the public" as similarly described in section 39A-49.
Part VI. Assisting Utilities Serving the General Public in Providing Electric Energy or Gas	

Statute Section	Description of Record and Party With Possession
39A-195	Project agreement required as similarly described in section 39A-35.
39A-208(b)	Public Utilities Commission, in every rate proceeding involving a public utility making use of special purpose revenue bonds, shall calculate the estimated savings realized by utility service consumers for the purpose of "public disclosure," according to statute.
Chapter 40: Audit and Accounting Part I. Comptroller; Powers and Duties	
40-1	Any financial transaction recorded by the state comptroller may be "inspected by the public."
40-3	Comptroller to maintain double entry books, ledgers, warrant registers, and original warrant vouchers.
40-4	Comptroller to prepare and publish in newspaper a yearly statement of income and expenditures by funds, a consolidated statement, and an opening and closing balance sheet for the year.
40-5	Annual report by Comptroller submitted to Governor and Legislature.
40-7	Comptroller to count money, securities owned by the state, and depository securities actually in the treasury.
40-8	Comptroller to file statement compiled under Section 40-7 with Governor, Director of Finance, and post and maintain a triplicate copy in comptroller's office.
40-59	The comptroller shall keep in his office a correct list of all state permanent settlements, specific salaries, payrolls, subsidies, rents, contracts and all bids for materials and supplies; ....
40-83	The comptroller shall examine and audit the books of account kept by any public school related to school fees and other monies collected. ....

Statute Section	Description of Record and Party With Possession

TITLE 6

COUNTY ORGANIZATION AND ADMINISTRATION

Subtitle 1. Provisions Common to All Counties

Chapter 52: Police Departments
Part III. Honolulu

52-11	Each county chief of police, on the first Monday in January and July of each year, shall deliver a verified account to the county treasurer or Director of Finance, of all monies (except money found), goods, wares, and merchandise remaining unclaimed and which have remained unclaimed for 90 days or longer, in the chief's custody. At least once annually, after making such report, the chief shall give notice once a week, for four successive weeks, by publication in a newspaper of general circulation in the county, as well as posting in conspicuous places copies of imprinted notice to the public interested in claiming the property, which, if unclaimed, shall be sold by auction to the highest bidder.
52-12	All property held by common carriers, subject to section 490:7-308 of the uniform commercial code and by the clerks of the court, subject to section 606-4, shall be reported by the common carriers or clerks to the county chief of police where the property is held, in June and December of each year.
52-44	See, Exhibit 2 in this Appendix re: confidentiality.
52-35	The chief of police ... shall make such reports as the (police) commission shall require, and shall make an annual report to the commission on the state of affairs and condition of the police department.
52-66	Honolulu chief of police required to make same reports as chiefs for Hawaii, Maui, and Kauai under section 52-35 above.

Chapter 53: Urban Renewal Law
Part I. Urban Redevelopment Act

53-3	Any member or employee of a redevelopment agency owning or controlling an interest directly or indirectly in any property included or planned to be included in any

Statute Section	Description of Record and Party With Possession
	redevelopment project shall immediately disclose the same in writing to the agency for entry of the disclosure on the minutes of the agency. Failure to so disclose the interest shall constitute misconduct sufficient to warrant removal.
53-10	Independent appraisals of real property values based on future use of area under redevelopment plan, and ordered by redevelopment agency, shall become "public record and subject to examination by any interested person after the disposal" of property.
53-19	Annual report of receipts, expenditures, activities, and other information submitted by each redevelopment agency to county council by statutory date.
53-34	Redevelopment agency may prescribe uniform methods and forms of recordkeeping, require information and the filing of periodic reports.
Chapter 62: County Officers Part II. Board of Supervisors	
62-31	Board of supervisors to hold regular monthly meetings for transaction of public business on days as required by statute; special meetings may also be called as necessary for public welfare.
Part III. Chairman and Executive Officer	
62-51	Chairman and executive officer of board of supervisors shall file a report with board immediately on taking office, fully setting forth amount, kind, and condition of property of every kind found and taken over; following any preliminary investigation of a county officer or employee for misconduct while in office, he shall submit a written report to the board with the results of his findings and the board shall pursue further and legal investigations.
62-52	Certificate of chairman and executive officer reporting facts relayed by county officer or employee with knowledge of actual or possible violation of contract with county, its officers or employees, and shall be filed with the county attorney and the county clerk for presentation at the next board meeting with written report of action taken.

Statute Section	Description of Record and Party With Possession
Part IV. Clerk	
62-61	County clerk with custody of all records properly filed in his office; and perform other duties as ex-officio clerk of the board of supervisors, which include recording all proceedings of the board, including their votes on any question, file and preserve reports of the county treasurer of county receipts and disbursements, and other records.
Chapter 64: Provisions Specific for Hawaii Part II. Board of Disposal	
64-24	Proceedings of the board of disposal recorded and kept in the office of the county auditor.
64-26	Report of disposition, sale, or exchange of any county property filed with board of supervisors by board of disposal.
Part III. Bureau of Purchases and Supplies	
64-35	Open market purchase orders and bids recorded by county purchasing agent, which "record shall be open to public inspection."
64-37	Consolidated record of supplies, materials, and equipment in possession or control of each using agency of the county kept by purchasing agent, including a record of all real property owned by county and its use.
Chapter 65: Provisions Specific for Kauai Part III. Subdivision Control	
65-22	Subdivision map approved by board of supervisors filed with land court and Bureau of Conveyances.
65-26	Final subdivision map shall be filed with board of supervisors within one year after approval of preliminary map; certificate issued for final map approved by board; disapproval requires hearing with grounds stated in the minutes of the records of the board.

Statute Section	Description of Record and Party With Possession
Chapter 67: Improvement by Assessment	
67-13	Written protests or objections to proposed improvements and/or assessments filed with board of supervisors by frontage property owners.
67-31	District improvement bonds, record of, kept by county treasurer in book.
67-43	Written protests or objections to proposed refunding of outstanding indebtedness of improvement districts filed with county board of supervisors.
	Subtitle 3. Honolulu Government
Chapter 70: General Provisions Relating to Honolulu Part II. Officers and Employees	
70-27	Certificate of death, insanity or criminal conviction filed with county clerk as basis for incapacity or disqualification of elected person from taking office.

TITLE 7

PUBLIC OFFICERS AND EMPLOYEES

Chapter 76: Civil Service Law Part II. Civil Service for the State	
76-28	Notices of personnel actions, i.e. appointments, terminations of employment, transfers, resignations, suspensions, demotions, and dismissals filed with director of personnel services. Written statements under HRS section 76-45 and 46 also filed with director for suspensions, demotions and dismissals,.
Part V. Employee Organizations; Veteran's Preference; Other Rights	
76-101	State departments and its employees may mutually agree to keep written records of their meetings to address issues or disputes.
Chapter 84: Standards of Conduct Part II. Code of Ethics	
84-12	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
84-13	Full and complete "public disclosure" of nature and extent of interest or transaction which may be affected by legislative action shall be filed by every legislator.
84-15	Written justification for state contract awarded without competitive bidding filed with State Ethics Commission prior to entry into contract and "shall be made a matter of public record."
84-17	(c) Disclosure of financial interests filed annually with State Ethics Commission by Governor, Lieutenant Governor, legislative members, department directors, their deputies, division chiefs, state hearings officers, university president, vice presidents, chancellors, provosts, and many other positions named in the statute. (d) The statements of specific members of the above group such as Governor, department directors, Legislators and others described by this subsection, are "public records and available for inspection as specified in section 92-51...."
	(e) Statements of those persons excluded from subsection (d) are "confidential." The commission shall release contents of disclosures only as provided by this chapter. Any person who releases "confidential information" shall be subject to section 84-31(c).
	(f) Required items of disclosures spelled out in subsection. Except for candidates who are state elected officers, including the constitutional convention, the disclosing person shall include all others designated in subsection (c), their spouses, and dependent children.
	(h) State Ethics Commission shall provide short form disclosure for subsequent filings that are substantially same as prior filings.
84-18	See, Exhibit 2 in this Appendix re: confidentiality.
84-30	(e) Written decision of Ethics Commission required pertaining to conduct of legislator, constitutional convention delegate, or employee or persons formally holding these offices, or subject to HRS Chapter 97.
Part IV. Administration and Enforcement	
84-31	(b) Charges regarding violation of HRS Chapter 84 (ethics code) shall be in writing.
	(c) See, Exhibit 3 in this Appendix re: penalties.

Statute Section	Description of Record and Party With Possession
	(d) See, Exhibit 2 in this Appendix re: confidentiality.
84-31.5	See, Exhibit 2 in this Appendix re: confidentiality. (f) Commission shall publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with deletions of person's identities to prevent disclosure in summaries.
84-32	Complaints against legislators and employees removable only by impeachment made public by commission if legislature fails to timely dispose of the complaint. (b) All other employees not subject to impeachment proceedings, the commission shall refer its decision to the Governor who shall take action. If a violation has occurred, the Governor or the commission may make the findings and record of the proceeding public. This subsection, however, does not prevent reporting of decisions in yearly summaries required by section 84-31(f). (c) For former employees, the Commission may issue a "public statement of its findings and conclusions" for complaints filed under section 84-32(a-b). (d) For delegates to the constitutional convention removable only by impeachment, the Ethics Commission shall issue a complaint on finding sufficient cause and refer the matter within the convention. (e) For persons subject to chapter 97, on finding of violation of the chapter after hearing, the Commission shall refer the matter for prosecution and the fact of such referral shall be "made public" by the Commission.
Chapter 85: Loyalty Part II. Loyalty Oath	
85-38	Loyalty oath or affirmation of each state officer or employee of the executive, judicial, and legislative branches of the state and county governments, shall be filed with the Department of Personnel Services, Chief Clerk of the Court, the clerk of either House, and the Civil Service Commission of the County, respectively, and shall become a "public record and open, ... to public inspection."
Chapter 87: Public Employees Health Fund Powers and Duties of the Board	

Statute Section	Description of Record and Party With Possession
87-29	Board of Trustees of public employees' health fund to maintain records of all financial transactions of the fund which shall be audited annually and summarized in an annual report by the State Comptroller.
Procedure of the Board	
87-34	Board of trustees to keep records and minutes of all meetings of the board.
Chapter 88: Pension and Retirement Systems Part II. Retirement for Public Officers and Employees B. Membership; Service	
88-46	Record of amounts deducted from employees' salaries for contribution to state retirement system transmitted to system monthly or as otherwise agreed by board.
Part II D. Administration; Financing	
88-103	Record of proceedings of the board of trustees of State Employee Retirement system shall be "open to public inspection." Board shall also publish annual report showing details required by statute, such as financial transactions of the system, amounts of accumulated cash and securities, among other items.
Part III. Police Officers, Firefighters, and Bandsmen Pension System	
88-171	Adjudications by board of trustees required by statute affecting pensions shall be made only after public hearing.
Chapter 89: Collective Bargaining in Public Employment	
89-5	All decisions of the Hawaii Labor Relations Board shall be written and separately state its finding of facts and conclusions. The Board shall submit a written annual report to the Governor at fiscal year end describing its activities, including cases, dispositions, and the names, duties, and salaries of its officers and its employees; report copies transmitted to legislature.
89-16	Complaints, orders, and testimony related to HRS section 377-9 proceeding instituted by board shall be "public records and be available for inspection or copying." All proceedings under section 377-9 shall be "open to the public."

Statute Section	Description of Record and Party With Possession

TITLE 8

PUBLIC PROCEEDINGS AND RECORDS

Chapter 91: Administrative Procedure

91-2	(a) In addition to other rulemaking requirements imposed by law, each agency shall: (1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests. (2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency. (3) Make "available for public inspection" all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions. (4) Make "available for public inspection" all final opinions and orders. (b) No agency rule, order, or opinion shall be valid or effective against any person or party, or applied by the agency for any purpose, until the order has been published or made "available for public inspection" as required by this section, except where a person has actual knowledge of the rule, order, or opinion. (c) Nothing in this section shall affect the "confidentiality" of records as provided by statute.
91-4	Permanent register of Chapter 91 rules "open to public inspection" kept by Lieutenant Governor and county clerks. Certified copies of new, amended or repealed rules, with executive approval, filed with Lieutenant Governor or county clerk.

Chapter 94: Public Archives; Disposal of Records

94-1	The Department of Accounting and General Services shall collect all public archives, order and maintain them, and compile and furnish information concerning them, including rules and regulations.
94-3	List of records for disposal submitted to state comptroller by each public officer with custody of any government records, except officers of the judiciary. Comptroller with full power to determine disposition,

Statute Section	Description of Record and Party With Possession
	including disposal of all records submitted for such purpose. The comptroller shall also make a record of all records disposed of, including lists submitted by public officers, and action taken by the comptroller. One copy of this record shall be filed in the agency where the records originated, one copy filed with the Attorney General, and the original filed in the public archives.
94-4	The state comptroller, archivist, or custodian of the public archives authorized to certify as true and correct, any copies of records in their custody. Fees for copying, certification, or other services shall be in direct relation to the cost of the services, except that no fees charged for work required by agencies of the federal, state, or county governments.
94-5	All statutory boards or commissions authorized to hold examinations for applicants shall preserve all records of each examination, which includes applications, questions, answers, and grades, until after the end of the legislative session following the examination.

Statute Section	Description of Record and Party With Possession
94-6	Any state or county agency initiating a study on a contractual basis shall notify the state archivist of initiation of the study within ten days thereafter. The archivist shall maintain a current index of all studies so initiated and distribute at least semi-annually current copies of the index to the Governor, county mayors, Legislative Reference Bureau and the Legislative Auditor. The archivist may request a copy of the study or a portion thereof for deposit with the archives. This applies to all studies of whatever nature, except where the Governor or the mayors waive compliance with this section when compliance is contrary to the public interest.
Chapter 97: Lobbyists	
97-2	Every lobbyist shall file a registration form with the State Ethics Commission, report any change of information in the statement, and file a notice of termination within the time in which such information is required by the statute.
97-3	Lobbyists shall file a statement of expenditures with the State Ethics Commission twice each year, with such information as required by the statute, which includes the name and address of each person who receives or otherwise benefits from the expenditure.
97-4	All statements filed with the State Ethics Commission pursuant to Chapter 97 shall constitute part of the "public records" of the State Ethics Commission and shall be "open to public inspection pursuant to section 92-51."
97-4.5	State Ethics Commission to publish list of registered lobbyists, the entities or persons they represent, and other information which shall not include the addresses of the lobbyists.

TITLE 9

PUBLIC PROPERTY, PURCHASING AND CONTRACTING

Chapter 101:	Eminent Domain
Part I.	Condemnation of Private Property
101-26	Final order of condemnation (certified copy) filed and recorded in the Bureau of Conveyances.

Statute Section	Description of Record and Party With Possession
101-36	In eminent domain proceeding, if plaintiff pays any monies into court, he shall certify the fact of the payment to the Director of Taxation and when plaintiff acquired possession of the land, or the date of the final order of condemnation. Copy of certificate shall be filed as part of record in case.
Chapter 103: Expenditure of Public Money and Public Contracts Part II. Public Works and Contracts	
103-25	See, Exhibit 2 in this Appendix re: confidentiality.
103-29	Bids for public works construction contract shall include the name of any joint contractor or subcontractor hired by the bidder, indicating the nature and scope of their work to be performed.
103-32	All contracts shall be in writing and executed in the name of the state, county, or agency authorized to make contracts and with the lowest responsible bidder.
103-42	A Hawaii products list is established and administered under rules made by the State Comptroller. Lists are for distribution to purchasing departments of various governmental agencies. Advertisement for bids by governmental agencies shall contain, if applicable, a notice indicating the place to examine the Hawaii products list, and indicating a preference for Hawaii products under the statute.
Chapter 103: Expenditure of Public Money and Public Contracts Part V. Products and Services of Handicapped Individuals	
103-83	A qualified rehabilitation facility interested in selling products to a public agency may submit a proposal to the agency with a description of the product, its price, and documents necessary to qualify as a facility under section 103-81(5).
Chapter 104: Wages and Hours of Employees on Public Works	
104-2	Required terms and conditions for every contract over $2,000 for construction of any public work where a governmental contracting agency is a party; such as stating minimum wages paid to various classes of laborers and mechanics performing the contract.

Statute Section	Description of Record and Party With Possession
104-3	Each contract (noted above) shall contain a provision that a certified copy of all payrolls shall be submitted weekly to the governmental contracting agency. The records shall contain the employee name, his correct classification, rate of pay, and other wage and hour information.
Chapter 106: Inventory, Accounting, and Disposal of Government Assets Part I. Inventory of State and County Property	
106-1	A return or inventory sworn under oath with a true and correct detailed list of all property of whatever nature belonging to the state and in possession, control, or use of the Lieutenant Governor, executive department heads, administrative director of the courts, and all other public boards and persons in any way using state property, shall be filed with the state comptroller. The officer shall also file a copy of the sworn inventory accompanied by detailed and sworn separate statements of items acquired and disposed of during the year since the inventory of the prior year July 1 (with estimate of carrying value).
106-2	Each county mayor shall prepare and file with the state comptroller a sworn return or inventory similar to that described in section 106-1, without requirement of filing second sworn inventory with separate statements of property acquired or disposed of.
106-12	Separate consolidated record of each department or agency of government with control of state property and held on a memorandum receipt, shall be prepared and maintained by the comptroller.
Chapter 107: Public Improvements	
107-2	Surveys, maps, and plans of government lands set aside for public purposes, including harbors, and planned internal improvements shall be kept in the state comptroller's office for "public inspection and reference."

Statute Section	Description of Record and Party With Possession

TITLE 10

PUBLIC SAFETY AND INTERNAL SECURITY

Chapter 121: Militia; National Guard

121-10	Adjutant General is official custodian of military records of all persons from the state who served in the United States Armed Forces during war or grave national emergency, including records turned over to the state by the federal agency of Selective Service. He shall also maintain personnel records, superintend preparation of all letters and reports required by the United States from the state, and take a yearly inventory of all military stores, property, and funds under his jurisdiction. He shall also file an annual report for his department's operation.

Chapter 124A: Hawaii Code of Military Justice

124A-79	Record of each court martial trial proceeding kept and authenticated by signature of the president and the law officer, or other party as designated by statute. A trial record where sentence includes bad-conduct discharge or more than that adjudged by a special court martial shall contain verbatim account of proceedings and testimony before court. All other trial records subject to Governor's prescribed rules. A copy of record given to accused when authenticated.

Chapter 125: Procurement and Control of Distribution of Necessary Commodities

125-6	The Governor or his designee may make investigations and surveys, to include the making of schedules, records, reports or other statements necessary to administer this chapter relating to "emergency" in the availability of commodities to the public.

Chapter 125C: Procurement, Control, Distribution and Sale of Petroleum Products
Part I. General Powers and Procedures During a Shortage

125C-9	The Governor or his designee may make investigations and surveys to include the making of schedules, records, reports or statements necessary to administer this chapter relating to maintaining adequate supplies of petroleum products for Hawaii.

Statute Section	Description of Record and Party With Possession
Chapter 127: Disaster Relief	
127-4	The director of disaster relief may make or otherwise alter the Governor's approval or orders or rules necessary to carry out the chapter, including preparation of comprehensive plans and programs for disaster relief, make studies and surveys of the industries, resources and state facilities to ascertain state capabilities for disaster relief.
Chapter 128: Civil Defense and Emergency Act	
128-6	The Governor may prepare comprehensive plans and programs for civil defense in the state, institute training programs and public information programs, provide for compulsory registration identification of blood types and other miscellaneous powers.
128-9	Irrespective of the existence of a civil defense emergency period, the Governor has further emergency functions and powers, to include the prevention of hoarding, waste or destruction of materials, commodities, accommodations, facilities and services to equalize the distribution thereof, by means of licensing, rationing, or otherwise, the storage, use, or distribution thereof, and any business or any transaction related thereto; to relieve hardships and inequities, or obstructions to the public health, safety or welfare, found by the Governor to exist in the laws and to result from the operation of federal programs under this chapter, by suspending the laws, or alleviating the provisions of laws as the Governor may impose including licensing laws, quarantine laws, and laws relating to labels, grades and standards.
128-25	The Governor may make investigations and surveys to ascertain facts used in administering this chapter, including the making or filing of schedules or statements.
Chapter 132: Fire Protection	
132-1	The fire chief of each county shall keep in his office a record of all fires occurring in the county and of all related facts, make compilations and statistical investigations as deemed proper, all of which shall be kept as permanent records in his office. All records shall be "public" except that the county fire chief may withhold from the public any evidence in any investigation in his discretion.

Statute Section	Description of Record and Party With Possession
132-2	The fire chief of each county may adopt rules consistent with any ordinance relating to protection of persons and property against fire.
132-4.5	(a) The fire chief of each county may require any insurer in writing to release information from any investigation by the insurer concerning a loss or potential loss due to fire of suspicious or incindiary origin, including an insurance policy relating to loss, policy premium records; history of previous claims; and related material. (c) In the absence of fraud, malice or criminal act, no insurer or person furnishing information on its behalf shall be liable for civil damages or criminal prosecution for any oral or written statement necessary to supply information pursuant to this section. (d) County fire chief receiving any information pursuant to this section shall "hold the information in confidence" until required in furtherance of a criminal or civil proceeding.
132-11	Duplicate original of every county fire chief's order shall be filed in his office and shall be admissible as evidence in prosecution for a violation of its provisions.
Chapter 134: Firearms, Ammunition and Dangerous Weapons Part I. General Regulations	
134-3	Application form for permit to acquire a firearm shall include the applicant's name, address, sex, height, weight, date and place of birth, information regarding applicant's mental health history, social security number, and the taking of the applicant's fingerprint and photograph by the county police, except where already on file. The applicant shall also sign a waiver to allow the chief of police access to applicant's mental health records. The applicant and the issuing authority shall sign the application for the permits. The issuing authority shall retain one copy of the permit as a permanent official record.
134-14	Each authority that issues or revokes permits and licenses shall file a monthly report with the department of the Attorney General on all permits and licenses issued or revoked.
134-31	Any person in the business of selling and manufacturing firearms for sale at wholesale or retail, shall annually file a license application with the Director of Finance of each county. The licensee shall apply for license renewal on or before his license expires on June 30 of each year.

Statute Section	Description of Record and Party With Possession

TITLE 11

AGRICULTURE AND ANIMALS

Chapter 142: Animals, Brands, and Fences
Part I. Animal Diseases and Quarantine

142-1	Department of Agriculture (DOA) to gather, compile and tabulate information and statistics concerning domestic animals in the state, their protection and use, inquire into a report on causes of contagious, infectious and communicable diseases among them, and the means for prevention, suppression and the cure of the same.
142-2	DOA may make rules subject to Chapter 91 for inspection, quarantine, disinfection, or destruction of animals on the premises used by such animals, as well as rules relating to the control and eradication of transmissible diseases, the transportation of animals between islands, and on highways, to make reports necessary to a full and complete record of shipping and handling of livestock.
142-41	Every owner of livestock in the state shall have his brand or mark recorded in a separate book by the DOA to be known as the "Hawaii brand book." Aside from the department, county police officers may receive applications for registration of brands. A certificate showing the recordation of the brand or mark shall be issued to the applicant if the brand is not the same or similar in design to any other previously recorded brand which has not expired. Earmarks shall not be recorded except as supplemental identification of a brand. Numerals not used as a brand shall be the common property of all persons and not subject to preemptive use.

Chapter 144: Feed

144-1	The Department of Agriculture shall gather and tabulate information and statistics concerning entomology and plant pathology, and general agriculture as described by statute; secure copies of laws and publications germane to subject matters of Chapter 141, 142, and 144 to 149 A and make the same "available for public information" and consultation; make and publish at year end an annual report of the expenditures, proceedings and results achieved by the department and other matters germane to Chapters 141, 142, and 144 to 149 A.

Statute Section	Description of Record and Party With Possession
144-3	Each commercial feed except custom-mixed or toll milled feed, shall be registered before distribution in or importation to the state. On approval by the department, a copy of the registration shall be furnished the applicant. The application for registration shall include information also required on labels that shall accompany any commercial feed as set forth in section 144-4(a).
144-5	Every person who distributes or imports for use or sale feed in this state shall file quarterly statements indicating the number of net tons of feed distributed or imported in the state during the preceding calendar quarter and shall pay inspection fees on filing the statements. The department may require the filing of further reports by carriers, sellers, agents, distributors and named consignees.
144-12	(f) See, Exhibit 3 in this Appendix re: penalties.
144-14	DOA shall publish at least annually information concerning distribution of feeds, together with data on their production and use, and a report of results of analyses of official samples of feeds distributed within the state as compared with analyses guaranteed in the registration and on the label; provided that information concerning production and use of feeds shall "not disclose" the operations of any person.
Chapter 145: Regulation of Dealers and Farm Produce	
145-2	Persons acting as a commission merchant, dealer, broker, agent, processor, or retail merchant shall obtain a license as directed by rules of the department. In addition to general requirements prescribed by rule, commission merchants and brokers shall submit with each application a schedule of commissions and charges for services, and a surety bond as required by section 145-4; agents shall include the name and address of each commission merchant, dealer, or broker represented, the written endorsement or nomination of the commission merchant, dealer or broker, other information as required.
145-3	Every produce dealer shall keep a record of each lot, shipment, or consignment of farm produce received or taken by the produce dealer in such form and detail as prescribed by DOA.

Statute Section	Description of Record and Party With Possession
Chapter 146: Slaughtering Operations and Slaughter Houses Part II. Hides and Beef	
146-21	Every person slaughtering a calf, heifer, cow, steer and bull butchered for human consumption shall retain the hide for two weeks after the killing and allow any interested person to inspect the hide during usual business hours, except when the office in charge of recording brands in writing permits an earlier disposition of the hide.
146-22	Every person who slaughters a bovine as described in section 146-21 above at any place other than a duly licensed slaughter house shall comply with the provisions of section 146-21 and shall report the slaughter to the officer in charge of recording brands. The report shall include a description of the animal slaughtered, other information as required by this section, and the name of the person from whom, and date when, such animal was acquired by the person who slaughters.
146-23	Every vendor of butchered beef has the duty to "know and truthfully state to any inquirer" the name and residence of the person from whom the vendor obtained the beef which he has for sale.
Chapter 149A: Hawaii Pesticides Law Part II. Pesticide Licensing and Sale	
149A-11	(b) (3) See, Exhibit 2 in this Appendix re: confidentiality.
149A-13	Any pesticide sold, offered for sale, or distributed within this state or transported within this state shall be licensed by the Board of Agriculture. The licensee shall file with the department a statememt including a complete copy of the labeling accompanying the pesticide, a statement of all claims made for it, including directions for use, and if requested, a full description of tests made and the results thereof upon which claims are based among other statutory information.
149A-17	Every person who sells or distributes restricted pesticides shall obtain an annual permit from the department.

Statute Section	Description of Record and Party With Possession
149A-18	Any permit to sell a restricted pesticide may be suspended or revoked by the department after hearing. Such a departmental order shall be in writing, setting forth the reasons for the suspension or revocation.
149A-34	Any certificate issued to permit the use under section 149A-33(1) may be suspended or revoked by the department after hearing for violation of any condition of the certificate or of any law or regulation pertaining to the use of any restricted pesticide. Such an order shall be in writing, setting forth the reasons for the suspension or revocation.
Chapter 150: Plant and Animal Life, Seeds and Soils Part II. Regulation of Sale of Seeds	
150-29	No person shall import into the state for sale or resale any agricultural or vegetable seeds for sowing purposes without a license from the DOA.
Part III. Seed Distribution	
150-41	A revolving fund is established to enable the seed distribution program to adequately meet the demand for seed. The College of Tropical Agriculture and Human Resources shall submit an annual report summarizing receipt and expenditures and the fund balance to the Department of Budget and Finance.
Chapter 157: Milk Control Act Part II. Administration, Powers and Duties	
157-16	See, Exhibit 2 in this Appendix re: confidentiality.
157-18	The Board of Agriculture shall submit to the Governor a report relating to the activities of the milk control division at the end of each license year.
Part III. Licensing	
157-21	It is unlawful for any producer, producer-distributor, or distributor to produce, sell, process or distribute milk in a milk shed without a license under this chapter.
157-27	Each licensee as required by rule or order of the board, shall file a verified report concerning matters for which a record is kept.

Statute Section	Description of Record and Party With Possession
Chapter 159: Hawaii Meat Inspection Act Part V. Meat Processors and Related Industries	
159-38	Any person engaged in business in or for interstate commerce, (1) as a meat broker, vendor or animal food manufacturer, or (2) as a wholesaler of any carcasses, or their parts or products, of any cattle, sheep, swine, goats, horses, mules, or other equines, whether intended for human food or other purposes, or (3) as a public warehouseman storing any meat or meat products in or for commerce, or (4) in buying, selling, or transporting any dead, dying, disabled, or diseased animals as specifically noted, or parts of the carcasses of any animals that died otherwise than by slaughter, must register with the Board of Agriculture, his name, and the address of each place of business and all trade names under which the person conducts such business.
159-47	A veterinarian or inspector shall certify to the correctness of the brand record kept by any licensee under this chapter whenever he inspects any slaughtered animal as required by law.
Chapter 161: Poultry Inspection Part III. Licensing	
161-12	It is unlawful for any person to engage in the business of slaughtering poultry, manufacturing, or processing of poultry or poultry products without a license as required under this part.
161-13	An applicant for an original or renewal license to operate as a poultry slaughter house operator or poultry processor shall file an application on a form and with such information as deemed necessary by the board.
161-39	Any person engaged in business as a poultry broker, renderer or animal food manufacturer, or as a wholesaler of any carcasses or their parts or products, of any poultry, or engaged in business as a public warehouseman storing any such articles in or for interstate commerce, or engaged in the business of buying, selling, or transporting within the state any dead, dying, disabled or diseased poultry or parts of carcasses of any poultry that died other than by slaughter, shall register with the board the person's name, the address of each place of business, and all trade names under which the person conducts his business.

Statute Section	Description of Record and Party With Possession

TITLE 12

CONSERVATION AND RESOURCES

Subtitle 1. Public Lands

Chapter 171: Public Lands, Management and Disposition of
Part I. General Provisions

171-4	Each member of the Board of Land and Natural Resources shall disclose and file with the board a list of all transactions with Department of Land and Natural Resources (DLNR) in which the member has a direct interest. The member shall also disclose all transactions with the department involving any corporation, association, partnership or joint venture in which the member is an officer, partner, or employee.
171-5	The land board shall keep accurate records and minutes of meetings, special and regular, and they shall be "public records." Copies of portions of the agenda relating to dispositions of land shall be "made available to the public" in the land office of each district at least three days before the meeting in which the matter will be discussed or voted upon.
171-7	The land board to the chairman shall (1) maintain an accurate inventory of public lands; ... (9) keep a record of all official transactions, relating to public lands within the chairman's jurisdiction and such record shall be a "public record;" ....
171-12	The land board shall establish and maintain in each land district a register for all persons desiring to acquire public lands in the district.
171-17	(f) Whenever more than one appraiser is appointed to appraise public lands for sale or lease at public auction, each shall prepare and submit an independent appraisal. All appraisal reports shall be "available for study by the public."

Statute Section	Description of Record and Party With Possession
171-24	Documents setting aside land for public purposes or withdrawing the same shall be signed by the Governor. All other documents prepared by DLNR shall be signed by its chairman and countersigned by a member of the board. The board shall keep a complete record of all such documents. The record shall be "open to public inspection" and the board shall furnish a certified copy, under its official seal, of any document to any person applying therefor, on payment of reasonable charges set by the board for certified copies.
171-29	The land board shall submit a written annual report to the legislature of all land dispositions in the preceding year, including sales, leases, and other statutorily described dispositions of real property, with other information concerning the transfer or encumbrance of land, including the per unit price paid or set, and whether disposition was by auction, drawing, or by negotiation. For land where the land board acts as a sublessor, the report shall also include the reason for approval of the sublease by the board and the estimated net economic result accruing to the state, lessee and sublessee.
171-31	DLNR is a depository for purpose of recordation with the registrar of conveyances, all documents pertaining to real property and the interest therein conveyed to the territory, state, or its political subdivisions. Any state departmental officer authorized to negotiate for real property acquisitions or any interest therein shall, within thirty days after execution of the necessary documents, file all the documents pertaining to the real property with the department. Two blue print plans of the real property shall also be filed with the department. All such documents shall be offered for record (sic) by the land board and recorded by the registrar of conveyances.

Part II. Dispositions, Generally

A. Policy and Planning

171-33	Prior to any notice of intended disposition, the land board shall, (1) classify the land according to its use; (2) determine the specific use intended by the disposition; (3) divide land into minimum size suited to its specific use, common economic units; and among other statutory items, ... (8) prepare the proposed documents and make them "available for public inspection;" ....

Statute Section	Description of Record and Party With Possession
171-34	In addition to the requirements of 171-33, if the intention is to use the land for intensive agricultural pasture uses, the land board shall, among other items, (4) prepare a written report on the land which shall include (A) the class of the land within the specific use for its intended disposition; (B) the condition of the land with respect to its state of development; and other required information.

C. Residential Uses

171-49.7	DLNR shall maintain a current inventory of all public lands placed in the urban district by the Land Use Commission under Chapter 205 which may be suitable and available for residential development. The inventory shall be updated each quarter and identify the island and the area where the land is located, the acreage, and other information necessary to identify and inventory the land.

Chapter 174: Water and Land Development

174-4	If any member of the land board or an employee of the board owns or controls an interest, direct or indirect, in any property included or planned to be included in any water facility or project, the member of the board or employee shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board.

Subtitle 2. Water and Land Development; Flood Control

Chapter 176: Water Resources

176-2	The land board shall collect and correlate all recorded information concerning the water resources of the state. All other agencies of the state and several county governments having any such information shall, on request of the board, make their records available to the board.
176-3	The land board shall initiate and conduct surveys of the water resources and requirements in the state to enable formulation and revision of a master plan concerning water resources. The board shall also make an inventory of all water resources and compile sufficient information to enable property valuation of those resources for purposes of planning the development, conservation and use.

Statute Section	Description of Record and Party With Possession
176-6	The land board shall keep all information assembled by it concerning water resources of the state on file in its offices and "available for public inspection."
Chapter 177: Ground-Water Use	
177-11	The transcript or testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision by the board, and upon payment of lawfully prescribed costs, shall be made available to the parties. The board shall prepare an official record, which shall include findings of fact, determinations of law, and the decision as to the subject matter involved, the testimony and exhibits.
177-21	Each application for a permit required under this chapter shall be in writing and shall state specifically the information determined by the land board by rule as necessary to determine (1) the merits of the water use, (2) the hazards to the public health, safety, or welfare, (3) the desirability of the permit, and (4) any qualifications of the applicant the board deems appropriate to effectuate this chapter.
Chapter 178: Wells, Generally	
178-6	Any person constructing or causing the construction of a well shall keep a complete and accurate record of each well and within 90 days after the end of construction or testing, shall file the record in the office of the land board.
Chapter 180: Soil and Water Conservation Districts	
180-2	DLNR shall keep a record of its official actions, and promulgate rules necessary to execute its functions under this chapter.
180-8	To complete organization of the district, DLNR shall present to the Lieutenant Governor a statement setting out the district's name, its boundaries, and certifying full compliance with the procedures prescribed by this chapter when organizing this district. The Lieutenant Governor shall record the statement in his office and shall issue to the directors of the district a certificate, under the seal of the state, of the new organization of the district.

Statute Section	Description of Record and Party With Possession
180-12	District directors as appointed shall keep a record of proceedings, resolutions, regulations and orders issued or adopted, and accounts of receipts and disbursements; and shall furnish all of the same to DLNR as requested.
180-15	Following receipt of the valid petition to discontinue a district, and following a referendum on the proposal, and if the department determines in favor of the discontinuance, it shall certify the determination to the district directors and to the Lieutenant Governor, who shall issue to the directors a certificate of dissolution and record a copy of the certificate in the Lieutenant Governor's office.

Chapter 182: Reservation and Disposition of Government Mineral Rights

Subtitle 3. Mining and Minerals

182-6	Exploration of state lands containing minerals requires an application to the land board who shall issue exploration permits as prescribed by regulation. On termination of the exploration permit, the drill logs and the results of the assays from the exploration shall be turned over to the board and kept "confidential" by the board. If the person fails to apply for mining lease of the lands within six months from the date the information is turned over to the board, the board has discretion to disclose the confidential information.

Subtitle 4. Forestry and Wild Life; Recreation Area; Fire Protection

Chapter 183: Forest Reservations, Water Development, Zoning
Part IV. Zoning

183-41	(d) Whenever any land owner or government agency makes an application to change the boundaries of permitted uses of any forest and water reserve subzone, or to establish a subzone with certain permitted uses, or whether department proposes changes, the change shall be put in the form of a proposed regulation by the applicant and the department shall give notice for a hearing on the proposal. Any proposed regulation and the necessary map shall be made "available for inspection by interested members of the public."

Chapter 186: Tree Farms

186-9	After harvesting trees for commercial purposes, the owner shall file monthly returns showing the total stumpage value of the trees cut during the preceding month, together with other required information.

Statute Section	Description of Record and Party With Possession
Chapter 189: Commercial Fishing Part I. License and Regulation	
189-2	(a) Any person taking marine life for commercial purposes, regardless of whether the marine life is caught within the state, requires a license under this section. Any person providing vessel charter services for that purpose shall also obtain a commercial marine license. (b) Applications for commercial marine licenses shall state the applicant's name, address, age, place of birth, length of residence in Hawaii, height, weight, color of hair and eyes, citizenship and any other information required by the department.
189-3	(a) Every commercial marine licensee shall furnish to the department a report with respect to the marine life taken and any live, fresh, or frozen bait used for each month on a departmental form, known as the "monthly catch report;" provided that when the total marine life taken monthly by the licensee is insufficient in the judgment of the department to require the submission of such a report, a certificate of exemption may be issued, thereafter exempting the licensee from the monthly catch report requirement until cancellation of the exemption by the department. (b) Any information submitted to the department by any person in compliance with any requirement under this section shall be "confidential and shall not be disclosed," except when required under court order or pursuant to subpoena issued by the state attorney general's office, or require written consent of the person submitting the information, or under the cooperative agreements with federal government agencies for exchange and use of the information specifically to manage marine life. By rule, the department may establish procedures to preserve "confidentiality," except that the department may release or make public any of the information in the aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits information. This subsection shall not include the wet weight harvest of corallium secundum, and other marine life specified in this section. The wet weight harvest of each of the above shall be "reported to the public" by the department.

Statute Section	Description of Record and Party With Possession
189-10	Every commercial marine dealer engaging in the business of buying or selling marine life or products taken from state waters, shall file monthly statements with DLNR on department forms showing the weight, number, and value of each species of marine life purchased, received, or sold during the previous month.
189-11	Every commercial marine dealer engaging in business as described in section 189-10 above, and further receives marine life or products from any person, shall issue receipts to the person and give on the receipt (1) the date of issuance; (2) the name of the person receiving the receipt; (3) information concerning each variety of marine life as DLNR shall require, such as the weight in pounds of each variety received and so on; and (4) the signature of the dealer who issues the receipt. Where the dealer takes the dealer's own marine life or marine life taken by licensees working for or with the dealer, the same shall apply.
Part II.	Large Fishing Vessel Purchase, Construction, Renovation, Maintenance, and Repair Loan Program
189-24	The director of the Department of Planning and Economic Development (DPED) shall: (1) prescribe the qualifications for eligibility of loan applicants and ... (4) provide for inspection of the vessel, books and records of the party who has applied for or been granted a loan and require the submission of progress and final reports.
189-26	DPED shall make an annual report to the Governor, Senate President, and Speaker of the House of Representatives on the progress under this part.
Part IV.	Hawaii Small Fishing Vessel Loan Program
189-44	In performance of the powers under this part, the director of DPED shall: (1) prescribe the qualifications for eligibility of loan applicants; ... (4) provide for inspection of the vessel, records and books of the party applying for or who has been granted a loan and to require the submission of periodic reports.
189-46	DPED shall make an annual report to the Governor, the Senate President and the Speaker of the House on the progress made under this part.

Statute Section	Description of Record and Party With Possession

Subtitle 6. General and Miscellaneous Programs

Chapter 195: Natural Area Reserves System

195-6	The natural area reserves systems commission shall be a part of DLNR for administrative purposes, shall adopt rules guiding its conducts and shall maintain a record of its activities and actions.

Chapter 198: Conservation Easements

198-4	Instruments creating, assigning or otherwise transferring conservation easements shall be recorded in the Bureau of Conveyances or the Land Court.

TITLE 13

PLANNING AND ECONOMIC DEVELOPMENT

Chapter 201. Department of Planning and Economic Development
Part I. Research and Economic Development

201-3	DPED shall (1) (B) promote an informational program to the consumering public concerning Hawaii's agricultural commodities and maximum utilization;... (5) DPED shall disseminate information developed for or by the department to assist the present industry; and attract and assist new industry.
201-6	Any member or employee of DPED shall have no pecuniary interest, direct or indirect, in any contract entered into by the department. Any person with such an interest shall immediately disclose the same in writing to the department which shall enter the disclosure upon its minutes.
201-8	Based on submitted reports and other information as obtained, DPED may make written recommendations to any agency in the state for the best coordination and effectivess of economic activities.
201-10	DPED shall file annual reports of its activities with the Governor and shall report to the Legislature each year.

Statute Section	Description of Record and Party With Possession
201-12	DPED shall develop a state program for energy planning and conservation. The program for short and long range planning for development and creating methods to encourage voluntary conservation of fuels and other energy sources, and efficient development of new or alternative uses of fuels and energy. The information obtained shall be disseminated to the people of the state through the media.
201-13	As concerns marine affairs, DPED shall ... (4) coordinate the dissemination of information to the federal government and other state and foreign governments interested in marine affairs in the Pacific Basin and Hawaii.
201-26	The director of DPED shall annually review the various capital expenditure requests and proposed public works from around the state and prepare a report to the Legislature concerning the director's recommendations on the Governor's proposed capital budget and forward the report to the Legislature prior to each session.
201-45	The director shall assess the need for statistics and other information concerning Hawaii's population, including resident, migrants and visitors, for purposes of state planning, delivery of governmental services and long range policy making. The director is responsible for collecting, analyzing and disseminating the information to governmental agencies and is authorized to determine the appropriate method to collect the information, as further determined by department rule.
Chapter 202: Employment and Human Resources	
202-4	The chairperson of the advisory commission on employment and human resources or the executive director at the direction of the commission shall: ... (6) prepare articles, reports and bulletins for the use of the commission, concerned agencies and for general publication; (7) keep and maintain records and reports and conduct correspondence relative to the work of the commission; ....

Statute Section	Description of Record and Party With Possession
Chapter 203: Tourism Development Part I. Generally	
203-2	The contract between DPED and Hawaii Visitors Bureau shall contain the following term and condition: (1) that HVB shall receive any complaints relating to tourist activities from any person who files complaints with them, shall make a monthly report to DPED and shall make these "complaints available for inspection of (sic) all interested parties."
Chapter 205: Land Use Commission Part I. Generally	
205-1	The state Land Use Commission, as administratively part of DPED, shall adopt rules guiding its conduct, maintain a record of its activities, and accomplishments, and make recommendations to the Governor and the Legislature through the Governor.
205-3.1	(b) any agency of the state, or of the county, in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority for a change in the boundary of a district involving lands less than 15 acres presently in the agricultural, rural, and urban districts. (d) ... within 60 days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, following its hearing, the decision and the description and map of the affected property shall be transmitted to the Land Use Commission and DPED by the county planning director.
205-4	Any agency or person with the same interests as noted above in section 205-3.1 (b), may petition the Land Use Commission for a change in the boundary of a district for lands greater than 15 acres, including conservation districts.

Statute Section	Description of Record and Party With Possession
205-5.1	(b) The board of DLNR ("Land Board") has responsibility for designating areas as geothermal resource subzones as provided in HRS § 205-5.2; ... the Board shall adopt rules related to its authority to designate and regulate the use of geothermal resource subzones under Chapter 91. ... (c) .... If provisions of the county general plan and zoning ordinances relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provision shall require the appropriate county authority to conduct a public hearing and upon appropriate request, a contested case hearing under Chapter 91, on any application for a geothermal resource permit to determine whether the use conforms with the criteria specified in subsection (e) of this section for granting those permits.
205-5.2	(a) ... any property owner or person with an interest in real property desiring designation of an area as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form described by the rules of the Land Board.
205-6	Any person desiring to use a person's land within an agricultural or rural district for some other use, may petition the relevant county planning commission, which shall establish by rule the hearing procedures for action on the permit. ... Special permits for land areas greater than 15 acres shall be subject to approval by the Land Use Commission.
Chapter 205A: Coastal Zone Management Part II. Special Management Areas	
205A-23	(a) The special management in each county shall be as shown on such maps filed with the appropriate authority, such as the county planning commission, or county council, as of June 8, 1977.
205A-28	No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part.
205A-29	(a) The appropriate authority in each county shall establish rules pursuant to Chapter 91 concerning special management area use permit application procedures, conditioned under which hearings must be held, and the time periods for the hearings and the action on the permits.

Statute Section	Description of Record and Party With Possession
Chapter 206: Oahu Land Development	
206-26	A private developer or assign, shall file with the Land Board a list of all persons directly or indirectly connected with the private developer as a condition precedent to the private developer's acceptance as the private developer by the board. ... All bids and any or all records of a private developer or assign, relating to any and all transactions with the state, shall be "public records, and defined in Chapter 92, and subject to such use as permitted by Chapter 92."
Chapter 206E: Hawaii Community Development Authority Part I. General Provisions	
206E-19	Hawaii Community Development Authority shall submit to the Governor and the Legislature a complete and detailed annual report of its activities.
Chapter 206J: Aloha Tower Development Corporation	
206J-19	The Aloha Tower Development Corporation shall submit to the Governor and the Legislature a complete and detailed annual report of its activities.
Chapter 207: Mortgage Loans Part II. Loans Made by Foreign Lenders and Certain Other Activities of Such Lenders	
207-14	Before participating in activities as specified in section 207-13, such as making loans and servicing said loans, a foreign lender as described herein shall execute and file with the director of Commerce and Consumer Affairs a statement, giving its name, state of incorporation or organization, and principal place of business, among other items, and shall appoint irrevocably the director and the director's successors as its agents upon whom process may be served against it in any proceeding or cause of action arising out of its business engaged in the state as described in section 207-13.

Statute Section	Description of Record and Party With Possession
Chapter 208: Economic Redevelopment Program for Depressed Areas	
208-2	(a) DPED is a state agency charged with responsibility for representing the state and for providing information, ... and action necessary to meet state and federal requirements on redevelopment of depressed areas and similar purposes. (b) The director shall compile and maintain a general economic development and redevelopment plan for the state and each county, including a priority list of all needed and desirable facilities, buildings, or improvements, public and private, and compile necessary statistics pertinent to such development.
Chapter 209: Disaster Relief and Rehabilitation Part I. General Provisions	
209-5	The rehabilitation coordinator shall: ... (2) make available to persons affected by a state disaster information on all state rehabilitation programs: ... (4) inform these persons of assistance available from non-state sources, and assist the victims; (5) keep a list of persons receiving state assistance, and all amounts; ... (8) file an annual report with the Governor and Legislature describing its activities, and assistance granted.
Chapter 210: Capital Loan Program	
210-5	Rules (promulgated by the director of DPED) shall: (1) prescribe the qualifications for eligibility of loan applicants. ... (4) Provide for inspection of the plant, books, and records of the enterprise which applied for or has been granted a loan, and require the submission of progress and final reports.
210-8	DPED shall make an annual report to the Governor and the Legislature on the progress made under this chapter.
Chapter 211: Guarantee of Commercial Loans	
211-5	The director of DPED to prescribe rules for: ... (2) prescribing qualifications for eligiblity of guarantee applicant; ... (5) providing for inspection of the premises, books, and records of the eligible business which applied for or is issued a guaranteed loan, and requiring the submission of progress and final reports from the business and the lender.

Statute Section	Description of Record and Party With Possession
Chapter 226: Hawaii State Planning Act Part II. Planning Coordination and Implementation	
226-54	The policy council (as established in section 226-53) shall (perform functions as described in this section, and) ... (7) maintain a record of its activities: ... and (9) prepare an annual review and report to the Legislature under section 226-63.
226-63	The policy council with the assistance of the DPED shall prepare an annual report for submittal to the Legislature, mayors, and county councils, containing recommendations for legislative consideration and action. The report shall assess the progress made in attaining the priorities and goals of this chapter and the state functional plan; recommendations on improving coordination of the goals of this chapter, county general plans and development plans, state functional plans and state programs; and reassessing legislation.

TITLE 14

TAXATION

Chapter 231: Administration of Taxes	
231-3	The Department of Taxation shall: ... (a) prepare an annual report to the Governor concerning the activities and administration of the department, and other matters concerning taxation; ... (9) to make rules necessary to carry out the purposes of the department; (10) to compromise with the Governor's approval any claim arising under the tax laws subject to the department's administration, and in such case, file in the department's office a statement of the amount of tax assessed, and other facts of the compromise; ... (13) to enter into a written closing agreement with any taxpayer concerning liability of that person for any taxable period, which agreement shall be final and conclusive, except for fraud, which shall not be reopened, or modified to any officer or employee of the state nor shall the agreement in addition be set aside or disregarded by any court.
231-15.5	See, Exhibit 3 in this Appendix re: penalties.

Statute Section	Description of Record and Party With Possession
231-19	All maps and records compiled, made, obtained or received by the director of taxation or his subordinates, shall be "public records," .... The information and all maps and records connected with the assessment and collection of taxes shall, during business hours, be "open to the inspection of the public."
231-23	Procedures for obtaining a tax refund, filing a written application for adjustment or refund and the conditions by which a "refund voucher" prepared by the tax collector is issued are described by this section.
231-32	The Department of Taxation shall prepare and maintain, "open to public inspection, a complete record" of the amount of delinquent taxes in each district with the name of the delinquent tax payer, without necessity to compute the amounts of penalties and interests. A list of delinquent taxes that are deemed uncollectible by the department shall be entered in a special record and deleted from other books.
Chapter 232: Tax Appeals	
232-9	The clerk of the land court shall be the ex-officio clerk of the tax appeal court and shall record all proceedings of the court. On the entry of any written note of the court, the clerk shall immediately send a copy thereof to all interested parties and to the Department of Taxation which shall correct the assessment list to conform to the order. All records of the court shall be kept in the office of the clerk.
Chapter 232E: Tax Review Commission	
232E-3	The Tax Review Commission shall conduct a systematic review of the state's tax structure. Prior to the convening of the second regular session of the Legislature after the appointment of the commission members every five years, the commission shall submit an evaluation of the state's tax structure and recommend revenue and tax policy to the Legislature.
Chapter 235: Income Tax Law	
235-5.5	The trustee of an individual housing account as described in this section shall make reports regarding the account to the director and to the relevant individual or beneficiary of the accounts, contributions, distributions, and other matters as determined by rules.

Statute Section	Description of Record and Party With Possession
235-116	See, Exhibit 2 in this Appendix re: confidentiality.
235-117	Notwithstanding section 235-116 (confidentiality of returns), the Department of Taxation may permit the secretary of the treasury of the United States, the commission of internal revenue, the multi-state tax commission, or other proper officer of any state or territory imposing an income tax on incomes taxable under this chapter, to inspect the income tax returns and estimates of any such person for tax purposes only. This includes furnishing authorized persons an income tax return abstract or estimate or supply such persons with information concerning income contained in a return or disclosing for the report of an investigation of income or return of the taxpayer.
Chapter 237: General Excise Tax Law	
237-23	(c) An application for exemption shall be filed as an affidavit setting forth in general all facts affecting the right to the exemption, plus particular facts as required with such records, papers and other information. If the exemption is allowed, a further application is necessary only with a material change in the facts, but the person shall register annually.
237-34	(b) See, Exhibit 2 in this Appendix re: confidentiality.
237-35	Any taxpayer engaged in two or more forms of business activities which are interrelated, or of like character, shall file a consolidated return covering all related business activities.
Assessments, Refunds, and Records	
237-37	All refunds and the details thereof, including the names of the persons receiving the refund and the amount refunded shall be "accessible for the inspection of the public" in the office of the department in the taxation district in which the person receiving the refund made the person's returns.
237-43	(a) for any sale in bulk of the whole or a large part of a stock of merchandise and fixtures, or other assets of a business, outside of the ordinary course of trade, the seller shall make a written and verified report of the bulk sale to the department. (b) the purchaser shall withhold payment of the purchase price until receipt of the certificate from the department indicating that all taxes, penalties, and interests levied or accrued against the seller, or constituting a

Statute Section	Description of Record and Party With Possession
	lien on the property, have been paid, together with other information shown on the face of the certificate such as the names of seller and purchaser, and the date and description of the property sold.
Chapter 243: Fuel Tax Law	
243-2	Every distributor of liquid fuel in the state shall register with the Department of Taxation and the department shall issue a license to such distributor.
243-3	Any retail dealer of liquid fuel shall make an application for a permit from the Department of Taxation; ... (f) each retail dealer with a permit may make a certificate showing the amount of monthly retail sales, of liquid fuel purchased from a licensed distributor.
243-10	Each distributor and person subject to section 243-4(b) shall file with the director of taxation an authenticated statement showing separately for each county the (1) total number of gallons of fuel refined, manufactured, or compounded by the distributor within the state and sold or used by the distributor; (2) total number of gallons of fuel imported by the distributor; and other required information.
Chapter 244D: Liquor Tax Law	
244D-2	(a) Any dealer selling liquor shall have a permit issued by the liquor commission in full force and effect.
244D-6	Every taxpayer shall file a monthly return showing all sales of liquor made by the tax payer in the preceding month, showing separate amounts of nontaxable sales, taxable sales, and the tax payable, as well as the amount of liquor used subject to tax and the tax payable.
Chapter 245: Tobacco Tax Law	
245-2	Any wholesaler or dealer who sells or uses tobacco products in the state shall have a license issued by the Department of Taxation on application therefor.
245-5	Every licensee shall monthly file a return of the tobacco products sold or used by the licensee for the preceding month and the tax payable with the Department of Taxation.

Statute Section	Description of Record and Party With Possession
Chapter 246: Real Property Law Tax Maps: Valuations	
246-9	The department shall provide for each taxation district, maps drawn to scale, showing all parcels, blocks, lots, or the divisions of land based on ownership, their areas or dimensions, numbered or designated in a systematic manner for identification, valuation and assessment. The department shall also maintain maps showing present use, zoning, and physical use capabilities of land within each district for uses in the field and the general public. Fees for the use of these maps, including copies or prints, shall be as provided for in section 92-22.
246-10	(a) The director of taxation shall determine the fair market value of all taxable real property and annually assess as provided by law; ... (c) records shall be compiled and kept in each district which shall show the methods established by or under the authority of the director, for the determination of values. ... (g) ... the owner-occupant of a building shall file with the director of taxation a statement detailing the improvements certified by the urban renewal coordinator in the City and County of Honolulu, or the county chairman of any county, or other official, that the additions or other new construction or repair work satisfactorily comply with the particular urban redevelopment, rehabilitation or conservation act provision, or in the case of maintenance or repairs to a residential building pursuant to any health, safety, sanitation or other governmental code provision the statement shall be certified by the building superintendent of the respective building department, or the county chairman of any county, that the building was inspected and found to be substandard when the owner-occupant made his claim, and that the maintenance and repairs to the building were made and satisfactorily comply with the particular code provision.
246-23	To receive an exemption described in section 246-26 and -29 through -33, the claimant shall file with the Department of Taxation a claim for exemption. ... (d) Any person allowed an exemption as noted has a duty to report to the assessor within 30 days after he ceases to qualify for the exemption as noted in the statute.

Statute Section	Description of Record and Party With Possession
Returns	
246-40	Whenever the Department of Taxation deems the filing of returns under this paragraph advisable for making assessments, and following public notice, every person owning, with possession, or control of real property in the district, shall file returns setting forth description and location of all real property in the district belonging to the person as of January 1, and setting forth the tax payer's opinion of the fair market value of the property, in sufficient detail to identify the property. All returns under this section shall be "open to inspection by the public," and shall be admissible in evidence against the person making the return, in any state action where the value of the real property or a portion thereof covered by the return may be in dispute.
Chapter 247: Conveyance Tax	
247-5	The conveyance tax on all transfers or conveyances of any interest in real property shall be evidenced and appropriate seal imprinted on the document or instrument, indicating on its face the amount of tax paid, together with any appropriate penalties or interests, and in any event, prior to the recordation or filing of the document with the Bureau of Conveyances of the land court.
247-6	Any party with the exception of governmental bodies or officers, shall file a certificate of conveyance setting forth the actual and full consideration of the property transferred, including any lien or encumbrance on the property, and other facts as prescribed by rule. The certificate shall be appended to the document subject to this chapter and filed with the director simultaneously with those documents for the imprinting of the required seals.

Statute Section	Description of Record and Party With Possession

TITLE 15

TRANSPORTATION AND UTILITIES

Chapter 261: Aeronautics

261-14	(a) Department of Transportation ("DOT") may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter or relating to the development of aeronautics. (b) The department may use the services, records and facilities of the federal government, as practical to enforce this chapter, and provide reciprocal service to the agencies of the United States. (c) The department shall report all aeronautic accidents to the appropriate federal agency and preserve the aircraft involved or its parts until the federal agency begins its investigation.
261-15	(a) If the certificate, permit or license is required by the United States, it shall be unlawful for any person to operate or authorize the operation of any civil aircraft in the state, or to engage in aeronautics as an airman in the state, without the appropriate certificate, permit or license as required by the United States. (b) Any certificate, permit, reading or license required for an airman by the United States shall be kept in his personal possession when operating within the state and shall be presented for inspection upon the demand of any authorized public officer, or on the reasonable request of any person.
261-15.5	Absent any aircraft exemption, no person shall operate any aircraft at an airport owned or controlled by the department without a valid certificate of registration.

Chapter 266: Harbors
Part I. Generally

266-7	The Department of Transportation (DOT) shall collect all monies, fees and dues paid to the state for wharfage, demurrage, and all other fees resulting from the entry, anchorage, and wharfage of any and all vessels and crafts entering the ports of the state. The department shall keep a full and complete record of its official acts.

Statute Section	Description of Record and Party With Possession
Chapter 269: Public Utilities Commission Part I. Public Utilities, Generally	
269-5	The Public Utilities Commission (PUC) shall present an annual report to the Governor in January of each year concerning its actions during the preceding fiscal year, and summarizing information and data concerning major regulatory issues acted on, pending before, and processed by the PUC, and other subjects as directed by this section. Copies of the annual report shall be furnished by the Governor to the Legislature. The PUC shall establish and maintain a register of all its orders and decisions, which shall be "open and readily available for public inspection," and no order or decision of the PUC shall be effective until filing and recordation in this register.
269-7	The PUC and each commissioner shall have the power to examine and investigate the condition of each public utility, including the manner of its operations, as described by this section. The commission may conduct any investigation on its own motion, and shall be made when requested by the public utility to be investigated, or on a sworn written complaint to the commission, setting forth any prima facie cause of complaint.
269-7.5	Any person holding itself out to the general public as a public utility as defined in section 269-1, shall obtain from the PUC a certificate of public convenience and necessity before commencing its business. Written applications for certificates shall comply with the rules of the commission, and shall include the type of service to be performed, geographical scope of the operation, the type of equipment to be used, and other information as noted in this section.
269-8.5	All annual financial reports to be filed by public utilities with the commission shall include a certification that the report conforms with applicable uniform systems of accounts adopted by the commission.
269-9	Every public utility shall report to the PUC all accidents caused by or occurring in connection with its operations and services, and the commission shall investigate the same.
269-10	All meetings and hearings of the commission shall be public.

Statute Section	Description of Record and Party With Possession
269-12	(a) Reasonable notice of an investigation undertaken by the PUC and the subjects under investigation shall be given to the public utility concerned, with a copy of the relevant complaint, and a written notice of the date and place fixed by the commission for beginning the investigation. (b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, classification, rule, practice or other item proposed to be established, modified, or abandoned, the proposed effective date, and shall be given by filing notice with the commission and keeping it "open for public inspection."
269-16	(a) All rates, fares, charges, classifications, schedules, rules and practices made, charged, or observed by any public utility, or combinations of them, shall be just and reasonable and shall be filed with the PUC. The rates, fares, classifications, charges and rules of every public utility shall be published by the public utility in such a manner as the PUC may require, and copies "furnished to any person on request."
Part II. Consumer Advocate	
269-55	The Consumer Advocate shall provide a central clearing house of information by collecting and compiling all consumer complaints and inquiries concerning public utilities and shall monitor the handling of consumer complaints by the PUC.
Chapter 271: Motor Carrier Law	
271-8	Any person engaging in the transportation of persons or property by motor vehicle for compensation or hire, over any public highway in this state shall have in force a certificate or permit issued by the PUC authorizing the transportation by the person, except as provided in section 271-5.
271-10	(a) Whenever the PUC quotes a public hearing on any investigation into the operations, rights, rates or activities of a motor carrier regulated under this chapter, the PUC shall make a written report stating its findings of fact and conclusions of law, together with its decision or order. (b) All reports issued under subsection (a) shall be entered of record, with a copy furnished to the parties of record. (c) The commission may provide for the publication of its reports and

Statute Section	Description of Record and Party With Possession
	decisions for public information and use, and these authorized publications shall be competent evidence in all state courts without further proof or authentication. The commission may also print an annual report.
271-11	The copies of schedules, classifications, and tariff of rates, fares and charges, and all contracts, agreements and arrangements between motor carriers filed with the PUC, and the statistics, tables, and figures contained in the annual and other reports of carriers made to the PUC as required by this chapter shall be preserved as "public records" in the custody of the commission, except as provided in section 271-25 with regard to agreements between a contract carrier by motor vehicle and a shipper. These items shall be received as prima facie evidence of what they purport to be, and copies of an abstract from any of these public records as noted in this section, certified by the commission with the commission's seal, shall be received in evidence the same as originals.
271-12	(a) Except as provided in this section and section 271-16, any common carrier by motor vehicle engaging in operations on any state public highway, shall have in force a certificate of public convenience and necessity issued by the PUC authorizing such operation. (b) Written applications for certificates made to the commission shall be verified under oath and shall otherwise contain information and conform to the requirements of the commission.
271-13	(a) Except as provided in this section and in section 271-16, any person operating the business of a contract carrier by motor vehicle over any state public highway shall have in force relative to such carrier a permit issued by the PUC authorizing the person to engage in this business. (b) Written applications for permits made to the commission shall be verified under oath and in such form and with such information as required by the commission.
271-21	(a) Every common carrier by motor vehicle shall file with the PUC and print, and "keep open to public inspection" tariffs showing all the rates, fares, and charges for transportation, and all connected services of passengers or property. The tariffs shall be published, filed, and posted with such information as the commission shall require by regulation.

Statute Section	Description of Record and Party With Possession
271-22	(a) Every contract carrier by motor vehicle shall file and observe reasonable minimum rates and charges for any service rendered in the transportation of passengers or property, and file and observe reasonable regulations and practices as applied with reasonable rates, fares, and charges. Said contract carrier by motor vehicle shall also file with the PUC, publish and "keep open for public inspection," schedules containing the actual rates or charges of the carrier for the transportation of passengers or property, and any rule, regulation, or practice affecting the rates or charges and the value of the service.
271-25	See, Exhibit 2 in this Appendix re: confidentiality.
271-27	See, Exhibit 3 in this Appendix re: penalties.
Chapter 271G: Hawaii Water Carrier Act	
271G-8	Whenever the PUC holds a public hearing on the operation, rights, rates, or otherwise investigates water carrier activities regulated under this chapter, it shall make a written report, stating its findings of fact and conclusions of law, together with its decision or order.
271G-9	The copies of schedules, classifications, tariffs or rates, fares, and charges, all contracts, agreements and arrangements between water carriers filed with the PUC, and any required reports filed with the commission shall be preserved as "public records."
271G-10	(a) Except as provided in this section, sections 271G-6 and -12, any water carrier operating within the state shall hold a certificate of public convenience and necessity issued by the PUC authorizing its operations. (b) Written applications to the commission for certificates shall be verified under oath, and with such information as required by the commission.
271G-18	The PUC may require annual, periodic, or special reports from all water carriers.

Statute Section	Description of Record and Party With Possession

TITLE 16

INTOXICATING LIQUOR

Chapter 281: Intoxicating Liquor
Part II. Liquor Commissions

281-11	... Before he begins his duties, each member of the liquor commission shall subscribe to an oath that the member will faithfully perform his duties according to law, which written oath shall be filed with the elective executive head of each county.
281-14	The Liquor Commission shall keep complete records of all commission meetings, proceedings and acts with reference to all business pertaining to licenses issued, suspended, and revoked, monies received as license fees or otherwise, and disbursements by the commission under its authority, and these records shall be "open for examination by the public." The records may be destroyed as provided in section 46-43.
281-15	The commission chairman shall submit to the elected executive county official a full annual report on the operations of the commission for the preceding year. The county fiscal officer shall regularly examine the accounts of the commissions for the several counties and make a written report to the legislative body.

Part III. Licenses and Permits, General Provisions

281-31,-32, -32.5, -33.1, -40, -41, and -46	These various sections describe licenses and permits required for the manufacture, wholesale dealing, and retail dealing of liquor or by form of consumption of liquor, whether by dispenser, club, vessel, tour or cruise vessels, special, cabaret, hotel, caterer, temporary permits for trade shows, individual permits, transfer of licenses and pool buying. The reader is directed to the particular statutes for the application information and requirements.

Part IV. Procedure for Obtaining License

281-52	No license shall be granted except after a public hearing by the Liquor Commission on notice as prescribed in this chapter; provided that sections 281-57 to 281-60 shall not apply to the holder of a wholesale general license, retail general license, or other specific licenses as described in this section.

Statute Section	Description of Record and Party With Possession
281-53	Every application for a license or for the renewal or transfer of a license shall be in writing, signed, and except for a renewal, verified under oath by the applicant or by the proper officers of the relevant entity, such as a corporation or a partnership as described in the statute, and shall set forth: (1) the full name, age, and residence of the applicant; or of the partners or the corporate officers, with such other information as described by the statute; (2) a particular description of the place or premises that will use the license; (3) the class and kind of license applied for; (4) any other pertinent information as may be required by the rules of the commission.
281-56	On every application referred to the inspector under section 281-55, the inspector shall make a written report to the commission, and for all license applications other than class 7, 8 or 9, such reports shall show: (1) a description of the intended premises for license, the equipment and surrounding conditions including surrounding residences which share a common boundary or common structure with the proposed premises; (2) for prior license holders, a statement concerning prior operations on the premises and the business conducted under the previous license; the location of any church, chapel or school, within a distance of 500 feet from the proposed premises; and such other information as specifically required by this section.
281-61	The renewal of an existing license shall be granted on filing of an application, except for good cause.

Part V. Duties of and Supervision Over Licensee

281-74	All persons manufacturing any liquor for sale under this chapter shall securely and permanently attach to every container a label stating the name of the manufacturer or, if the manufacturer does business under another name, stating such name, with the kind and quality of liquor contained therein. ... Before attaching any label containing the name by which the manufacturer does business, instead of the manufacturer's name, the manufacturer shall first register such business name under Chapter 42. The manufacturer shall furnish to the Liquor Commission written confirmation of the registration and other information as required by the

Statute Section	Description of Record and Party With Possession
	commission to enable it to establish and maintain records to properly identify the manufacturer, its name or names by which it does business and the liquor manufactured. The record so established and maintained shall be "available for public inspection."
281-75	Whenever the Liquor Commission, any member, or inspector suspects that any liquor being manufactured, or possessed, or possessed or kept for sale by any licensee is impure, adulterated or otherwise illegal, the commission, any member, or inspector or other authorized person may secure a sample for analysis. Following delivery of the sample to the state Department of Health or competent analyst employed by the commission, he shall make an analysis of the liquor and send a certified report to the inspector who shall file the report with the secretary of the commission.

TITLE 17

MOTOR AND OTHER VEHICLES

Chapter 286: Highway Safety
Part I. General Provisions

286-10	When a person authorized to enforce the provisions of this chapter, on arrest of a person for violation of any provision of this chapter including any adopted rules, he shall issue to the alleged violator a summons or citation warning the violator to appear in court and ... answer to the violation to the charge against him at a certain place and time within seven days after such arrest.

Part IA. Motor Vehicle Regulation

286-16	The Director of Transportation shall prescribe uniform standards and procedures for motor vehicle inspection, driver licensing and registration, including the form and contents of records to be maintained for the registration of vehicles and for the licensing of drivers.

Statute Section	Description of Record and Party With Possession
Part II. Inspection of Vehicles	
286-27	(a) Each county shall designate a department to issue permits for, furnish instructions, and all forms to official inspection stations. (b) Application for an official inspection permit shall be on an official form and granted based on equipment and competent personnel for the required inspections. Each applicant must file proof of an adequate liability insurance policy with requirements and amounts as stated by this section. (c) An official station permit is not assignable and shall be posted in a conspicuous place at the location so designated.
Part III. Registration of Vehicles	
286-41	(a) Every owner of a motor vehicle operated on a public highway shall apply to the Director of Finance of each county of operation for registration of the vehicle. (b) Application for vehicle registration shall be made on official forms to the director and shall contain the name, occupation, and address of the owner and legal owner; the applicant's military status if applicable, a description of the vehicle, including the maker's name, type of fuel used, the serial or motor number, the date first sold by the manufacturer or dealer, and such further description or information as required by the director to establish legal ownership. (c) If the vehicle for registration is specially constructed, reconstructed, rebuilt or imported, the facts shall be stated in the application and on registration of every imported motor vehicle previously registered in another state or county, the owner shall surrender his original certificates of registration to the Director of Finance who shall grant full faith and credit to the currently valid certificates of title and registration describing the vehicle. The acceptance by the Director of Finance of the certificate of title or registration previously issued as provided by this section, without knowledge of forgery, fraud or other voiding information, shall sufficiently determine the genuineness of the certificate, and no liability shall be incurred by any officer or employee of the department by reason of the acceptance of the certificate.
286-42	(e) The county finance director on notice from the designated county department that a vehicle has been inspected and approved as reconstructed, shall cause that fact to be shown on the registration certificate and registration records for that vehicle.

Statute Section	Description of Record and Party With Possession
286-44.5	(a) An application for a salvage certificate ... shall contain: (1) the name and address of the applicant; (2) a description of the vehicle being salvaged; and (3) any further information required by the director.
286-45	The Director of Finance shall file each application received and register the vehicle described in a record or book kept by the director under the following headings: (1) vehicle registration number; (2) name of owner; and (3) vehicle identification number. The director may microfilm registration and ownership records older than a year and discard original records. The director may discard the same records older than six years.
286-46	The Director of Finance shall keep a book of record known as the "Tax Lien and Encumbrance Record" with entry of the following information: (1) notices of liens of federal and state taxes payable; ... (3) notices of seizure of any registered motor vehicle under authority of law; (4) notices of restraining order or other order affecting registration of any vehicle; notice of any action affecting the title or interest of an owner or legal owner; and notice of release of any of the foregoing. The record shall show the year, month, day, hour and minute at which the notice has been filed with the director, shall show the nature and kind of lien or encumbrance claimed, the amount of tax or the claim, with interest, penalties and cost, and shall identify the registered motor vehicles affected by the lien or encumbrances and such other information as requested. The record shall be a "public record" and may be arranged in such manner as the Director of Finance determines.
286-47	On registration of a vehicle, the Director of Finance shall issue a certificate of registration to the owner and a certificate of ownership to the legal owner, or to the dealer licensed to sell new motor vehicles under Chapter 437 which certificate shall: (1) contain on the face of the certificates of registration and ownership the date issued, the registration number assigned to the owner and to the vehicle, the name and address of the owner and legal owner, and the description of the registered vehicle. (2) The face of the certificate of ownership shall also contain endorsement lines for transfer of title or interest of the registered or legal owner, and the odometer reading on the date of transfer. The reverse side of the certificate of ownership shall contain the application for registration by the transferee.

Statute Section	Description of Record and Party With Possession
286-47.2	On registration of a trailer, the Director of Finance shall issue a certificate of registration, containing the information as described above in section 286-47.
286-47.5	(a) and (b) If the address or the name of a registered owner of a motor vehicle is changed from that shown on the application, certificate of registration, or certificate of ownership, the registered owner shall notify the county director of finance in writing of the change and stating or submitting proof of the change.
286-66	The Director of Civil Defense shall be responsible for processing all applications for special license plates (under section 286-62). The administrator of the county civil defense agency shall assist the director with the receipt of applications, the issuance of special license plates, the transmittal of the list of special license plates issued together with the names and addresses of the license holders to the Director of Civil Defense, the respective chief of police, and the licensing officer of each county.

Part VI. Motor Vehicle Driver Licensing

286-118	The examiner of drivers shall file every application for a license received by him and maintain suitable indexes containing, in alphabetical order: (1) all applications denied indicating a reason for the denial; (2) all applications granted; (3) the name of every licensee whose license has been suspended or revoked by court of competent jurisdiction with an indication of the reasons for such action. The examiner of drivers shall also file all accident reports and abstracts of court records of convictions received by the examiner, maintain these records in convenient form and make suitable notations for ease of consideration by the examiner on any renewal of license application or at other times.
286-121	(b) On receiving a record of conviction in this state of a non-resident for any motor vehicle offense, the examiner of drivers may forward a certified copy of the record to the motor vehicle administrator in the state where the convicted person is a resident. (c) When a non-resident's operating privilege is suspended or revoked, the examiner of the driver shall forward a certified copy of the record of such action to the motor vehicle administrator in the state where the person resides.

Statute Section	Description of Record and Party With Possession
286-137	District judges of each county shall keep, maintain and control, or otherwise provide for the same, of proper and accurate record of each conviction, bail forfeiture or other disposition of each license violation within this part.
Part VIII. Traffic Records	
286-171	(a) The State Director of Transportation is responsible for the administration or operation of the state-wide traffic record system, and shall adopt necessary rules under Chapter 91. (b) The system shall include all traffic records of the violation bureaus of the district courts, the circuit courts, the police departments, the county treasures, the Department of Health and the Department of Education.
286-172	(a) Subject to authorization granted by the Chief Justice concerning traffic records maintained by the district and circuit courts, the Director of Transportation shall furnish information contained in the state-wide traffic record system in response to: (1) any request from a state, county, or federal agency or any other authorized person under the adopted rules; (2) any request from a person with a legitimate reason, as determined by the director under his rules, to obtain information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports; or (3) any request from a person required or authorized by law to give written notice by mail to owners of vehicles. (b) Any person requesting information contained in the system under subsection (a) (2) above shall file an affidavit with the director stating the reasons for obtaining the information and assuring that the information will be used only for those reasons, that individual identities will be protected, and that the information will not be used to compile a mailing list for commercial solicitation, or the collection of delinquent accounts, or any other use not allowed by the rules.

Statute Section	Description of Record and Party With Possession
	(c) ... The director shall require the person receiving information to file a corporate surety bond in favor of the state in a penal sum determined by the director and conditioned on the person's compliance with the terms of the affidavit and condition set by the director. Any person otherwise qualified to receive information under subsection (a)(2) and who complies with the provisions of this section may receive all the information in the motor vehicle registration file if the person performs recalls on behalf of manufacturers of motor vehicles as authorized by the federal government or as deemed necessary by manufacturer in order to protect the public health, safety and welfare. (d) Any person receiving information under subsections (a)(2) or (a)(3) shall hold harmless the state and any agency thereof from all claims for improper use or release of such information.
286-202	The Director of Transportation shall (1) establish rules promoting the safety of operations, motor vehicle and equipment of motor carriers; including but not limited to coordinating the various motor carrier safety programs in the state, developing and implementing a record-keeping and information safety system for the motor carrier safety program, developing standards for the qualification of motor carrier vehicle drivers, establishing standards for motor carrier vehicle safety inspection, inspection stations, and inspection personnel, developing standards for the size and weight of vehicles, including motor carrier vehicles pursuant to Chapter 291, establish standards for the issuance of special permits to carry oversized and overweight loads on the highway, establish standards for the transportation of hazardous materials on the highways, and other items as indicated by this section.
Chapter 287: Motor Vehicle Safety Responsibility Act	
287-3	The traffic violations bureau of the district court shall furnish on request of any person a certified abstract of the bureau's record of any person relating to all alleged moving violations, as well as any convictions arising from the operation of a motor vehicle.

Statute Section	Description of Record and Party With Possession
287-4	The driver of every motor vehicle in any way involved in an accident within the state in which any person is killed or injured or where damage to property exceeds $300 shall, within 24 hours after the accident, report the matter in writing or in person to the chief of police.
287-14	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 289:	Used Motor Vehicle Parts and Accessories
289-2	Any person or organization that (1) purchases or sells used motor vehicles or parts accessories; or (2) engages in the business of wrecking, salvaging, or dismantling motor vehicles for the purpose of resale of the parts, shall be duly licensed under this chapter.
289-3	(a) Any person shall apply for a license with the Director of Finance for any business described in section 289-2, containing the applicant's name and address, the kind of business conducted, the business name and such and other information described by this section.
289-7	The Director of Finance shall promulgate under Chapter 91 rules necessary to carry out this chapter and prescribe application forms, licenses and other documents, and create and maintain in the director's office an appropriate filing system to accommodate records filed with the Director of Finance.
Chapter 290:	Abandoned Vehicles
290-2	On taking custody of any "abandoned" vehicle, a written notice shall be sent by registered or certified mail with a return receipt to the legal or registered owner of the vehicle. The notice shall describe the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within 20 days after mailing.
Chapter 294: Part I.	Motor Vehicle Accident Reparations No-Fault Insurance
294-13	See, Exhibit 2 in this Appendix re: confidentiality.
294-15	Each insurer licensed to transact motor vehicle no-fault or optional additional insurance businesses in the state shall provide the Insurance Commissioner with periodic

Statute Section	Description of Record and Party With Possession
	reports on every aspect of such business the insured transacts in the state, including, but not limited to, reports on the investment, reserve, reinsurance, loss and profit experience, rate making and schedules, claims received and paid. ... Each insurer shall report to the Commissioner at least quarterly, the detail of each claim received, claim paid, application for and sale of a motor vehicle insurance policy, each termination and renewal refusal notice posted and of each cancellation and refusal to renew effected on both no-fault and optional additional insurance policy transactions. ... A copy of every audit, internal and external, performed by any insurer on any aspect of its motor vehicle books and business records shall be submitted immediately on completion to the Commissioner.
294-16	The Commissioner shall annually publish in a newspaper of general circulation in the state a list of motor vehicle insurers with representative annual premiums for motor vehicle insurance.

TITLE 18

EDUCATION

Chapter 296: Department of Education
Part I. General and Organizational Provisions

296-11	... Except as otherwise provided, the superintendent (of the Department of Education (DOE)) shall sign all drafts for the payment of monies, all commissions and appointments, all deeds, official acts and other documents of the department. He shall also present to the Board of Education full annual reports of the principal transactions within the department during the last completed year, which reports together with recommendations of the board shall be presented to the Governor and the Legislature. The superintendent shall annually report to the Governor on: (1) the number and percentage of students in public schools who, based on statewide testing, score in each of the lowest three stanines (classes which divide educational testing scores) in basic skills. The breakdown shall include statewide, districtwide, and individual school totals, and the number and percentages

Statute Section	Description of Record and Party With Possession
	of students according to grade levels; and other information required by this section which includes departmental action to improve the students' achievement, measures of the progress of these students, and an analysis of departmental action for these students. The report shall be submitted to the Legislature prior to each regular session and made "available to the general public."
296-14	The DOE shall adopt a seal, whose impression shall authenticate all DOE appointments, commissions, final acts of record, and all other documents issued by the DOE.
296-16	The DOE shall record all its proceedings, doings and acts, and such records shall be filed in the archives of the department.
296-17	The DOE may prepare, print, and publish such reports, pamphlets, duplicate certificates, outlines of courses, and so on, as the department sees fit, and sell or dispose of the publications.
Chapter 297: Part I.	Personnel of Public and Private Schools Certification, Employment and Tenure
297-2	A person must first obtain a certificate from the DOE before serving as a teacher in any school.
297-11	Teacher dismissals due to decreasing numbers of pupils or for causes beyond departmental control, begins with teachers with the least years of service, and teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty based on length of service and qualifications.
297-12	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 298: Part I.	Schools and Attendance, Generally School Attendance, Generally
298-5	(c) See, Exhibit 2 in this Appendix re: confidentiality.
298-6	Any person establishing a private school within the state shall, prior to establishment, apply in writing to the DOE, signed by the applicant, and stating (1) the names of the persons seeking to establish the school; (2) the proposed location; and (3) the course and language of instruction to be given.

Statute Section	Description of Record and Party With Possession
298-19	All public or private schools shall keep a correct register of the names, sex, age and nationality, date of entering school, and student's place of residence. No school shall release any minor registered at that school to attend another school without the written consent and approval of the parents or guardians of the minor, and stating the reasons for the change. As often as DOE shall direct, the register shall be filed in the office of the department.
298-27	(d) See, Exhibit 2 in this Appendix re: confidentiality.
Part II. School Entry Examination	
298-42	Any child attending any school in the state shall present to the school official certification from a licensed physician concerning the child's receipt of immunization against communicable diseases as required by the Department of Health. (b) Any child admitted to any school for the first time in the state shall present an official certification from a licensed physician or other personnel concerning the child's receipt of a tuberculin test or x-ray and his freedom from communicable tuberculosis.
298-47	Any child admitted to any school for the first time in the state shall present to the school an official certification from a licensed physician concerning the child's physical examination.
Chapter 304: University of Hawaii Part I. General and Administrative Provisions	
304-7	The Board of Regents shall keep suitable books of account to record each gift of monies or other properties given to the university from sources other than the Legislature or the federal government for the purpose of the university. The books of account shall contain essential facts of the management of the gift, the expenditure of income, and a statement of all trust funds, which shall be included in the annual report to the Governor.
304-8	... The university shall provide an annual report to the Legislature prior to each regular session with an itemized account of the income to and expenditure from each university special and revolving fund during the previous fiscal year.

Statute Section	Description of Record and Party With Possession
304-8.1	(b) The university shall prepare and submit an annual report on the status of the research and training revolving fund to the Legislature prior to the convening of each regular session. The report shall include a breakdown of travel expenses.
304-20	The teacher education coordinating committee is an advisory committee created to identify, study, take action, or make recommendations on education matters of common interest to the Department of Education and institutions of higher learning in Hawaii. The committee shall submit an annual report on its activities as described by this section to the Legislature and may include recommendations for Legislative consideration.
304-23	The Board of Regents shall secure the compilation from all available sources of a revised history of the Hawaiian people, which history shall not be published until after approval either by the Legislature or by the trustees of the Hawaiian Historical Society. All documents, records, and material so secured shall be deposited in the state archives after their use by the board.
304-24	The University of Hawaii is designated as the official depository of material, documents, photographs, and other data relating to Hawaii's part in the war between the United States and Germany, Japan and Italy. The University of Hawaii shall secure, collect and preserve the necessary information and other data as described relating to Hawaii's part in the war.
Chapter 306: University Projects	
306-10	The comptroller of the state shall open and keep in the comptroller's books a separate and special account of the university revenue-undertakings fund which shall be known as the university-undertakings fund account and which shall at all times show the exact condition of the account, including reserves. Monies appropriated as described in this section shall be payable by the Director of Finance, on warrants issued by the comptroller, on vouchers approved by the board or its duly authorized agent.

Statute Section	Description of Record and Party With Possession
Chapter 307: Research Corporation of the University of Hawaii	
307-6	The Research Corporation shall submit an annual report to the Governor, Senate President, and Speaker of the House, which report shall include the total number and amount of gifts received, payroll disbursements, research or other equipment purchased exceeding $4,000, contracts entered into, and other information.
Chapter 310: Western Regional Education Compact	
310-5	A report of the activities and expenses of the state commissioners of the Western Interstate Commission for Higher Education, and a proposed program for the state's continuing participation in commission activities, including a budget request, shall be submitted by the commissioners to each regular session of the Legislature.
Chapter 311: Compact for Education	
311-4	Pursuant to Article III (I) of the compact, the state commission shall file a copy of its bylaws and amendments with the Lieutenant Governor's office.
311-6	A report of the activities and expenses of the commission and council members and a proposed program for the state's continuing participation in compact activities, including a budget request, shall be submitted by the council to each regular session of the Legislature.
Chapter 312: Libraries	
312-5	The Board of Education shall annually report to the Governor concerning monies received from all sources and expended for all purposes during the preceding year, and any other matters pertaining to the libraries or that the Governor may require.
Chapter 314: Hawaii Public Broadcasting Authority	
314-6	The Board of Public Broadcasting shall keep records and minutes of all of its meetings.
314-12	The board shall submit an annual report, with the full disclosure of its objectives, accomplishments, policies, financial condition and recommendations of the authority, to the Governor and the Legislature.

Statute Section	Description of Record and Party With Possession

TITLE 19

HEALTH

Chapter 321: Department of Health
Part I. General and Administrative Provisions

321-1	The Department of Health (DOH) shall have general charge, oversight and care of the health and lives of the people of the state. When the director finds that a potential health hazard exists, he may take precautionary measures to protect the public through imposition of an embargo, or the detention of products regulated by the department, or the removal of regulated products from the market, or the declaration of quarantine; provided that the director must find evidence of a health hazard within 72 hours of the action taken or rescind the action. The director shall "make public the findngs." The department, through its director, shall present an annual report to the Governor detailing its expenditures, transactions, and other information concerning the public health. During the prevalence of any severe pestilence or epidemic, the department shall also publish a weekly report of the public health.
321-13	(b) A person engaging in the occupations or practices referred to in subsection (a)(1) of this section, such as midwifery, laboratory technologist, or tattoo artist, shall first obtain and hold a valid unrevoked certificate of registration or permit issued by the DOH.
321-14	Any persons seeking to obtain a license to engage in these occupations specified in section 321-13 (a)(1), shall apply to DOH in accordance with its rules.
321-15.6	(a) All adult residential care homes shall be licensed by DOH to ensure the health, safety and welfare of the homes' residents. ... (e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies to facilitate the placement of individuals in such facilities.

Statute Section	Description of Record and Party With Possession
Part III. Cancer Control	
321-43	See, Exhibit 2 in this Appendix re: confidentiality.
Part IV. Crippled Children	
321-52	For the purposes of establishing and administering a program of services for crippled children or those suffering from conditions which lead to crippling, the Department of Health may ... (2) formulate and administer a detailed plan for the purpose just described and is more specifically described in paragraph (1) of this section. Any plan shall include provisions for: ... (D) maintenance of records and preparation of reports of services rendered as shall be directed by the Secretary of Health and Human Services of the United States; ...
321-52.5	(a) DOH may specify diseases for screening and newborn infants and methods employed to prevent mortality and morbidity within the state population. (b) The person in charge of each institution caring for newborn infants, the responsible physician attending the birth of a child, or the assisting person when a physician is not present, shall ensure that every infant be tested for phenylketonuria hypothyroidism, and any other disease specified by DOH; absent a written objection to the test based on religious beliefs which objection shall be made a part of the infant's medical record. (c) DOH shall adopt rules under Chapter 91 for this section, including but not limited to; ... (3) keeping of records and related data; (4) reporting of positive test results; ... (6) informing parents about purposes of these tests; and (7) maintaining the "confidentiality" of affected families.
Part VI. Industrial Hygiene	
321-71	The DOH shall make rules relating to industrial hygiene to detect, prevent, and control unhealthy conditions and exposures associated with employment, such as atmospheric pollution, improper fumigation, inadequate ventilation, and other similar conditions. DOH may conduct research and investigations, and "disseminate knowledge and information to the public," concerning conditions in places of employment or areas affected thereby, which may result in the development of occupational diseases and poor health.

Statute Section	Description of Record and Party With Possession
Part X. Veneral Diseases	
321-111	(b) DOH shall formulate, supervise, and coordinate throughout the state an educational program to prevent veneral disease, instruct the general public in detection, and encourage early treatment. (c) The information shall be made "available upon request to all minors and members of the general public without parental consent" and the information shall be distributed to all public school counselors requesting the material.
Part XV. Mental Health Services for Children and Youth	
321-175	(a) Beginning September 1, 1980, and every four years thereafter, the childrens' mental health services branch, prior to the beginning of each four year cycle, shall develop and present to the Governor and Legislature, as well as "release for public inspection and comment," a current statewide childrens' mental health services plan which shall include: (1) a survey of children and youth in the state who either need or receive mental health services showing the total number of children and youth and the geographic distribution; ... and such other information as described in this section.
321-176	Every two years, beginning January 1, 1979, DOH, before each two year cycle, shall submit to the Legislature and the Governor a report analyzing the progress towards fulfillment of the goals developed under section 321-175, and other matters described by this section.
Part XVI. Substance Abuse	
321-195	DOH shall submit an annual report to the Legislature concerning its progress in the implementation of a state plan for substance abuse.
Part XVIII. State Comprehensive Emergency Medical Services System	
321-221	The Legislature establishes a state comprehensive emergency medical services system by this section. The system shall provide for personnel, training, communications, emergency transportation, facilities, and other items including mandatory standard medical recordkeeping, consumer information and education, as well as independent review and evaluation.

Statute Section	Description of Record and Party With Possession
321-224	DOH, as the department administering this part, shall regulate ambulance and ambulance services, establish emergency medical services throughout the state, collect and evaluate data for continued evaluation of the system subject to section 321-230, implement public information and education programs concerning the state's system and its use, and to disseminate other emergency medical information including appropriate methods of medical self-help and first-aid and the availability of first-aid training programs in the state; as well as other duties specified by this section.
Part XX. Agent Orange	
321-263	(a) Any physician with primary responsibility for treating a veteran or resident exposed to chemical defoliants, herbicides, or other causative agents, including agent orange, at the veteran or resident's request, shall submit a report to DOH. (b) The departmental form given to the physician shall provide for non-disclosure of the patient's identity, including information on (1) symptoms related to chemical exposure; (2) diagnosis of the patient; and (3) prescribed methods of treatment.
321-264	DOH, in consultation with a certified medical toxicologist, if appropriate, shall conduct epidemiological studies on exposed veterans or residents with medical problems associated with a chemical exposure. The department shall obtain the patient's consent for study under this section. DOH shall prepare an annual report for distribution to the Legislature, the Veterans Administration, the Veterans Affairs Commission, and other veterans' groups.
321-265	The identity of a veteran or exposed resident who is the subject of a report made under Sections 321-263 shall "not be disclosed" unless the subject consents to the disclosure; except that statistical information obtained under this part is "public information."
Part XXII. Newborn Metabolic Screening	
321-291	(c) DOH shall adopt rules under Chapter 91 necessary for this section (on newborn screening tests), incuding but not limited to: ... (3) keeping of records and related data; (4) reporting of positive test restuls; ... (6) informing parents about purposes of these tests; and (7) maintaining the "confidentiality" of affected families.

Statute Section	Description of Record and Party With Possession
Chapter 322: Nuisances; Sanitary Regulations Part II. Insanitary Conditions of Land	
322-21	If any tract or parcel of land in the state is detrimental to the public health in the opinion of DOH, because of conditions as described in this section, the department shall report such fact to the comptroller, together with a recommended operation to improve the land.
322-22	If DOH recommends a system of drainage or of filling and drainage, the comptroller shall, on receipt of the notice, prepare a map of the land to be drained or filled, which land shall constitute a drainage district. The map shall show the districts subject to drainage, the location and size of each parcel in the district, and such other information as indicated by this section.
Chapter 323: Hospitals and Medical Facilities Part I. General Provisions	
323-3	The governing body of any public hospital may receive, manage and invest monies or other properties given to the hospital for its use, other than by the Legislature or any federal appropriation. The governing body shall keep suitable books of accounts and record each gift, the facts concerning its management, the expenditure of income, and a statement of all trust funds to be included in the regular reports required of the governing body.
Chapter 323D: Health Planning and Resources Development and Health Care Cost Control Part II. State Health Planning and Development Program	
323D-13	(e) No member of the statewide health coordinating council shall vote on any matter before respecting any individual or entity with which the member has or, within the 12 months preceding the vote, had any substantial ownership, employment, medical staff, fiduciary, contractual, creditor or consultive relationship. Any statewide council member involved in such relationship with an individual or entity involved in any matter before the council shall make a written disclosure of the relationship before any action is taken by the council concerning matters in the exercise of "any function described in section 323D-14 and to make the relationship "public" in any meeting in which the action is to be taken.

Statute Section	Description of Record and Party With Possession
323D-14	The statewide council shall: (1) prepare and revise as necessary the state health services of facilities planned. (2) Review applications for planning and medical facilities grants pursuant to applicable federal requirements, and submit a report of its comments to the secretary pursuant to the same requirements. ... (4) Review annually and recommend approval or disapproval of any state plan, any application and any revision of a state plan or application submitted to the secretary (of the United States Department of Health and Human Services) as a condition to the receipt of federal funds by the state under the various federal acts as indicated in this section.
323D-16	The state health planning and development agency shall prepare and annually execute an implementation plan which guides the agency in achieving the system of care envisioned in the state health services and facilities plan and administering the certificate of need program.
323D-17	In the preparation of the state health services and facilities plan or amendments thereto, the state agency and statewide council shall conduct public hearings on the plan or amendments in compliance with Chapters 91, 92 and with applicable federal law.
Part V. Certificate of Need	
323D-43	(a) Any public or private person, whether for profit or not, who seeks to develop or modify a health care facility or health care services in the state with expenditures exceeding the minimum, or substantially modifying the scope or type of health service rendered, or changing the class of usage of beds within a health care facility or relocating beds between facilities, shall have a certificate of need issued by the state agency.
323D-44	An application for a certificate of need shall be filed with the state agency, who shall assist in the preparation and filing of the application. The application shall contain statements and otherwise comply with the requirements of this section.
323D-45	(a) The state agency shall refer every application for a certificate of need to the appropriate subarea council, the review panel, and the statewide council. The review panel shall consider each application at a public

Statute Section	Description of Record and Party With Possession
	meeting and submit its recommendations to the statewide council, who in turn shall consider the recommendation of the review panel at a public meeting and submit its recommendations to the state agency.
323D-49	No permit or license shall be issued by any county or state office for the development, construction, or modification of an existing or new health care facility or service unless a current certificate of need issued by the state agency, or a statement of exemption of such a certificate is submitted with the application for the permit or license.
323D-52	Persons proposing construction projects shall submit to the state agency letters of intent informing the agency of the scope and nature of the progress as early as possible in the planning of the project.
Chapter 324: Medical Research; Morbidity and Mortality Information	
Part I. Maternal and Parinatal Studies	
324-1	Any person, hospital, sanitorium, nursing or rest home, or other similar medical facility may provide information, interviews, reports, statements, memoranda or other data or material relating to the condition and treatment of any person to the maternal and parinatal mortality study committee of the Hawaii Medical Association or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing morbidity or mortality. No liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided the information or material, or by reason of having released or published findings, conclusions and summaries of the research or study committees to advance medical research and medical education.
324-2 and -3	See, Exhibit 2 in this Appendix re: confidentiality.
324-4	See, Exhibit 3 in this Appendix re: penalty.
Part II. Mental Health and Mental Retardation Studies	
324-11	Any person, public or private medical facility, or social or educational agency may provide information as described in section 324-1 above, relating to

Statute Section	Description of Record and Party With Possession
	individuals to the Department of Health for use in the course of any study for the purpose of reducing morbidity or mortality resulting from mental illness or mental retardation. This section contains the same "no liability" provision as found in section 324-1 above.
324-12 and -13	See, Exhibit 2 in this Appendix re: confidentiality.
324-14	See, Exhibit 3 in this Appendix re: penalty.
Part III. Cancer Studies	
324-21	Any person, public or private medical facility, or social or educational agency, may provide information as described in section 324-1, relating to individuals with cancer to the Hawaii Tumor Registry. Such information may be used in the course of any cancer research study approved by the cancer commission of the Hawaii Medical Association. Hospitals, skilled nursing homes and intermediate care homes shall submit a report of any person admitted with or diagnosed as having cancer to the Hawaii Tumor Registry on a form approved by the cancer commission of the Hawaii Medical Association, with assistance from the Registry staff if necessary. This section contains the same "no liability" provision as found in section 324-1 above.
324-22 and -23	See, Exhibit 2 in this Appendix re: confidentiality.
324-24	See, Exhibit 3 in this Appendix re: penalty.
Part IV. Health Surveillance	
324-31	See, Exhibit 2 in this Appendix re: confidentiality.
324-32	(a) Consistent with section 324-31 and public law 93-380, the Department of Health may, if not otherwise prohibited by law, release statistical records or information relating to the health surveillance program. The materials collected under this part shall only be used for the analysis of health, demographic, socio-economic, environmental and related factors for the evaluation of health problems, programs, delivery

Statute Section	Description of Record and Party With Possession
	and utilization of medical care, analysis and interpretation of public health trends, forecasting long and short range public health needs and for the determination of programs to meet such needs. (b) The Department of Health may collect additional information requested by other public or private agencies and may release statistical information from the health surveillance program for research, educational or program purposes to the public or private agencies or individuals.
324-33	See, Exhibit 2 in this Appendix re: confidentiality.
324-34	See, Exhibit 3 in this Appendix re: penalty.

Chapter 325: Infectious and Communicable Diseases
Part I. General Provisions

325-2	Every physician and every chiropractor having a patient infected with any of the diseases described in section 325-1, or any other infectious, communicable, or other disease danger to the public health, shall give immediate notice to the Department of Health or its nearest agent in writing, and in like manner report to the department or its agent, every case of death which takes place in the physician or chiropractor's practice from any such disease. If the patient is infected with particular diseases as specified by this section, the physician, in addition to the written notice, shall immediately notify the department or its nearest agent by telephone or by direct oral communication. Failure to give such notice or report shall render the physician responsible for penalties under section 325-14.
325-3	Every householder, keeper of a boarding or a lodging house, or master of a vessel, shall report immediately to DOH or nearest agent, any person in his house or vessel whom he has reason to believe to be sick, or to have died of any infectious, communicable, or other disease dangerous to the public health. All police officers aware of any person suffering from the same afflictions as noted, shall immediately report this to DOH or its nearest agent. Any such householder, keeper, master, or police officer who refuses or neglects to immediately report to DOH or its agent shall be fined not more than $100 for each offense.
325-4	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
325-6	All withdrawals from the "epidemic control fund" created by this section shall be on warrants of the comptroller of the state on vouchers properly approved by the Director of Health.
325-15	United States citizens or nationals, on return to this state after five years or more residence in any territory or possession of the U.S., or any foreign country with the high occurrence of infectious and communicable diseases, shall submit a medical examination report containing a tuberculin skin test or a chest x-ray examination, to DOH within 60 days of return to this state. In the case of a positive skin test a chest x-ray report shall also be submitted.
Part II. Vaccination and Immunization	
325-33	A record of the immunization of any person performed by a licensed physician, his authorized personnel or authorized representatives of DOH, shall be maintained by the physician and be available to the Department of Education for school entry requirements and the Department of Health.
325-34	A vaccination under section 325-32 is not required for three months after a licensed physician or authorized representative of DOH signs two copies of a certificate giving the name and address of the person and the reason why the person's health is endangered by the vaccination or immunization. The original copy of the certificate goes to the person, or to the person's parent or guardian in the case of a minor or guardianship, or if the duplicate copy to the DOH for its files. Any person who objects in writing to a vaccination or immunization on the grounds of religious beliefs of an established church of which the person is a member, or by a parent or guardian on behalf of a minor or his ward; but the Director of Health may deny an objection where a danger exists of an epidemic from any communicable disease.
325-35	DOH may prescribe forms and procedures to achieve the purposes of sections 325-32 through -34, and shall maintain in the offices of the department in Honolulu, Hilo, Wailuku, Lihue and Kaunakakai, a complete roster of all exemptions from vaccination or immunization granted by that office.

Statute Section	Description of Record and Party With Possession
Part III. Congenital Syphilis	
325-51	Every physician attending a pregnant woman in the state for conditions related to her pregnancy during the period of gestation or at delivery, and any other person permitted by law to attend such women, shall take or cause a lawful person to take a blood sample for a standard serologic test for syphilis by an approved laboratory.
325-52	A standard serologic test for syphilis shall be approved by DOH, made at a laboratory approved by DOH, and reported by the laboratory to DOH on a laboratory report form issued by DOH. The certifying physician shall receive the original report, and duplicate copies shall go to the department and the laboratory shall retain a copy for its files.
325-53	Every physician or person required to report a birth or fetal death shall accompany the certificate with a report indicating whether the physician or a person knows of a blood test for syphilis performed on the mother who bore the child named on the certificate and the date of taking the blood specimen.
325-54	See, Exhibit 2 in this Appendix re: confidentiality.
Part IV. Tuberculosis	
325-71	Every physician shall report in writing the name, age, sex, nationality, occupation, place of last employment, and address of every person known by the physician to have tuberculosis to the Department of Health or its agent, within 24 hours after learning the facts, and shall, on request, provide to DOH medical information on the suspected person. The person in charge of any hospital, dispensary, asylum or similar institution shall likewise report the same information within the same time period and provide the same information on request to the department. Every laboratory identifying mycobacterium tuberculosis from the body fluid or tissue of any living or dead person, shall submit a written report of the examination to DOH.
325-73	See, Exhibit 2 in this Appendix re: confidentiality (and penalty).

Statute Section	Description of Record and Party With Possession
Part VI. Sexually Transmitted Diseases	
325-101	See, Exhibit 2 in this Appendix re: confidentiality.
325-102	See, Exhibit 3 in this Appendix re: penalty.
325-103	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 327: Medical and Research Use of Bodies Part III. Unclaimed Bodies	
327-32	(d) Every head officer of a hospital, nursing home or correctional facility in which a dead human body was a patient or an inmate at the time of death and whose body is unclaimed and requires a burial at public expense shall transmit to the DOH a medical history of the decedent for identification and a permanent record, which record shall be open to inspection by any state or county public official or prosecuting attorney.
327-33	Every university, hospital or institution receiving an unclaimed body shall: ... (2) Keep a permanent record of every body received, giving an identification number, source and disposition of the body and, if possible, the name, age, sex, nationality, race and place of last residence of the decedent, which record shall be open to inspection by DOH. (3) Report annually, or as specified by the department to them concerning the receipt and final disposition of dead bodies as provided in this part.
Chapter 328: Food, Drugs, and Cosmetics Part I. Hawaii Food, Drug, and Cosmetic Act	
328-6	See, Exhibit 3 in this Appendix re: penalty.
328-17	(a) No person shall sell, deliver, offer or hold for sale, or give away any new drug unless (1) an application regarding the new drug has been approved and the approval has not been withdrawn under section 505 of the Federal Act, or (2) when not subject to the Federal Act, unless the drug has been tested and been found to be safe for use and effective in use under the conditions prescribed, recommended or suggested in the labeling, and prior to selling or offering the drug for sale, the person has filed with the Director of Health an application setting forth (A) full reports of

Statute Section	Description of Record and Party With Possession
	investigations on the safe and effective use of the drug; (B) a full list of the articles used as components of the drug; (C) a full statement of the composition of the drug; and such other requirements of this subsection. (b) An application filed under subsection (a)(2) shall become effective six months after the filing, unless the director, after notice and hearing, and prior to the effective date of the application, issues an order that refuses to give the application any effect under the standards described in this subsection.
328-25	(a)(3) See, Exhibit 2 in this Appendix re: confidentiality.
328-29	See, Exhibit 3 in this Appendix re: penalty (and "no liability" provision).
Part IV. Enrichment of Bread and Flour	
328-75	(b) If the Department of Health finds that there is an existing or eminent shortage of any ingredient required by section 328-72 or -73, and that such shortage and enforcement of this part may impede the sale and distribution of flour, white bread or rolls, the department shall issue an order effective on issuance that permits the omission of the ingredient from flour, white bread or rolls; and if necessary, except such foods from the labeling requirements until further order of the department.
Chapter 329: Uniformed Controlled Substances Act Part I. General Provisions	
329-3	The Hawaii Advisory Commission on Drug Abuse and Control Substances shall prepare an annual report to the Governor on its yearly activities and legislative recommendations, and furnish copies of the report to the Governor and the Legislature.
Part II. Standards and Schedules	
329-11	(a) The Department of Health shall annually report to the Legislature the effects of implementation of this chapter on the drug abuse problem in Hawaii, and shall recommend any changes to the schedules of substances described in this part (section 329-14, -16, -18, -20, and -22).

Statute Section	Description of Record and Party With Possession
329-23	(a) DOH shall republish the schedules annually or as necessary to update the schedules. (b) DOH shall publicly announce and shall "make available to the public" copies of any changes to the schedules as changes occur.
Part III.	Regulation of Manufacture, Distribution, Prescription and Dispensing of Controlled Substances
329-32	(a) Every person who manufactures, distributes, prescribes or dispenses any controlled substance within this state or who proposes to engage in the described activities within this state, must obtain annually a registration issued by the department in accordance with its rules.
329-37	All persons registered to manufacture, distribute or dispense controlled substances and all persons who transport, warehouse, or otherwise handle controlled substances, shall file with the department copies of order, receipt and distribution of schedule I and schedule II of controlled substances and other controlled substances designated by the department, showing the amounts of such controlled substances ordered, received, distributed, transported, warehoused or otherwise handled.
329-54(a)(3) and -54(c)	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 333: Part IV.	Mental Retardation Private Institutions
333-51	No person, association or corporation shall establish, maintain, or operate an institution for the care or custody and treatment of mental retardates or other incompetent persons, for compensation or hire, without first obtaining a license from the Department of Health. A floor plan of the premises proposed to be occupied, describing the buildings and the intended use, the extent and location of adjacent grounds, and the number of patients proposed for care, custody, treatment or hire, and other information as required by the department.
333-81	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 334: Part I.	Mental Health, Mental Illness, Drug Addiction and Alcoholism General and Administrative Provisions

Statute Section	Description of Record and Party With Possession
334-5	See, Exhibit 2 in this Appendix re: confidentiality.
334-10	(a) A state council on mental health and substance abuse is established. ... (d) The council shall prepare and submit an annual report to the Governor and the Legislature on implementation of the state plan.
334-11	(a) A service area board is established to advise each service area center. ... (c) If the center chief's actions are not in conformance with the board's planning decisions, the center chief shall provide a written explanation to the board for the chief's position.
Part II. Operation of Psychiatric Facilities	
334-21	Any person, association, corporation, or government agency who establishes, maintains, or operates a psychiatric facility to which persons are involuntarily admitted, shall first obtain a license from DOH.
Part III. State Hospital	
334-35	The Director of Health shall see that every patient receives necessary care and treatment, periodic re-examination and record review, suitable discharge or authorized absence, as set forth in subsections (1-3) and (4) keep a medical record of every patient.
334-37	The administrator of the state or county psychiatric facility may accept voluntary contributions for any patient, and shall keep a detailed account of expenditures for each contribution, which is open to the inspection of the donor at any time.
Part IV. Admission to Psychiatric Facility	
334-59	A police officer, any licensed physician, attorney, member of the clergy, health or social service professional or any state or county employee in the course of his employment, may apply to a judge for an ex parte order on finding that there is probable cause to believe a person is mentally ill, suffering from substance abuse, and imminently dangerous to himself or others or property, and in need of care and/or treatment; and that a police officer should deliver the person to the nearest psychiatric facility for emergency examination and treatment, based on the procedure and circumstances as described by these sections (a)(1-3).

Statute Section	Description of Record and Party With Possession
334-60.3	(a) Any person may file a petition that another person in the county meets the criteria for commitment to a psychiatric facility, under the procedures and conditions as described by this section.
334-60.7	When contemplating discharge of an involuntary patient because of expiration of the court order for commitment, or because the patient is no longer a proper subject for a commitment under section 344-60.2, the administrator of the psychiatric facility shall file with the court a notice of intent to discharge and personally serve the notice on persons specified in the order of commitment. The administrator shall discharge the patient if no objection is filed within three days of service of the notice.
Part VII. Community Residential Treatment System	
334-106	A community residential treatment facility receiving funds under this part shall be licensed under existing licensing categories, including provisional licenses.
Part VIII. Involuntary Outpatient Treatment	
334-123	(a) Any person may file a petition with the family court alleging that another person meets the criteria for involuntary outpatient treatment, and setting forth the facts and criteria in the petition as required by this section.
Chapter 334E: Rights of Recipients of Mental Health Services	
334E-2	(a) Any patient in any psychiatric facility, or his legal guardian or representative, shall have the right: ... (7) a written treatment plan based on the individual patient; ...(14) confidentiality of the patient's record; (15) access to the patient's record; ....
Chapter 338: Vital Statistics Part I. State Public Health Statistics Act	
338-1	"Public Health Statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, morbidity, marital status, and data incidental thereto.
338-2	The Department of Health (DOH) shall: (1) establish a central bureau of public health statistics equipped for

Statute Section	Description of Record and Party With Possession
	the safety and preservation of its official records; (2) install a state-wide system of public health statistics; (3) make and amend rules after notice and hearing that give instructions and prescribe forms for collecting, transcribing, compiling and preserving public health statistics; .... .
338-4	DOH shall, within six weeks after the end of each month, deliver or forward by mail to the county clerk of each county a list of the names of all citizens of voting age or over whose deaths have been recorded in the department during each month. The list shall contain sufficient information obtained from the citizen's death record to enable identification by the county clerk.
338-5	The physician, midwife, or other authorized person in attendance shall file a certificate of every birth with the local agent of DOH in the district where the birth occurred. If the mentioned parties did not attend the birth, one of the parents shall file the certificate.
338-6	(a) If neither parent prepares a birth certificate for an unattended birth as provided in section 338-5, the local agent of DOH shall prepare and file a certificate based on information from any person with knowledge of the birth. (b) DOH shall allow a supplementary report to furnish information to complete the original certificate. Certificates of birth completed by supplementary report shall not be considered as "delayed" or "altered."
338-7	(a) Whoever assumes custody of a living child of unknown parentage shall immediately file a "foundling" report to the local agent of the department with the information required by this section. (c) The foundling report shall constitute a certificate of birth. (d) See, Exhibit 2 in this Appendix re: confidentiality.
338-8	A certificate of every death or fetal death shall be filed with DOH in Honolulu or with the local agent of DOH in the district where the death occurred or a dead body was found, within three days after death or finding the dead body. A certificate shall be filed prior to interment or other disposition of the body.
338-9	(a) The person in charge of disposition of the body shall file with DOH or its local agent a certificate of

Statute Section	Description of Record and Party With Possession
	death or fetal death within three days after the occurrence, except for reports of intentional terminations of pregnancy under section 453-16, the report may be deferred for up to one month. (b) The person in charge of disposition of the body shall prepare a certificate of death or fetal death according to the requirements of subsections (1-3) of this subsection, relating to personal data of the deceased person, certifying the cause of death by the last attending physician or the coroner's physician, and beginning an investigation and certification of the cause of death before issuing a permit for burial or other disposition of the body if the death occurred without medical attendance. (c) The next of kin may file a death certificate and the local agent may accept it without meeting the requirements set forth above when a court of record judicially finds and declares that the person is dead, on an approved form certified by the clerk of court.
338-13	(a) Except as provided in sections 338-16, -17 and -18, DOH shall furnish any applicant on request a certified copy of any certificate or its contents.
338-14	(a) DOH shall charge reasonable fees for certified copies of certificates, and shall provide, free of charge, certified copies of any of the records, to any veteran of the United States Armed Forces, the veteran's wife, and similar persons as described by this section. The department shall also charge a reasonable fee for correction of any items on a vital statistics certificate initiated by the registrant, his or her parents, or his representative. (b) The department may also charge fees for searches of files and records not involving issuance of certified copies. ... (d) In establishing a fee, the amount shall be sufficient to cover the expenses involved in searching for, cost of the copy of, or correction of the certificate, file or record.
338-16	(a) Birth certificates registered one year or more after the date of birth, and certificates which have been altered after filing with DOH, shall contain the date of the delayed filing and the date of alteration and be marked distinctly "delayed" or "altered." (b) A statement summarizing evidence in support of the acceptance for delayed filing or alteration shall be

Statute Section	Description of Record and Party With Possession
	endorsed on the certificates. ... (d) When the minimum documentation required for delayed registration but when the state registrar questions the validity or adequacy of the certificate or the documentary evidence, the registrar shall not register the delayed certificate and shall advise the applicant of the reason for the action.
338-17.5	(a) If a delayed certificate is rejected under section 338-15, a petition may be filed with the Circuit Court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered. (b) A statement of the registration official made under section 338-16(d) shall accompany the petition and all supporting documentary evidence submitted to the registration official. (c) The court shall hear the petition and give the registration official who refused to register petitioner's delayed certificate of birth 15 days' notice of the hearing. (d) If the court finds from the evidence that the person represented by the delayed certificate was born in this state, the court shall make findings on the place and date of birth, parentage, and other findings as required and shall issue an order to establish a record of birth. (e) The clerk of the court shall forward a copy of the order to the state registrar vital statistics and such order shall be registered in accordance with section 338-13.
338-17.7	(a) DOH shall establish a new certificate of birth for a person born in this state with an existing certificate filed with the department, and who is referred to as the "birth registrant" under the circumstances described in this section. (b) See, Exhibit 2 in this Appendix re: confidentiality.
338-17.8	(a) On application of an adult or legal parents of a minor, the Director of Health shall issue a birth certificate for the adult or minor, on proof that the legal parents of the individual, while living outside the territory or state of Hawaii, had declared the territory or state of Hawaii as their legal residence for at least one year immediately preceding the birth or adoption of the individual.
338-18	(a-b) See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
	(c) The department may permit use of data contained in public health statistical records for research purposes only, "but no identifying use thereof shall be made." (d) Index data consisting of name, age, and sex of the registrant and date, type and file number of the vital event and such other data as the director may authorize may be made "available to the public." (e) Persons working on geneology projects may have access to microfilm or other copies of vital records of events that have occurred more than 75 years prior to the current year. (f) Subject to this section and on filing of birth, death, and fetal death certificates with its local agents, the department may direct the agents to return certain data shown on the certificate to federal, state, county or other governmental agencies, who may pay for the service.
338-20	(a) For the adoption of any person in the state, on receipt of a properly certified copy of the adoption decree or certified abstract on an approved form, DOH shall prepare a supplementary certificate in the name of the adopted person that conforms to the decree, and seal and file the original certificate of birth with the certified copy attached thereto. (b) The supplemental birth certificate shall show the names of the parents as stated in the adoption decree under section 578-14. (d) If the department has no original certificate of birth on file, it may require sufficient evidence to establish the facts of birth before preparing the supplementary certificate in the new name of the adopted person. Such certificate shall only be filed if the evidence satisfacorily establishes the birth of the adopted person in this state. (e) Only an order of a court of record can open documents "sealed by the department." On receipt of a certified court order setting aside the adoption decree, the department shall restore the original certificate to its original place in the files.
338-20.5	(a) DOH shall establish a Hawaii certificate of birth for a foreign born person and for whom a proper Hawaii court has entered a final decree of adoption, when the department receives documents described by this section, including but not limited to, (1) a certified adoption decree, (2) an investigative report and recommendation prepared by the director of Social Services; (3) a vital statistics report as described by this section with the adopted person's name, age, names of his adopting

Statute Section	Description of Record and Party With Possession
	parents, and the true or probable country of birth and the approximate date of birth. This report shall constitute an original certificate of birth; and (4) a request for a new certificate of birth. (b) See, Exhibit 2 in this Appendix re: confidentiality.
338-21	(a) ... If legitimation under this section is accomplished before the original certificate of birth is filed with DOH, the original certificate of birth shall contain the stipulated name of the child. The parents or the child may petition DOH to issue a new original certificate of birth and not a duplicate original that is amended, altered or modified, in the new name of the legitimated child, and the department shall issue the new original certificate of birth on satisfaction that the legitimation of the child has occurred. (b) See, Exhibit 2 in this Appendix re: confidentiality.
338-23	A written permit shall be issued from the local agent of the department before removal or disposal of a body following a death, fetal death, or finding of a dead body. No permit is required for a dead fetus less than 24 weeks of gestation. The local agent may orally authorize removal of dead bodies resulting from an accident or other casualty occurrence from a registration district to Honolulu for preparation and filing of death certificates and issuance of written permits for further disposition.
338-24	When a person dies outside this state and a valid permit for (from another jurisdiction) burial, removal or other disposition accompanies the body into or through this state, the permit shall authorize the transportation of the body, but before burial, cremation or disposal of the body within the state, the local agent of the department shall endorse the permit and keep a record thereof.
338-25.5	Any person seeking to expose, disturb or otherwise remove a corpse from its place of burial, exclusive of ashes, or otherwise affect the receptacle, container or coffin holding the remains, shall apply in writing to the director of Health for a permit.
338-28	Local agents of the department shall transmit all certificates filed with them to the department according to its rules.

Statute Section	Description of Record and Party With Possession
338-29	Before signing any decree of divorce or annulment of marriage, the applying person shall prepare a certificate on an approved form and file it with the clerk of the court. Within ten days after the court grants the final decree of divorce or annulment of marriage, the clerk of the court shall endorse the date of the decree on the certificate and forward it to the department.
338-29.5	(b) Certificates of death, fetal death, marriage or divorce registered one year or more after the date of occurrence shall be marked "delayed" and shall show on the face the date of the delayed registration.
Chapter 340B:	Hawaii Law for Mandatory Certification of Operating Personnel in Waste Water Treatment Plants
340B-3	(a) On approval of the board of certification established by section 340B-4, the director of Health shall issue certificates entitling qualified individuals to operate waste water treatment plants. Each certificate shall indicate the class of waste water treatment plant for which the individual is qualified, under the terms specified by this section.
Chapter 340E:	Safe Drinking Water
340E-2:	(e) The director of Health shall promulgate regulations establishing an underground injection control program, which shall prohibit any underground injection not authorized by a permit issued by the director, except where authorized by regulation. Authorized underground injection shall not endanger drinking water sources.
Chapter 342: Part I.	Environmental Quality Definitions and General Provisions
342-1	"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule, regulation, or order promulgated pursuant to this chapter. "Permit" means written authorization from the director to discharge waste or to construct, modify, or operate any air pollution source, water pollution source, excessive noise source, or solid waste disposal system. A permit authorizes the grantee to cause, emit or discharge waste or pollution in a manner or amount or to do any act, not

Statute Section	Description of Record and Party With Possession
	forbidden by this chapter, or by rules and regulations promulgated under this chapter, but requiring review by the department. "Variance" means special written authorization from the director to cause, emit, or discharge waste or pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules or regulations promulgated under this chapter.
342-5	Reports submitted to the Department of Health on discharges of waste shall be made "available for inspection by the public" during office hours unless such reports contain "information of a confidential nature concerning secret processes or methods of manufacture." Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342-10 who divulges information except as authorized in this chapter, by court order, or at an administrative hearing regarding an alleged violation of this chapter or of any rule or regulation or standard promulgated pursuant to this chapter, shall be fined not more than $1,000.
342-6	(a) An application for any permit required under this chapter shall be in a form prescribed by the director. (b) The department may require that plans, specifications and other necessary information accompany applications for permits to determine whether the proposed installation, alteration or use complies with rules or standards. (c) The director shall issue a permit for any term up to five years, renew a permit for the same period, or modify the conditions of the permit on application when consistent with the public interest. Any denial of an application for issuance, renewal or modification of a permit shall be after a hearing under Chapter 91.
342-7	(a) Every application for a variance shall be on departmental forms and accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may, by rule or regulation, prescribe. (b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, additional information submitted on request of the department, and the effect or probable effect on the air and water quality standards and noise level standards established pursuant to this chapter.

Statute Section	Description of Record and Party With Possession
342-10	See, Exhibit 2 in this Appendix re: confidentiality.
342-11.3	Any person who commits a violation of the noise control regulations, vehicular smoke emission regulations and open burning control regulations promulgated by the department under this chapter may be issued a summons or citation for the violation by any person authorized to enforce such regulations.
Part III. Water Pollution	
342-32	In the discharge of his duty to prevent, control and abate water pollution in the state, the director may: (1) establish by rule water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions; ... (7) require complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of, or alteration of any such works, system or plant which contain the information requested by the director in a prescribed form; such plans or reports shall be made by a competent person acceptable to the director at the applicant's expense; ... (12) publish an annual report on the quality of state waters, which report shall include, among other items: (A) a description of sampling programs and quality control methods procedures; (B) statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations); (C) discussion of the results of these analyses so that the general public understands the implications; (D) recommendations for the modification of the water quality monitoring program to enhance effective maintenance of high water quality standards in the state; and (E) a note of any significant changes in the quality of state waters.
Part VI. Underground Storage Tanks	
342-62	(a) The owner of an existing underground storage tank shall notify the department on an approved form by December 31, 1986, of the existence of such tank and specify the age, size, type, location, and uses of such tank. (b) The owner of an existing underground tank taken out of operation between January 1, 1974 and May 19, 1986, shall notify the department by December 31, 1986, of the existence of the tank, unless the owner knows that the tank is no longer in the

Statute Section	Description of Record and Party With Possession
	ground. The notice shall contain information as specified by this section. (c) Any owner who brings into use an underground storage tank after May 19, 1986 shall notify the department within 30 days after the installation of the tank, specifying the age, size, type, location, and uses of the tank.
342-64	(a) The department shall adopt under Chapter 91 standards of performance for maintaining leak detection system, and inventory control system, and tank testing system, or comparable system or method designed to identify releases and protect human health and the environment. The department shall also adopt requirements for maintaining records of any such monitoring, leak detection, inventory control and tank testing system. (b) The leak detection and record maintenance shall collect data in the manner and form as specifically described by this subsection.
342-65	The department shall adopt under Chapter 91 requirements for the reporting of any releases and corrective action that responds to a release from an underground storage tank.
342-68	(a) The department shall adopt under Chapter 91 requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and unsudden accidental releases arising from operating an underground storage tank. Evidence of financial responsibility may be established by rule for anyone or combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.
342-69	(a) For the purpose of developing or assisting in the development of any regulation, conducting any study, or enforcing this part, any owner or operator of an underground storage tank, on request of the department, shall furnish information relating to such tanks, including tank equipment and contents; conduct monitoring or testing; and permit the department representative to have access to and to copy all records relating to such tanks. ....

Statute Section	Description of Record and Party With Possession
	(b) Any records, reports or information obtained from any persons under this section shall be "available to the public except as provided in this subsection." On a satisfactory showing to the department that public disclosure of records, reports or information, or any particular part, may divulge commercial or financial information entitled to protection under state law, the department shall consider the information or the particular portion as "confidential;" with limited disclosure allowed to officers, employees or representatives of the state or the federal government charged with carrying out this part or Subtitle I of the resource conservation and recovery act of 1976, public law 94-580, or when relevant in any proceeding under this part.
342-70	(a) Any person who owns, installs, or operates an underground storage tank brought into use after the effective date of the new tank standards established in section 342-63 shall obtain a permit from the department after submitting an application for the permit that includes the new tank standards provided in section 342-63. (b) The department shall prepare a form providing for the acceptance of obligations of a transferred permit by any person who assumes ownership of an underground storage tank from the previous owner, and complete the form within 30 days after transfer of ownership.
Chapter 343: Environmental Impact Statements	
343-2	"Environmental Impact Statements" means an informational document prepared according to rules adopted under section 343-6 and which discloses how a proposed action affects the environment, the economic and social welfare of the community and state, the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternative to the action and their environmental effects.
343-3	All statements and other documents prepared under this chapter shall be made "available for inspection by the public" during established office hours. The office of Environmental Quality Control shall inform the public of agency notices which indicate determinations that statements are required or not required, of the availability of statement for review and comments, and of the acceptance or rejection of statements. The

Statute Section	Description of Record and Party With Possession
	office shall publish a periodic bulletin available through the office and public libraries, to persons requesting this information.
343-5	(b) Whenever an agency proposes an action within the categories in subsection (a) of this section, except as excluded by this subsection, that agency shall prepare an environmental assessment for such action at the earliest practical time to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file a notice of such determination with the office which, in turn, shall publish the agency determination for public information pursuant to section 343-3. The statement shall be prepared by the agency, submitted to the office, and made "available for public review and comment" through the office. The office shall inform the public of the availability of the statement for public review and comments under section 343-3. The agency shall respond in writing to comments received during the review. Following public review and any agency revision, the council may recommend acceptance or rejection of the statement when requested by the agency. Final authority to accept such a statement shall rest with: (1) the Governor or his representative, for any action involving state lands or state funds or when a state agency proposes an action within subsection (a) of this section; or (2) the mayor or his representative of the county when an action proposes the use of county lands or funds. Acceptance of the required statement shall be a condition precedent to implementation of the proposed action. On acceptance or rejection of the statement, the Governor or mayor or their representatives shall file notice of such determination with the office, which in turn, shall publish the determination of acceptance or rejection under section 343-3. (c) When an applicant proposes an action specified by subsection (a) of this section, requiring agency approval, and the action is not exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental assessment of the proposed action to determine whether an environmental impact statement is required. This section then tracks

Statute Section	Description of Record and Party With Possession
	subsection (b) above except that the authority to accept the statement shall rest with the agency receiving the request for approval. In any acceptance or rejection, the agency shall provide the applicant with specific findings and reasons for its determination. The applicant, within 60 days after rejection of a statement by an agency, may appeal the rejection to the environmental council, which shall notify the applicant of its determination within 30 days of receiving the appeal. The council shall provide the applicant and agency with specific findings and reasons for its determination. ....
Chapter 343D: Hawaii Environmental Disclosure Law	
343D-3	Any person owning beneficially 10 percent or more of any class of voting securities of any Hawaii corporation who seeks to purchase or pay for more than an additional 5 percent of any such security or 5 percent or more of the assets of such Hawaii corporation during any 12-month period shall comply with the following requirements: (1) filing a statement with the Office of Environmental Quality Control on a departmental form which includes: (A) a complete and detailed description of the person, its organization, its capitalization, and its operations, including a breakdown of sales for each line of business activity according to the applicable 4-digit-product-number listed in the most recent edition of the standard industrial classification manual published by the executive office of the president, office of management and budget; (B) copies of the person's audited financial statements, balance sheets, and income statements for the past five years; (C) a complete and detailed history of the person's prior compliance or noncompliance with all applicable environmental laws and regulations including rules of the federal government, any state government or any municipal government of the United States; (D) a description of all judicial and administrative proceedings during the preceding five years to which the person was a party and which involved any issue concerning any environmental law or regulations; (E) a complete and detailed statement of all intentions by the person to influence the issue of the voting security or any of its affiliates to take any action within the following five years which might require the filing of an environmental impact statement pursuant to Chapter 343; ....

Statute Section	Description of Record and Party With Possession

TITLE 20

SOCIAL SERVICES

Chapter 346: Department of Social Services and Housing
Part I. General and Administrative Provisions

346-5	The director of Social Services shall file with the Governor a written report at least once each year ... covering the condition and activities of the department and each of its divisions.
346-10	(a), (b), (c), (f), and (g). See, Exhibit 2 in this Appendix re: confidentiality.
	(a) Subject to the confidentiality provisions of this section, the use or disclosure of information concerning applicants and recipients shall be limited to: (1) persons authorized by the state or the federal government whose official duties directly involve the administration of any form of public assistance, medical assistance, food stamps, or social services; or (2) purposes directly connected with any criminal or civil investigation or prosecution related to the administration of any and all forms of public assistance, food stamps, medical assistance, or social services, such as disclosure of information and documents by the department to the police, prosecutors, attorney general's office and other similar agencies for the purposes as specifically set forth in this subsection; and other specific public and private agencies and businesses directly involved in public assistance programs, social welfare organizations, and adult day care centers. ... (d) The use of the records, and other communications of the department or its agents by any other agency or department of government to which they may be furnished, shall be limited to the purposes for which they are furnished. (e) "Confidential information" shall be released if requested by specific written waiver of the applicant or recipient concerned.
346-11	See, Exhibit 3 in this Appendix re: Penalties.
346-13	(b) On the written request of the director of DSSH or a representative, a financial institution including but not limited to banks, savings and loan associations, and credit unions, shall furnish the records of accounts, deposits and withdrawals of any applicant for or recipient of public assistance. The director shall

Statute Section	Description of Record and Party With Possession
	require every applicant for public assistance to furnish written consent to authorize any financial institution to furnish the records of accounts, deposits, and withdrawals of such applicant. At the time of the written request for information, the director shall provide to the institution written certification that the applicant for or recipient of public assistance has furnished such written consent.
346-16	(a) As used in this chapter: ... "criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.
346-17	... As a condition for a certificate of approval, any (child placing) organization, (child caring) institution or (foster boarding) home shall meet the standards set by the department to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346-19.6 .... An applicant for a certificate of approval shall submit statements signed under penalty of perjury by the operators, employees and new employees of the facility, indicating whether such persons were ever convicted of a crime other than a minor traffic violation involving a fine of $50 or less, and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. Operators and employees of the facility shall be fingerprinted for the purpose of complying with the record check. New employees of the facility shall be fingerprinted within five working days of employment for the same purpose. The department shall obtain criminal history record information through the Hawaii Criminal Justice Data Center on all such persons of child care facilities subject to licensure pursuant to this section. ... The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to applicable federal laws and regulations.
346-29	Applications for public assistance under this chapter shall be made by the applicant or his representative in the manner, place and form prescribed by the department.

Statute Section	Description of Record and Party With Possession
346-29.5	(a) DSSH may require any person applying for or currently receiving assistance under the department's programs, whether aid to families with dependent children, medicaid, food stamps, general assistance or other aid, who owns or has any interest in real property, that person shall enter into an agreement with the department creating a lien against the interest in real property for any future grants of assistance, which shall remain until satisfied and discharged, except for home property lived on by the assistant's household where the lien shall be limited to $20,000.
346-54	The director shall submit a report to the Legislature concerning the adequacy of the basic needs allowance and shelter allowance established by this chapter, on or before January 1 of each odd numbered year. If general fund expenditures or financial assistance and medical payments increase at a rate greater than the rate of increase in general fund tax revenues in any fiscal year, the director shall report the increases to the Legislature and make cost control recommendations.
Part IV. Services to Adults	
346-72	Applications for general assistance shall be made by the applicant or his representative in the manner, place, and form prescribed by DSSH.
346-83	The department shall recruit and license day care centers for the elderly, disabled and aged persons.
Part VII. Resident Alien and Naturalized Citizen Program	
346-144	(a) A person desiring to return to the person's homeland may make application to the director, with evidence from a recognized agency or other means to insure that the person's health and welfare will be protected on return to the person's homeland. ... On approval, the qualified person shall be required to sign a statement of intent to take up permanent residence in the qualified person's homeland. On signing the statement, the director shall enter into a contract as provided under section 346-143 to provide transportation assistance for the qualified person.

Statute Section	Description of Record and Party With Possession
Part VIII. Child Care Facilities	
A. General	
346-153	For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints or violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations and reissuances of licenses, temporary permits, and registrations issued under this part. Regardless of any other law to the contrary, such record shall be "available for inspection in the manner set forth in section 92-51;" provided that with respect to records of family child care homes and group child care homes, sensitive personal information or information provided with the understanding that the department would not publicly divulge said information, such shall be "deleted or obliterated prior to making records available to the public." Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint subject to an ongoing investigation up to ten working days following the filing date of the complaint. For criminal investigations, "no information shall be released" until the investigation is complete and the director has determined that release of the information will not jeopardize any legal proceeding.
346-154	This section provides for criminal history record checks of an applicant to operate a child care facility in the same manner as set forth in section 346-19.6 above.
B. Group Child Care Home and Group Child Care Center Licensure.	
346-161	No person shall operate, maintain or conduct a group child care home or group child care center without a license from the department.
346-163	... A temporary permit may be issued for a period of six months by DSSH to any applicant who is temporarily unable to conform to all of the minimum standards. ... Licenses and permits shall be conspicuously posted on the licensed premises.
346-166	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
C. Family Child Care Home Registration	
346-171	Any person operating or maintaining a family child care home shall register with DSSH.
346-173	A person shall apply to DSSH to register the person's home as a family child care home. On receipt of the application, DSSH shall conduct a study of the applicant's qualifications, home and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes him to operate a family child care home subject to compliance with the minimum requirements established in section 346-172 and criminal history record checks under section 346-154.
346-174	(a) The department shall maintain a registry of registered family child care homes and make the information in the registry "available to the general public upon request." The department may also provide for publication and dissemination of the registry through the news media or other means. (b) The provider of child care in a family child care home shall give to each parent or legal guardian of a child a copy of the provider's certificate of registration on request.
Chapter 348E: Commission on the Handicapped	
348E-3	The commission shall perform the following duties: ... (3) conduct research, studies and other appropriate activities designed to provide additional information on the handicapped, with particular reference to specific needs of the handicapped, and to publicize the results thereof.
348E-5	The commission shall annually report its activities to the Governor and the Legislature, and may include recommendations.
Chapter 349: Executive Office on Aging	
349-5	(b) The planning and administrative services division (of the Executive Office on Aging) shall engage in the following activities: ... (2) preparation of an annual evaluation report on elderly programs for the Governor and Legislature; (3) preparation of studies and analyses; (4) maintenance of personnel records; ... (c) the community assistance and program management

Statute Section	Description of Record and Party With Possession
	division (for the Executive Office on Aging) shall engage in the following activities: ... (6) establishment of a state-wide information and referral system, and an annual inventory of elderly programs and service agencies; ....
349-6	The executive office on aging is responsible for the development, implementation and continuous updating of a comprehensive master plan for the elderly which shall include, but not be limited to, the objectives described by this section.
349-12	(b) The executive office on aging shall have responsibility to represent the interests of residents of long term care facilities, individually and as a class, and to promote improvement in the quality of care received and the quality of life experienced by these residents within the state. In meeting this responsibility, the office shall: ... (7) establish procedures for appropriate access by the office to all patient records or portions thereof necessary for the office to evaluate the merits of complaints; provided that patient records shall be divulged only with the written consent of the patient or the patient's legal representative; (8) establish procedures for appropriate access to files maintained by the office, except that the identity of any complainant or resident of a long term care facility shall not be disclosed unless: (A) the complainant or resident, or their legal representative, consents in writing to such disclosures; or (B) the disclosure is required by court order.
Chapter 349C: Elderly Abuse or Neglect	
349C-2	Any medical personnel, social worker, law enforcement officer, medical examiner or coroner, acting in his professional capacity with reason to believe that an elderly person is or has been a subject of elderly abuse or neglect shall promptly report the matter orally to the Department of Social Services and Housing. This reporting responsibility also applies to persons in charge of hospital or medical facilities who receive reports of such abuse from the hospital or facility staff examining, attending or treating an elderly person. The initial oral report shall be followed as soon as possible by a written report to DSSH. All written reports shall contain the name and address of the elderly person and the person who is alleged to have

Statute Section	Description of Record and Party With Possession
	committed or had been responsible for the elderly abuse or neglect, if known, the nature and extent of injury or harm, and any other relevant information.
349C-8	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 350: Child Abuse	
350-1	"Report" means the oral or written disclosure to the Department of Social Services and Housing (DSSH), that a minor is believed to have been harmed or threatened with harm by parent, legal guardian, or person responsible for that child's care.
350-1.1	(a) Certain members of the community, such as licensed or registered health care professionals, public or private school employees, employees of medical or social welfare agencies or services, law enforcement employees, employees of child care facilities, or homes or similar institutions, and medical examiners and coroners, and as more specifically set forth in this section, shall promptly report knowledge or reasons to believe actual or threatened child abuse or neglect to DSSH orally, with a report to follow. All written reports shall contain the name and address of the minor and the minor's parents or other persons responsible for the minor's care, if known, the minor's age, the nature and extent of the minor's injuries and any other information relevant to establishing the cause of the injuries.
350-2	... The department shall maintain a central registry of reported cases and may adopt rules to carry out this section.
350-3	Anyone making a good faith report under this chapter shall have immunity from any liability, civil or criminal, that might otherwise result from making a report. This immunity shall extend to participation in any judicial proceeding resulting from such report.
350-6	See, Exhibit 2, in this Appendix re: confidentiality.
Chapter 351: Criminal Injuries Compensation Part II. Establishment of Commission	
351-13	On an application made to the criminal injuries compensation commission under this chapter, the commission shall fix the time and place for hearing on the application and serve notice to the applicant.

Statute Section	Description of Record and Party With Possession
Part III. Compensation to Victims or Dependents	
351-31	(d)... On application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent or that the release of the investigation report would be detrimental to the public interest.
351-70	The criminal injuries compensation commission shall annually transmit a report to the Governor and the Director of Finance of its activities, including a brief description of the facts in each case, the amount of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The Director of Finance shall transmit the report with a tabulation of the total amount of compensation awarded, and a legislative bill appropriating funds necessary to replenish the compensation fund for the amounts awarded. On request of the Governor, the Director of Finance, or the Legislature, the commission shall provide relevant data including the names of all applicants for compensation under this chapter.
Chapter 352: Hawaii Youth Correctional Facilities	
352-5.5	Staff members of the facility shall submit a statement under penalty of perjury concerning convictions for crimes other than minor traffic violations, and providing consent to the department to conduct a criminal history record check and obtain other criminal history record information for verification. Staff members shall provide fingerprints. The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff members and new staff members of the facility. Information obtained shall be used exclusively for the stated purpose for which it was obtained, and subject to federal laws and regulations.
352-7	The director shall establish a record of all facts relating to the admission, discharge, escape, death, medical history, programs and significant occurrences concerning a committed person. The director shall also account for all monies received for work performed by the committed person and received from other authorized sources.

Statute Section	Description of Record and Party With Possession
352-18	All sums collected pursuant to section 352-16 (establishment of work release) and 352-17 (compensation in facilities) and other authorized sources shall be placed in a bank trust account or federally insured savings account to the credit of the committed person. The director or his agent shall maintain an individual ledger account for each committed person and shall issue each person a periodic statement showing deposits and withdrawals.
352-26.1	The director, with the concurrence of the police, shall publicly disclose the name, the place of residence, a photograph, and prior adjudications for offenses which may be adult felonies, of any person who escapes or are committed to the youth correctional facility; provided that the crime resulting in commitment involved the use or threat of force or violence punishable as felony.
Chapter 353: Corrections Part I. Prisons and Prisoners Generally	
353-1.4	An intake service center for each of the counties is established within DSSH. The overall state executive director for all of the service centers shall set policy and provide for the operation of the centers, and provide periodic reports, at least annually, on their operations to the Governor.
353-1.6	The intake service center shall notify the prosecutor's office of the appropriate county whenever it is recommending to the court that a person accused of a class A felony involving force or violence against another be conditionally released or receive lower bail. The center shall provide the notice on completion of its investigation on the offender's case to allow presence of the prosecution when the court considers the recommendation.
353-6.5	The director of DSSH shall establish a correctional diagnostic center staffed by psychiatrists, social and correctional workers, technician, and other personnel to determine which correctional treatment program and facility will best rehabilitate the prisoner.
353-7	Hawaii Paroling Authority, its members and the director of DSSH shall have access to all state correctional facilities, all related records and books, and otherwise inquire about committed persons whether confined or on parole.

Statute Section	Description of Record and Party With Possession
353-8	DSSH shall establish a record of all facts relating to the admission, sentence, commutation, parole, pardon, discharge, escape, death and correctional programs of any committed person and also all actions that are taken for breach of correctional rules and other occurrences concerning the committed person.
353-9	DSSH shall file all warrants, mittimuses processes and other official papers or copies by which any prisoner has been committed, paroled, liberated or retaken and safely keep them in a suitable box or safe.
353-10	The medical officer of a correctional facility shall carefully examine the committed person on admission and establish a medical record, entering a statement of the committed person's physical condition on entry and all subsequent medical treatment and examination while a committed person resides at a state correctional facility.
353-45	Each prison or jail shall keep a record styled the commutation book, with the name of every prisoner confined in the prison. On a separate page, the name of each prisoner, a record of his conduct, and whether commutation has been granted, withheld, forfeited or restored from or by the prisoner, and the reasons therefor shall be entered. The records or true copies of them shall be shown to the Governor when considering petitions for executive clemency. (Section is repealed for prisoners with minimum sentence after June 7, 1967. SLH 1967 Chap. 264, section 2.)
Part II. Paroles and Pardons	
353-62	(b) In its operations, the Hawaii paroling authority shall: (1) keep and maintain a record of all meetings and proceedings; (2) send a detailed report of its operations to the Governor every three months; ....
353-70	The Hawaii paroling authority may grant the prisoner a written discharge from further liability under the prisoner's sentence when any paroled prisoner meets the requirements of the statute in the opinion of the authority.

Statute Section	Description of Record and Party With Possession
353-71	Hawaii paroling authority may appoint parole officers and assistant parole officers, whose duties shall include keeping a (1) record of all paroled prisoners and information concerning employment and wages, health, conduct and environment and to receive reports of the same, and conduct investigations, make monthly reports to the paroling authority, and such additional reports as called for.
Chapter 354: Correctional Industries	
354-6	DSSH shall prepare catalogs containing the description of all articles and products manufactured or produced under this chapter, with copies sent to all offices, departments and agencies of the state and all political subdivisions.
354-9	The administrator of the correctional division, DSSH, shall annually make a detailed statement of all materials, machinery or other property procured and the cost and expenditures made during the past year for manufacturing purposes, together with other statements, including earnings realized during the last preceding year as the proceeds of the labor of the prisoners of the correctional facilities, which statement shall be verified under oath.
Chapter 356: Hawaii Housing Authority; Low Income Housing Part I. General Provisions	
356-6	(a) The Authority shall, ... develop and maintain a housing information system, that shall make available current information on housing conditions, needs, supply, characteristics, developments, trends, federal housing programs, housing laws, ordinances rules and regulations. ... (c) The information system may be used by housing researchers, planners, administrators, and developers, and shall be coordinated with other housing research efforts. The Authority shall maintain a current supply of information, including means to gather new information through surveys, contracted research and investigations, and shall by rule provide for access to the information system at reasonable rates on an equitable basis.
356-13	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession
356-26	The Hawaii Housing Authority shall file at least annually with the Governor a report of its activities and make any relevant legislative recommendations. The Authority shall report to the state comptroller on monies deposited in depositories other than the state treasury under section 40-81 and relevant rules.
Part II. Housing Loan and Mortgage Programs	
356-201	"Eligible Improvement Loan" means a loan to finance an eligible improvement to the owner of the house or condominium unit provided that the owner meets the requirements of an "eligible borrower" as described by this section. "Eligible Loan" means a loan to an eligible borrower for the permanent financing of a dwelling unit as provided by this section. "Eligible Project Loan" means an interim or permanent loan, which may be federally assured a guarantee, made to a "qualified sponsor" for the financing of a rental housing project, and other requirements as established by the Authority. "Housing Loan Programs" includes all or any part of the loan to lender's program, the purchase of existing loans program, the advanced commitments program, and the loan funding programs authorized by this part.
Chapter 359: State Housing Projects Part III. Housing for Elderly Persons	
359-52	"Elderly Housing Study" means a study of a designated geographic area conducted by the Authority as a prerequisite to the development and construction of any elderly housing project in that area and shall be made "public." The study shall address the issues raised by this section, including but not limited to qualitative and quantitative information and data relating to the shortage of dwelling units exclusively for elderly persons, the numbers who need and qualify for such housing in the geographic area, a list of lands available for possible development and desirable public and private facilities for elderly persons.
359-53	(c) Prior to the development of any housing projects for elderly persons, the site, plans and specifications, estimated development costs, including administrative and other costs, operation or management plans for such projects which shall include income receipts and other

Statute Section	Description of Record and Party With Possession
	operating costs, shall be submitted by the developer and shall be subject to the prior written approval of the authority.
359-63	An applicant shall be entitled to elderly housing under this chapter if he has insufficient income or other resources to provide a subsistence compatible to decency and health. The Authority shall consider current available resources, including all assets transferred or assigned by the applicant to other parties within the three years prior to submittal of his application, and shall be based on their fair market value as of the date of transfer.
Chapter 359G: Hawaii Housing Authority--Housing Projects	
359G-12	(k) A special fund known as the "state mortgage guarantee fund" is created, with all interest and fees collected by the director of Finance and the Hawaii Housing Authority under this section deposited into this fund. ... All disbursements from this fund shall be paid out on vouchers approved by the director of Finance and warrants signed by the comptroller.
359G-24	(a) All applications for participation loans shall be on forms prescribed by the Authority, and signed both by the borrower and the lender. The application shall contain a description of the residential property for purchase, the purchase price, the amount of the down payment from the borrower and a statement from the private lender indicating its portion of the total loan. The private lender shall process the application and forward it to the Authority. (b) The Authority shall review all applications and determine the state's share of the loan on those loans approved for state participation made to persons who qualify under section 359G-23 and the rules of the Authority.
Chapter 363: Veterans Rights and Benefits	
363-3	The Department of Social Services and Housing (DSSH) shall: ... (3) Assemble, analyze, compile and disseminate factual information with respect to benefits, rights and services of whatever nature available to veterans, their families and dependents, and the structure, functions, aerial service and other information regarding each agency and organization participating in the veterans assistance program in the state.

Statute Section	Description of Record and Party With Possession
Chapter 367: Status of Women	
367-3	The Commission on the Status of Women shall: ... (2) accumulate, compile and publish information concerning instances of actual discrimination and discrimination in the law against women; ... (11) submit an annual report with recommendations to the Governor and the Legislature.

TITLE 21

LABOR AND INDUSTRIAL REATIONS

Chapter 371: Department of Labor and Industrial Relations	
371-7	In addition to other duties conferred on the Department of Labor and Industrial Relations (DLIR), the department shall: (1) file with the Governor a written report at least annually covering the condition and activities of the department; (2) make, modify and repeal rules of general application for the protection of life, health, and safety of employees in every employment or place of employment, that shall not conflict with rules of DOH covering the same subject; (3) make other rules necessary to carry out the chapter. For any practical difficulties or unnecessary hardships in carrying out the rule, the director of DLIR may, after public hearing, make a variation from such requirement if the spirit of the rule is observed. Any person affected by the rule or his agent may petition for variation, stating the grounds therefor. ... A properly indexed record of all variations made shall be kept in the office of the department and shall be "open to public inspection."
Chapter 372: Apprenticeship	
372-5	The director of DLIR shall: (5) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship; ....
Chapter 373: Commercial Employment Agencies	
373-2	No employment agency shall engage in business without a license obtained under this chapter and the rules of the director of Commerce and Consumer Affairs ("DCCA").

Statute Section	Description of Record and Party With Possession
373-5	(a) Every individual or legal entity seeking a license to operate an employment agency shall file a written application with the director containing the information and on the form as he may require. The applicant must also pass a certified employment consultant examination or have in its employ a principal agent. (b) and (d) Every principal agent and an employment agency seeking a branch office, respectively, shall file a written application with the director.
Chapter 373C: Occupational and Career Information Part I. Findings and Purpose	
373C-2	This chapter provides for the development and delivery of occupational and career information on a state-wide basis, and other related goals as described by this section.
Part II. Hawaii State Occupational Information Coordinating Committee	
373C-12	The Hawaii State Occupational Information Coordinating Committee shall coordinate the development, dissemination, and application of occupational and career information to enable the planning of occupational, educational and employment training, and for the delivery and use of career information in educational occupational decision-making by youth, trainees and job seekers.
Part III. Hawaii Occupational Information Systems	
373C-22	The Hawaii State Occupational Information Coordinating Committee shall facilitate the development, implementation and application of the Hawaii Occupational Information System.
Part IV. Hawaii Career Information Delivery System	
373C-31	The Hawaii Career Information Delivery System shall be a part of the Occupational Information System, and shall develop and deliver occupational and educational information used for career choice and job search purposes.
Part V. Hawaii Occupational Employment Planning System	
373C-41	This Occupational Employment Planning System shall develop and deliver occupational employment demand and

Statute Section	Description of Record and Party With Possession
	supply information used for planning by employment, training, vocational education and rehabilitation, economic development and other agencies as well as private industry and individuals.
Chapter 375: Garment Industry Home Work	
375-2	Any person performing industrial home work in the garment industry shall obtain a special industrial home work certificate issued in effect for each industrial home worker.
375-3	Each employer shall apply for special industrial home work certificates from the director of Labor and Industrial Relations on departmental forms containing all information required and signed by the employer and the industrial worker.
375-9	A copy of the certificate shall be sent to the home worker who shall keep the copy on the premises where the work is performed. A copy shall also be sent to the employer who shall keep the copy on file with the worker's employment records.
Chapter 377: Hawaii Employment Relations Act	
377-9	(b) Any party in interest may file with the Hawaii Labor Relations Board a written complaint charging any person with having engaged in any specific unfair labor practice. ... The board shall set a time for hearing on the complaint and notice shall be given to each party by personal service or by mail to the party's last known address. ... (c) The board shall keep a full and complete record of all proceedings before it, and a reporter shall take down all testimony and proceedings. A transcript of the record is unnecessary, except for purposes of rehearing or court review.
377-13	The complaints, orders, and testimony relating to a proceeding instituted by the board under section 377-9 shall be "public records and be available for inspection or copying." All proceedings pursuant to section 377-9 shall be "open to the public."

Statute Section	Description of Record and Party With Possession
Chapter 381: Labor Dispute; Public Utilities	
381-5	The emergency board (appointed under this chapter) shall notify the employer and the employees or their representatives of the time and place for commencement of hearings, ... The board shall ascertain the facts of the controversy and use its best mediation efforts to bring the parties into agreement. ... The 20-day period within which to hold meetings may be extended by the board with written consent of the parties. A copy of the consent shall be filed with the director of Labor and Industrial Relations. Within three days of the termination of the hearings, the board shall submit to the Governor a written report setting forth findings of fact and stating the position of each of the parties as to each agreed issue, and each disputed issue existing at the termination of the hearings. Within five days from receipt of the findings of the board and if no agreement is reached during this period, the Governor shall make the findings of the board "public."
Chapter 383: Hawaii Employment Security Law Part II. Benefits	
383-32	Claims for benefits shall comply with the rules of the Department of Labor and Industrial Relations (DLIR).
383-33	DLIR shall promptly determine a claim filed under section 383-32, and include a statement as to whether and what amount the claimant is entitled to benefits for the week with respect to which the determination is made and in the event of a denial, shall state the reasons therefor.
Part IV. Administration	
383-94	... Each employer shall report all new employees hired within five working days after the first date of employment, and shall report separation of any employee and the wages paid such employee within five working days after the last day of employment.

Statute Section	Description of Record and Party With Possession
383-95	(a) See, Exhibit 2 in this Appendix re: confidentiality. Any claimant or his legal representative shall be supplied with information from the records of the department necessary for proper presentation of his claim in any proceeding under this chapter. This section also provides for disclosure of information and determinations to numerous state and federal agencies involved with unemployment compensation, public employment, the federal Internal Revenue Service, and where the disclosure serves the public interests, all as more specifically described in this section.
383-102	(a) DLIR may make such summaries, compilations, photographs, duplications or reproductions of any records, reports or transcripts as deemed advisable for effective and economical preservation of information and such duly authenticated documents shall be admissible in any proceeding under this chapter if the original is otherwise admissible. (b) The department may establish rules for the destruction or disposition after reasonable periods, of any records, reports, transcripts or other papers in its custody, where preservation is no longer necessary to establish contribution liability or benefit rights or for any purpose necessary to the proper administration of this chapter, including audits.
Part VI. Penalties	
383-144	See, Exhibit 3 in this Appendix re: Penalty.
Part VII. Miscellaneous Provisions	
383-163.5	(a) An individual filing a new claim for unemployment compensation at the time of such filing shall disclose whether or not the individual owes child support as defined under subsection (g) of this section. Subject to the provision referred to above, this section provides for limited disclosure of information to: (1) officials administering the laws relating to matters under jurisdiction of the director of DLIR; (2) any agency of this or any other state or any federal agency for enforcement of this chapter; (3) any employee for the proper presentation of his claim under section 387-12; and (4) to the Wage, Hour, and Public Contracts Divisions of the U.S. Department of Labor.

Statute Section	Description of Record and Party With Possession
Chapter 386: Workers' Compensation Law Part III. Administration	
386-86	The director shall investigate as necessary any claim made for compensation and render a decision within 60 days after the conclusion of the hearing awarding or denying compensation, stating the findings of fact and conclusions of law. ... The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.
386-95	Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, when known to the employer or brought to his attention. Within seven working days after the employer gains knowledge of the injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, the employer shall report to the director of DLIR. The report shall set forth the name, address, and nature of the employer's business and the name, age, sex, wages, and occupation of the injured employee and shall state the date and hour of the accident, if the injury is produced thereby, and the nature and cause of the injury and such other information as the director may require. On December 31 of each year the employer shall make a report to the director for each injury on which the employer is continuing to pay compensation, showing all amounts paid by the employer on account of the injury. ... When an injury results in immediate death, the employer shall within 48 hours notify personally or by telephone a representative of DLIR in the county where the injury occurred. Within 30 days after final payment of compensation for an injury, the employer shall make a final report to the director showing the total payments made, the date of termination of temporary total disability, and such other information as required. ... Copies of all reports, other than those of fatal injuries, filed with the director under this section shall be sent to the injured employee by the employer.

Statute Section	Description of Record and Party With Possession
386-96	Any physician, surgeon, or hospital that renders treatment or any service to an injured employee shall make a report of the injury and treatment on DLIR forms and in the nature of an initial report, interim report, and final report in the form, manner and time table as specified by this section. ... The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one, a copy of the final report of each physician or surgeon.
Part IV. Security for Compensation; Employment Rights of Injured Employees; Funds--C. Special Compensation Fund	
386-151	(c) The director shall annually appoint a certified public accountant to examine and audit all the books and records relating to the special compensation fund and shall advise the director as to the fund's solvency, including recommendations on levies and charges provided for in section 386-152 and the required level of funding.
386-152	... The director shall annually furnish each insurance company provided for in section 386-153 and each employer provided for in section 386-154 with a copy of the certified public accountant's audit report and recommendations.
Part VI. Self-Insurance Groups	
386-193	No person, association or other entity shall act as a workers' compensation self-insurance group unless the insurance commissioner has issued a certificate of approval to the person or entity.
386-194	(a) A proposed workers' compensation self-insurance group shall file with the insurance commissioner its application for a certificate of approval accompanied by a fee. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may require together with numerous items as specified by this section, including but not limited to proof of compliance with subsection B of this section, copies of its articles of association, if any, agreements with the administrator or any service company, bylaws of the proposed group, the workers' compensation benefit agreements between the group and each member and so forth.

Statute Section	Description of Record and Party With Possession
386-200	Except for a salaried employee of a group, its administrator, or its service company, any person soliciting membership in a workers' compensation self-insurance group shall be licensed as a general agent or some agent under sections 431-361 through -407.
386-201	(a) Each group shall submit to the insurance commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the insurance commissioner and shall include but not be limited to actuarially appropriate reserves for: (1) known claims and expenses associated therewith; (2) claims incurred but unreported and expenses associated therewith; (3) unearned premium; and (4) bad debts, reserves for which shall be known as liabilities. An actuarial opinion for (1) and (2) above shall be included in the audited financial statement. ... (c) The insurance commissioner may prescribe the format and frequency of other reports which may include, ... , payroll audit reports, summary loss reports and quarterly financial statements.
386-204	(d) Each (self-insurance) group shall be audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. The audit report shall be filed with the commissioner.
Chapter 387: Wage and Hour Law	
387-8	See, Exhibit 2 in this Appendix re: confidentiality. Subject to the provision referred to above, this section provides for limited disclosure of information to: (1) officials admnistering the laws relating to matters under jurisdiction of the director of DLIR; (2) any agency of this or any other state or any federal agency for enforcement of this chapter; (3) any employee for the proper presentation of his claim under section 387-12; and (4) to the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor.
387-12	See, Exhibit 3 in this Appendix re: Penalties.

Statute Section	Description of Record and Party With Possession
Chapter 392: Temporary Disability Insurance Part V. Determination--A. Appeal Procedure	
392-72	(b) ... Unless the appeal is withdrawn with the referee's permission, and after a reasonable opportunity for a fair hearing, the referee shall make findings and conclusions and either affirm, modify, or deny the disputed benefits. The referee shall promptly notify all parties of the decision and furnish a copy of the decision, the findings and conclusions in support thereof....
392-73	... A record shall be kept of all testimony and proceedings in connection with an appeal, but the testimony need not be transcribed unless further review is initiated.
Chapter 396: Occupational Safety and Health	
396-11	Any citation, proposed penalty or order of the director of DLIR shall be final and conclusive against the employer unless he files with the director a written notice of contest of the citation, the abatement period stated in the citation, the proposed penalty order within 20 days after receipt of such citation, proposed penalty or order....
396-13 and 14	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 397: Boiler and Elevator Safety Law	
397-7	(a) Any person may complain to the department and where the department has reasonable grounds to believe a hazard may exist, an inspection shall occur in response to the complaint. (b) See, Exhibit 2 in this Appendix re: confidentiality.
397-11 and -12	See, Exhibit 2 in this Appendix re: confidentiality.

Statute Section	Description of Record and Party With Possession

TITLE 22

BANKS AND FINANCIAL INSTITUTIONS

Chapter 401: Commissioner of Financial Institutions

401-3	... The commissioner shall keep in his office proper records showing the acts, matters, and things done by the commissioner under this chapter.
401-4	... On the close of the examination (of the offices of the corporations, agents of the business being examined, and their records as described by this section) by the commissioner, he shall make a full and detailed report of the condition of the affairs of the banking and fiduciary companies, corporations or individuals, that have been examined by him, in the form prescribed by the schedule in section 401-11. The report shall be filed with the records of the Division of Financial Institutions.
401-5	When the commissioner of Financial Institutions finds an apparent violation of the law, or an unsafe or unauthorized conduct of a licensee's business from any examination or report of a bank, trust company, building and loan association, fiduciary company, industrial loan and investment company or a licensee under chapter 409, the commissioner shall, by an order in writing, direct the discontinuance of the illegal, unsafe, or unauthorized practice and enforce strict conformity to the requirements of law. ....
401-6	Following an examination of the institutions described above in section 401-5, by an examiner who finds securities owned or otherwise held in any fiduciary capacity which are, in the examiner's judgment, of doubtful value, he shall then report this to the commissioner, who is authorized to investigate and appraise the securities at bank expense. If the commissioner finds any unsafe or unauthorized conduct of the business, by the entity or its licensee, the commissioner in his discretion or at the request of the institution may audit the affairs of the institution at its own expense.

Statute Section	Description of Record and Party With Possession
401-10	Any officer, director, partner, individual subject to examinations under this chapter shall immdiately in writing notify the commissioner of the circumstances of any act of robbery, embezzlement, or fraud committed in connection with the operations of the institution involving an amount in excess of $2500.
401-11	Every institution as described in section 401-5 above shall submit semi-annual reports to the commissioner. ... The report shall be made in the form prescribed by the commissioner and shall show the assets and liabilities, all losses sustained, expenses and taxes paid, gross earnings and profits, losses recovered since last reported, payments made by stockholders, and all amounts carried to surplus, undivided profits or dividends paid. These institutions shall also file such special or supplementary reports as the commissioner deems necessary in the public interest and requires in writing. Every bank, trust company, building and loan association, fiduciary company or industrial loan and investment company shall publish twice a year a statement of its assets and liabilities as of December 31 and June 30.
401-14	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 403: Hawaii Bank Act of 1931 Definitions, General Provisions	
403-13	Every person acting as a bonafide investment banker and using terms provided for in section 403-12 shall first make application to the commissioner who shall prescribe the form of application for a license that includes, among other things, the name and business address of the person residing within the state on whom legal notice and process, or notice from the officials of the state may be served. All information relative to corporations, domestic or foreign, shall be provided as required.

Statute Section	Description of Record and Party With Possession
Organization and Corporate Powers; Branch Banks	
403-23	Any number of persons, not less than five, at least three of whom shall be residents of the state, may file an application with the commissioner for authority to organize a bank, and such organization shall not occur until the commissioner gives written authority for that purpose. The application in regard to the proposed bank shall contain the information as specified by this section.
403-28	When authorized in writing by the commissioner under section 403-25, any number of persons, not less than five, of whom at least three shall be residents of the state, may associate themselves by Articles of Incorporation to establish a bank under this chapter, subject to the terms of this chapter. The Articles of Incorporation shall specify information as required by this section.
403-30	Within 30 days after issuance of a certificate of incorporation, the corporation shall file an application for a solicitation permit, containing the following information as required by this section, including but not limited to the solicitation plan, classes of shares and respective quantities, subscription prices of the classes of stock, and other information. The application shall be accompanied by the following exhibits, including but not limited to, the prospectus used in soliciting subscriptions, the bylaws of the corporation, the underwriting, escrow and subscription agreements, and advertising material.
403-32	Any bank hereafter organized shall file with the commissioner: (1) An application for a charter to do a banking business; (2) a list of shareholders, showing name, address, number of shares, and amount paid on same, sworn to by the president or cashier; (3) the sworn certificate of the president, cashier or secretary, that the bank has complied with all requirements of law; (4) a list of directors and officers elected; (5) the oaths of office of the directors and officers of the bank; (6) a copy of its bylaws certified by its president or cashier.

Statute Section	Description of Record and Party With Possession
403-55	Any bank desiring to open and maintain a branch bank or change the location of an established branch shall file a petition with the commissioner of the state on approved forms stating the information as required by this section.
Directors; Bank Auditor	
403-68	At least twice in every year, every bank shall be examined by an auditor or auditors elected annually by the shareholders of the bank in general meeting. ... The auditor shall make a report to the shareholders on the examination made by him and on every balance sheet laid before the shareholders of the bank in general meeting during the auditor's tenure of office; every report shall state whether in the auditor's opinion the balance sheet referred to in the report is a full and fair balance sheet, properly drawn up, so as to exhibit a correct view of the state of the bank's affairs as shown by the books of the bank, and the report shall be read before the shareholders of the bank in general meeting.
Chapter 406: Trust Companies Organization; General Powers	
406-1.5	Any corporation or joint-stock company organized under Hawaii law may file an application with the commissioner for authority to do business as a trust company. The application shall specify the information as required by this section. Including but not limited to the location of the company, that the amount of the capital stock of the company shall be fully paid in cash to the company before commencement of its business, the names and residence addresses of all subscribers to the capital stock of the company, including the number of shares, the amount of capital stock subscribed and percentage of ownership; and such other information as required by this section.

Statute Section	Description of Record and Party with Possession
406-27	Each common trust fund shall be established and maintained in accordance with a written plan approved by resolution of the board of directors of the trust company. The plan shall state the manner of operation of the fund, the apportionment of income, capital gains and losses, and other information as specified by this section. The plan shall be available at the principal office of the trust company during regular business hours for inspection by any person having an interest in a fiduciary account any funds of which are invested in the common trust fund. The trust company shall designate clearly on its records the names of the fiduciary accounts on behalf of which the trust company, as fiduciary or co-fiduciary, owns a participation in the common trust fund and the extent of the interest of the fiduciary accounts therein.
406-37	Every trust company, before it commences business and as of June 30 and December 31 in every year, shall make a statement of its assets and liabilities as set forth in section 406-38 and 401-11. A copy of the verified statement shall be conspicuously placed in the principal office of the company, and shall be published by the company in a newspaper of general circulation approved by the commissioner at least once in each of three successive weeks.
Chapter 407: Savings and Loan Associations Organization	
407-11	Any five or more persons, of whom a majority are residents of the state, desiring to form a corporation to engage in the business of a building and loan association under this chapter, shall file an application with the commissioner in writing and under oath, for authority to organize such association.
407-12	The application in duplicate shall specify: (1) the proposed location, the amount of capital (not less than the minimum required by this chapter), the corporate name; (2) the names of the proposed subscribers to the capital stock and the amount of stock for each, the names of proposed active officers and directors; (3) any other information required by the commissioner.
407-14	When authorized in writing by the commissioner under section 407-13, any five or more persons, three of which are residents of the state, may associate themselves by

Statute Section	Description of Record and Party with Possession
	Articles of Association to establish a building and loan association under this chapter. The Articles of Association shall be executed and specify information as required by this section. At the time of filing of the Articles, the president, secretary and treasurer of the association shall file with the commissioner a sworn affidavit setting forth the amount of subscribed capital stock and the number of shares representing it, the names of subscribers for shares, with their post office addresses and the amount of capital initially paid in cash on each subscription.
407-35	Any agent employed by any building and loan association doing business in the state shall not solicit the sale of stock, savings certificates, or investment certificates without a license from the commissioner. The applicant must make and file his application in the office of the commissioner showing his name, business and residence address, the name of the company represented, present occupation, occupation for the last 12 months and other information as required by the commissioner.
Members, Shares, and Reserves	
407-61.4	(a) Any person seeking control of an association, foreign association, savings and loan holding company or foreign holding company shall obtain prior approval of the commissioner to the proposed acquisition. (b) The proposed acquirer shall submit a written application for approval to the commissioner, verified under oath, and containing such information regarding the applicant and details concerning the acquisition as required by the commissioner. (d) See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 408: Industrial Loan Companies	
408-7	No company shall engage in the industrial loan business without first obtaining a license to engage in the business subject to the conditions of this chapter.
408-8	(a) Any company desiring a license to operate under this chapter shall file a written application under oath with the commissioner containing the information as required by this section.

Statute Section	Description of Record and Party with Possession
408-21	(b) ... Each company shall file with the commissioner a report of its condition, affairs and operations for the six months ending December 31 and June 30 of each year. (c) Every company shall furnish any special or supplementary reports as the commissioner deems necessary to the public interest. The report shall be in writing under oath.
408-21.5	(a) Each industrial loan company issuing investment certificates under this chapter or debentures under chapter 45 shall submit within 90 days after the close of its books on a fiscal or calendar year, its financial statements prepared in accordance with generally acceptable accounting principles and audited by an independent certified public accountant. (b) ... The audit shall include, among other things, a direct verification of the installment investment certificate accounts, investment certificate accounts and debenture accounts. The report rendered by the indpendent certified public accountant shall include a statement as to the extent of the verification of the accounts. If consolidated financial statements are used, separate financial statements for the company and for each of its wholly-owned subsidiaries shall appear within the audit.
408-23	After the completion of an examination, the commissioner shall report in writing all findings to the director of Commerce and Consumer Affairs. A copy of the report may be provided to the licensee examined, that the report or other information made available to the licensee shall remain the property of the commissioner. The licensee, or any officer, director or employee thereof shall "not disclose any of the information." ....
408-27	See, Exhibit 2 in this Appendix re: confidentiality.

Chapter 408A: Industrial Loan Company Guaranty Act

408A-18	The guaranty corporation shall have authority to submit reports and make recommendations to the commissioner regarding the financial condition of any member. The commissioner shall have authority to order the member to implement such recommendations. Such reports and recommendations shall "not be public documents." No liability on the part of, and no cause of action of any nature, shall rise against the guaranty corporation or its directors, officers, employees or agents or the commissioner or his authorized representatives for any statement made by them in reports, recommendations or orders made hereunder.

Statute Section	Description of Record and Party with Possession
408A-21	No member of the board (of directors of the guaranty corporation) shall divulge any information acquired from the commissioner under section 408-27 except as necessary by this chapter, any other law or court order in any civil or criminal proceeding.
408A-31	In order to permit the guaranty corporation to fulfill its obligations under this chapter, the commissioner shall furnish to the corporation a list of all industrial loan companies with outstanding thrift account obligations.
Chapter 409: Small Loan Companies	
409-3	Any person, partnership, association or corporation shall first obtain a license from the commissioner before engaging in the business of making loans of money, credit, goods or things in action in the amount up to a value of $300 or less and charge, contract for or receive on any such loan a rate of interest, discount or consideration greater than one percent a month or as otherwise authorized by this chapter.
409-4	Any person shall submit a written application for a license under oath, containing the name, residence and business address of the applicant, and such other information as required by this section.
409-6	.... If the application (for a license under this chapter) is denied the commissioner shall prepare, file, and keep on file in his office a written decision containing findings and the reasons supporting the denial.
409-8	The license shall state the address where business will be conducted, state fully the name of the licensee, and if a co-partnership or association, the names of the members, and if a corporation, the date and place of its incorporation. The license shall be "kept conspicuously posted" in the place of business of the licensee and shall not be transferable or assignable.
409-25	... Each licensee shall annually file a report with the commissioner twice a year giving such relevant information as required to show the business, operations, and the results from operations for the six month period ending June 30 and December 31. The report shall be made under oath and each licensee shall furnish such other reports as required from time to time.

Statute Section	Description of Record and Party with Possession
409-29	... All the rules, regulations, directions, orders, decisions and findings shall be filed and entered by the commissioner in the Division of Financial Institutions in an index, permanent book or record with the effective date thereof suitably indicated, and the book or record shall be a "public document."
Chapter 410: State Chartered Credit Unions	
410-3	(a) There shall be a credit union review board appointed by the Governor. ... (b) The powers and duties of the board shall include ... (7) keeping detailed minutes of each meeting.
410-25	... A report of the examination (of the credit union) shall be forwarded to the chairman of the board of each credit union. The report shall contain comments concerning the management of the credit union and also the general condition of its assets. Within 30 days thereafter, a general meeting of the directors and committee persons shall consider the matter contained in the report and make a reply to the commissioner as required. ... In lieu of making an annual examination, the commissioner may accept an audit report of the financial condition of the credit union by a licensed public accountant or other qualified person.

TITLE 23

CORPORATIONS AND PARTNERSHIPS

Chapter 415: Hawaii Business Corporation Act	
415-9	Exclusive right to use a corporate name may be reserved by filing with the director an application to reserve a specified corporate name, executed by the applicant. If the name is available for corporate use, the director of Commerce and Consumer Affairs shall reserve the name for the exclusive use of the applicant for a period of 120 days. The right to the exclusive use of a specified corporate name may be transferred to any other person or corporation by filing in the office of the director a notice of such transfer, executed by the original applicant, and specifying the name and address of the transferee.

Statute Section	Description of Record and Party with Possession
415-14	... The director shall keep a record of all processes, notices, and demands served on the director under this section, and shall record therein the time of such service and the action taken.
415-16	(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall deliver to the director under section 415-55, a statement setting forth: (1) the name of the corporation; (2) a copy of the resolution establishing and designating the series, and fixing and determining relative rights and preferences thereof; (3) the adoption date of such resolution; and (4) that the board of directors duly adopted such resolution.
415-54	(a) The Articles of Incorporation shall be delivered to and filed by the director pursuant to section 415-55, setting forth those items of information as specifically described by this section.
415-61	The Articles of Amendment shall be delivered to and filed by the director under section 415-55, setting forth items of information as specifically described by this section.
415-74	On receiving the approvals required by sections 415-71, -72, and -73, Articles of Merger or of Consolidation shall be delivered to and filed by the director pursuant to section 415-55, setting forth the items of information as required by this section.
415-75	(c) Articles of Merger for a subsidiary corporation shall be delivered to and filed by the director pursuant to section 415-55, setting forth items of information as required by this section. (d) Thirty days after mailing a copy of the plan of merger to shareholders of the subsidiary corporation, or on waiver of the mailing by the outstanding shareholders, duplicate originals of the Articles of Merger shall be delivered to the director who shall file them pursuant to section 415-55.
415-82	A corporation which has not begun business and which has not issued any shares, may voluntarily dissolve through its incorporators by delivering Articles of Dissolution to the director for filing pursuant to section 415-55, setting forth items of information as required by this section. After filing the Articles, the director shall issue a certificate of dissolution.

Statute Section	Description of Record and Party with Possession
415-85	The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to and filed by the director under section 415-55.
415-90	The statement of revocation and of voluntary dissolution proceedings whether by consent of shareholders or by act of the corporation, shall be delivered to and filed by the director pursuant to section 415-55.
415-93	Articles of Dissolution shall be delivered to and filed by the director pursuant to Section 415-55. After filing of these Articles, the director shall issue a Certificate of Dissolution, with the effect as stated by this section.
415-103	Where the court enters a decree dissolving a corporation, the clerk of the court shall file a certified copy of the decree with the director.
415-106	No foreign corporation has a right to transact business in this state until it procures a Certificate of Authority to conduct business from the director. ...
415-110	In order to procure a Certificate of Authority to transact business in this state, a foreign corporation should apply to the director, setting forth the information as required by this section.
415-111	The application of the corporation for a Certificate of Authority shall be delivered to the director, together with a copy of its Articles of Incorporation, all amendments thereto, and a Certificate of Good Standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.
415-114	A foreign corporation authorized to transact business in this state may change its registered office, its registered agent, or both on delivery of a statement to and filed by the director setting forth the information as required by this section. ...
415-118	In the event a foreign corporation authorized to do business in this state changes its corporate name, or desires to pursue other or additional purposes in this state not described in its prior application for a Certificate of Authority, shall make an application for an amended certificate to the director. The form, contents, manner of execution and filing for the amended certificate shall be the same as in the case of an original application for a Certificate of Authority.

Statute Section	Description of Record and Party with Possession
415-119	An authorized foreign corporation may withdraw from this state on procuring a Certificate of Withdrawal from the director following an application for withdrawal, setting forth the information as required by this section.
415-122	On revoking any such Certificate of Authority, the director shall: (1) Issue a Certificate of Revocation in duplicate. (2) File one of the certificates in the director's office. (3) Mail to such corporation at its registered office in this state a notice of the revocation accompanied by the other certificate. ....
415-125	Each domestic and foreign corporation authorized to transact business in this state shall file an annual report within the time requirements of this chapter, setting forth the information as described by this section.
415-137	The director may require of any domestic or foreign corporation subject to this chapter, and to its officers or directors, such interrogatories as reasonably necessary to determine whether the corporation has complied with all applicable provisions of this chapter. ... The answers shall be full and complete, made in writing and under oath. ... The director need not file any document related to the interrogatories until they are answered, and not file the document if the answers disclose that the document does not conform with the provisions of this chapter. ....
415-138	Interrogatories produced by the director and their answers shall "not be open to public inspection" nor shall the director disclose any facts or information obtained, except insofar as the director's official duty may require the (interrogatories) to be "made public" or in the event such interrogatories or the answers are required for evidence in any criminal proceeding or any other action in this state.

Chapter 415B: Hawaii Non-Profit Corporation Act

Unless otherwise indicated, each section of Chapter 415B cited below represents documents delivered to the director of DCCA for filing pursuant to Section 415B-10, in similar fashion to the same named documents described in Chapter 415 relating to business corporations. The reader is directed to the full text contained in HRS Chapter 415B to determine what information shall be set forth in each document presented for filing.

Part I. Non-Profit Corporations, Generally

415B-8	Application to reserve exclusive right to use a corporate name.

Statute Section	Description of Record and Party with Possession
415B-9	(b) The director shall keep a record of all processes, notices, and demands served on the director under this section, and shall record the time of such service and the action taken.
415B-11	Annual report of domestic or foreign corporation filed with director.
Part II. Organization and Members	
415B-34	Articles of Incorporation in duplicate signed and delivered to director.
415B-38	Articles of Amendment filed with director.
Part IV. Mergers and Consolidations	
415B-84	Articles of Merger or Articles of Consolidation shall be delivered to and filed by the director.
Part V. Dissolution, Liquidation, and Sale of Assets	
415B-95	The Articles of Dissolution shall be delivered to and filed by the director.
415B-105	On entry of a decree by a court dissolving a corporation, the clerk of the court shall file a certified copy of the decree with the director.
Part VI. Foreign Corporations	
415B-124	A foreign corporation shall submit an application for a Certificate of Authority to conduct affairs in this state to the director.
415B-125	The application of a foreign corporation for a Certificate of Authority shall be delivered to the director, together with a copy of the corporation's Articles of Incorporation, and any amendments thereto.
415B-130	A foreign corporation authorized to conduct affairs in this state may change its registered office or its registered agent by delivering to the director a statement setting forth information required by this section.
415B-135	The application for withdrawal shall be delivered to and filed by the director.

Statute Section	Description of Record and Party with Possession
415B-137	On revoking any Certificate of Authority, the director shall issue a Certificate of Revocation in duplicate and file one of the certificates in the director's office, mailing the second certificate to the corporation at its registered office in this state with a notice of revocation.
Part VII. Enforcement, Fees, and Penalties	
415B-153	The director may propose to any foreign or domestic corporation, or its officers or directors, any interrogatories reasonably necessary to enable the director to determine the corporation's compliance with the provisions of this chapter.
415B-154	Answers to interrogatories proposed by the director shall "not be open to public inspection." The director shall "not disclose" any facts or information obtained from the interrogatories except where the director's official duties require that facts or information be made public or if the interrogatories or answers are required for evidence in any criminal or other action by the state.
Chapter 416: Corporations, Generally Part II. Organizations; Powers	
416-13	... An application for the reservation of the exclusive right to use a corporate name shall be filed with the director of Commerce and Consumer Affairs. A specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the director a notice of transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.
416-14	The Articles of Incorporation and charters, and any subsequent amendments, shall be filed with the director of DCCA, and, ... , shall be accepted for record (sic) and shall thereafter be "open to inspection of the public" during business hours.
416-20	No less than three persons, a majority of whom are residents of the state, shall file a signed and verified petition to obtain a charter of incorporation under Section 416-19 with the director of DCCA, containing the information as described by this section.

Statute Section	Description of Record and Party with Possession
Part V. Rights, Duties, and Liabilities.	
416-95	Each corporation organized for profit under this chapter shall annually file an exhibit of its state of affairs as of December 31 of the preceding year with the director of DCCA, containing such information as required by the director.
Part VI. Dissolution	
416-121	Any corporation wishing to dissolve at any time before the expiration of its charter or Articles of Association may file with the director of DCCA a certificate verified on oath by the persons described and containing the information as required by this section.
416-125	... The trustees for dissolved corporations ... shall render and file in the office of the director within one year after their apportionment or within sixty days after a complete distribution of assets ..., whichever is earlier, an itemized final account ..., on oath, showing all receipts and disbursements .... No account shall require the approval of the director but shall be a "public document open to inspection" of all interested parties ....
Chapter 417: Consolidation and Merger of Corporations Part I. Corporations for Profit	
417-8	The (merger or consolidation) agreement approved, executed and acknowledged (as required by this chapter) and the certificates of its approval by each constituent corporation ... shall be filed in the office of the director of DCCA, and the merger or consolidation shall be effective at the time of filing of the agreement and all necessary certificates of its approval in accordance with this part.
417-9	If any of the constituent corporations proposing a merger or consolidation agreement under this part are fiduciary companies within the meaning of Section 402-1, or subject to examination of the commissioner of financial institutions under Section 401-3, then a copy of any proposed merger or consolidation agreement prior to execution, shall be filed in the office of the commissioner of financial institutions for his approval. ... If the agreement is approved by the commissioner, the approval shall be evidenced by the commissioner's certificate of approval.

Statute Section	Description of Record and Party with Possession
417-10	If any of the constituent corporations are public utility companies within the meaning of Chapter 269, then prior to execution a copy of the proposed merger or consolidation agreement shall be filed in the office of the Public Utilities Commission for its approval as provided by Section 269-9, before filing of the agreement in the office of the director of DCCA. On approval by the PUC, the approval shall be evidenced by a Certificate of Approval.
417-11	On the filing of the agreement and the certificates of its approval in the office of the director of DCCA, and on the merger or consolidation becoming effective under this part, the director shall make and seal with the seal of the director's office, his Certificate of Merger or Consolidation, which shall set forth the following information as required by this section. One certified copy of the director's certificate shall be recorded in the Bureau of Conveyances, or with the Land Court, as appropriate.
Part III. Non-Profit Corporations	
417-57	The merger or consolidation agreement among two non-profit corporations shall be filed in the office of the director of DCCA, and the merger or consolidation shall be effective on the allowance of the merger or consolidation by the director.
417-58	On allowance of the agreement, the director of DCCA shall make and seal with the seal of his office, the director's Certificate of Merger or Consolidation, setting forth the information as required by this section. A copy of the director's certificate shall be recorded in the Bureau of Conveyances or the Land Court as appropriate.
Chapter 417E: Corporate Take-Overs	
417E-2	Any person who makes a take-over offer or acquires any equity securities pursuant to the offer is unlawful, unless the offer is effective under this chapter. A take-over offer (as defined by this chapter) is effective when the offeror files with the commissioner (of securities) a registration statement containing the information prescribed in subsection (f). The offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal office and "publicly disclose" the material terms of the proposed offer, not later than the date of filing of the registration

Statute Section	Description of Record and Party with Possession
	statement. "Public disclosure" shall require, at a minimum, supplying copies of the registration statement to all broker-dealers with offices in the state currently quoting the security. (b) The registration shall be ... accompanied by consent by the offeror to service of process and the filing fees ... and shall contain the following information: (1) all the information specified in subsection (f); and such other information as required by subsections (2-4) of this section. ... (f) The form required to be filed by this section shall contain the following information, including but not limited to (1) identity and background of all persons for whom the acquisition of any equity security has been or is to be affected; (2) the source and amount of funds or other consideration used in acquiring any equity security, ... (3) a statement of any plans or proposals which the person, on gaining control, (if such is the purpose of his acquisition) to liquidate the issue or sell its assets, effect its merger or consolidation and any other purposes as described by this subsection; (4) the number of shares or units of any equity security beneficially owned by the person or his affiliates or associates, together with names and addresses of each; (5) material terms of any contract, arrangement or understanding with other persons concerning additional purchases by the person filing the statement, or obligation to transfer any interest in the securities to another.
417E-3	Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the take-over offer, shall be filed with the commissioner and sent to the target company or offeror.
Chapter 418: Foreign Corporations Part I. Foreign Corporations, Generally	
418-1	Every corporation organized under the laws of any other jurisdiction which transacts business in the state shall file in the office of the director of DCCA: (1) a sworn declaration stating the name of the corporation, its state of incorporation, its principal office address, the total value of property owned and used by its business, the nature and total value of the property to be acquired for use in the state within the following 12 months, the name and business address of the person residing within the state who will accept service of legal notice and processes

Statute Section	Description of Record and Party with Possession
	from Hawaii courts, or notices from officials of the state, and such other information as specifically described by subsections (A-K) in this subsection. ... (3) a certificate stating that the corporation is in good standing under the laws of the jurisdiction of its incorporation executed by a proper official with custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the declaration. If such certificate is in a foreign language, a translation under oath of the translator shall be attached.
418-2	Any corporation organized without capital stock under the laws of another jurisdiction for any lawful purpose except one for profit, which undertakes business in the state shall file in the office of the director of DCCA: (1) a sworn declaration specifically described by subsection (A-H) of this section. ... (3) A certificate of good standing as specifically set forth by this subsection here and in Section 418-1(3) above.
418-3	Every foreign corporation authorized to do business in this state shall continuously maintain an agent for service of process, and may change that agent by filing with the director of DCCA a statement of the change verified by any authorized officer. ....
418-5	Every qualified foreign corporation who shall amend its charter to change its corporate name, or shall be a party to a merger or consolidation, shall ... file with the director of DCCA a certificate by the official with custody of the corporate records in the jurisdiction of its incorporation, certifying the change of name, merger or consolidation. If in a foreign language, a translation of the certificate under oath shall be attached. The director may also request a certified copy of the amendment, Articles of Merger or Consolidation.
418-9	Foreign corporations except insurance companies and non-profit corporations shall first obtain from the director of DCCA an annual license to carry on business in this state.
418-11	(a and b) Every corporation qualified under Sections 418-1 and -2 shall file annual exhibits of its state of affairs as of December 31 of the preceding year with the director of DCCA containing information as he requires.

Statute Section	Description of Record and Party with Possession
Chapter 420: Business Development Corporations	
	The Articles of Incorporation (for a business development corporation) shall be effective when filed in the office of the director of DCCA; .... .
420-4	The corporation shall be subject to examination by the commissioner of financial institutions, and shall make reports of its condition at least annually to the commissioner, who shall make copies of the reports available to the director of DCCA and the Governor, ...Chapter 421: Agricultural Cooperative Association
Chapter 421: Agricultural Cooperative Associations	
421-6	(a) The Articles of Association, charters and any certificates of amendments shall be recorded in the office of the director of DCCA in a book kept for that purpose, which shall, at all times during business hours, be "open to the inspection of the public" without charge. (b) A certified copy of the Articles or a Certificate of Incorporation issued by the director shall be filed with the Department of Agriculture. .... .
421-18	(d) The association may file contracts to sell agricultural products to or through the association in the office of the Bureau of Conveyances. With uniform contracts with more than one member in any county, affidavits may be filed instead of the original contracts, with such information as required by this section. The association may file from time to time thereafter affidavits containing revised or supplementary lists of members producing the product in the county without setting forth a copy of the uniform contract, but referring to the filed or recorded copy thereof. All affidavits filed shall state that they are filed pursuant to this section. The Bureau of Conveyances shall file the affidavits, make endorsements, and record entries as required by law with chattel mortgages, and shall compile and make "available for public inspection" a convenient index containing the names of all signers of the contracts. ....
421-22	An association under this chapter shall file an annual report with the director of DCCA and the Department of Agriculture containing its name, place of business, a general statement of its business operations during the year, and other specified information whether a stock or non-stock association.

Statute Section	Description of Record and Party with Possession
Chapter 422: Fish Marketing Associations	
422-9	Articles of Incorporation must be signed, acknowledged and filed in the same manner as required of domestic corporations in this state.
422-25	The association may file contracts to sell fishery products to or through the association in the office of the Bureau of Conveyances. (This section contains virtually the same language as that previously described in Section 421-18 above, including the requirement that the Bureau of Conveyances "compile and make available for public inspection a convenient index" with the names of all signers of the contracts.)
Chapter 425: Partnerships Part I. General Partnerships	
425-1	Any general partnership formed under Hawaii law or the law of any other jurisdiction who does business in this state shall file in the office of director of DCCA the registration and annual statements within the time requirements and containing the information as required by this section.
425-2	The registration, annual and other statements required by this part, shall be filed on forms furnished by the director of DCCA.
425-7	Any change in partnership name shall be filed in the office of the director of DCCA showing the registered name of the partnership and the new name of the partnership.
425-8	Applications to reserve the exclusive right to use a partnership name shall be filed with the director of DCCA. The exclusive right to use the specified partnership name as reserved may be transferred to any other person or partnership by filing a notice of transfer in the office of the director signed by the applicant holding the reservation and specifying the name and address of the transferee.
425-9	A statement of dissolution for a domestic general partnership shall be filed in the director's office of DCCA subject to the conditions of this section.

Statute Section	Description of Record and Party with Possession
425-11	The director of DCCA shall keep books or files in his office for recording the particulars (documents and information) that this part requires for filing in his office; and such books or files shall be "open to public inspection."
425-17	Any foreign general partnership qualified to do business in this state may withdraw and surrender its right to do business by securing from the director of DCCA a Certificate of Withdrawal in such manner and containing such information as required by this section.
Part II. Uniform Limited Partnership Act	
425-22	(2) Two or more persons shall file a certificate (of limited partnership) in the office of the director of DCCA. ... The director shall preserve the certificate and keep an indexed record. The certificate, record and index shall, during all business hours, be "open to inspection of the public," free of charge.
425-45	(e) A certificate is amended or canceled by filing in the director's office of DCCA a writing that conforms to paragraph (a) or (b) of this section, or a certified copy of the court order provided for in paragraph (d) of this section.
425-50	Every limited partnership shall file an annual statement (in the office of the director), containing such information as required by this section.
Part III. Foreign Limited Partnerships	
425-71	Every limited partnership formed under the laws of another jurisdiction, whether of the United States or a foreign state or country, which undertakes business in the state, shall file a registration statement in the director's office of DCCA under the time requirements and containing such information as required by this section.
425-77	Any change of facts in a registration or annual statement filed under Section 425-71, or any amendment to the Certificate of Limited Partnership, shall be verified in a statement setting forth the change or in a certified copy of the amendment to the Certificate of Limited Partnership, both of which shall be filed with the director of DCCA.

Statute Section	Description of Record and Party with Possession
Chapter 431: The Hawaii Insurance Law Insurance Commissioner	
431-34	Any certificate or license issued by the (insurance) commissioner shall bear the commissioner's official seal.
431-36	(a) Orders and notices of the insurance commissioner shall be effective when written and signed by the commissioner or his authority. (b) Every order or notice shall contain the information as required by this subsection.
431-38	(a) A chief deputy commissioner, ... shall have power to perform any act or duty of the commissioner, and shall take and subscribe the same oath of office ... which oath shall be endorsed on the certificate of the chief deputy commissioner's appointment and filed in the office of the Lieutenant Governor.
431-41	(a) The insurance commissioner shall preserve in permanent form records of the commissioner's proceedings, hearings, investigations, and examinations, and shall file such records in the commissioner's office. (b) The records of the commissioner and insurance filings in the commissioner's office shall be "open to public inspection," except as otherwise provided by this chapter. (c) Five years after conclusion of transactions to which they relate, the commissioner may destroy any correspondence, claims files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states, void and obsolete rate filings, foreign or alien insurer's annual statements and valuation reports, license applications, and such other information specified by this section. (d) Ten years after the year to which they relate, the commissioner may destroy any foreign or alien insurer's tax reports, and other similar records in the commissioner's possession. (e) The commissioner shall concurrently execute and file in a separate, permanent office file a certificate listing and giving a summary description of the records, files, documents and memoranda as they are destroyed.
431-45	The commissioner shall prepare and submit to the legislature a report containing: (1) The condition of all insurers authorized to do business in the state during the preceding year. (2) A summary of the abuses and deficiencies of benefit payments, complaints made to the commissioner and the disposition, and the extent of compliance and non-compliance by each insurer with this chapter or Hawaii's no-fault law. ...

Statute Section	Description of Record and Party with Possession
431-47	(a) The commissioner may file in circuit court of the first circuit of this state a petition alleging, with respect to a domestic insurer: (1) that there exist any grounds justifying a court order for a formal delinquency proceeding against an insurer under sections 431-653 or -655; (2) that the interests of policyholders, creditors or the public will be endangered by delays; and (3) the contents of an order deemed necessary by the commissioner.
431-48	In all proceedings and judicial reviews under sections 431-46 and -47, all records of the insurer, other documents, and all files, court records, and papers of the insurance division of DCCA that are part of the record of the proceedings, shall "remain confidential" except as necessary to obtain compliance therewith, unless the circuit court, after hearing arguments in chambers, orders otherwise or unless the insurer requests that the matter be made "public." Until a court order, all papers filed with the court shall be held in a "confidential file."
Examinations, Investigations, Hearings and Appeals	
431-54	(c) Instead of the commissioner's own examination (of the affairs and records of an authorized insurer), the commissioner may accept a full report of the last recent examination of the foreign or alien insurer certified to by the insurance supervisory official of the state, province or country of domicile or the state of entry into the United States. .... .
431-57	(a) The insurance commissioner shall make a full written report of each examination made by him. (b) The commissioner or his examiner in charge of the examination shall certify the report and file the same with DCCA subject to subsection C of this section. (c) The commissioner shall furnish a copy of the report to the person examined. .... (d) The report, when "filed for public inspection," shall be admissible in evidence in any action or proceeding brought by the commissioner against the parties examined, its officers or agents; .... .
431-58	The insurance commissioner may "withhold from public inspection" any examination or investigation report so long as he deems prudent.
431-60	(b) The hearing (whether required by this chapter or the commissioner chooses) ... at the commissioner's discretion it may be "open to the public." (c) Application for a hearing shall be in writing, specifying how the applicant is aggrieved or wronged, and the grounds relied on for relief demanded at the hearing. ...

Statute Section	Description of Record and Party with Possession
431-66	(b) A copy of the record of proceeding shall be furnished any person affected by the hearing or any person on written request and at his expense. ... (d) Any person heard shall make "full disclosure" of facts pertinent to the subject of inquiry as requested by the commissioner or any person affected by the hearing.
431-67	(a and b) Within 30 days following the hearing, the commissioner shall make an order, give a copy to all persons noticed for the hearing, and containing such information as required by this section.
Insurers-General Requirements	
431-91	An insurer shall apply for an original certificate of authority by filing with the commissioner its request showing all information as required by this section, including but not limited to, its name, home office location, type of insurance, organization, date, state or country of domicile, classes of insurance proposed for transaction, copy of its charter and bylaws and so forth.
431-106	(a) Annually before March 16, each insurer shall file with the commissioner documents specified by this section, including but not limited to: a true statement of its financial condition, transaction, and affairs for the year preceding December 31, in form and context as approved by the National Association of Insurance Commissioners, a tax statement under section 431-317, and such other information as required by this section.
431-106.3	In absence of actual malice, members of NAIC, their authorized committees, task forces, delegates, employees and all others charged with responsibility of collecting, analyzing and disseminating information from filing of the annual statement convention blanks (as provided in section 431-106.2) shall be acting as agents of the commissioner under sections 431-106.1-2, -106.4 and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, analysis or dissemination of the data information collected from the filings hereunder.
Organization of Domestic Insurance	
431-123	A person shall apply for solicitation permit by filing with the commissioner his request showing items of information as required by this section.

Statute Section	Description of Record and Party with Possession
431-139	(a) Prior to applying with the commissioner for an initial certificate of authority, an insurer shall file in the office of DCCA an affidavit, sworn to by the president, secretary and treasurer of the corporation as named in the Articles of Incorporation. (b) The affidavit shall set forth (information relating to shares, stock value, shareholders, number of shares held, money paid by each shareholder, and that the required capital has been paid in full in cash.
Domestic Stock Insurers	
431-169	Every direct or indirect beneficial owner of more than 10 percent of any class of equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner a statement of the amount of all equity securities of such company which the person holds as beneficial owner, and for any change in ownership during the month, he shall file in the office a statement indicating the person's ownership at the close of the month, and such changes in ownership occurring during the month.
Domestic Reciprocal Insurers	
431-236	The annual statement of a reciprocal insurer shall be made and filed by the attorney as required by the commissioner.
Fees and Taxes	
431-317	Each authorized insurer shall file with the commissioner annually a statement setting forth the total business transacted, and the amount of gross premiums received by the insurer for the year preceding December 31, for all risks or property situated or located within this state, together with other information necessary to determine taxability of premiums. ....
431-321	The commissioner shall promptly report to the Department of Taxation all amounts of taxes collected under sections 431-317 to -320 and -338 and all amounts of refunds of such taxes made under section 431-319.

Statute Section	Description of Record and Party with Possession
Unauthorized Insurers	
431-333	Any licensed general agent may apply to the commissioner for a license as a surplus line broker pursuant to this section, and file a bond in favor of the state in the penal sum of $5,000, with authorized corporate sureties approved by the commissioner, ...
431-337	(a) Each surplus line broker shall file annually with the commissioner a verified statement of all surplus line insurance transacted during the preceding calendar year. (b) The statement shall show: (1) gross amount of premiums for each kind of insurance transacted; (2) aggregate gross premiums charged; (3) aggregate of returned premiums paid to insured; (4) aggregate of net premiums; and (5) additional information as required.
Deposits of Insurers	
431-349	(a) The Director of Finance shall keep a permanent record of all such funds and securities. (b) The director shall deliver to the insurer a deposit receipt for all funds and securities received.
431-350	(a) Any transfer of any funds or securities so held on deposit, whether voluntary or by operation of law, requires a written approval from the commissioner and countersigned by the Director of Finance or his agent. (b) A statement of each such transfer shall be entered on the records of the director, showing the name of the insurer from whose deposit the transfer is made, the name of the transferee, the par value of securities having par value, and the asset value of other securities as of the last recent valuation.
431-354	(b) No such release (of any required deposit or a portion thereof) shall be made except on application to and written order of the insurance commissioner on satisfactory proof of the grounds) for such release described in subsection (a) of this section). No personal liability shall result from any such release of any deposit or a part made by the commissioner in good faith.
431-355	Any part of any deposit in excess of the deposit required or permitted by the insurer under this chapter shall, on written order of the insurance commissioner, be released.

Statute Section	Description of Record and Party with Possession
General Agents, Subagents, Solicitors, and Adjusters	
431-365	Any person acting or holding oneself out as a general agent, subagent, solicitor or adjuster shall be licensed by the state. .... (b) No general agent, subagent, or solicitor in this state shall solicit or take applications for, procure or place for others any class of insurance for which the person has not been licensed.
431-368	(a) Application for any such license shall be made to the insurance commissioner. ... The applicant shall furnish information concerning his identity, personal history, experience, business record, and other pertinent facts as reasonably required. (b) If the applicant is a partnership or a corporation, the applicant shall show additionally the names of all members and officers, and shall designate each individual who shall exercise the powers conferred by the license on the entity.
431-370	(a) Subject to the exceptions provided herein, each applicant for license as a general agent, subagent, solicitor or adjuster shall, before issuance of any such license, personally take and pass an examination of the applicant's qualifications and competenence given by the commissioner.
431-381	(a) Each general agent or subagent or domestic insurer on appointing a solicitor in this state shall file written notice in duplicate with the commissioner. ... (c) Any person who revokes or terminates shall file at once with the commissioner a copy of the notice of revocation or termination.
431-386	(a) Each licensed non-resident agent or broker shall appoint the commissioner as the agent's or broker's attorney to receive service of legal process issued against the agent or broker in this state. ... (d) On receiving service, the commissioner shall send copies of the process, ... , to the defendant, agent or broker at his last known address of record with the commissioner. (e) The commissioner shall keep a record of the day and hour of service on him of all such legal process.
431-393	(a) Prior to the issuance of the license as public adjuster, the applicant shall file with the commissioner and maintain in force while licensed a surety bond in favor of the state, executed by an authorized corporate surety approved by the commissioner, in the amount of $5,000. ....

Statute Section	Description of Record and Party with Possession
431-394	(a) Every adjuster investigating any fire claim lost under any insurance contract covering property in the state, shall promptly report in writing and in triplicate to the commissioner any facts or circumstances found and which give rise to his belief that fraud was committed or attempted. (b) On completing the adjustment of any file loss requiring property damage claim payments of $100 or more, under any policy issued by an unauthorized insurer, an adjuster shall promptly report the details to the commissioner. The report shall state the names of the insurers and insured involved, amount of insurance on the property carried in each insurer, the amount of the claim and the amount paid by each insurer on account thereof, the circumstances of the loss and such other information.
Group and Blanket Disability Insurance	
431-527	The forms of the policies, applications, certificates or other evidence of insurance coverage, commission schedules, and applicable premium rates relating thereto shall be filed with the insurance commissioner. No policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless the form has been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval of the forms. ... The association shall submit an annual report to the commissioner which shall become "public information" and shall provide information as to the number of persons insured, the names of the insurers participating in the association concerning insurance offered under sections 431-522 to -529 and the calendar year experience applying to such insurance offered under those sections, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. ....
431-528	The Articles of Association of any association formed in accordance with sections 431-522 to -529, all amendments and supplements thereto, a designation in writing of a state resident as agent for service of process, and a list of member insurers of the association and all supplements shall be filed with the commissioner.

Statute Section	Description of Record and Party with Possession
Unfair Practices and Fraud	
431-643	(10) ... The commissioner shall, by certified mail, notify the insurer's agent designated under section 431-102, of each complaint filed with the commissioner under this section. ...
431-646	(a) If after hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and serve on the person charged a copy of the findings and an order requiring the person to cease and desist from the method of competition, act or practice. ....
Mergers, Rehabilitation, Liquidation	
431-675	The insurance commissioner shall include in his annual report, the names of all insurers proceeded against under sections 431-651 through -686 together with sufficient facts to acquaint the policyholders, creditors, stockholders, and the public with the proceedings. Any special deputy commissioner in charge of any such insurer shall file annually with the commissioner a report of the affairs of the insurer.
431-682	Within three years from the date of filing in the office of the clerk of the court, an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make a report to the court setting forth: (1) The reasonable value of the assets of the insurer; (2) the insurer's probable liability; and (3) the probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration.
Rates of Casualty, Vehicle, and Surety Insurers	
	(b) If any class of insurance, subdivision or combination thereof, or type of coverage subject to the casualty rating law is also subject to regulation under sections 431-711 to -726, insurers subject to both the casualty rating law and the described sections shall file with the commissioner a designation as to whether the casualty rating law or described sections apply to it with respect to such class of insurance, subdivision, or combination thereof, or type of coverage.

Statute Section	Description of Record and Party with Possession
431-694	(a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Each filing shall state the proposed effective date, and shall indicate the character and extent of the coverage contemplated. ... The information furnished in support of a filing may include: (1) the experience or judgment of the insurer or rating organization making the filing, (2) its interpretation of any statistical data it relies on, (3) the experience of any other insurers or rating organizations, or (4) any other relevant factors. (b) A filing and any supporting information shall be "open to public inspection" after the filing becomes effective. ... (d) Every filing under this section in relation to workers' compensation insurance shall include a report of investment income. ... (f) ... With respect to workers' compensation filings, the insurer or rating organization submitting the filing shall also publish a notice of an approved filing in a newspaper of general circulation in the state in an approved form at least 30 days prior to the effective date of the approved filings. ... (i) On written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing may be used on any specific risk.
431-696	(a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for a license as a rating organization for such classes of insurance or subdivisions as specified in its application and shall file therewith such documents and information as specifically set forth by this section.
431-697	Any insurer who is a member or subscriber to a rating organization may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a class of insurance, or such other class or subdivisions as specified by this section. The application shall specify the basis for the modification and shall be accompanied by the data on which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization ....

Statute Section	Description of Record and Party with Possession
Rates of Property and Marine and Transportation Insurers	
431-712	(c) If any class of insurance, subdivision or its combinations, or type of coverage subject to the fire rating laws also subject to regulation under sections 431-691 through -707, and insured to which both the fire rating law and said sections apply shall file with the commissioner a designation as to whether the fire rating law or said sections apply to it with respect to such class of insurance, subdivison or combination, or type of coverage. ...
431-714	(a) Every insurer shall file with the commissioner, except as to inland marine risks ... not written according to manual rate or rating plans, every manual, minimum, class rate, rating schedule, or rating plan or every other rating rule, and every modification of the foregoing which it proposes to use. Every filing shall state the proposed effective date and shall indicate the character and extent of coverage contemplated. The information furnished in support of a filing may include such items as previously described in section 431-694(a) above. (b) A filing and any supporting information shall be "open to public inspection" after the filing becomes effective. (c) Specific inland marine rates on risks specially rated, may be made by a rating organization, shall be filed with the commissioner. ... (i) A rate in excess of that provided by filing otherwise applicable may be used on any specific risk following written application of the insured's stating his reasons therefor and filed with and approved by the commissioner.
431-716	(a) A corporation, an unincorporated association, a partnership or an individual, whether within or outside the state may make application to the commissioner for a license as a rating organization for such classes of insurance, subdivision or class of risk or its combinations as specified in its application and shall file with said application those items of information as previously described by section 431-696(a) above. ... (f) Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidence of insurance or cancellation thereof, and may make reasonable rules governing their submission. ... All information so submitted for examination shall be "confidential."

Statute Section	Description of Record and Party with Possession
431-720	(b) Every advisory organization shall file with the commissioner (the same information as previously described in sections 431-700(b)) above.
Medicare Supplement Policies	
431-777	(b) The insurer shall submit each (medicare supplement) policy form and group certificate form, including the form of any riders or endorsements of applications which may be attached or made a part of such form, and the schedule of premium rates therefor to the commissioner. ...
Chapter 431D: Insurance Company Insolvency	
431D-8.1	(a) Within 120 days of final determination of an insurer's insolvency and court order of liquidation, the receiver shall apply to the court for approval of a proposal to disburse the insurer's assets from time to time as they become available to Hawaii Insurance Guaranty Association (HIGA). HIGA and any other entity or person performing similar functions shall be referred to collectively as the "associations." (b) The proposal shall at least include provisions for: (1) Reserving amounts for payment of claims falling within priorities established in section 431-678 as now or hereafter amended; (2) disbursement of assets marshalled to date and subsequent disbursement of assets that become available; (3) equitable allocation of disbursements to each of the entitled associations; ... (5) a full report made by the association to the receiver accounting for all assets disbursed to the association, all disbursements made by the association and any interest earned on such assets, and other matters as the court may direct. ... (d) Notice of the application shall go to associations in and through the commissioners or directors of insurance of each state. ...
431D-9	(a)(1) The associations shall submit to the commissioner a plan of operation and any necessary amendments to assure fair, reasonable and equitable administration. The plan and any amendments shall become effective on written approval by the commissioner. ... (c) The plan of operation shall establish the following including but not limited to: (1) Procedures to perform all powers and duties of the association. (2) Procedures for handling assets of the association. (3) The amount and

Statute Section	Description of Record and Party with Possession
	method for reimbursement of members of the board of directors. Procedures to file claims with the association and establish acceptable forms of proof of covered claims. ... (6) Procedures to keep records of all financial transactions of its association, agents, and the board.... and such other procedures as specified by this section....
431D-13	To aid in the detection and prevention of insurer insolvencies: (1) The board of directors on majority vote has the duty to notify the commissioner of any information indicating that the financial condition of any member may be insolvent or hazardous to the policyholders or the public. (2) ... The cost of such examination (as ordered by the commissioner following a vote of the board) shall be treated as other examination reports. In no event shall the board receive the examination report prior to its release to the public, except for compliance with paragraph (3) of this section. The commissioner shall notify the board when the examination is complete. The request for examination shall be kept on file by the commissioner but it shall "not be open to public inspection" prior to the release of the report to the public. ... (4) The board of directors on majority vote may make reports and recommendations to the commissioner on any matter relevant to the insolvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall "not be considered public documents." ...
Chapter 431F: Hawaii Life and Disability Insurance Guaranty Association Act	
431F-9	(a) The association shall submit to the commissioner a plan of operation and any necessary amendment to assure its fair, reasonable and equitable administration. The plan of operation and any amendment shall become effective on written approval by the commissioner. ... (c) The plan of operation shall ... (1) Establish procedures for handling its assets. (2) Establish the amount and method for reimbursing members of the board. ... (4) Establish procedures to keep records of all financial transactions of the association, its agents and the board.
431F-11	To aid in the detection and prevention of insurer insolvencies or impairments: (1) The commissioner has the duty to notify commissioners in other states in jurisdictions of the United States when the commissioner

Statute Section	Description of Record and Party with Possession
	acts to revoke or suspend a license, or make any formal order that restricts the company's premium writing or requiring other acts done by the insurer as described by this section. (1)(B) To report to the board any actions taken under subparagraph (e) of this section, or receipt of a report from any other commissioner indicating action in another state. The report to the board shall contain all significant details of action taken or the report received as noted. ... (1)(D) To furnish to the board the NAIC early warning test developed by NAIC, and the board may use the information in carrying out its duties under this section. Such report and the information contained shall be kept "confidential" by the board until such time as made public by the commissioner or other lawful authority. ... (3) The board on majority vote may make reports and recommendations to the commissioner on any matter germane to solvency, liquidation, rehabilitation or conservation of any member insurer or any company seeking to do insurance business in this state. Such reports and recommendations shall "not be considered public documents." ... (5) The board on majority vote may request the commissioner to order an examination of any member insurer which the board in good faith believes may be impaired or insolvent. ... In no event shall such examination report be released to the board prior to its release to the public, that this shall not excuse the commissioner from complying with paragraph (1). ... The request for an examination shall be kept on file by the commissioner and shall "not be open to public inspection" prior to the release of the examination report to the public. ... (7) At the conclusion of any insurer insolvency which obligated the association to pay covered claims, the board shall prepare a report to the commissioner containing such information that bears on the history and causes of such insolvency. ...
431F-13	(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss its activities in carrying out its powers and duties under section 431F-7. Records of such negotiations or meetings shall be made "public only on termination of a liquidation, rehabilitation, or conservation proceeding" involving impaired or insolvent

Statute Section	Description of Record and Party with Possession
	insurer, on termination of the impairment or insolvency of the insurer, or on court order. This section has no effect on the association's duty to report its activities under section 431F-14.
431F-14	The association is subject to examination and regulation by the commissioner. The board shall submit to the commissioner by May 1 of each year, a financial report and a report of its activities for the preceding calendar year.
431F-16	No liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this chapter.
Chapter 431J: Captive Insurance Companies	
431J-2	(a) Any captive insurance company, when permitted by its Articles of Association or Charter, may apply to the commissioner for a license to do any and all insurance as set forth in subsection (g) of this section subject to provisos of this section. (b) No captive insurance company shall do any insurance business in this state unless it first obtains a license from the commissioner authorizing it to do such business, and such other conditions as set forth in this section. (c) Before receiving a license, the captive insurance company shall file with the commissioner certified copies of its charter, bylaws, a statement of its president and secretary showing its financial condition, and any other statements or documents required. (d) Each applicant captive insurance company shall also file with the commissioner evidence of: (1) The amount and liquidity of its assets relative to the assumed risks; (2) the adequacy of the expertise, experience and character of its management; (3) the overall soundness of its plan of operation; (4) the adequacy of the loss prevention programs of its parent or member organizations; and such other factors relevant to the commissioner to determine whether the proposed captive insurance company can meet its policy obligations.
431J-6	(b) Before transmission of the Articles of Incorporation to DCCA, the incorporator shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. ...

Statute Section	Description of Record and Party with Possession
431J-7	Each captive insurance company shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant by the last day of the sixth month following the end of the company's fiscal year. The financial statement shall include, but not be limited to, actuarially appropriate reserves for: (1) Known claims and expenses associated with the reserves; (2) claims incurred but not reported and associated expenses; (3) unearned premiums; and (4) bad debts, which reserve shall be shown as liabilities. An actuarial opinion for (1) and (2) above, shall be included in the audited financial statement. ... (b) The commissioner may prescribe the format and frequency of other reports which may include, without limitation, summary loss reports and quarterly financial statements.
Chapter 432: Title Insurance and Title Insurers	
432-3	(a) Every title insurer, before issuing any policy, shall deposit $100,000 with the insurance commissioner or other official of its domicile or with the insurance commissioner of this state as a "guarantee fund" for the security and protection of the holders of, or beneficiaries under, its title policies.
432-20	(a) Every title insurer shall at least 30 days before use file with the commissioner every form of insurance contract which it proposes to issue for risks located in the state, together with forms of all printed endorsements or other modifications of the contract proposed for use.
432-26	Every title insurer shall include in its annual statement and furnish the commissioner under section 432-31(4), the name of each person in this state which is a controlled escrow company or underwritten title company by reason of its relationship with such title insurer.
432-31	This section cites provisions of the Hawaii Insurance Law, Chapter 431, which applies to title insurance and to title insurers, absent a conflict between the cited provisions of Chapter 431 and the provisions of this chapter, in which case the provisions of this chapter shall prevail. HRS section 432-32.
Chapter 433: Mutual and Fraternal Benefit Societies	
433-2	Before so engaging in an act, any (mutual benefit) society shall file with the insurance commissioner copies of its

Statute Section	Description of Record and Party with Possession
	constitution or organic instrument under which it purports to operate, the bylaws, rules and regulations, if any. Any society promising or offering to pay death, sick, disability or other benefits in an amount equal to or in excess of $25 shall also file copies of all proposed forms of benefits, certificates, applications, or circulars to be issued by the society and a bond in the sum of $5,000 with sureties approved by the commissioner conditioned on return of advance payments if the organization is not completed within one year. On filing of the foregoing and furnishing additional information as required, and subject to the commissioner's satisfaction of a lawful purpose, the commissioner shall issue a certificate registering the society and licensing its operations in the state, and in the case of any society offering to pay death, sick, disability or other benefits as noted above, the commissioner, on satisfaction that the society exists for benefit of its members and not for profit, shall authorize the society to solicit members as hereinafter provided. ...
433-6	... On presentation of satisfactory proof that the society has complied with this chapter, and other applicable laws, the commissioner shall issue to the society a certificate to that effect. The certificate shall be prima facie evidence of the existence of the society as of the date of the certificate. The commissioner shall create a record of the certificate ....
433-8	Each society shall file with the insurance commissioner annually before January 31 in each year a statement under oath in such form and detail as the commissioner shall prescribe. Those societies promising to pay death, sick, disablity or other benefits shall set forth in the statement the total business transacted and the amount of gross receipts received by the society, the resources and liabilities of the society, the receipts and expenditures, and the computation of loss or gain of the society during the year preceding December 31.
433-13	Any mutual and fraternal benefit society may be incorporated by charter as provided in sections 416-19 and -20, ... Any society chartered as a corporation shall be subject in all respects to this chapter.
433-22	... Any labor union mutual benefit society shall file with the insurance commissioner annually a copy of the report filed under Public Law 85-836 and a complete financial report prepared by a certified public accountant.

Statute Section	Description of Record and Party with Possession
Chapter 434: Insurance by Fraternal Benefit Societies	
434-5	The organization of a society shall be governed as follows: ... (2) The Articles of Incorporation, certified copies of the constitution, laws and rules, copies of all proposed forms of certificates, applications and circulars issued by the society and a bond conditioned on the return to applicants of advance payments if organization is not completed within one year shall be filed with the insurance commissioner. .... If the purposes of the society conform to this chapter and compliance with all provisions of law has occurred, the commissioner shall so certify, retain and file the Articles of Incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members. ... (5) ... On presentation of satisfactory evidence that the society has complied with all provisions of law, the commissioner shall issue a certificate to that effect and the society is authorized to transact business under this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall create a record of the certificate. ....
434-9	A domestic society may consolidate or merge with any other society by complying with this section, and filing with the insurance commissioner: (1) A certified copy of the written contract containing the full terms and conditions of the consolidation or merger; a sworn statement by the president and secretary showing the financial condition of the society on a date fixed by the commissioner subject to the time requirements of this subsection; ....
434-12	(b) No amendment to the Articles of Incorporation, constitution, or laws of any domestic society shall take effect unless approved by the insurance commissioner .... The approval or disapproval of the commissioner shall be in writing and mailed to the secretary of the society at its principal office. If he disapproves the amendment, the reasons shall be stated in the written notice. ... (d) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments or addition to its Articles of Incorporation, constitution, or laws within 90 days after the enactment.
434-22	No domestic, foreign or alien society authorized to do business in this state shall issue or deliver any certificate or other evidence of any contract or acts of

Statute Section	Description of Record and Party with Possession
	accident insurance, health insurance, or any total and permanent disability insurance contract until the form of the contract, application and all riders of endorsements for use in connection with the contract, has been filed with the insurance commissioner.
434-25	The authority of all societies may be renewed annually, but in all cases to terminate on the succeeding May 1. A license so issued, however, shall continue in full force until the new license is issued or specifically refused. ....
434-26	No foreign or alien society shall transact business in the state without a license issued by the commissioner. Any such society may be licensed to transact business on filing with the commissioner: (1) Its Articles of Incorporation; (2) its constitution and bylaws, certified by its secretary; (3) a power of attorney to the commissioner under section 434-30; and such other information as required by this section.
434-29	(a) Agents of societies shall be licensed in accordance with this section.
434-35	(a) Reports shall be filed in synopses of annual statements and shall be published according to this section. (b) Every society transacting business in this state shall annually, ... file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year. ... (c) A synopsis of its annual statement providing an explanation of the facts on the condition of the society as disclosed shall be printed and mailed to each benefit member of the society or the synopsis may be published in the society's official publication. (d) As part of the annual statement, each society shall, before March 1, file with the commissioner a valuation of its certificates in force on the preceding December 31 .... to report a valuation shall show, as reserve liabilities, the difference between the present mid-year value of the promised benefits provided in the certificates in force and the present mid-year value of future net premiums as the same are in practice actually collected, subject to the exemptions as provided by this section. ...
434-36	... A summary of the report (of the examination done under this section) of the commissioner and such recommendations or statements as may accompany the report shall be read at

Statute Section	Description of Record and Party with Possession
	the first meeting of the board of directors or corresponding body of the society following its receipt, ... a copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of the board of directors or governing body. ....
434-38	See, Exhibit 2 in this Appendix re: confidentiality.
Chapter 435: Credit Life Insurance and Credit Disability Insurance	
435-7	(a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner for approval. ...
435-8	(a) Any insurer may revise its schedule of premium rates, and shall file the revised schedules for approval with the commissioner. ... (b) ... The formula to be used in computing the refund (under this subsection) shall be filed with and approved by the commissioner.
Chapter 435C: Hawaii Medical Malpractice Underwriting Plan	
435C-3	(c)(1) The commissioner shall, after consultation with the joint underwriting plan, representatives of the public, the Hawaii Medical Association and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this chapter in 60 days after creation of the plan. The plan of operation shall become effective and operational on order of the insurance commissioner. ... (4) Amendments to the plan of operation may be made by the directors of the plan, subject to approval of the insurance commissioner or shall be made at his direction.
435C-9	The plan shall annually file with the insurance commissioner a statement containing information with respect to its transactions, conditions, operations and affairs during the preceding year. The statement shall contain matters and information prescribed and approved by the commissioner. ...
435C-10	The commissioner shall make an examination into the affairs of the plan at least annually. The conduct of the examination and the report filed thereon shall be as prescribed in sections 431-54.

Statute Section	Description of Record and Party with Possession
Chapter 435E: Physicians and Surgeons Cooperative Indemnity Part II. Trust Agreements	
435E-18	Withdrawal of all or any portion of the corpus of the reserve trust fund shall be on written authorization signed by at least two-thirds of the members of the board.
435E-19	The board of trustees shall furnish the following to each member participating in the inter indemnity arrangement and shall file a copy with the commissioner: (1) Within 120 days after the end of each fiscal year, a statement of assets and liabilities, a statement of revenue and expenditures, a statement of change in corpus of the reserve trust, and in each case accompanied by a certificate signed by a firm of independent certifiedpublic accountants selected by the board indicating that the firm conducted an audit of such statements according to generally accepted auditing standards and indicating the results of such audit. (2) Within 45 days after the end of each of the first three quarters of a fiscal year, the statements noted above in subsection (1) for such period, in each case accompanied by a certificate signed by a majority of the board indicating that the statements were prepared from the official books and records of the inter indemnity arrangement. In addition to these statements, the board shall annually file with the commissioner an authorization for disclosure of all financial records pertaining to the inter indemnity arrangement. For this paragraph, the authorization for disclosure shall also include the financial records of any association, partnership or corporation that has management or control of the funds or the operation of the inter indemnity arrangement.
Part IV: Unfair Competition and Deceptive Acts or Practices	
435E-43	The commissioner may in his discretion: (1) Make such public or private investigations in or out of the state as he deems necessary to determine any violations of this chapter, or to aid in its enforcement, and (2) publish information concerning the violation of this chapter.

Statute Section	Description of Record and Party with Possession

TITLE 25

PROFESSIONS AND OCCUPATIONS

Chapter 436E: Acupuncture Practitioners

436E-3	Any person practicing acupuncture in this state, whether free or for pay, or shall offer to practice, or shall announce themselves either publicly or privately as prepared to qualify to so practice any method of acupuncture shall have a valid unrevoked license from the state.
436E-5	(a) A person shall receive a license to practice acupuncture if he passes an examination and possesses necessary qualifications prescribed by the rules adopted by the board. (b) Before being eligible for such examination, the applicant shall furnish satisfactory proof to the board that he: (1) Completed a formal program of acupuncture received the certificate or diploma from the institute or private tutorship approved by the board ... or has met such other requirements described by this section.
436E-7	The board shall: ... (2) Develop standards for licensure; (3) prepare, administer and grade examinations, and contract with a testing agency if necessary; (4) issue, renew, suspend and revoke licenses; (5) register applicants or holders of a license; ... (7) maintain a record of its proceedings; ....

Chapter 436M: Alarm Businesses

436M-4	Alarm businesses that maintain, service or monitor alarm systems shall, on request by the police, share data about false alarms and alarm systems in operation to determine the monthly false alarm rate for each alarm business. Data obtained from each alarm business shall be used by the police only for statistical purposes and shall "not be released to others."

Chapter 437: Motor Vehicle Industry Licensing Act

437-2	(a) Any person engaging in the business as, serving in the capacity of, or acting as a motor vehicle dealer, motor vehicle salesman, motor vehicle auction or auctioneer, manufacturer, factory branch, or representative, distributor, distributor branch, or distributor representative in this state or otherwise selling or

Statute Section	Description of Record and Party with Possession
	negotiating for the purchase of motor vehicles in this state shall be licensed under this chapter. The license shall authorize permitted activities only in the county where the license is issued. (b) The license shall authorize engaging in the business at branch locations in the same country where the license is issued, so long as each branch is approved by the motor vehicle industry licensing board.
437-7	(a) Application. Any person desiring a license under this chapter shall file an application with the board. Prior to expiration of the license, the holder shall file an application for its renewal. (b) The board may grant a temporary license to a person applying for a salesman's license absent any disclosed disqualification or valid objection for a temporary license, and if all requirements for the application have been met, including compliance with section 437-21, and the dealer files an affidavit certifying that the person is employed and under the supervision of the dealer. (c) Financial statements. (1) Applicants for a dealer or auction license shall furnish financial statements as specified by this subsection. (e) On filing any application, the staff shall endorse the date of filing on it. Absent any blatant disqualification or valid objection to the granting of the application, and if all requirements for filing are met, the chairman of the board or executive secretary shall refer the application to a staff member for investigation and report. The report shall include: (1) A statement as to whether the applicant is disqualified for any reason by this chapter from obtaining a license or whether the license he has complied with all requirements for making and filing of his application; and (2) any other matters relevant in the judgment of the staff member to the application, issuance or exercise of the license. (3) In the case of a dealer's or auction's license, the application shall state additional matters as described by this subsection.
437-13	Any person licensed under this chapter who represents a buyer in the state attempting to purchase or purchasing a vehicle through a dealer or broker not licensed in the state residing or doing business outside the state, the person shall file with the board each month a statement showing the name and address of all such non-residents with whom a person actually negotiated any sale for the past month and with whom the person is authorized in writing to negotiate or continue to negotiate or to make such sales. All statements shall be under oath.

Statute Section	Description of Record and Party with Possession
437-25	(a) A salesman or auctioneer shall apply to the board for the amended license authorizing new employment other than one for which the original license was issued. The holder of a license contemplating a move, amending the premises, or adding branch locations of a business shall apply for an amended license authorizing the change.
437-26	(b) Each dealer shall keep the license or a certified copy posted in a conspicuous place on each premises. (c) Each salesman shall carry the salesman's license on his person, or a certified copy thereof, and shall exhibit the license or the copy on demand by any person with whom the salesman transacts business as a motor vehicle salesman.
437-27	If the status of any licensee changes while his license is valid with respect to: (1) Changes in officers, directors, or limited partners of the licensee or termination of employment of any licensed salesman or auctioneer, or (2) the transfer of more than 10 percent of the ownership of the licensee to one person; or (3) the termination of a licensed premises of a dealer, auction, acquiring or termination of a franchise; or (4) the assignment of any part of the licensee's assets for the benefit of creditors; the licensee shall, within 15 days thereafter, file with the board a notice of the change containing information as required.
437-40	The applications for license and contracts under section 437-7 shall "not be deemed a part of the public records" but shall be "confidential information" for use of the treasurer and the motor vehicle industry licensing board. Except in a report to the treasurer, the board, or when called on to testify in any court or proceeding, whoever divulges any information contained in applications and acquired by the official or employee of the county treasurer's office or the board in their official capacity shall be fined not less than $50 nor more than $100. The treasurer or the board may permit inspection of any applications by any person on being satisfied that the inspection is desired for some lawful and proper purpose.
Chapter 437B: Regulation of Motor Vehicle Repairs	
437B-5	(b)(2) The executive secretary ... shall be in charge of the offices of the board and shall be responsible to the board for preparation of reports, collection and dissemination of data, and other "public information" relating to the motor vehicle repair industry.

Statute Section	Description of Record and Party with Possession
437B-6	The board shall, on its own initiative or in response to complaints, investigate and gather evidence of violations of this chapter, any rule adopted hereunder, by any motor vehicle repair dealer, mechanic or apprentice, whether registered or not.
437B-7	It is unlawful for any person to engage in the repair of motor vehicles for compensation without registering as a motor vehicle repair dealer or motor vehicle mechanic under this chapter.
43B-8	(b) A person may apply for registration in more than one classification if he is certified for each classification or otherwise meets the qualifications for registration as prescribed by the board.
437B-18	The board shall establish procedures for accepting complaints from the public against any registrant according to section 92-17.
437B-23	(b) The certification program (for motor vehicle mechanics) shall provide for issuing of certificates to mechanics generally skilled in motor vehicle repair and to mechanics who specialize in certain areas of repair. ... Each area shall be separately tested and certified. ... (c) The certification test shall include both a written and a performance test.
Chapter 438: Barbering, Practice of	
438-2	Any person in the state engaging in the practice of barbering for compensation shall first obtain a certificate of registration.
438-4	(c) The board of barbers shall keep a record of its proceedings and a register of applicants for certificates showing the name of the applicant, the name and location of the applicant's place of occupation or business, and whether the applicant has been granted or refused a certificate. The books and records of the board ... constitute "public records."
438-7	Each person who wants to practice as a barber or an apprentice barber shall file a written application with the board and shall submit satisfactory proof of age, good moral character, and freedom from infectious or contagious diseases, ...

Statute Section	Description of Record and Party with Possession
438-9	On passing the examination, paying his fee and complying with the requirements pertaining to the applicant, the board shall issue a certificate signed by the chairman and executive secretary and attested by its seal. The certificate evidences that the person named thereon is entitled to practice as a registered apprentice barber or registered barber. The certificate shall be conspicuously displayed adjacent to or near the person's work chair.
Chapter 439: Beauty Culture	
439-2	Any person who, for commercial purposes, demonstrates any hair or cosmetic preparations or products, or practices as a cosmetologist, operator, apprentice, student or instructor, or operates a school of beauty shop, or advertises as being qualified to do so shall be registered with and hold a certificate from the board of cosmetology. ... The certificate of a cosmetologist, operator, apprentice, shop, or school shall be displayed in a conspicuous place in the office, place of business or employment, or the school of the holder.
Chapter 440: Boxing Contests	
440-10	Any individual, partnership or club may apply to the boxing commission for a license to conduct, hold and give professional boxing contests. The written application shall be verified by the applicant or its duly authorized officer, and shall include such information as described by this section, including but not limited to, evidence of financial integrity such as current credit reports for a five year period prior to the application, current financial statements, and state tax clearance; as well as affidavits and certificates of registration on file with DCCA, and proof that the applicant has major medical insurance coverage for all boxers on the applicant's cards. The application shall also contain sufficient facts to determine the applicant's necessary physical, mental, moral and financial qualifications to entitle a license.
440-12	The boxing commission shall accept written application for a license to act as a physician, referee, judge, matchmaker, manager, timekeeper, second, announcer or professional boxer to participate whether directly or indirectly in any contest. The application shall recite facts specified by the commission to determine the applicant's necessary physical, mental, and moral qualifications to entitle a license.

Statute Section	Description of Record and Party with Possession
440-15	Every person, partnership or club holding a boxing contest, within 72 hours after the determination of the contest for which admission fees are charged and received, shall furnish to the commission a written and verified report showing the number of tickets sold, the amount of gross receipts or proceeds, and other matters as prescribed.
Chapter 440G: Cable Television Systems	
440G-4	The director of DCCA has the power to issue CATV (Community Antenna or Cable Television) permits.
440G-5	Any person constructing, operating, or acquiring a CATV system, or extending an existing system outside its designated service area shall first obtain a CATV permit as provided by this chapter.
440G-6	A CATV permit shall issue only on a written application to the director, and shall set forth such facts on the citizenship, character, financial, technical and other qualifications of the person seeking to operate the CATV system, and complete information as to the principals and ultimate and beneficial owners, and such other information as the director deems necessary, and as specifically set forth by this section.
440G-10	... No CATV permit may be assigned, sold, leased, encumbered, or otherwise transferred without the prior written consent of the director, given only on a written application. The application form shall contain substantially the same information from the transferor and transferee as required by section 440G-6 above. The application shall also report the consideration paid, and other information as necessary, and shall be signed by the transferor and the proposed transferee.
440G-11	Each CATV company shall submit a schedule of its rates and all terms and conditions of service to the director.
440G-14	Each CATV permit holder shall annually file with the director a statement of its revenue and expenses and its ownership. The completed form shall be kept on file "open to the public."
Chapter 441: Cemeteries and Mortuaries	
441-2	Every cemetery authority as property becomes available for cemetery purposes shall file in the office of the Bureau of

Statute Section	Description of Record and Party with Possession
	Conveyances or in the Land Court, if appropriate, a written certificate of dedication containing a description of the land or property which shall be used for cemetery purposes and dedicating the property exclusively to cemetery purposes.
441-3	The cemetery authority, as property described in the certificate of dedication is offered for sale, transfer or disposition as a form of plots, crypts or niches, shall also survey land into appropriate subdivisions, make a good and substantial map or plat showing the sections, blocks, plots, avenues, walks or other subdvisions, with descriptive names, initials or numbers; in the case of a mausoleum or columbarium, make a substantial map or plat and delineate the sections, halls, rooms, corridors, elevation and other divisions with descriptive names, initials or numbers. The map or plat shall be filed in the Bureau of Conveyances or with the Land Court.
441-19	In addition to other duties, the director shall, pursuant to Chapter 91: (1) Grant licenses to cemetery and pre-need funeral authorities pursuant to this chapter; ... (5) Annually report to the Governor concerning the director's activities; ....
441-20	No person shall act as a cemetery or pre-need funeral authority without a license previously issued by the director in compliance with this chapter and its rules.
441-24.6	(a) Every cemetery authority operating a perpetual care cemetery and every cemetery or pre-need funeral authority offering such services shall contract with an independent actuary for an annual study of its level of funding, subject to the requirements of this subsection. (b) The actuarial study shall be submitted to the director within 120 days after the close of the authority's books for the year. The study shall detail the assets and liabilities of the fund or trust, the actuarial assumptions used in preparing the report, and the actuary's conclusions as to the adequacy of the level of funding. If funding is inadequate, the actuary shall recommend necessary actions to protect the perpetual care fund or pre-need trust participants.
441-24.7	(a) The actuarial study, audited financial statement, and trust agreement filed by a cemetery or a pre-need funeral authority shall be "available for review" by any member of the "general public upon request." ... The director may deny review for reasons specified in rules adopted by the director under Chapter 91.

Statute Section	Description of Record and Party with Possession
441-29	Every applicant for a license under this chapter shall file an application with the director containing information as required and bearing on the issue of the license. ...
441-32.5	Every cemetery or pre-need funeral authority shall file with the director a copy of all existing contract forms, and any new contract form prior to its use relating to the selling of cemetery property or pre-need services and related commodities. The contract shall conform to section 441-22.5(b).
441-37	(a) Every perpetual care fund and pre-need trust shall be administered by an authorized bank or trust company, or a board of trustees under section 441-1. Every authority under this chapter shall file with the director a copy of an executed copy of the declaration of the fund or trust and any amendments. (b) The bank or trust company appointed as trustee shall file a notice with the director disclosing the name of the bank or trust company, business address and additional information as required. (c) The board of trustees appointed as trustees shall file the following, including but not limited to a notice disclosing the names of its members, sworn affidavit stating that its members are not affiliated with the appointing authority; a penal bond in the sum of $100,000; and evidence of insurance.
Chapter 442: Chiropractic	
442-2	(a) Any person practicing chiropractic shall have a license. Such person shall submit an application to the board of chiropractic examiners 60 days before the examination, accompanied by the application and examination fees, and required documents and affidavits. In addition, each applicant shall furnish the board: (1) An unretouched photograph taken within 60 days preceding the date of the application; (2) a copy of a diploma from a chiropractic college or school holding accreditation status with the commission; and (3) providing such other information as required by this section.
442-9	(b and c) Any time following suspension, revocation, limitation, restriction or probation of a licensee, the board on application of the person may restore or reinstate the license with its original rights and privileges, and may require as part of the relief that the applicant complete an approved course of continuing education, or his studies or training that the board may require.

Statute Section	Description of Record and Party with Possession
442-12	Every holder of a license shall display his license in a conspicuous place in the holder's principal place of business or place of employment. This includes re-registration certificates.
442-13	Every license holder shall file his proper and current mailing address, and his business or residence address with the board and shall notify the secretary of any and all changes.
442-15	The secretary (of the board) shall keep in his or her office an up-to-date record of all licenses issued, as follows: Name, age, nativity, location, number of years of practice of chiropractic by the license holder, the number of the certificate, and the date of registration.
442-16	The board shall "keep for public inspection" in a book a complete list and description of licenses recorded.
Chapter 444: Contractors	
444-3	(d) Organization, records, reports. ... The (contractors) board shall keep a complete record of all its proceedings and shall present annually to the Governor through the director of DCCA a detailed statement of receipts and disbursements of the board during the preceding year, a statement of its acts and proceedings, and such recommendations as deemed proper.
444-5	(b)(2) The executive secretary shall, ... be in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other "public information" relating to contracting. No person shall act or advertise as a general engineering contractor, general building contractor, or a specialty contractor without a license previously obtained under and in compliance with this chapter and the rules of the board.
444-9.1	Each county or other local subdivision of the state requiring issuance of a permit as a condition preceding the construction, operation, improvement, demolition of any building or structure shall also require that each applicant for such a permit file as a condition to its issuance a statement that the applicant is licensed under this chapter, giving the license number and stating it is in full force and effect, or, if exempt from this chapter, the basis for the claimed exemption. If the applicant

Statute Section	Description of Record and Party with Possession
	claims an exemption under section 444-2(7), he shall certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the state shall maintain an owner-builder registration list containing the information required by this section relating to the 444-2(7) exemption. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply. The county shall verify the license against the list of licensed contractors provided by the state contractor's licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is the contractor so licensed, or his duly authorized agent.
444-10.5	(a) In addition to other remedies, an investigator may issue written citations to persons acting or engaging in the business of a contractor within the state without a license under this chapter.
444-12	(a) Every applicant shall file an application for a license with the contractor's license board setting forth information as required and additional information bearing on the issuance of the license. Every application shall be sworn to under oath.
444-15	(b) ... Failure, neglect or refusal to pay the biennial license renewal fee shall constitute a forfeiture of the license. Any license may be restored on written application within 60 days from the date of the forfeiture and payment of the required fee. On written request of a licensee, the board may place the person's active license in inactive status. ... The license may be reactivated at any time during the biennial period by making written request to the board and fulfilling the requirements.
444-16	Within 120 days after filing of the proper application for a license, ... , the board shall (1) conduct an investigation of the applicant, and may post pertinent information, including but not limited to, the name and address of the applicant and any of his business associates in a partnership, corporation or other entity, and the name, addresses and capacities of his associates; and (2) either issue the license or notify the applicant in writing by registered mail of the decision to refuse the license.

Statute Section	Description of Record and Party with Possession
444-25.5	(5) The board shall develop the disclosure form required by this section.
Chapter 445: County Licenses Generally	
445-2	The treasurer shall, on application of any person, issue to the applicant any license described by this chapter under its terms and conditions.
445-3	The treasurer of the county shall sign every license where license shall operate, and impress the seal of his office thereon.
445-7	Before issuing any license to any person carrying on business as co-partners, the county treasurer shall require the persons to file in his office a statement in writing showing: (1) The names and residences of each members of the co-parnership; (2) the firm name; (3) the place of business of the co-partnership. The statement shall be verified under oath. ...
445-11	All persons holding a license for any crafts or kind of business shall keep the license exposed to view, in some prominent place, convenient for inspection, on the premises for which it is granted.
Auction	
445-22	It shall be unlawful for any person to sell, offer for sale, or expose for sale at public auction, any personal property at any place other than in a public auction room, except household furniture, vehicles, automobiles, machinery, livestock, and other bulky items usually sold in warehouses or places other than auction rooms; provided that this section shall not apply to any sale under court direction ... nor to a bonafide sale of stock or merchandise where the owner is engaged in a legitimate closing out of such stock and owner has been engaged in business at a specified location in the state for not less than six months preceding the commencement of the sale. In such case, the owner shall prior to the sale affix to each article to be sold a tag designating the article by serial number, and file with the county treasurer issue a sworn statement containing a detailed list and inventory of the stock which includes identifying description of each article to be sold, its serial number, its cost price and the approximate date of receipt by the owner if received

Statute Section	Description of Record and Party with Possession
	within 90 days prior to the date of the statement. On conclusion of sale, the owner shall file with the treasurer a true and sworn statement containing a list and inventory of such stock sold at or during the sale including an identifying description of the article sold, its serial number, and the price received. At any time prior to the filing of the final statement with the treasurer, he may require the owner to file with the treasurer invoices and bills of lading for any articles received by the owner within three months prior to the first day of sale. The statements, invoices, and bills of lading shall be "open to inspection by any interested person" on application to the treasurer. ...
445-30	Every auctioneer shall keep and preserve a record book containing information required by this section, including but not limited to, a detailed list and description of property received for sale, and such other identifying information including dates received and sold, price of sale, and purchaser of each article, which record shall, during regular business hours be "open to inspection of any person" desiring to see the same. Every such entry shall be made immediately after each transaction required to be recorded.
Beef or Pork	
445-61	A license to sell beef or pork shall be granted only after the person has first received a certificate from the Department of Health stating that, after an examination is made, it appears that the shop, building, vehicle or other type of premises from which the beef or pork is sold is in a sanitary condition; when issued, the license shall contain, among other things, a condition that the shop, building, vehicle, and premises be kept in a good sanitary condition in accordance with law and with orders of the agents of the department. ....
Food Products	
445-71	A manufacturer, compound, or preparation of any confection, cakes, breadstuffs or other food products intended for sale and for human consumption in any shop or premises shall first obtain a license from the county treasurer, which license shall not be granted until the person has received a certificate from the Department of Health concerning the sanitary and fit condition of the manufacture, compounding

Statute Section	Description of Record and Party with Possession
	and other preparation of food products in the particular shop, building or premises of such manufacture or preparation.
Laundry, Etc.	
445-81	The treasurer may issue to any person a license to maintain and operate a laundry, dyeing or cleaning, or dyeing and cleaning works or on such conditions are as to location and otherwise as set forth in the license, which shall not be issued except when a certificate of the Department of Health that the location for the proposed laundry, dyeing or cleaning, or dyeing and cleaning works is suitable.
Lodging or Tenement Houses, Hotels, Boarding Houses and Restauarants	
445-94	No license shall be issued for a lodging or tenement house, hotel, boarding house or restaurant, until the applicant secures from the Department of Health and presents to the treasurer a certificate indicating that a department agent has examined the proposed premises with an identifying description and location, and that the same are in good sanitary condition and suitable for its purpose, and if the application is for a lodging or tenement house, hotel or boarding house, the license shall state the number of persons who, by law, can be lodged therein.
Milk	
445-101	The annual fee for a license to produce, process, or otherwise prepare milk intended for sale and for human consumption shall be $10; provided that any person having no more than two milk cows may sell milk from the cows without a license. Every person hereunder shall comply with all county ordinances and with rules and regulations of the Department of Health relating to milk.
445-102	No person shall sell, offer, or have in his possession with intent to sell any adulterated or misbranded milk or milk products.
Outdoor Advertising	
445-113	The several counties may adopt ordinances regulating billboards and outdoor advertising devices not prohibited by section 445-101 to -121. The ordinances may: ... (4) control and license the business the making, erecting, posting, renting and maintaining outdoor advertising

Statute Section	Description of Record and Party with Possession
	devices and billboards as a business providing advertising for others, and require each person engaging in the business to obtain an annual license. ... (5) Require that no person, whether licensed under paragraph (4) or not shall erect or maintain any billboard unless it is licensed by a permit issued by the county, which permit shall be conditioned on compliance with this chapter, applicable ordinance, and the payment of an annual fee. ....
Pawn Brokers	
445-132	The treasurer may grant licenses for the period of one year to suitable persons to carry on the business of pawn broking.
445-133	Every license shall be issued on these expressed conditions which shall be set forth in the licenses: ... (6) That the licensee will keep a book in which shall be written the date, duration, amount, rate of interest of any loan made by the licensee, an accurate description of the property pledged and the name and residence of the pledgor. A record of all sales made shall also be entered in the book. No entry in the book shall be erased, mutilated, or changed; (7) that the licensee will make out and deliver to the chief of police, or his authorized subordinate in the county where the licensee carries on the business, ... a true and correct copy of all entries required in the paragraph (6) made by the licensee in the book concerning his transactions for the week and for the period since the licensee's last preceding report, which record shall be preserved by the chief of police and shall be "open to the inspection" of any person, on satisfactory showing to the chief of police that the inspection is desired for a proper purpose; .... .
Poisonous Drugs	
445-151	A license to sell poisonous drugs shall not be issued unless the applicant presents a permit from the Department of Health.
Secondhand Dealers	
445-171	The treasurer may grant licenses to dealers and traders in secondhand articles.

Statute Section	Description of Record and Party with Possession
Solicitors	
445-182	Any person desiring a license to act as a solicitor may apply to the county treasurer on provided forms stating the name and address of the applicant, the name and address of the person, firm or corporation which the applicant represents, and the kinds of goods offered for sale or the kinds of services performed. The application shall be accompanied by a penal bond in the sum of $1,000 with sufficient and qualified sureties, conditioned on making final delivery of the ordered goods or completion of the services to be performed.
Steam Laundries, Honolulu	
445-191	The treasurer may issue to any person a license to erect, maintain, and operate a steam laundry within the district of Honolulu.
445-192	The license shall not issue except on the certificate of the Department of Health, indicating that any department agent has examined the location for the proposed steam laundry operation and that it is suitable for the purposes.
Surety, Bail Bond	
445-201	Every person who for compensation acts as surety on any bail bond or bond to keep peace shall pay an annual license fee of $10, except sureties under chapter 431.
Tobacco, Cigars and Cigarettes	
445-211	The annual fee for a license to sell tobacco, leaf tobacco, cigars, or cigarettes shall be $10.
Vehicles and Drivers for Hire	
445-221	The annual fee for a license to carry freight or baggage for hire or compensation on any dray, cart, wagon, or other vehicle other than the handcart shall be $2.50 for each vehicle used.
445-222	The annual fee for a license to carry passengers for hire in any vehicle shall be $5 for each vehicle.
445-223	All passenger carrying vehicles shall comply with the motor vehicle safety inspection requirements of these statutes and shall be certified by the treasurer prior to the issuance of a business license.

Statute Section	Description of Record and Party with Possession
Scrap Dealers	
445-232	Any person engaging in the business as a scrap dealer shall be licensed with the treasurer.
Chapter 447: Dental Hygienists	
447-1	(a) Any person 18 years of age or over with sufficient qualifications as required by this section may make written application through the board (of dental examiners) prior to the examination as required by the board for qualification as a dental hygienist.
447-2	The board of dental examiners may issue, without examination, to any qualified person to be examined, a temporary license to practice as a dental hygienist in the employment of the state, any county, any legally incorporated eleemosynary dispensary or infirmary, private school or welfare center.
Chapter 448: Dentistry	
448-2	No person shall practice dentistry or dental surgery in this state, whether free or for pay, or offer to practice, advertise, announce oneself, either publicly or privately, as prepared or qualified to practice, or append the letters "D.M.", "D.M.D.," "Dr.," "L.D.S.," or any other dental degree to the person's name intended to imply that he is a practioner of dentistry or dental surgery, without a valid, unrevoked license from the board of dental examiners.
448-9	Any person 18 years or more shall be eligible to take an examination for the board of dental examiners on complying with the following requirements, including but not limited to, submitting a written application to the executive secretary of the board 60 days prior to the examination, and meeting other requirements set forth by this section.
448-12	(a) The board of dental examiners may issue without examination to any qualified resident or non-resident otherwise qualified for examination, a temporary license to practice dentistry in the employment of the state, any county, any legally incorported eleemosynary dispensary or infirmary, private school or welfare center.
Chapter 448E: Electricians and Plumbers	
448E-4	The board of electricians and plumbers has the power to: (1) grant licenses renewable on a biennial basis to: .

Statute Section	Description of Record and Party with Possession
	journeymen and supervising electricians, journeymen and supervising specialty electricians, master and journeymen plumbers, maintenance electricians, journeymen and supervising industrial electricians.
Chapter 448H: Elevator Mechanics	
448H-2	No person shall operate or practice as an elevator mechanic without a license under this chapter.
448H-5	The board shall: ... (4) issue license to persons determined after application to meet the qualifications and revoke or suspend the license previously issued pursuant to hearings under chapter 91; ... (6) receive, investigate and take appropriate action concerning charges or complaints filed with the board against any licensed elevator mechanic who fails to comply with this chapter, the rules of the board or chapter 397; (7) register apprentice elevator mechanics; (8) maintain a record of its proceedings; ...
Chapter 449: Escrow Depository	
449-5	No person shall act as an escrow depository in this state unless it is a corporation licensed to practice by the commissoner of financial institutions.
449-6	Any corporation desiring to be licensed as an escrow depository shall file an application with the commissioner on his forms, stating: (1) The corporate name, amount of capital and office address of the applicants; (2) the names of stockholders, officers and directors of the applicant; (3) evidence of the character, financial responsibility, experience, and ability of the officers and directors.
449-9	Before an escrow depository's license is effective, the depository shall give a bond to the commissioner in the penal sum of not less than $100,000 executed by an authorized surety insurer in the state, and conditoned as required by this section.
Chapter 450: Fumigation	
450-3	The examination required by section 450-2 shall be in writing and on subjects as the Department of Health may, by regulation, prescribe to determine that the applicant possesses sufficient knowledge of fumigants, vapors, fumes, safety devices, techniques and methods sufficient to insure the public's safety and the safety of persons engaged in fumigation.

Statute Section	Description of Record and Party with Possession
450-2	The Department of Health ... cause each applicant for a fumigation license to be examined to determine his eligibility for the license.
450-8	No person shall engage in the fumigation business unless he has filed with the Director of Finance a general liability insurance policy in amounts as specified by this section, or a verified statement providing proof satisfactory to the director of financial responsibility equivalent to such policy.
Chapter 451A: Hearing Aid Dealers and Fitters	
451A-2	Any person engaging in the sale or practice of dealing and fitting of hearing aids, or to use any sign, card, or device to indicate that the person is licensed and registered, shall first obtain a license under this chapter. Any person wishing to obtain a license, or a permit or certificate of endorsement shall apply to the board and furnish satisfactory proof that the person graduated from an approved high school, and that the person has fulfilled all requirements of the board. An applicant shall also pass a written and practical examination.
451A-5	The board of hearing aid dealers and fitters has the power to issue, renew, suspend and revoke license, register applicants and holders of license, permit, and certificate of endorsement, maintain a record of its proceedings, and such other powers and duties as specified by this section.
451A-7	The board shall register each applicant without discrimination or examination who satisfactorily meets the experience requirements or passes an examination under section 451A-2.
451A-9	(a) On receiving application for a temporary permit and payment of a fee, the board may issue such permit to entitle the applicant to engage in the fitting and sale of hearing aids for a period of one year.
451A-10	Whenever the board determines that another state or jurisdiction has a program with requirements equivalent to or higher than those in effect under this chapter, the board may issue certificates of endorsements to applicants who hold current, unsuspended and unrevoked certificates or license to fit and sell hearing aids in another state or jurisdiction.

Statute Section	Description of Record and Party with Possession
451A-11	(a) Any person who owns a license, certificate of endorsement or temporary permit shall notify the board in writing of the address of where the person intends to fit or sell hearing aids. (b) The board shall keep a record of the place of business.
Chapter 452: Massage	
452-1	To engage in or attempt the occupation or practice of massage for compensation without a current massage therapist license or massage therapist apprentice permit issued under this chapter is unlawful.
452-3	No massage establishment or outcall massage service shall be operated without a license under this chapter.
452-9	The board shall keep a record of all its proceedings and activities including all applications, and action taken thereon. The books and records of the board ... shall constitute "public records."
452-12	Each person desiring to practice the occupation of massage therapist shall file a written application under oath with the board and submit such required credentials and information.
Chapter 453: Medicine and Surgery Part I. Generally	
453-2	Except as otherwise provided, no person shall practice medicine or surgery in this state either free or for pay, offer to practice, advertise or announce oneself either publicly or privately, as prepared or qualified to practice, or shall append the letters "doctor" or "M.D." to one's name, or to imply that the individual is such a practioner, without having a valid unrevoked license or a limited and temporary license obtained from the board of medical examiners.
453-5.3	(a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician to be certified as a physician assistant.
453-7.5	DCCA shall review each complaint and information received under sections 92-17, 329-44, 453-8.7, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information ... and if the department determines that the physician has violated this chapter, it shall present the

Statute Section	Description of Record and Party with Possession
	results of its investigation to the board of medical examiners for appropriate disciplinary proceeding. (b) Reports of adverse decisions of peer review committees transmitted to the department under section 633-1.7 shall "not be available to public inspection" or subject to discovery and shall be held "confidential" by the department; provided that: (1) A written affirmative or negative reply may be given to a written inquiry by a hospital or health care facility as to whether a report of an adverse decision is on file with the department; and (2) a subpoenaed report shall be subject to the requirements under section 453-17.
453-8.1	A physician or surgeon may in writing request that the board limit the individual's license to practice.
453-8.7	(a) Every physician's license under this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to DCCA within 30 days after signing any written settlement agreement or 30 days after service of the arbitration award on the parties. ... (c) The clerks of the court of this state shall report to the department any judgment or other determination of the court adjudging or finding that a physician is criminally or civilly liable for any death or personal injury caused by the physician's professional negligence, error, or omission in the practice of his profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after judgment is entered by the court.
453-14	Every physician and surgeon attending or treating a case of knife, bullet or gun shot wound, powder burn, or any injury that would seriously maim, produce death, or render the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner or whenever such cases treated in a hospital, clinic or other institution, the manager or person in charge shall report such case to the chief of police in the county where the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of injury, together with other pertinent information.

Statute Section	Description of Record and Party with Possession
453-17	In connection with an investigation under section 453-7.5, the director of DCCA may issue subpoenas under section 26-9(i), compelling the production of hospital records of patients subject to review by a peer committee that filed a report under section 663-1.7, notwithstanding section 624-25.5. A medical society, hospital, or health care facility shall expunge from the documents specific patient identifiers. Information for investigation obtained through a subpoena shall be for the sole use of DCCA to carry out its responsibilities and shall be held "confidential" by the department, unless the information is admissible evidence at a hearing held under section 453-9. This investigation shall be deemed a sensitive matter related to public safety under section 92-5.
Part II. Emergency Medical Service Personnel	
453-31	The practice of any emergency medical services by any individual employed by an emergency ambulance service who is not licensed under this chapter, or chapter 457, shall be subject to certification under this part
453-32	The board of medical examiners shall certify the individuals as qualified in emergency medical services on application and subject to the qualifications required by this section.
Chapter 454: Mortgage Brokers and Solicitors	
454-3	(a) No person shall act as a mortgage broker or mortgage solicitor without a license under this chapter, and no person without a license under this chapter shall charge or receive any commission, fee or bonus in connection with arranging for, negotiating or selling a mortgage loan. ... (c) Every person licensed as a mortgage broker shall deposit with the commissioner prior to doing business, a bond in the amount of $15,000, executed by the broker as principal and a surety company authorized to do business in this state as a surety. ... (d) Each application for a license or its renewal shall be made in writing containing such information and accompanied by such evidence as required by the commissioner. (g) A license shall be prominently displayed in the office of the mortgage broker

Statute Section	Description of Record and Party with Possession
Chapter 454D: Mortgage and Collection Servicing Agents	
454D-3	(a) No person shall act or advertise oneself as a servicing agent without having in effect a surety or cash bond previously obtained in compliance with this chapter, a copy of which shall be filed with the director of DCCA. ... (e) in lieu of the bond, ... and a revocable letter of credit in a form approved by the director of DCCA ... in the amount of the bond as required by this section may be substituted. ...
Chapter 455: Naturopathy	
455-2	Any person desiring to practice naturopathy shall apply in writing to the state board of examiners in naturopathy ... and shall include in the application such facts concerning the applicant as the board shall require. The applicant shall file his own application, sworn to under oath. ... No person shall be licensed to practice naturopathy unless he has passed the examination.
455-6	The state board of examiners in naturopathy may: ... (2) revoke or suspend any license issued to any person to practice naturopathy on any of the following causes: ... (d) willfully betraying a professional secret; ....
455-8	The board shall issue licenses to practice naturopathy to those qualifying under this chapter ... Every person holding a license to practice in the state shall re-register with the state board of examiners on or before December 31 of each odd numbered year and shall pay a re-registration fee.
Chapter 456: Notaries, Public	
456-2	... Every person appointed to that office (of a notary public) shall, before entering, take and subscribe an oath for the faithful discharge of the person's duties, which oath shall be filed in the department of the Attorney General.
456-4	Each person appointed and commissioned a notary public under this chapter shall forthwith file a literal or photostatic copy of the person's commission, an impression of the person's seal, and a specimen of the person's official signature with the clerk of the circuit court of the circuit in which the notary public resides. ...

Statute Section	Description of Record and Party with Possession
	Thereafter any clerk, when requested, shall certify to the official character and acts of such notary public whose commission, impression of seal and specimen of official signature is so filed in the clerk's office.
456-5	Each notary public forthwith and before entering on the duties of his office shall execute, at the notary's own expense, an official surety bond which shall be in the sum of $1,000. Each bond shall be approved by a judge of the circuit court. ... After approval the bond shall be deposited and kept on file in the office of the clerk of the circuit court in the judicial circuit where the notary public resides. The clerk shall keep a book called the "bond record," in which the clerk shall record such data on each of the bonds deposited and filed in his office as the Attorney General may direct.
456-10	It shall be a notary public's duty, when requested, to enter on record all losses or damages sustained or apprehended, by sea or land, and also all averages, and such other matters as by mercantile usage, appertain to the notary's office and cause protest thereof to be made, duly and formally.
456-12	The protest of any foreign or inland bill of exchange, or promissory note or order, duly certified by any notary public or under the notary's hand and official seal, shall be legal evidence of the facts stated in the protest, as to the same, and also as to the notice given to the drawer or endorser in any court of law.
456-15	Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. All copies of certificates granted by the notary shall be under the notary's hand and notarial seal, and shall be received as evidence of such transactions.
456-16	The records of each notary public shall be deposited with the clerk of the circuit court in which the notary resides on the resignation, death, expiration of each term of office or removal or abandonment of office.
Chapter 457: Nurses	
457-1	... It shall be unlawful for any person not licensed under this chapter to practice or to offer to practice nursing as a registered nurse or as a licensed practical nurse or to use any sign, card or device to indicate that the person is a registered or licensed practical nurse.

Statute Section	Description of Record and Party with Possession
457-5	(b) The board may: ... (6) examine, license and renew the licenses of qualified applicants; ... (10) keep a record of all its proceedings.
457-6	(c) ... The executive secretary shall be in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other "public information" relating to nursing. The executive secretary shall maintain a manual of policies and procedures of the board of nursing, which shall be updated when necessary. The manual shall be provided to each member of the board and "made available for public inspection."
457-7	(a) An applicant for a license to practice nursing as a registered nurse shall submit to the board written evidence under oath, that the applicant meets the requirements as set forth by this section. ... (g) Any person requesting a verification of a registered nurse license to a nursing board of another state shall pay a license revocation fee.
457-8	(a) An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence under oath that the applicant has met the requirements of this section.
457-9	(a) The license of every person licensed under this chapter shall be renewed biannually by filling in the application blank and returning it to the board with a renewal fee on or before June 30.
457-11	(d) As necessary, the board, through its representative, shall survey nursing education programs in the state. Written reports of the surveys shall be submitted to the board. If the board determines that an accredited nursing education program is not maintaining standards required by law and by the board, notice thereof in writing specifying the discrepancy shall be immediately given to the institution conducting the program.
Chapter 457B: Nursing Home Administrators Act	
457B-3	No person shall operate a nursing home in the state without a license and registration with the board (of examiners of nursing home administrators) as hereinafter provided. It shall be unlawful for any person not licensed under this chapter to practice or to offer to practice nursing home administration or to use any sign, card or device to indicate that the person is licensed and registered as an administrator.

Statute Section	Description of Record and Party with Possession
457B-6	The board shall: (1) Develop ... standards ... in order to receive a license as a nursing home administrator ... ; (a) maintain a record of all its proceedings.
Chapter 458: Opticians, Dispensing	
458-3	... The board shall keep a complete record of its proceedings. ...
458-4	Before engaging or continuing in the occupation of dispensing optician, individuals shall first apply for examination .... The application shall bear the signature of the individual and shall contain the name under which the applicant proposes to do business, and the business address. Before engaging or continuing in the business of dispensing optician, firms shall first apply for certificates of dispensing optician. ... The application shall bear the signature of the partner if the applicant is a partnership, or president or secretary if the applicant is a corporation; shall contain the name under which the applicant proposes to do business and the business address, and the name of the licensed dispensing optician who shall be employed at the business address. Separate applications shall be made for each place of business, and each application shall be accompanied by a registration fee.
458-5	Each application, ... , shall contain: (1) The experience of the applicant; (2) the name and experience of each person who will take facial measurements, fit or adjust lenses or frames or duplicate lenses; (3) other information as required.
458-6	If after examination, the board approves the application and finds him to be competent and qualified to accurately to fill prescriptions for ophthalmic lenses and otherwise engage in the business of dispensing optician, it shall register the applicant and issue a certificate of dispensing optician on payment of the registration fee. ... The certificate shall at all times displayed in a conspicuous place at the place of business licensed. The certificate shall not be transferrable.
458-7	Each holder of a certificate of dispensing optician shall file with the board a report containing the names and experience of each person employed by the certificate holder, who in the course of the person's employment, take facial measurements, fits or adjusts lenses or frames, or duplicate lenses, together with other information as required.

Statute Section	Description of Record and Party with Possession
458-10	(g) Record. A stenographic record of the hearing shall be kept and a transcript thereof filed with the board.
Chapter 459: Optometry	
459-1	... Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or claims such ability, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked and unsuspended license as provided in this chapter.
459-2	It shall be unlawful for any person to practice optometry or to append the letters "O.D." or any other optometric degree to a person's name to imply that the individual is a practioner of optometry, without first securing a license under this chapter.
459-5	DCCA on behalf of the board of examiners in optometry shall preserve a record of all applications for examination. The record shall also show where the applicants were rejected or licensed, and if rejected, the reasons therefor.
459-7	(a) Except as otherwise provided, every person desiring to begin or to continue to practice optometry, ... on presentation of satisfactory evidence under oath, that the applicant graduated from an accredited American optometric college, school or university approved by the board and such other organizations as required by this section, shall take an examination before the board on complying with the requirements as set forth in this subsection. (b) Each applicant shall file in writing with the executive secretary ... prior to the date for the examination the credentials as specified by this subsection.
Chapter 460: Osteopathy	
460-1	No person shall practice as an osteopathic physician and surgeon whether for free or for pay, or shall offer to so practice, advertise or announce, either publicly or privately, that the person is prepared to so practice, or shall append the letters "Dr." "D.O." to the person's name with the intent to imply that the person practices as an osteopathic physician and surgeon, without having a valid unrevoked license obtained from the board of osteopathic examiners.

Statute Section	Description of Record and Party with Possession
460-3	No person shall be licensed by the board to practice as an osteopathic physician and surgeon unless he has been duly examined and found to possess necessary qualifications.
460-6	Each applicant for a license under this chapter shall comply with the requirements as set forth by this section.
460-9	The board of osteopathic examiners may issue a license, without examination to a practioner licensed in any country, state, territory or province, provided that the license requirements in that jurisdiction are deemed practically equivalent by the board to the requirements for a license in force in this state. (This section also describes other circumstances where a licensed applicant can forego a local examination based on some other examination, whether by the national board, the medical corps of the United States Army, Navy, or public health service, or the federal licensing examination, so long as the applicant otherwise meets the requirements of state law.)
460-10	Every holder of a license shall display it in a conspicuous place in the licensee's principal place of business or employment.
460-17	The board of osteopathic examiners shall keep a record which shall be "open to public inspection" ... of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of licenses to practice osteopathy and surgery. This record shall also contain the name, known place of business and residence, and the date and number of the license of every registered osteopathic physician and surgeon.
460-18	(a) Every osteopathic physician and surgeon licensed under this chapter who does not possess professional liability insurance shall report any settlement or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to DCCA within 30 days after any written settlement agreement has been signed by all parties thereto or 30 days after service of the arbitration award on the parties. ... (c) The clerk of the respective courts of this state shall report to the department any judgment or other determination of the court finding that an osteopathic physician or surgeon is criminally or civily liable for any death or personal injury caused by

Statute Section	Description of Record and Party with Possession
	professional negligence, error or omission in the practice of his profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after judgment is entered by the court.
460-19	(a) DCCA shall review each complaint and information received under sections 92-17, 329-44, 460-18, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information ... and if the department determines that the osteopathic physician and surgeon has violated this chapter, the department shall present the investigation results to the board for appropriate disciplinary proceedings. (b) Reports of adverse decisions of peer review committees transmitted to the department under section 663-1.7 shall "not be available to public inspection" or subject to discovery and shall be held "confidential" by the department; provided that: (1) a written affirmative or negative reply may be given to a written inquiry by a hospital or health care facility as to whether a report of an adverse decision is on file with the department; and (2) a subpoenaed report shall be subject to the requirements under section 460-20.
460-20	In connection with an investigation under sectin 460-19, the director of DCCA may issue subpoenas, pursuant to section 26-9(i), compelling the production of hospital records of patients whose cases were reviewed by a peer review committee that filed the report under section 663-1.7, in spite of section 624-25.5. A medical society, hospital, or health care facility shall expunge from the documents specific patient identifiers. Investigation information obtained through a subpoena shall be for the sole use of DCCA ... and shall be held "confidential" by the department unless the information is admissible evidence at a hearing held under section 460-14. This investigation shall be deemed a sensitive matter related to public safety under section 92-5.
Chapter 460J: Pest Control Operators	
460J-2	(c) ... The (pest control) board shall keep a complete record of all proceedings and shall present annually to the Governor through the director of DCCA a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as deemed proper.

Statute Section	Description of Record and Party with Possession
460J-3	In addition to other duties and powers granted by this chapter, the board shall: (1) Grant licenses to operators under this chapter; (2) make, amend, or repeal such rules necessary to effectuate this chapter and protect the general public, including such rules that may: ... (B) require operators to make reports to the board containing such information that will enable the board to enforce this chapter and rules ...; ... (5) direct the executive secretary to publish and distribute pamphlets and circulars containing information as proper to the further accomplishment of this chapter.
460J-4	(b)(2) The executive secretary shall, under supervision of the board: ... (B) be in charge of the offices of the board for the preparation of reports and the collection and dissemination of data and other public information relating to pest control.
460J-6	No person within the purview of this chapter shall act or assume to act or advertise as a pest control operator or fumigator without a license obtained under and in compliance with this chapter and the rules of the board.
460J-9	(a) Every applicant for a license shall file an application as required by the board, and shall furnish any additional information bearing on the issuance of the license as the board requires. ... (b) Every application in the case of an individual shall be accompanied by a sworn certificates of not less than two persons who know the applicant for a period of not less than six months, certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealing. (c) Every application for a license by an individual who passed the examination shall be accompanied by a license fee.
460J-12	(a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant qualified by application and examination. ... The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section 460J-14. ... (c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. ... Each applicant for a license shall be designated by a number instead of by name and the identity thereof shall "not be disclosed" until the examination papers are graded.

Statute Section	Description of Record and Party with Possession
460J-19	(a) This section applies only to wood destroying pests. (b) No licensee shall commence work on a contract, or sign, issue or deliver any documents expressing an opinion or statement relating to the absence or presence of wood-destroying pests until an inspection has been made. A written inspection report ... shall be prepared and delivered to the person requesting the inspection or his designated agent, before work is commenced. The following shall be set forth in the report: (1) The date of the inspection and the name of the person making the inspection; (2) the name and address of the person or firm ordering the report; (3) the name and address of any person who is a party in interest to whom the licensee is to send certified copies of inspection reports and completion notices; (4) the address or location of the property; (5) a general description of the building or premises inspected.
460J-24.5	(a) All manufacturers or their representatives intending to sell a non-chemical pest control device in the state shall submit efficacy and safety data prior to sale to the Department of Agriculture; provided such requirement for submission of such data may include the furnishing of specimen devices or samples. The department ... shall conduct such examination and testing as may be necessary to ascertain the reliability, efficacy and safety data and actual or potential adverse effects on human health and safety of such device.
460J-25	No person shall engage in the business of pest control unless he has filed with the director of finance a general liability insurance policy approved by the director in the amounts as set forth in this section. If a policy cannot be obtained, the licensee may file with the director a verified statement providing satisfactory proof of financial responsibility equivalent to any such insurance policy ....
Chapter 461: Pharmacists and Pharmacy	
461-3	... The secretary shall, subject to the direction of the board (of pharmacy), make and keep all records and record books required to be kept by the board and the secretary shall furnish the Department of Health with copies of such of those records as it requires. The records and record books of the board as made and kept by the secretary shall be prima facie evidence of the matter recorded in any court of law.

Statute Section	Description of Record and Party with Possession
461-5	(a) Any applicant for a license as a pharmacist shall submit evidence to the board as required by this section, including registered pharmacists of any state or territory of the United States, and any applicant who is a graduate of a school or college of pharmacy located outside the United States.
461-6	Every applicant shall pass an examination ..., file an application with the board accompanied by application and examination fees. ... Each applicant who passes the examination shall pay a license fee.
461-14	It shall be unlawful for any person to operate, maintain, open, change location or establish any pharmacy within the state without first having obtained a permit to do so from the board of pharmacy. ... Separate applications shall be made and separate permits issued for each separate place conducting operations which require a permit.
Chapter 461J: Physical Therapy Practice Act	
461J-2	(a) No person shall practice physical therapy for free or for pay, offer to practice same, offer physical therapy or physical therapy services, or represent, advertise or announce publicly or privately that the person is a physical therapist or physiotherapist, unless appropriately licensed under this chapter. (b) Use of the words "licensed physical therapist," "physical therapist," or "physiotherapist," or the letters, "RPT," "LPT," "PT" or any other words, letters or symbols indicating that the person is a physical therapist requires a license under this chapter.
461J-5	(b) In addition to other powers and duties prescribed under this chapter, the board may: ... (6) keep a record of all its proceedings.
461J-6	(a) An applicant for a permanent license to practice physical therapy shall submit proof of educational qualifications and other information required by the board on a supplied application form. ... (b) Except as provided in section 461J-7, every applicant for a permanent license who meets qualifications established by the board shall take an examination administered by the board or an examination adminstered by a testing agency selected the board. ...

Statute Section	Description of Record and Party with Possession
461J-12	(a) Any license issued under this chapter may be revoked or suspended by the board at any time for one or more of the following acts or conditions on the part of the license holder: ... (2) willfully betraying patient "confidentiality;" ....
461J-13	Any person who violates or fails to comply with any of the provisions of this chapter shall be fined not more than $1,000 for each violation.
Chapter 462A: Pilotage	
462A-3	In addition to any other duties and powers granted by this chapter the director (of DCCA) shall: (1) Grant licenses to port pilots and deputy port pilots under this chapter; ....
462A-6	All licenses expire on June 30 of even numbered years. All applicants for renewal of license shall submit a renewal application and comply with all rules of the department. So long as the applicant possesses the qualifications established by the department (DCCA) and remains in active service as a pilot in the state, he shall not be denied a renewal of his license, except as provided in this chapter.
462A-7	An applicant for examination for a pilot's license shall pay a fee of $25. ...
Chapter 463: Private Investigators and Guards	
463-5	No person, firm, corporation, partnership or association shall engage in the business of private detective or guard, represent itself to be, hold itself out as, list itself or advertises as a private detective or guard, guard agency, bureau or is furnishing detective, investigating or guard services without first obtaining a license as a private detective, guard, or guard agency from the board on payment of application and license fees.
463-6	The board of detectives and guards may grant private detective licenses to suitable persons, corporations, partnerships or associations on written application and meeting the requirements as stated by this section, including but not limited to the disclosure of any treatments for psychiatric or psychological disorders, convictions for crimes, and others.

Statute Section	Description of Record and Party with Possession
463-7	The business of guard for the purpose of protecting persons or property, preventing theft or unlawful taking of goods, wares, merchandise, money, bonds or other articles of value for hire or reward or represent one as such without first obtaining a license as a guard or guard agency from the board.
463-8	The board of detectives may grant a guard or guard agency licensed to suitable persons or entities on written application and meeting the requirements of this section.
463-9	Application for such license shall be under oath on a form furnished by the board and requires such statements and information as set forth in this section including the disclosures noted in section 463-6 above, and requests for criminal history records of the applicant from each jurisdiction in which the applicant lived for any substantial period of time, as well as accompanied by affidavits of three reputable citizens of the state residing in the locality where the applicant proposes to conduct business, stating that the applicant is a person of good moral character.
463-12	Each licensee, ..., shall give to the board a bond whose sum shall not be less than $5,000 executed by the applicant and by an authorized surety company, subject to the conditions set forth by this section.
Chapter 463E: Podiatrists	
463E-2	No person shall practice or offer the same, or advertise oneself, either publicly or privately, as qualified to practice podietry without a valid license from the board of medical examiners.
463E-3	No person shall be licensed to practice podietry unless the person passes an examination and has been found to possess necessary qualifications required by the board. The applicant shall furnish satisfactory proof to the board of requirements as specified by this section.
463E-6	(a) Any license to practice podietry may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions by the license holder: ... (3) willfully betraying a professional secret; ....

Statute Section	Description of Record and Party with Possession
463E-6.5	(a) If a licensed podietrist does not possess professional liability insurance, he shall report any settlement or arbitration award of any claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or unauthorized rendering of professional services. Such report shall be submitted to DCCA within 30 days of the written settlement agreement signed by the parties. ... (c) The clerks of the courts of the state shall report to the department any judgment or other determination of the court finding a podietrist criminally or civily liable for any death or personal injury caused by the podietrist's professional negligence, error or omission in the practice of his profession or rendering of an authorized professional services.
463E-15	Whenever a medical or surgical services within the scope of a podiatrist's activities in any program financed by public funds or administered by a public agency for aid to indigent, aged, legally blind or any other group or class, the recipient may choose between a licensed physician or a licensed podietrist to perform services.
Chapter 464: Professional Engineers, Architects, Surveyors and Landscape Architects	
464-2	... No person except those exempted by sections 464-3 and -5 shall practice professional engineering, architecture, land surveying or landscape architecture in the state unless the person is duly registered under this chapter.
464-7	... The board (of professional engineer, architects, surveyors and landscape architects) shall keep a record of its proceedings, all applicants for registration as engineer, architect, surveyor, or landscape architect, the date of application, name, age, educational and other qualfications, place of business and residence, whether an examination was required, whether the applicant was registered and a certificate issued to the applicant and date of such action.
464-8	A person eligible for registration as a professional engineer, architect, land surveyor or landscape architect shall meet the requirements of this section.
464-9	(a) An application for registration ... furnished by the board, signed and sworn by the applicant, shall be accompanied by an application fee that is non returnable after the application has been entered on the records of the board. .... (b) On qualifying for registration and

Statute Section	Description of Record and Party with Possession
	paying the registration fee, the person shall be registered as a professional engineer, architect, land surveyor, or landscape architect and shall receive a certificate from the board signed by the chairman and secretary. Every person registered who has an individual or member of the firm or corporation, conducts an office for the practice of the profession shall display the original certificate in a conspicuous manner in the principal office or place of business.
464-11	Each certificate of registration issued shall bear the date of the original registration, specifying whether the person to whom it is issued is authorized by the board to practice professional engineering, architecture, land surveying or landscape architecture. For a certificate authorizing a person to practice professional engineering, the certificate shall indicate the major branch or branches of engineering in which the person has a especially qualified. ... All plans, specifications, maps and reports prepared by or under the supervision of the registered engineer, architect, surveyor or landscape architect shall be stamped with such seal or stamp when filed with public officials. It shall be unlawful for anyone to seal or stamp any document with such seal or stamp after the certificate of the registered has expired, been revoked or suspended unless the certificate has been renewed or reissued.
Chapter 465: Psychologist	
465-2	Except as otherwise provided, it is unlawful to represent oneself, or engage in the practice of psychology without first obtaining a license under this chapter.
465-6	The board shall: (1) Examine qualifications of applicants for licensing under this chapter; (2) prepare, administer and grade examinations and tests for applicants; (3) keep a record of action taken on applicants for licensing; the names of all persons licensed; petitions for temporary permits; actions involving suspension, revocation or denial of licenses and recommendations for reciprocity and receipt and disbursement of any monies; ....
465-8	... A licensed psychologist shall display the license in a conspicuous place in the psychologist's principal place of business.

Statute Section	Description of Record and Party with Possession
Chapter 466: Public Accountancy	
466-5	(a) A person who meets the requirements of this section shall, on application to the board, be issued a certificate of "certified public accountant." The board shall maintain a list of all persons to whom such certificates are issued. ... (e) A person applying for a certificate of certified public accountant shall satisfactorily complete an examination accounting, auditing and other related subjects as determined by the board.
466-6	(a) Registration. A person who meets the requirements of this section shall, on application to the board within six months of honorable discharge or release fromsuch service, be registered by the board as a "public accountant." ... The board shall maintain a list of all persons who are so registered.
Chapter 466J: Radiologic Technology	
466J-2	... The board (of radiologic technologists) shall: ... (5) examine, license and grant, deny or revoke licenses of qualified applicants; (6) keep a record of all its proceedings, and (7) make an annual report to the Governor.
466J-3	(b) The department shall employ an executive secretary of the board whose position shall be subject to Chapter 76 and 77. The executive secretary shall be: ... (3) in charge of the offices of the board and responsible to the board for preparation of reports and the collection and dissemination of data and other "public information" relating to radiologic technology.
466J-4	No person shall practice or offer to practice as a radiologic technologist or as a radiation therapy technologist without an appropriate license previously obtained, in good standing and in compliance with this chapter under rules of the board.
466J-5	(a) An applicant for a license to practice as a radiologic technologist or radiation therapy technologist shall submit to the board written evidence verified on oath that the applicant has met the requirements of this section. ... (c) The applicant shall pass the appropriate examination specified and administered by the board; provided that the board may accept instead of the examination a certificate of another agencyor organization which certifies radiologic technologists or radiation therapy technologists, if such certificate was issued on the basis of an examination reasonably equivalent to that administered by the board.

Statute Section	Description of Record and Party with Possession
Chapter 467: Real Estate Brokers and Salesmen	
467-4	In addition to other powers and duties granted by this chapter the reale state commission shall: (1) Grant licenses to real estate brokers and salesmen under this chapter; ... (5) report to the Governor through the director of DCCA annually and at such times and manner as the Governor may require; (6) publish and distribute pamphlets containing such information as appropriate to further the purpose of this chapter.
467-7	No person shall act as a real estate broker or salesman or shall advertise or assume to act as such broker or salesman without a license obtained under this chapter and the rules of the real estate commission.
467-9	(a) Every applicant for a real estate license under this chapter shall file an application with the commission setting forth required information and additional information bearing on the issuance of a license.
467-12	A licensed broker shall have and maintain a definite place of business in the state and shall display therein his broker's license.
467-25.5	(a) Schools. Any person may apply to the real estate commission for a certificate of registration as a real estate school on payment to the commission of an initial registration fee for the first year of registration and thereafter an annual registration fee. No school shall be granted a certificate of registration unless it maintains a sufficient number of registered instructors and requires a course of training of not less than that required by section 467-8. (b) Instructors. The commission shall issue a certificate of registration as instructor to any person meeting its requirements and paying the fee.
467-30	(b) Any sole proprietor, partnership, corporation or other business entity who, in the operation of a condominium hotel, engages in any activity within the definition of "real estate," "real estate broker" and " real estate salesman" in section 467-1 and who is also not a custodian or caretaker shall obtain a broker's license under this chapter and the rules of the commission and provide evidence of bonding to the commission in an amount equal to $500 multiplied by aggregate number of units covered by all of the broker's condominium hotel contracts and meet the minimum bond requirements as stated by this section.

Statute Section	Description of Record and Party with Possession
Chapter 467B: Solicitation of Funds from the Public	
467B-2	(a) Every charitable organization except as otherwise provided in this chapter, which intends to solicit contributions within the state or have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the director (of DCCA) ... and which shall be refiled in the next year and each following year in which the charitable organization engages in solicitation activities. ... The statement shall be sworn to and shall contain the information as described by this section, including but not limited to: (1) the name of the charitable organization and its purpose, (2) the principal address of the organization and addresses of any office in the state. If no office, the name and address of the person having custody of its financial records. ... (5) The name and address of all officers, directors, trustees and the principal salaried executive staff officer. (6) A copy of a financial statement (balance sheet and income and expense statement) audited by an independent certified public accountant covering, in a consolidated report, complete information on the preceding fiscal year's fund raising activities for the organization, showing kinds and amounts of funds raised, cost and expenses, and allocation and disbursement of funds raised whenever the organization raised to receive contributions exceeding $10,000 during the preceding fiscal year or a copy of an unaudited financial statement as described by this section. (b) Each chapter, branch or affiliate except an independent member agency of a federated fund raising organization, may separately report the information required by this section or report the information to its parent organization which shall furnish the information to its state affiliates, chapters, and branches in a consolidated form to the department ....
467B-3	The director may enter into a reciprocal agreement with appropriate authorities of another state to exchange information with respect to charitable organizations, professional fund-raising council and professional solicitors. Under the agreement, the director may accept information filed by such organization with the appropriate authority of another state in lieu of the filings required by this chapter, if the information is substantially similar to that required by this chapter. The director shall also grant exemption from the requirement of filing an annual registration statement for charitable organizations existing under laws of another state and is further described by this section.

Statute Section	Description of Record and Party with Possession
467B-4	Any charitable organization, professional fund raiser, solicitor or resident with its principal place of business outside the state ... which solicits contributions for people in this state shall be deemed to have irrevocably appointed the director as its agent to receive service of summons or other process directed to such charitable organization with principals or officers or any individual solicitor. ....
467B-6	(a) Every written contract ... or a written statement of the nature of the arrangement between professional fund raising council and a charitable organization shall be filed with the department within ten days after the concluding of the contract or agreement. (b) ... The contract or statement shall disclose the percentage distribution between the parties to the contract of all funds raised or received as a result of the agreed-upon solicitation activity .... .
467B-8	Registration statements and applications, reports, professional, fund-raising council contracts or professional solicitor contracts and all other documents and information required for filing under this part or by the director shall become "public records" in the department and shall be "open to the general public for inspection."
467B-12	(a) No person shall act as a professional fund-raising council or professional solicitor for a charitable organization under this chapter unless the person has first registered with the director. An application for registration shall be in writing under oath in the form prescribed by the director and containing such information as required. ... However, the names and addresses of all officers, agents or employees of professional fund-raising council and all professional solicitors, their officers, agents, servants, or employees employed to work under the direction of a professional solicitor shall be listed in the application. (b) The applicant at the time of the application shall file with and have approved by the director a bond in which the applicant shall be the principal obligor in the sum of $5,000 issued by an authorized surety company and subject to the provisions of this section.
Chapter 468: Solicitors; Business of Taking Orders	
468-1	Every person in the business of soliciting orders, options of sale, contracts or subscriptions requiring the delivery

Statute Section	Description of Record and Party with Possession
	of property within the state and not paying a business license fee or excise tax shall, in order to engage in business, obtain and have in force a permit issued by the director of DCCA under this chapter.
468-2	An application in writing for such permit shall be made and filed with the director of DCCA and shall set forth under oath the information as set forth by this section.
Chapter 468B: Bonding of Solar Energy Device Dealer	
468B-3	No dealer shall sell a solar energy device at retail in this state if the dealer has not placed and maintained a bond with the director (of DCCA) under section 468B-2.
Chapter 468E: Speech Pathologists and Audiologists	
468E-5	To be eligible for licensure by the board as a speech pathologist or audiologist, a person shall: ... (4) pass a written examination approved by the board.
468E-6	(d) ... The board shall conduct its meetings and keep records of its proceedings according to Chapter 92.
468E-8	(a) On or after January 1975, no person shall engage in the practice of speech pathology or audiology without a license under this chapter or as otherwise provided.
468E-9	(a) A person eligible for licensure under section 468E-5 ... shall make application for examination to the board. ...
468E-10	(a) Each applicant for a license under this chapter shall take a written examination. ... (d) The board shall maintain a permanent record of all examination scores.
Chapter 468K: Travel Agencies	
468K-2	Travel agencies and sales representatives shall register with the director (of DCCA) prior to engaging in the business of selling travel services.
Chapter 469: Undertakers, Embalmers, Funeral Directors	
469-1	The Department of Health may ... examine or cause to be examined by not less than two practicing embalmers, undertakers or funeral directors, any person with

Statute Section	Description of Record and Party with Possession
	qualifications as specified in this section. All examinations shall be conducted in writing and supplemented by practical demonstrations. Each person who passes the examination shall be given a license as an embalmer.
469-4	Any person qualifying as an apprentice under a regularly licensed embalmer shall register with the Department of Health and on payment of a fee, a certificate of apprenticeship shall be issued.
Chapter 471: Veterinary Medicine	
471-2	No person shall practice veterinary medicine, either free or for pay, or shall offer to practice or announce or advertise publicly or privately as prepared or qualified to so practice or shall append the letters "Dr." or any other letters to the person's name with the intent to imply that the person practices veterinary medicine, without having a valid unrevoked license obtained from the Board of Veterinary Examiners ....
471-8	(a) No person shall be licensed to practice veterinary medicine unless the person passes an examination of the qualifications and fitness to engage in such practice given by the board of veterinary examiners. Before any applicant is eligible for the examination under this chapter, he shall file an application, pay appropriate fees, and furnish proof satisfactory to the board of the applicant's qualifications.
	Title 26. Trade Regulation and Practice
Chapter 480: Monopolies; Restraint of Trade Part I. Antitrust Provisions	
480-18	(j) The custodian to whom any documentary evidence is delivered shall take physical possession and shall be responsible for the use and for the return pursuant to this section. The custodian shall issue a receipt for such evidence received ... While in the possession of the custodian, no such evidence so produced shall be available for examination, without the consent of the person who produced the evidence, by any individual other than a duly authorized representative of the office of the Attorney General. ...

Statute Section	Description of Record and Party with Possession
Chapter 482:	Trademarks, Prints, Labels, and Trade Names, Registration and Protection of
482-2	(a) Any person desiring to register any print, label or trademark intended to be attached or applied to goods manufactured articles or to bottles, boxes or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to register a service mark, or a trade name, may obtain a certificate of the registration of the print, label, trademark, service mark or trade name in the manner as provided herein. (b) Before receiving a certificate of registration of a print, label or trademark, the person shall file in the office of the director of DCCA an application for registration of such print, label or trademark, with a declaration certified by the applicant stating that the applicant is the sole and original proprietor or his assignee, and describing the goods or manufactured articles for which the print, label or trademark is used, and stating the manner of its use. This shall also apply to any person seeking a certificate of registration for a service mark or trade name. ... The application shall be accompanied by two copies of the print, label, trademark, service mark or trade name. ...
482-3	On receiving the application accompanied by the fee, the director of DCCA shall record the print, label, trademark, service mark or trade name and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant's claim of the use of the print, label, trademark, service mark or trade name throughout the state, for the term of one year from the date thereof; provided that the director shall not register any such symbol which is substantially identical with any registered print, label, trademark, service mark or trade name or with the name of any corporation or partnership registered under Chapters 416, 418 and 425; further provided that the registered symbol continues in actual use by the applicant in the state or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. ...
482-8	Any person claiming to own a print, label, service mark, trademark or trade name represented by a certificate of

Statute Section	Description of Record and Party with Possession
	registration under this chapter issued to any other person shall file a verified petition in the office of the director of DCCA for revocation of the registration of such symbol. The petition shall set forth facts in support of the ownership by the petitioner of the symbol, whether print, label, service mark, trademark or a trade name, and in support of the claim of the petitioner that the certificate of registration should be revoked. ...
482-10	Any person engaged in manufacturing, bottling, selling or distributing soda water, mineral or aerated water, porter, ale, beer, cider, ginger ale, milk, cream or other beverages of mixtures in bottles, syphons, tins, kegs or other containers with the person's name, title or other mark or device branded, stamped, engraved, etched, blown or impressed or otherwise produced in or on such bottles and other described containers as used by the person, may file in the office of the director of DCCA a description of the name, title or other mark or device so used by the person and cause such description to be printed at least once in each week for two weeks successively in a newspaper in the county where such manufacturing, bottling, selling or distributing takes place in some paper of general circulation in Honolulu; where on such name, title, or other mark or device shall be deemed registered.
Chapter 482E: Franchise Investment Law	
482E-2	(c) There shall be filed with the director a copy of the offering circular required under subsection (a) or the amended offering circular required under subsection (b) at least seven days prior to the sale of a franchise. (d) In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this state by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that such offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section.
482E-5	(a) Every person selling franchises in this state shall at all times keep and maintain a complete set of books, records and accounts of such sales and shall thereafter as are required by the director make and file in his office a report setting forth the franchises sold and the proceeds

Statute Section	Description of Record and Party with Possession
	derived therefrom. ... (c) ... Every person who sells a franchise in this state, other than a Hawaii corporation, shall file with the director as prescribed by rule, an irrevocable consent appointing the director or the director's successor in office to be the person's attorney, to receive service or any lawful process in any non-criminal suit, action or proceeding against the person or his successor, executor, administrator or personal representative which arises under this chapter or any rule or order after the consent has been filed, with the same force and validity as if served personally on the person filing consent.
482E-8	(a) The director may issue a stop order prohibiting the sale of a franchise if the director finds that the order is in the public interest and that particular circumstances as described by this section have arisen.

Chapter 484: Uniform Land Sales Practices Act

484-4	Unless the subdivided lands or the transaction is exempt by section 484-3 or exempted by the director under section 484-10(g): (1) No person shall offer or dispose of any interest in subdivided lands located in this state, or offer or dispose in this state of any interest in subdivided lands located outside the state before a preliminary or final order registering the subdivided land is entered in accordance with this chapter; and (2) no person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.
484-5	(a) The application for registration of subdivided lands shall be filed according to this chapter and rules adopted by the director (of DCCA) under Chapter 91 and contain the following documents and information as required by subsections (1 through 17) of this section. ... (c) The subdivider shall immediately report any material changes in the information contained in any application for registration.
484-6	(a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The propsoed

Statute Section	Description of Record and Party with Possession
	public offering statement submitted to the director shall be in a prescribed form and shall include the information as described by subsections (1 through 8) of this section. ... (c) The director may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to his prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.
484-7	(a) On receipt of an application for registration in proper form, the director shall issue a notice of filing to the applicant subject to section 484-20 and initiate an examination to determine whether requirements of subsections (1 through 6) of this section have been met. (b) On receipt of an application for exemption for registration pursuant to section 484-10(g) in proper form, the director shall issue a notice of filing to the applicant and initiating the examination to determine whether the requirements of subsections (1 through 5) of this section have been met.
484-8	(a) Within 45 days from the date of notice of filing, the director shall enter a preliminary or final order registering the subdivided lands or rejecting the registration, or shall enter a preliminary or final order exempting the subdivided lands pursuant to section 484-10(g) or rejecting the application for exemption. ... (b) If in the case of an application for a final order of registration, the director affirmatively determines on inquiry an examination that the requirements of section 484-7 have been met, the director shall enter a final order registering the subdivided lands and shall designate the form of the public offering statement. If in the case of an application for a final order exempting the subdivided lands pursuant to section 484-10(g), the director affirmatively determines ... that the requirements of the section have been met, the director shall enter a final order exempting the subdivided lands from registration under section 484-10(g).

Statute Section	Description of Record and Party with Possession
	(c) If the director determines that in the case of the application for either a final order of registration or exemption under the stated sections of this chapter, any of the requirements have not been met, the director shall notify the applicant that the application must be corrected in particulars within ten days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration or application, which order shall include the findings of fact on which the order is based. ...
484-8.5	(a) The director shall enter a preliminary order of registration or of exemption when the conditions as described by this section have been met. ... (b) If the subdivider obtained a preliminary order of registration or section 484-10(g) exemption, then on issuance of final subdivision approval of the subdivision by the county in which the land is situated, the subdivider shall submit to the director an application for a final order of registration or exemption, which application shall contain, among other things: (1) A copy of the subdivision map and evidence satisfactory to the director that final subdivision approval has been granted by the county; and (2) a written statement disclosing any material changes to the subdivision which may have occurred between the date of preliminary subdivision approval and the date of final subdivision approval. ...
484-9	(a) Within 30 days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the rules of the director of DCCA. The report shall reflect any material changes and information contained in the original application for registration. ...
Chapter 485: Uniform Securities Act (Modified)	
485-3	... The commissioner shall report to the Governor annually on such date as established. The report shall contain an amount of the work of the commissioner during the period covered and such data and information as necessary or appropriate.
485-8	It shall be unlawful for any person to sell or offer to sell any security except a class exempt under section 485-4 or unless sold or offered in any transaction exempt under section 485-6 in the state, unless the security has been registered by notification or by qualification as

Statute Section	Description of Record and Party with Possession
	hereinafter provided. Registration of stock shall be deemed to include the registration of rights to subscribe to the stock if the notice under section 485-9 or the application under section 485-10 includes a statement that the rights are to be issued. A record of the registration of securities shall be kept in a register of securities located in the office of the commissioner of securities. Any orders entered by the commissioner regarding securities shall also be recorded in this register. The register and all information with respect to the securities registered therein shall be "open to public inspection."
485-10	(a) All securities required by this chapter to be registered before being sold in the state and not entitled to registration by notification, or by coordination, shall be registered only by qualification in the manner provided by this section. ... (e) If on examination of any application and the documents filed therewith, the commissioner finds that the sale of the security would not be fraudulent and would not work or tend to work a fraud on the purchaser, and that the enterprise or business of the issuer is not based on unsound business principles, the commissioner shall record the registration of the security in the register of securities and thereon the securities so registered may be sold by the issuer or any registered dealer who has notified the commissioner of the issuer's or dealer's intentions to do so in a manner provided in section 485-14, subject however to this chapter and further order of the commissioner.
485-12	On any application for registration by notification ... made by an issuer and on any application for registration by qualification ... whether made by an issuer or registered dealer, where the issuer is not domiciled in the state, there shall be filed with the application the irrevocable written consent of the issuer that in suits, proceedings and actions growing out of violation of this chapter, service on the commissioner of securities of any notice, process or pleadings ... shall be as valid and binding as if due service had been made on the issuer. ...
485-14	(a) It is unlawful for any person to transact business in this state as a dealer, investment adviser, salesman or investment adviser representative unless registered under this chapter (and meet the requirements for eligibility and application as set forth by subsections (b through q) of this section).

Statute Section	Description of Record and Party with Possession
485-15	On the finding of errors in a registration statement or the filing of complaints by consumers or by any government agency, the commissioner may conduct investigation of the applicant or registrant and registration under section 485-14 may be refused or any registration granted may be revoked by the commissioner of securities after a reasonable notice and hearing to determine whether such violation exists as set forth by subsections (1 through 4) of this section. ... Until the entry of a final order the suspension of the dealer's or investment adviser's registration, though binding on persons notified thereof, shall be deemed "confidential" and shall "not be published," unless it appears that the order of suspension has been violated after notice.
485-18.7	(a) Whenever it appears to the commissioner that any person has engaged or is about to do so through any act or practice constituting a violation of any provision of this chapter, in a rule or order issued or promulgated hereunder, the commissioner may in his discretion issue a cease and desist order to enforce compliance with this chapter, in a rule or order issued or promulgated hereunder. ...
Chapter 486: Measurement Standards and Uniform Packaging and Labeling	
486-8	The director (of measurement standards who is the chairman of the Board Agriculture) shall have custody of the state measurement standards including other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The director shall have and keep a general supervision over the measurement standards established and measures offered for sale, sold or use in the state. The director shall annually, as established by the directive of the Governor, make to him a report on all of the activities of the division of measurement standards.
486-10	The director shall, from time to time, test all measures used in establishing or verifying any other measurement, including any measure or measurement standard used in checking the receipt or disbursement of supplies in every institution for the maintenance of which monies are appropriated by the legislature, reporting the director's findings in writing to the supervisory board and to the executive officer of the institution concerned.

Statute Section	Description of Record and Party with Possession
486-27	The director may issue licenses to a qualified measure master, who for purposes of this section, is a person who is licensed to issue certificates of measure. ... The director under Chapter 91 may adopt rules concerning the qualifications, execution requirements, bonding, recordkeeping and prohibitive acts for persons applying or certified as measure masters.
Chapter 486D: Petroleum Product Accounting Act	
486D-4	The director (of measurement standards) shall enforce this chapter, through the division of measurement standards. The director shall keep accurate records on all petroleum transactions and report on them annually to the Governor.
Chapter 486E: Fuel Distribution	
486E-2	Every distributor, and any person before becoming a distributor, shall register as such with the Department of Planning and Economic Development.
486E-3	Each distributor shall at such reporting dates as established by the director file with him ... a certified statement showing separately for each county and for the islands of Lanai and Molokai ... where fuel is sold or used during the last preceding reporting, the following information as specified by subsections (1 through 4) of this section. In addition to the above reporting, each distributor shall file with the director, federal form FEO-1000 or equivalent state form showing the expected supply of fuel products for the coming month, and their intended distribution as categorized by said form or the equivalent state form. ... All statements submitted to the director under this section shall be held "confidential."
Chapter 486M: Metal and Gem Dealers	
486M-2	Every dealer, agent, employee or representative of the dealer shall, immediately on receipt of any precious or semi-precious metals or precious or semi-precious gems, record the information on a form prescribed by the chief of police of each county the information as described by subsections (1 through 8) including but not limited to a complete and accurate description of all precious or semi-precious metals, and such gems received, including all markings, names, initials and inscriptions; and the price paid by the dealer for each item.

Statute Section	Description of Record and Party with Possession
Chapter 487: Consumer Protection	
487-5	The director of the office of consumer protection is designated the consumer counsel for the state and shall represent and protect the state, the respective counties and the general public as consumers. The office shall have the following functions, powers and duties: ... (6) investigate reported or suspected violations of laws and rules promulgated for the purpose of consumer protection and shall enforce such laws and rules by bringing civil actions or proceedings; (a) provide a central clearing house of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations "available to the general public;" provided that consumer complaints may "not be made available to the general public" if the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency.
487-12	As an alternative to instituting or continuing an investigation or action under section 487-5(6), the director may accept written assurance of voluntary compliance from the person or persons suspected of violation. The director will obtain the agreement of the affected consumers where possible. In no event shall the fact that a person who enters into an assurance of voluntary compliance be considered an admission of violation, nor shall such written assurance constitute prima facie evidence of any violation. ... All assurances of voluntary compliance may be made a matter of "public record." A consumer need not accept restitution under this stipulation, but the consumer's stipulated agreement to the assurance or the consumer's acceptance and full performance of restitution shall bar recovery of any other damages in any action on account of the same acts or practices by the consumer against the person or persons making restitution.
Chapter 488: Prepaid Legal Services	
488-3	Sixty days prior to implementation of any (prepaid legal service) plan and the accumulation of payment of money thereunder, all planned documents shall be submitted in writing to the department. Such documentation shall contain in writing such information as described by subsections (1 through 7) of this section. Any amendments

Statute Section	Description of Record and Party with Possession
	or changes to the documents filed under paragraphs (1) to (7) shall be filed with the department 60 days before they take effect. All documents filed under this section shall be "public documents."
488-5	Each plan shall file with the director of DCCA after the end of its fiscal year a statement under oath containing: (1) A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year; (2) the assets and liabilities of the plan at the close of its fiscal year; and (3) the profit and loss of the plan during its fiscal year. The powers, authorities and duties relating to examinations vested in and imposed on the insurance commissioner under Chapter 431 are extended to and imposed on the director in respect to examinations of the prepaid legal plans; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the attorney-client privilege as it is contained in the code of professional responsibility adopted by the Supreme Court.

TITLE 28.

PROPERTY

Chapter 501: Land Court Registration
Land Court: Personnel

NOTE: [The entire chapter relates to procedures to "register ownership to land," create a record of such ownership and otherwise establish all claims or interests affecting land and the owner's title to the land. The text of the basic sections are provided below. Other sections requiring either registration, filing or creating a memoranda, notation or recording for specific documents affecting an interest in land registered with the land court and "open to the public" are simply listed below.]

501-1 The Land Court shall have exclusive original jurisdiction of all applications for the registration of title to land and easements or rights in land held and possessed in fee simple within the state, with power to hear and determine all questions arising on such applications, and also have jurisdiction over such other questions under this chapter, subject to rights of appeal under this chapter. The

Statute Section	Description of Record and Party with Possession
	proceedings on the application shall be proceedings in rem against the land, and the degree shall operate directly on the land invested and titled thereto. ... It is a court of record, and shall cause to be made a seal, and to be sealed therewith all orders, process, and papers made by oral proceedings from the court and requiring a seal. All notices, orders and process of the court may run into any judicial circuit and be returnable as the court may direct. ...
501-7	The registrar shall be under the direction of the court, and shall have the custody and control of all papers and documents filed with the registrar under this chapter, and shall carefully number and index the same. The papers and documents shall be kept in Honolulu in an office called the Land Registration Office, which shall be near the Land Court. ...
501-8	The registrar may act in any judicial circuit. After lands have been registered under this chapter, he may make all memoranda affecting the title, and enter and issue certificates of title as provided herein.
501-10	The registrar and all assistant registrars shall be sworn before the judge, and a record thereof shall be made. They may administer oaths in all cases in which an oath is required, to persons appearing before them in matters pertaining to the registration of land. They shall keep accurate accounts of all monies received as fees or otherwise, which shall be subject to examination by the clerk of the Supreme Court, in the same manner as accounts of deputy clerks. They shall pay over such monies monthly to the director of finance.
Commencement of Land Registration Procedure	
501-22	Registration application.
501-31	Transfers pending application; temporary record; final record.
Decrees	
501-71	Decree of registration.
501-74	Contents of decree.

Statute Section	Description of Record and Party with Possession
501-75	Immediately on entry of the decree of registration the registrar shall send a certified copy under the seal of the court to the assistant registrar in the Bureau of Conveyances who shall transcribe the decree in a book to be called the registration book in which a leaf or leaves in consecutive order shall be devoted exclusively to each title. The entry made by the assistant registrar in this book in each case shall be the original certificate of title, and shall be signed by the assistant registrar and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number 1. The assistant registrar shall in each case make an exact duplicate of the original certificate, including the sale, by putting on it the words "owner's duplicate certificate," and deliver the same to the owner or to the owner's attorney duly authorized. In case of a variance with the duplicate certificate, the original certificate shall prevail. The certified copy of the decree of registration shall be filed and numbered by the assistant registrar with a reference noted on it to the place of record of the original certificate of title. When several parcels of land which are not contiguous have been registered under one application as permitted by section 501-25, the decree of registration shall expressly state that the assistant registrar after entering the decree in the registration book, may cancel the original certificate of title and issue in place thereof a separate transfer certificate of title for each parcel so registered.
Legal Incidents of Registered Lands	
501-82	Tenure of holder of certificate of title (possible encumbrances noted on certificate).
501-89	The registrar, under the direction of the court, shall make and keep indexes of all applications and of all decrees of registration, and shall also index and classify all papers and instruments filed in the registrar's office relating to applications and to registered titles. The registrar shall also, under the direction of the court, cause forms of indexes and registration and entry books to be prepared for the use of the assistant registrar in the Bureau of Conveyances. The court shall prepare and adopt convenient forms of certificates of title, and shall adopt general forms of memoranda used by the assistant registrar in registering the common forms of conveyance, and other instruments, to express briefly their effect.

Statute Section	Description of Record and Party with Possession
	Voluntary Dealing With Land After Original Registration
501-101.5	Agreements of sale; priority.
501-102	Filing liens, etc. Notice.
501-107	The assistant registrar shall keep an entry book in which he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of rates or other process filed with the assistant registrar relating to registered land. The assistant registrar shall note in the book the year, month, day, hour and minute of reception of all instruments, in the order in which they are received. They shall be regarded as registered from the time so noted, and the memoranda of each instrument when made on the certificate of title to which referer shall bear the same date. Every deed or other instrument, whether voluntary or involuntary, so filed with the registrar or assistant registrar shall be numbered and indexed, and endorsed with a reference to the proper certificate of title. All records and papers relating to registered land in the office of the registrar or of the assistant registrar shall be "open to the public" in the same manner as probate records are open, subject to such reasonable regulations as the registrar, under the direction of the court, may make. Voluntary Dealing With Land After Original Registration
501-108	Conveyance of Fee; Procedure.
501-110	Statement of encumbrances.
	Mortgages
501-116	Mortgage registration necessary.
	Leases
501-121	Leases and registration required.
	Trusts
501-131	Transfer in Trust; procedure.
501-132	(Trusts) Powers to be noted on certificates; construction for court.
501-134	Trusts, implied or constructive.

Statute Section	Description of Record and Party with Possession
501-136	Attachment and other liens; filing of.
501-138	Discharge or modification of liens to be recorded.
501-139	Assistant registrar as official recorder. Provisions of Law Relating to Attachments of Real Estate and Leasehold Estates on mesne process applied to registered land, except that the duties require to be performed by the registrar of conveyances shall be performed by him as the assistant registrar, who shall register the facts required to be recorded, and for that purpose shall keep books similar to those required to be kept for attachments by him as registrar of conveyances, if any, ...
501-141	Court orders to be recorded.
501-142	Mechanics lien.
Pending Actions; Judgments and Partitions; Recording	
501-151	Pending actions, judgments; recording of, notice.
501-156	Partition.
501-157	Re-registration of mortgage or lease after partition.
501-158	Notice of bankruptcy proceedings.
501-159	Decree of discharge (in bankruptcy).
Eminent Domain; Recording	
501-166	Eminent domain; recording procedure.
Descent and Devise	
501-171	Registration on transfer by descent and devise.
501-174	Power of attorney; registration necessary.
Adverse Claims After Original Registration	
501-186	Registration of adverse claim; notice; hearing and costs.
Amendment and Alteration of Certificate of Title	
501-196	Alterations on registration book prohibited when; court hearings; limitations.

Statute Section	Description of Record and Party with Possession
Fees and Access for Recovery of Loss	
501-219	Sale of land court maps (by department of Accounting and General Services)
Chapter 502: Bureau of Conveyances; Recording	
	[NOTE: This entire chapter relates to the "regular system" for recording interests in property, both real and personal, such as transfers of title, liens or encumbrances on title, as well as claims to personal property or improvements on land, such as uniform commercial code financing statements. Sections of this chapter thus set forth the various procedures to record documents at the bureau, the effect of recordation, the various record books, indexes, and registers to both record documents and locate their existence, as well as the form of documents prepared for recordation. Some of these sections discussing these subjects, all of which relate to the creation and location of public records within the bureau, are listed below.]
Indexing of Records	
502-11	The registrar shall make and keep in such form and manner as is prescribed by the board of land natural resources a permanent record of the receipt of every deed and instrument left for record, every copy left as a caution, and every plan filed, and shall note on the record in addition to the description sufficient to identify the document and the date and time of its receipt; such other facts as are prescribed by the board of land and natural resources. Every such record shall be considered as recorded at the time so noted.
502-12	Indexes. The registrar shall keep indexes for "public inspection" in such form and manner as is prescribed by the board of land and natural resources. The master index shall be programmed in such manner as to permit the location of all recorded agreement of sale documents by an alphabetical listing of each party to such agreements of sale.
502-13	He shall, within reasonable time, cause the name of each and every grantor, grantee or other party thereto to be entered at length alphabetically in its appropriate index.
502-14	Entries where one transfers another's real estate; in partition cases.

Statute Section	Description of Record and Party with Possession
502-15	The registrar shall, within the first six months of each year, ..., make copies of the indexes to the instruments recorded in the bureau of conveyances during the preceding year, and which copies the grantors and grantees shall be classified by the respective surnames in alphabetical order, and arranged under surnames in the order in which the deeds and other conveyances to which they refer or left for record. The registrar may also cause the Christian or given names of grantors and grantees, as well as their surnames to be arranged in alphabetical order in such lists. The registrar shall cause to be made a reclassification and consolidation of the yearly indexes as the convenience of the registrar may permit. ...
502-16	Decennial indexes. The registrar shall reclassify and consolidate yearly indexes at least once in every ten years as convenient.
502-17	Filing of, data on plans; monuments.
502-18	Lots, subdivisions.
502-20	New maps for old.
502-21	Recording of plans unlawful.
502-22	Copies of plans furnished by registrar.
502-26	The registrar shall, when requested, furnish an attested copy of any instrument or document recorded in the registrar's office, or any fact appearing on the registrar's records. The registrar may also issue non-attested portions of any instrument or document recorded in his office. The registrar may issue certificates of search or encumbrance when personnel is available for the making thereof.
Recording	
502-31	The registrar shall make or cause to be made an entire literal copy of all instruments required to be recorded in the registrar's office, and the registrar, his deputy, or clerk shall certify its correspondence with the original, after which the registrar, the deputy or clerk shall certify on the exterior, or endorse on the recorded instrument, the date of its registry, the book in the registrar's office in which, and the page of the book at

Statute Section	Description of Record and Party with Possession
	which it was recorded. ... On all documents to be recorded the top 2-1/2 inches of the first page shall be reserved for recording information. The left-hand 3-1/2 inches of space shall be reserved for "information to the public" to show the person requesting recordation and to whom the document should be returned.
502-33	Identification of assignments, etc. of mortgages and leases by reference to registration of old.
Acknowledgments; Proof of Instruments	
502-41	Certificate of acknowledgment; natural persons, corporations.
502-45	Ackowledgments without the state.
502-46	(Acknowledgments without the state); certificate of authority of officer.
502-47	Acknowledgment without the United States; by members of the Armed Forces; recordation where no official authorized to take proof.
Interlineations, Erasures, etc.	
502-61	Changes noted in instrument.
502-63	Not recorded unless initialed.
502-64	Noted in record.
Records of Acknowledgments	
502-71	All judges and other officers authorized by law to take acknowledgments to instruments, besides the certificate of acknowledgment endorsed on the instrument, shall keep a record of every acknowledgment in a book of records. Each record shall set forth at least the date of acknowledgment, the parties to the instrument, the persons acknowledging, mhe date, and some memorandum as to the nature of the instrument acknowledged.
502-72	Except as otherwise provided in respect to notaries public by section 456-16, the books of record so kept shall every five years and on the resignation, death or removal of office of such judge or other officer, be deposited with the clerk of the circuit court of the relevant judicial circuit.

Statute Section	Description of Record and Party With Possession
502-73	The clerks of the circuit court shall carefully preserve the books of record deposited with them under section 502-72, filing the same with records of the court. The records, both while in the custody of the acknowledging officers and after such filing, shall be "open at all reasonable times to the inspection" of any responsible person, without fee or reward.
Requirement and Effect of Ackowledging, Recording, Not Recording	
502-83	Effect of not recording deeds, leases, etc.
502-85	Agreements of sale; priority.
Prior Records	
502-91	Old records.
502-92	Copies of old records.
502-93	Retyping judgment registers.
502-94	Translation of Hawaiian documents, recording.
Veterans Certificate	
502-101	Veterans certificates, photographing of. The bureau of conveyances, on request of a veteran, resident in Hawaii or the veteran's kin, shall photograph any honorable discharge certificate or other separation or discharge document from the military or naval service of the United States of such veteran and establish and maintain a record and an index of photographic copies of all certificates and documents of which such photographs may made.
Chapter 503: Commissioner of Deeds	
503-2	A commissioner appointed for a state or territory of the United States shall ... take and subscribe an oath before a magistrate of the city where the commissioner resides or before a clerk of a court of record within the state or territory where he resides, faithfully to perform the duties of the commissioner's office, and shall have an official seal prepared with the commissioner's name and the words: "commissioner for Hawaii," and the name of the state or territory and city or county where the commissioner resides. ... In each case, a certificate of the commissioner's oath of office and the commissioner's

Statute Section	Description of Record and Party With Possession
	signature and an impression of the commissioner's official seal shall be forthwith transmitted to and filed in the office of the lieutenant governor.
503-4	Each appointed commissioner ... shall keep a record of every acknowledgment, oath, deposition and affidavit in a book of records. Each record shall set forth at least the date of the acknowledgment, the parties to the instrument, the person's acknowledging, the date, and some memorandum as to the nature of the instrument acknowledged; and as to oaths, depositions and affidavits, the names of the party or parties making the same, the date and nature of the instrument and the date of administering the oath.
Chapter 504: Federal Judgment Registration	
504-1	Judgments of the United States courts may be registered, recorded, docketed and indexed in the bureau of conveyances or with the assistant registrar of the land court in the same manner as judgments of the courts of the state.
Chapter 507: Liens Part II. Mechanics and Materialman's Lien	
507-44	The clerks of the circuit court shall keep in their respective offices a book called "notice of completion record" in which shall be entered a memorandum of each notice of completion filed and the date of filing, and arranged alphabetically in the names of the owners. There shall also be kept a "mechanics' lien record" in which a memorandum of each Application and Notice filed shall be entered, arranged alphabetically in the names of the claimants and showing the amount of the lien or claim, the date of the filing of the Application and Notice, the date of entry of the Order Directing Lien To Attach the date of withdrawl, discharge or cancellation of the Application and Notice or of a lien which has been directed to attach, and any matters deemed necessary.

Statute Section	Description of Record and Party With Possession
Chapter 514A: Horizontal Property Regimes Part II. Creation, Alteration and Termination of Condominiums	
514A-11	The bureau of conveyances and the and court shall immediately develop procedures to record a master deed or lease and the declaration. Procedures shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration under section 514A-20 shall express the following particulars as set forth by subsections (1 through 14) of this section.
514A-12	Simultaneous with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that the accuracy of the copy of portions of the plans of the building as filed with and approved by the county or city and county officer with jurisdiction over the issuance of permits for construction of buildings. ...
514A-14	Notwithstanding any provision of the declaration, apartment owners shall have the right to change the designation of parking stalls attached to their apartment by amendment of the declaration and respective apartment leases or deeds involved. ... The amendments shall be effective only on recording or filing of the same of record with the bureau of conveyances.
Part III. Registration and Administration	
514A-36	When the real estate commission makes an examination of any project, it shall make a "public report" of its findings, containing all material facts reasonably available. The public report shall neither be construed to be an approval or disapproval of a project. No final public report for a condominium project shall be issued until execution and recordation of the deed or master lease, the declaration with a true copy of the bylaws annexed thereto, and floor plans as approved by the county officer with jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 514A-12, -20 and -81.

Statute Section	Description of Record and Party With Possession
514A-37	A preliminary public report may be issued by the real estate commission on receipt of a notice of intention the filing of which is complete except for some particular requirement, or requirements which are at the time not fulfilled but which may reasonably be expected to be completed. No preliminary report shall be issued unless the commission is satisfied that the report adequately discloses all material facts which a prospective purchaser should consider and that adequate protection for the purchaser's funds has been provided.
514A-39	Preliminary public report shall not be used for selling under a contract for the sale of a condominium unit, unless the developer of the project has filed with the real estate commission those documents and exhibits as required with the notification of intention required by sections 514A-31 and -32, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a third party depository for retention and disposition of purchaser's funds in accordance with section 514A-65.
514A-40	No final public report shall be issued prior to completion of construction of a project, unless there is filed with the real estate commission such statements, facts and verifications as set forth by subsections (1 through 10) of this section.
514A-41	If after a final public report has been issued, any circumstance occurs which would render the final public report misleading to purchasers in any material respect, the developer shall stop all sales and immediately submit sufficient information to the real estate commission for the issuance of a supplementary public report describing the circumstance. ...
Part V. Condominium Management	
514A-81	The operation of the property shall be governed by bylaws, a true copy of which shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.
Part VI. Sales to Owner-Occupants	
514A-102	Beginning 15 calendar days prior to the date any developer notifies the commission of his intention to sell a project subject to this chapter, the developer shall publish in a classified section of at least one newspaper published daily

Statute Section	Description of Record and Party With Possession
	in the state and having a general circulation in the county in which the project is located, not less than once in each of two successive weeks, an announcement containing a summary of at least the following information as described by subsections (1 through 7) of this section. Proof of publication of the announcement summarizing the information required by paragraphs (1 through 7) of this section, and a copy thereof, shall be filed with the commission as a condition of issuance of any public report. The developer or his broker shall also provide a copy of the announcement and the following information: number of floors in the project, number of bedrooms and square feet of each residential unit, the price and amount of monthly maintenance fees for each residential unit, the amount of lease rent for each residential unit and the applicable time period. ....
Chapter 514E: Timesharing Plans	
514E-2.5	(a) Except as provided in section 467-2, no sales agent or acquisition agent shall act or assume to act as a real estate salesman or broker without a license previously obtained under chapter 467 and the rules of the real estate commission. No sales agent or acquisition agent shall solicit or encourage others to attend a timeshare sales presentation or to contact a timeshare sales agent or developer except as provided by the rules of the director without a license previously obtained under chapter 467.
514E-9	(a) Any offering of a timesharing plan to the public shall disclose such information as required by subsections (1 through 13) of this section.
514E-10	(a) A developer shall not offer or dispose of a timeshare unit or a timeshare interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the timeshare plan to be offered by the developer is accepted by the director for registration under this chapter. (b) An acquisition agent (including the developer if it is also the agent) shall register under this chapter by filing with the director a statement setting forth the timesharing plan for which it is providing prospective purchasers, its

Statute Section	Description of Record and Party With Possession
	address, the telephone number, other information required by the director by rule, and if the acquisition agent is not a natural person, the name of the responsible managing employee. All acquisition agents not licensed under chapter 467 shall be approved by the director. ... The acquisition agent shall furnish evidence of bonding or current license under chapter 467 as a real estate salesman or broker and the acquisition agent's activities are covered by the real estate recovery fund established under chapter 467. (c) A sales agent (including the developer if applicable) shall register under this chapter by filing with the director a statement setting forth the timesharing plan that it is selling, and such other information as directed by this section. (d) A plan manager (including the developer if applicable) shall register under this chapter by filing with the director a statement setting forth the timesharing plan that it is managing, and such other information as directed by this section. (e) An exchange agent (including the developer if applicable) shall register under this chapter with the director by filing a statement setting forth information as directed by this section. (f) Any registration required in this section shall be renewed on December 31 of each odd numbered year; provided that this shall not relieve the registrant from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of timeshare interests.
514E-10.5	The director may contract with private consultants in connection with a review of the filing required of timeshare developers under section 514E-10(a), ...; provided that the consultant review required under this section shall not affect the scope of a review under section 514E-27 which the director may request for filings which encompass alternative arrangements for purchase or protection. The consultant shall review the filing for the purpose of examining its compliance with this chapter, and any rule of the director, including the documentation of other materials provided

Statute Section	Description of Record and Party With Possession
	therewith. On completing the review, the consultant shall provide a written analysis of the filing and an opinion of the nature and extent to which it complies with this chapter and the rules. ...
514E-20	When a nondisturbance agreement has been executed by the lien holder and recorded, the lien holder, its successors and anyone acquiring property through foreclosure or by a deed, assignment or other transfer in place of foreclosure, should take the property subject to the rights of the owners.
514E-21	When a notice of timeshare plan is recorded, claims by creditors of the developer and claims on or by successors to the interest of the title holder who executed the notice of timeshare plan, shall be subordinate to the interest of owners whose purchase of timeshare interests in the plan is closed after the notice of timeshare plan is recorded. ...
Chapter 515: Discrimination in Real Property Transactions	
515-9	DCCA has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The department has powers as set forth by (1 through 6) of this section, which shall include rendering at least annually a comprehensive written report to the governor and legislature.
515-10	(a) A person claiming damage by a discriminatory practice, his agent or the attorney general, may file with DCCA a written complaint alleging commission of a discriminatory practice, setting forth facts supporting the complaint, and setting forth facts sufficient to enable the department to identify the person charged. ...
	(c) Absent an order dismissing the complaint, the department shall attempt to eliminate the alleged discriminatory practice by conference, conciliation and persuasion. ... If a conciliation agreement is entered, the department shall issue an order stating its terms and furnish a copy of the order to the complainant, respondent, the attorney general and such other public officers and persons as proper. Except for the terms of the conciliation agreement, neither the department nor any officer or employee shall "make public without the written consent" of the complainant and the respondent, information concerning efforts in a particular case to eliminate a discriminatory practice by conference, conciliation or persuasion, whether or not there

Statute Section	Description of Record and Party With Possession
	is a determination of reasonable cause or a conciliation agreement.
515-13	(a) If DCCA determines that the respondent engaged in a discriminatory practice, the department shall state its findings of fact and conclusions of law and issue and order requiring the respondent to cease and desist from the practice and to take affirmative actions as the department believes will carry out the purposes of this chapter. ...
Chapter 516: Residential Leaseholds	
516-8	No member of the Hawaii Housing Authority or officer or employee administering this chapter shall acquire any interest, whether direct or indirect, in the ownership or development of any tract other than by gift, devise or inheritance, nor shall a member acquire any interest, whether direct or indirect, in the financing or any contract or proposed contract for services furnished or used in connection with the development of the tract. If any such person acquires an interest by gift, devise or inheritance, whether direct or indirect, in any development tract or is a lessee of any residential lot affected by the eminent domain proceedings under this chapter, such member, officer or employee shall immediately disclose the same in writing to the authority and such disclosure shall be entered on the minutes of the authority. The member, officer or employee shall not participate in any action by the authority relating to the property, tract or contract in which the person has or acquires any such interest. Violation of this section constitutes misconduct in office and is cause for dismissal.
Chapter 516: Residential Leaseholds Part II. Condemnation of Development Tract	
516-29	Except for the sale of the lease to fee interest to a lessee of a residential lot, no sale or lease of any residential lot shall be made by the Hawaii Housing Authority unless it has published on at least two different days in a newspaper of general circulation in the county, a notice of its intent to sell or lease. The notice shall state, in general terms, the size, location, and prices or lease rentals of the lots to be sold or leased, the terms of the sale or lease, and the last day on which application will be received by the authority, which shall not be less than 30 days after the publication of the first notice. ...

Statute Section	Description of Record and Party with Possession
516-33	Except as provided under section 516-28, no sale of any residential house lot within a development tract shall be made to any person unless the person meets the requirements as set forth by subsections (1 through 7) of this section. The amount set by the authority for the lease fee interest in the lot for which the lessee must obtain a letter of credit, certificate of deposit, proof of funds or approve application for loan under section 516-33(4) shall "not be admissible" for any reason in any action, suit or proceeding brought under this chapter. Any financial information the authority may request and obtain from the lessees shall "not be discoverable or admissible" in any action, suit or proceeding brought under this chapter.
516-51	(a) On the filing of a petition by the number of lessees required by section 516-22 with the Hawaii Housing Authority, the Authority shall request the lessor and the lessees or their agents negotiate the just compensation which the lessees will pay to the lessor to acquire the lessor's interest in the development tract. If no agreement is reached within 60 days after the request, the parties shall simultaneously exchange written final offers together with any appraisals, other documents and any other expert opinions supporting their positions. Copies of the final offers and related document shall be submitted to the Authority who may use the information in determining prior to commencing condemnation proceedings, the probability that lessees will meet the financial requirements of section 516-33(4). (b) ... Any offers, appraisals, other documents or any other expert opinions giving a value of the lessor's interest in the development tract which were prepared by a party for use in preliminary negotiations provided for in this section, for setting qualification amounts under section 516-33(4), or for negotiations to determine just compensation after designation to acquire the lessor's interest in the development tract, and were not prepared for use in the trial shall "not be discoverable, usable, or admissible" by an opposing or adverse party in any action, suit or proceeding under this chapter.

Statute Section	Description of Record and Party with Possession
Chapter 523A: Uniform Unclaimed Property Act	
523A-17	(a) A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the director (of finance) concerning the property as provided in this section. (b) The report shall be verified and shall include such information as set forth in subsections (1 through 6) of this section.
523A-18	(a) The director shall publish a notice by March 1 or in the case of property reported by life insurance companies, September 1, of the year immediately following the report required by section 523A-17 ... in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice shall be published in the country in which the holder of the property has his principal place of business within this state. (b) The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property" and contain such information as set forth in subsections (1 through 3) of this section. (c) The director shall not be required to publish in the notice any items less than $50 unless the director considers the publication in the public interest.
523A-24	(a) A person, excluding another state, claiming an interest in any property paid or delivered to the director may file with him a claim on a form prescribed by him and verified by the claimant.
523A-30	(a) The director may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. ...

Statute Section	Description of Record and Party with Possession
	Title 30. Guardians and Trustees
Chapter 554: Trust and Trustees: Accounts	
554-4	Every trustee acting under appointment of any court or under any appointment requiring the approval of any court, shall ... file annually with the court having jurisdiction an account showing in detail all receipts and disbursements together with a full and detailed inventory of all property in the trustee's possession or under the trustee's control; ... and provided further that the court on its own examination or that of its clerk shall without reference to a master, pass on the accounts in cases in which the annual income does not exceed $1,000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of annual income, if for any reason is deemed proper or necessary.
	Title 30. A. Uniform Probate Code
Chapter 560: Uniform Probate Code Article I. General Provisions, Definitions and Probate Jurisdiction of Court Part III. Scope, Jursidiction and Courts	
560:1-305	The clerk of court shall keep a record of each decedent, ward, protected person or trust involved in any document which may be filed with the court under this chapter, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. On payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was supervised or informal. Certificates relating to letters must show the date of appointment.
Article II. Intestate Succession and Wills Part VIII. General Provisions	
560:2-801	(a) A person or the representative of an incapacitated or protected person, or the personal representative of a

Statute Section	Description of Record and Party with Possession
	deceased person with a written consent of all affected beneficiaries, who is an heir, devisee, grantee, donee, surving joint tenant, person succeeding to a renounced interest, beneficiary under a testamentary instrument or a non-testamentary instrument, who has not accepted the property or interest to be renounced, or appointee under a power of appointment exercised by a testamentary instrument or a non-testamentary instrument, may renounce in whole or in part the right of succession to, or transfer to him of any property or interest therein, including a future interest, by filing a written renunciation under this section.
Article III. Probate of Wills and Administration Part I. General Provisions	
560:3-110	The courts and registrars of the various judicial circuits shall prepare and make available to the public standard forms for the opening and closing of informal probate proceedings.
Part III. Informal Probate and Appointment Proceedings	
560:3-301	(b) Applications for informal probate or informal appointment shall be directed to the registrar, and shall be verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as follows: (1) Every application for informal probate of a will and appointment of a personal representative or for informal appointment of a personal representative in the case of intestacy, other than a special successor representative shall contain the information as set forth by subsections (i) through (x) of this section. (2) An application for informal probate of a will and appointment of a personal representative shall state the information required by subsections (i) through (iv) of this subsection in addition to statements required by (1) above. ... (c) Notice of the application shall be effected by delivering a copy of the application as provided in section 560:1-401 to the persons enumerated in subparagraph (b)(1)(v) above and in section 560:3-403. ... The application shall be accompanied by a statement to the effect that if the recipient has an objection to the informal probate or to the granting of the requested statutory allowances or exempt property, the recipient may

Statute Section	Description of Record and Party with Possession
	file a petition for a formal testacy proceeding, and that if, any such petition is filed within 14 days of the mailing or delivery of the notice, no action will be taken by the registrar on the informal application. (d) Published notice, if any, of the application shall contain information as set forth by subsections (1) through (7) of this section. ...
Article V. Protection of Persons Under Disability and Their Property Part IV. Protection of Property Under Disability and Minors	
560:5-418	Within 90 days after the guardian's appointment, every guardian of the property shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the guardian's oath or affirmation that (the inventory) is complete and accurate so far as the guardian is informed. The guardian shall provide a copy thereof to the protected person if the person can be located, has attained the age of 14 years and has sufficient mental capacity to understand these matters, and to any parent or guardian of the person with whom the protected person resides. The guardian of the property shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person.
560:5-421	Letters of guardianship or evidence of transfer of all assets of the protected person to the guardian of the property. An order terminating a guardianship is evidence of transfer of all assets to the estate from the guardian of the property to the protected person, or the person's successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of guardianship and orders terminating guardianships, may be filed or recorded to give record notice of title as between the guardian of the property and the protected person.
Part VI. Incapacitated Persons Sterilization Rights	
560:5-611	(a) All wards affected by this part shall be informed of their right to and be entitled to copies of all portions of any records relating to the sterilization or proposed sterilization.

Statute Section	Description of Record and Party with Possession
	(b) All records relating to sterilization or proposed sterilization of the ward shall be "confidential" and shall not be released to third parties except in the following circumstances: (1) When the ward or guardian of the ward has signed a written release for the specific information; or (2) when the ward or guardian designates a third party as either a payor or co-payor for the sterilization and consents to release information which is necessary to establish reimbursement eligibility. ...
	(d) When records are released to a third party, it shall be unalwful for the party to disclose any part of the record that contains personally identifiable information without the written consent of the person who is a subject of the record. The release of the record to the third party shall be accompanied by the following statement: "This information has been disclosed to you from records whose confidentiality is protected by the state law which limits disclosure of personally identifiable information to additional parties without the expressed written consent of the subject of the record."
	(e) Violations of this section shall be subject to action under section 571-81.
Article VII. Trust Administration Part I. Trust Registration	
560:7-101	The trustee of a trust having its principal place of administration in this state who is required to register the trust under section 560:1-108 shall register the trust in the judicial circuit either of the principal place of administration of the trust, or in the case of a trust relating only to land, of the place where the land is located. ...
560:7-102	Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each set lore and the original trustee and the date of the trust instrument. If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration

Statute Section	Description of Record and Party with Possession
	occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.
560:7-106	On the termination and distribution of a registered trust, the trustee shall notify the court in which he is registered of such termination and distribution, whereon the court may remove the record of the trust from its current registry of trusts.

Title 31. Family

Chapter 571: Family Courts
Part I. Establishment; Personnel

571-2	"Criminal history record check" means an examination of an individual's criminal history record by means of fingerprint analysis or name inquiry into state and national criminal history record files.

Part IV. Custody, Detention and Shelter

571-34	The judiciary shall develop standards to assure the reputable and responsible character of employees of detention facilities defined in this chapter which shall include but not be limited to criminal history record checks. Employees of facilities established under section 571-33, including new employees, shall submit a statement under penalty of perjury indicating whether the employee or new employee was ever convicted of a crime other than a minor traffic violation involving a fine of $50 or less. The statement shall provide consent to the judiciary to conduct a criminal history record check and to obtain other criminal history record information for verification. Employees shall be fingerprinted for the purpose of complying with the criminal history record check. New employees shall be fingerprinted for the same purpose. The judiciary shall obtain criminal history record information through the Hawaii Criminal Justice Data Center on all employees and new employees. ... The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and regulations as may be now or hereafter adopted. ...

Statute Section	Description of Record and Party with Possession
Part VI. Termination of Parental Rights	
571-62	Every petition under section 571-61 shall be filed in duplicate and the clerk of the court in which the same is filed shall immediately forward a copy of the petition and of the notice of the time and place of the hearing to the director of the Department of Social Services and Housing or the nearest county administrator of the department. ... If any petitioner or the department or any such child-placing organization approved by the department or any parent whose rights are sought to be terminated requests a continuance of the hearing for purpose of permitting an objective investigation of the circumstances of the minor and the parent or parents concerned, no judgment of termination shall be entered prior to the expiration of 30 days from the date of the request, or until the earlier date of the filing of a report of the investigation. ... The Department of Social Services and Housing shall prepare or procure and file in the termination proceeding a report of the facts disclosed as a result of investigation of the circumstances of the minor and the parent or parents whose rights are sought to be terminated. ... Any such report shall be incorporated in the record of the proceeding and shall be considered by the court in determining the issues presented by the petition. ...
571-63	... Every such judgment of termination of parental rights ... shall become final and binding on all parties concerned as of the date of its entry and filing, subject to the right of appeal. When any such child is placed for adoption, a sworn certificate evidencing the placement shall be filed in the termination proceeding by the agency or person making the placement. On the entry of a final decree of adoption of any such child, a certified copy of the decree shall be filed in the termination proceeding and notification of the entry of the decree, "without disclosing the identity of the adopting parents," shall, unless waived by the court, be given to each person whose parental rights have been terminated by registered or certified mail .... On the entry in the termination proceeding of a certified copy of the final decree of adoption of any such child and notification to the person whose parental rights have been terminated, unless waived as herein provided, or on the dismissal of discontinuance or other final disposition of the petition in the termination proceeding, the clerk of the court shall "seal

Statute Section	Description of Record and Party with Possession
	all records" in the termination proceeding and the seal shall not be broken and the records shall " not be inspected by any person," including the parties to the termination proceeding, except on order of the court.
Part VIII. General Provisions	
571-84	See, Exhibit 2 in this Appendix re: Confidentiality.
Chapter 572: Marriage Part I. Requisites, Procedures	
572-6	In order to secure a license to marry, the persons applying therefor shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent a written application. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth such information as described by this section. The agent shall endorse on the application, over the agent's signature, the date of the filing and shall issue a license which shall be on its face the date of issuance. ... It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department in the district in which the license is issued, setting forth all facts required to be stated.
572-7	(a) Except as otherwise provided in this section, no application for a marriage license shall be accepted by the licensed agent unless the female provides a physician's statement signed by a licensed physician or a commissioned medical officer of the United States Armed Forces or public health service verifying that the female has been given a serological test for immunity against rubella and has been informed of the adverse effects of rubella on the fetus; provided that no examination for immunity to rubella is required for a female providing proof of immunization with live rubella virus vaccine or who is not physically capable of conceiving a child. ... (d) After the completion of the serological test but prior to the issuance of the physician's statement, a written report of the test showing its result shall be transmitted to the physician by the director of the laboratory; one copy of the report shall be filed with the department by such director and another for one year be held on file at the laboratory for inspection by any authorized agent of the department. ...

Statute Section	Description of Record and Party with Possession
	(e) No information secured from any examination, test, report, statement or circuit judge's order or decision made under this section shall be divulged by any person except in the performance of the person's official duties or the person professional or other employment, as contemplated by law, or in compliance with a court order, or except as to the person's own condition.
572-13	(a) Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the persons solemnized, comprising the names of the man and woman married, their place of residence, and the date of their marriage. (b) It shall be the duty of every person legally authorized to perform the marriage ceremony to report within three business days every marriage ceremony performed by the person to the agent of the Department of Health ... setting forth all facts required to be stated in a standard certificate of marriage .... (c) ... The Department of Health shall on request furnish to any applicant additional certified copies of the certificate of marriage or any part thereof.
572-15	Whenver any agent authorized to grant marriage licenses ceases to be an agent, or is directed to do so by the Department of Health, or leaves the state, the agent shall deliver to the department all the agent's records of marriage licenses. On the death of any such agent such records shall also be delivered to the department by the agent's personal or legal representative. This shall also apply where licenses are canceled or terminated.
Chapter 574: Names	
574-2	The registrar of births shall register any child born in wedlock as having the child's father's name as its family name, and shall also register a given name for the child. The registrar shall register any child legitimated, as provided in section 338-21, as having either the child's father's name or its mother's name as a family name, and shall also register a given name for the child.
574-3	The registrar of births shall register any illegitimate child as having the child's mother's name as a family name, and shall also register a given name for the child.
574-4	The father or mother of any child shall report the name or names conferred upon the child to the registrar of births for the district in which the child was born, within three months after the birth of the child. The name of the child

Statute Section	Description of Record and Party with Possession
	shall be registered as required in section 574-2 or 574-3 and the name of the child conferred upon it by its parents, if different from its registered name, shall also be registered.
574-5	(a) It shall be unlawful to change any name adopted or conferred under this chapter, except as provided by subsections (1) through (4) of this section. (b) The order of change of name by the lieutenant governor shall be founded upon a notarized petition. The petition shall be executed by the person desirous of making the change of name. In the case of a minor, the petition shall be executed by parties described in subsections (1) through (3) of this section. (d) A notice of change of name signed by the lieutenant governor shall be published once in a newspaper of general circulation in the State as mentioned in the order for change of name, and the petitioner within sixty days of the signing of the notice of change of name shall deposit at the office of the lieutenant governor an affidavit executed by an officer of the newspaper publishing the notice showing that the notice has been published therein. The affidavit shall have attached to it a clipping showing the notice as published. Failure to deposit the affidavit of publication as required shall void that petition for a change of name by that petitioner. (e) When the petition is accompanied by an affidavit executed by a prosecuting attorney of this State, the affidavit shall show that for the protection of the person desirous of making a change of name, the following actions shall not be necessary: (1) Publication in a newspaper of general circulation in the State; (2) recordation in the bureau of conveyances; and (3) reporting to the registrar of births. The petition, affidavit, and order shall be kept "confidential."
Chapter 578: Adoption	
578-2	(a) Persons required to consent to adoption. Unless consent is not required or dispensed with under subsection (c) of this section, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by those persons set forth by subsections (1) through (8) of this section.

Statute Section	Description of Record and Party with Possession
	(b) A petition to adopt an adult may granted only if written consent to the adoption has been executed by the adult and the adult's spouse, if married, and if the adult to be adopted is an adult niece, nephew or stepchild of the adopting parents. (c) Persons to whom consent is not required or whose consent may be dispensed with by order of the court are set forth in this subsection. ...
578-14	A certified copy of the decree of adoption, or a certified abstract thereof on an approved form shall, after such decree has become effective, be sent to the department. The department shall make a new record of the birth in the name of the individual, as fixed or changed by the decree, with the names of the adoptive parents, and on request of both adoptive parents or the sole parent, that the name or names of either or both of the natural parents appear on the certificate with the name of the natural parent who consents to be named on the certificate, and shall then cause to be "sealed and filed" the original birth certificate of the individual with the decree of the abstract thereof, and such sealed package shall be opened only by order of the court of record. ... If the parental rights of a parent or parents of a minor child have been judicially terminated under chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding.
578-15	The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of social services or his agent or by any proper person on a showing of good cause therefor on order of the court. Except in an adoption by a person married to the legal father or mother of the individual being adopted, or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided that the legal names may be added to the petition by amendment during the course of the hearing and shall be included in the decree. The hearing of the petition shall be in chambers and shall "not be open to the public." On entry of the decree or on the later effective date of the decree, or on the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall "seal all records" in the proceedings; provided that the court may waive the requirements for sealing of the records on written request of the petitioners. The seal shall "not be broken" and the record

Statute Section	Description of Record and Party with Possession
	shall "not be inspected by any person," including the parties to the proceedings, except on order of the family court. The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court.
Chapter 583: Uniform Child Custody Jurisdiction Act	
583-9	(a) Every party in a custody proceeding in its first pleading or in an affidavit attached to that pleading shall give information as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall declare whether he has participated or otherwise has information concerning any other custody litigation involving the same child whether completed or pending, and his knowledge of any person who has physical custody of the child or claims custody or visitation rights with respect to the child and is not a party to the proceedings. ...
583-16	The clerk of each family court shall maintain a registry in which he shall enter the following: (1) Certified copies of custody decrees of other states received for filing; (2) communications as to pendency of custody proceedings in other states; and (3) communications concerning a finding of inconvenient form by a court of another state; and (4) other communications or documents concerning custody proceedings in other states which may affect the jurisdiction of this court or disposition of the custody proceeding.
583-20	(a) ... A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced in any social studies prepared (by order of a court of this state following a request by a court of another state to adduce evidence or social studies for use in a custody proceeding in another state) shall be forwarded by the clerk of the court to the requesting clerk. ...
583-21	In any custody proceeding in this state, the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies and other pertinent documents until the child reaches 18 years of age. On appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all such documents.

Statute Section	Description of Record and Party with Possession
Chapter 584: Uniform Parentage Act	
584-10	As soon as practical after an action to declare the existence or non-existence of the father and child relationship has been brought, an informal hearing shall be held. The public shall be "barred from the hearing." A record of the proceedings or any portion thereof shall be kept if any party requests, or court orders.
584-13	(a) On the basis of the information produced at the pre-trial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the child's best interest. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following: ... (2) That the matter be compromised by an agreement among the alleged father, mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child .... In the best interest of the child, the court may order that the alleged father's identity be kept "confidential." In that case, the court may designate a person or agency to receive and disperse on behalf of the child all amounts paid by the alleged father ....
584-20	Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this chapter shall be held in "closed court" without admittance of any person other than those necessary to the action. All papers and records, pertaining to the action or proceeding whether part of the permanent record of the court or of the file in the Department of Health or elsewhere, shall be subject to inspection only on consent of the court and all interested persons, or in exceptional cases only on an order of the court for good cause shown.
584-23	(b) The fact that the father and child relationship was declared or acknowledged after the child's birth shall not be ascertainable from the new (birth) certificate but the actual place and date of birth shall be shown. (c) The evidence on which the new certificate was made and the original birth certificate shall be kept in a "sealed and confidential" file and be subject to inspection only on consent of the court and all interested persons, or in exceptional cases only on an order of the court for good cause shown.

Statute Section	Description of Record and Party with Possession
Chapter 587: Child Protective Acts Part V. Burden of Proof	
587-42	(a) Any testimony by or other evidence produced by a party in a child protective proceeding under this chapter may be ordered by the court to be inadmissible as evidence in any other civil or criminal action or proceeding if the court deems such an order to be in the best interest of the child. (b) The court may direct that a child testify under such circumtances as the court deems in the best interest of the child in the furtherance of justice, which may include or be limited to an interview on the record in chambers with only those parties present as the court deems in the best interests of the child. ...
587-81	The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays or other information of any nature submitted to the court may be made available to other appropriate persons, who are not parties, only on an order of the court after the court has determined that such access is in the best interests of the child or serve some other legitimate purpose; provided that the department may disclose, without order of the court, such information as is in the court record in the manner and to the extent set forth in departmental rules that ... concern the "confidentiality" of records; provided further that: (1) The department shall not disclose parties' names to researchers without prior order of the court; and (2) the department shall report each disclosure to the court and all parties as part of its next report the court after the department has disclosed information pursuant to this section.
Chapter 588: Childrens Advocacy Program	
588-1	(b) The purpose of the program shall be to: ... (2) Obtain evidence useful for both criminal prosecution as well as protective action in civil proceedings; ... (7) serve as the focus of information and referral for child sex abuse programs.
588-4	The director shall: ... (5) Coordinate the flow of information between the agencies responsible for criminal prosecution and those agencies responsible for protective action and civil proceedings; (6) arrange for the exchange of information to include statistical data from public and private agencies involved in child sex abuse programs and issues; ... (8) prepare and maintain records and reports for the program.

Statute Section	Description of Record and Party with Possession
	Title 32. Courts and Court Officers
Chapter 601: Courts Generally	
601-3	The chief justice, with approval of the Supreme Court, shall appoint an administrative director of the courts .... The administrative director shall, subject to the direction of the chief justice, perform the following functions: (1) Examine the administrative methods of the courts and make recommendations to the chief justice for the improvement; (2) examine the state of the dockets of the courts, secure information as to the needs of assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice; (3) examine the estimates of the courts for appropriations and present to the chief justice the administrative director's recommendation; (4) examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics; (5) collect, analyze and report to the chief justice statistical and other data concerning the business of the court; (6) assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and other reports requested by the legislature; ...
Chapter 602: Courts of Appeal Part I. Supreme Court	
602-5.5	Notwithstanding the provisions of section 94-3, the Supreme Court shall determine the care, custody and disposition of all judiciary case, fiscal and administrative records. A record of dispositional activities shall be maintained stating whether a record was retained by the judiciary, transferred to public archives, the University of Hawaii, the Hawaiian Historial Society or other agency, or destroyed. This record shall be kept on forms specified by the Supreme Court. The original copy of the record shall be filed in the public archives. One copy of the record shall be filed with the court in which the records originated, one copy with the office of the Attorney General, and one copy with the comptroller.

Statute Section	Description of Record and Party With Possession
	in the state and having a general circulation in the county in which the project is located, not less than once in each of two successive weeks, an announcement containing a summary of at least the following information as described by subsections (1 through 7) of this section. Proof of publication of the announcement summarizing the information required by paragraphs (1 through 7) of this section, and a copy thereof, shall be filed with the commission as a condition of issuance of any public report. The developer or his broker shall also provide a copy of the announcement and the following information: number of floors in the project, number of bedrooms and square feet of each residential unit, the price and amount of monthly maintenance fees for each residential unit, the amount of lease rent for each residential unit and the applicable time period. ....
Chapter 514E: Timesharing Plans	
514E-2.5	(a) Except as provided in section 467-2, no sales agent or acquisition agent shall act or assume to act as a real estate salesman or broker without a license previously obtained under chapter 467 and the rules of the real estate commission. No sales agent or acquisition agent shall solicit or encourage others to attend a timeshare sales presentation or to contact a timeshare sales agent or developer except as provided by the rules of the director without a license previously obtained under chapter 467.
514E-9	(a) Any offering of a timesharing plan to the public shall disclose such information as required by subsections (1 through 13) of this section.
514E-10	(a) A developer shall not offer or dispose of a timeshare unit or a timeshare interest unless the disclosure statement required by section 514E-9 is filed with the director pursuant to the time specified in this chapter, or the development is exempt from filing, and the timeshare plan to be offered by the developer is accepted by the director for registration under this chapter. (b) An acquisition agent (including the developer if it is also the agent) shall register under this chapter by filing with the director a statement setting forth the timesharing plan for which it is providing prospective purchasers, its

Statute Section	Description of Record and Party With Possession
	address, the telephone number, other information required by the director by rule, and if the acquisition agent is not a natural person, the name of the responsible managing employee. All acquisition agents not licensed under chapter 467 shall be approved by the director. ... The acquisition agent shall furnish evidence of bonding or current license under chapter 467 as a real estate salesman or broker and the acquisition agent's activities are covered by the real estate recovery fund established under chapter 467. (c) A sales agent (including the developer if applicable) shall register under this chapter by filing with the director a statement setting forth the timesharing plan that it is selling, and such other information as directed by this section. (d) A plan manager (including the developer if applicable) shall register under this chapter by filing with the director a statement setting forth the timesharing plan that it is managing, and such other information as directed by this section. (e) An exchange agent (including the developer if applicable) shall register under this chapter with the director by filing a statement setting forth information as directed by this section. (f) Any registration required in this section shall be renewed on December 31 of each odd numbered year; provided that this shall not relieve the registrant from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation promptly to file amendments or supplements to the disclosure statement and to supply the same to purchasers of timeshare interests.
514E-10.5	The director may contract with private consultants in connection with a review of the filing required of timeshare developers under section 514E-10(a), ...; provided that the consultant review required under this section shall not affect the scope of a review under section 514E-27 which the director may request for filings which encompass alternative arrangements for purchase or protection. The consultant shall review the filing for the purpose of examining its compliance with this chapter, and any rule of the director, including the documentation of other materials provided

Statute Section	Description of Record and Party with Possession
Chapter 604: District Court	
604-17	The District Court shall be courts of record, and in all cases shall preserve in writing, on tape, or such other mechanical device as appropriate, the minutes, proceedings and testimony of their trials, transactions and judgments, and the facts on which their decisions rest.
604-20	The clerks of the District Court shall have, within the scope of the District Court's jurisdiction, all the powers of clerks of other courts of record, including the power to sign and enter judgments, subject to the direction of the court; administer oaths; sign and issue garnishee summons, writs of attachment, execution and possession, and other process; and take depositions.
Chapter 605: Attorneys	
605-1	(a) The Supreme Court may examine, admit and reinstate as practitioners in the courts of the state, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The Supreme Court shall have the sole power to revoke or suspend the license of any such practitioner. ...
605-2	Except as provided by rules of court, no person shall be allowed to practice in any court of the state unless he has been duly licensed to do so by the Supreme Court; provided that nothing in this chapter prevents any person, plaintiff, defendant or accused from appearing in person before any court and their prosecuting or defending his own cause without the aid of legal counsel; provided further that in District Court section 605-11, -13, and -28, shall apply.
Chapter 606: Clerks, Reporters, Interpreters, etc.	
606-3	Each court of record shall have a seal, the device of which shall be as approved by the Supreme Court. The seal shall be in the custody of the clerk of the court, and shall be impressed upon all processes and official certificates, accompanied by the clerk's official attestation.

Statute Section	Description of Record and Party with Possession
606-4	The clerks of the Supreme, Intermediate, Appellate Courts, Circuit and District Courts, shall have the custody of all records, books, papers, monies, exhibits and other things pertaining to their respective courts.
606-8	The clerks of the courts of record may issue process, administer oaths, take depositions and perform all other duties pertaining to their office. The clerk shall attend and record the proceedings of all sittings of courts of record.
606-12	The duties of each court reporter shall be to attend upon the court and write down all the testimony of witnesses in shorthand, together with the proceedings and objections of counsel, exclusive of argument, rulings of the court, charge to the jury and any other matter which the court may require the reporter to report. The reporter may be called upon at any time during a hearing, by any party to the same or by the court, to read aloud any portion of the reporter's notes. The reporter may be referred to any time by the clerk of the court for the exact language of any orders from the bench. In any hearing of probate of will or administration matter the judge may, in his discretion, order the reporter to supply and file, without charge and within reasonable time, a certified statement of such testimony as relates to the names, ages and geneologies of heirs. Other duties for reporters may be prescribed by rule of court. Each reporter shall file the reporter's shorthand notes ... and, when requested by any party to a cause and so directed by the court, or by the court's own motion, shall ... furnish a certified transcript of the reporter's notes, or any portion thereof, taken in the cause, on the payment of the fee fixed in section 606-13. The reporter may furnish a transcript of any of the reporter's notes, where the same is not intended for the purposes of appeal to the Supreme Court, on request of any party, without the order of the judge first obtained.
Chapter 612: Jurors Part I. Selection and Service	
612-11	(a) Each year the jury commission for each circuit shall compile a master list. The master list shall consist of all voter registration lists for the circuit, which may be supplemented with names from other lists of persons resident therein such as lists of taxpayers and drivers'

Statute Section	Description of Record and Party with Possession
	licenses. This includes names, addresses, and social security numbers taken from income tax returns and estimates notwithstanding the provisions of section 235-116. (b) Whoever has custody, possession, or control of any of the lists which are to be used in compiling the master list, shall make the list "available to the jury commission for inspection, reproduction, and copying" at all reasonable times.
612-13	(a) The jury commission shall prepare an alphabetical list of the names in the master jury wheel, which shall "not be disclosed" to any person other than pursuant to this chapter or specific "order of the court." The jury commission shall mail to every name on such list a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The form shall elicit the name, address of resident, age of the prospective juror, other information pertinent to disqualification or exemption from jury service, and such other matters as may be ordered by the court. The form further shall contain the prospective juror's declaration that the prospective juror's responses are true to the bet of the prospective juror's knowledge .... (b) At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court, jury commission, or clerk, any prospective juror may be required or permitted to fill out another juror qualification form in the presence of the court, jury commission, or clerk, at which time the prospective juror may be questioned, but only with regard to the prospective juror's responses to questions contained on the form and grounds for the prospective juror's exemption, excuse or disqualification. Any information thus acquired by the court, jury commission or clerk, shall be noted on the juror qualification form.
612-14	Upon return of the juror qualification forms, the jury commission shall, after careful investigation in each case, select for jury service all those persons whom it believes are qualified and not exempt; provided that any person who is exempt may be selected if the person waives the person's exemption. The names of the persons so selected shall be placed in the qualified jury wheel, to be used in compiling lists of jurors subject to service during the ensuing year, ...

Statute Section	Description of Record and Party with Possession
612-15	(a) Every year the jury commission of each circuit shall make and, not later than January 5, file with the clerk of its circuit court, one or more certified lists of the names and addresses of fifty citizens, or such greater number as the court may order, subject to serve as grand jurors during the ensuing year from and after January 15. At the same time the jury commission of each circuit shall likewise file a separate certified list of the names and addresses of citizens subject to serve as trial jurors during the ensuing year, from and after January 15, the number for each circuit to be such as the jury commission considers necessary. The certified lists of grand jurors and trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. Upon the order of the court, from time to time, additional lists of persons subject to serve as grand jurors shall be compiled and filed, and additional names shall be added to a grand or trial jury list, ... The names on the certified lists shall be "open to public inspection," subject to orders of the court. (b) In the second, third and fifth circuits any circuit judge, and in the first circuit a majority of the circuit judges, may at any time, for reasons appearing sufficient to the judge or them, order the dissolution of any certified list of grand or trial jurors and order the jury commission to make and file a new list, which may include any of the persons so discharged, to serve for the remainder of the year. The new list shall be compiled in the manner prescribed by the court.
612-16	(a) The court shall order one or more grand juries to be impaneled at such times as the public interest requires; provided that there shall be an annual initial impaneling not later than January 15. (c) A certificate listing the names of the grand jurors and stating the essential facts of the drawing, signed by the judge and attested by the clerk, shall be filed.
612-23	(a) Promptly after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this chapter in selecting the grand or trial jury. ...

Statute Section	Description of Record and Party with Possession
	(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the State, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter. (d) The contents of any records or papers used by the jury commission or the clerk in connection with the selection process shall "not be disclosed," except as provided by other provisions of this chapter, or in connection with the preparation or presentation of a motion under subsection (a), or upon order of the court. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (a).
612-24	All records and papers compiled and maintained by the jury commission or the clerk in connection with selection and service of jurors shall be preserved by the clerk for four years after the termination of the prescribed period of service and for any longer period ordered by the court.
Chapter 633: Small Claims, District Courts	
633-36	For the more effective carrying out of this chapter, the chief justice, as administrative head of the judiciary department, shall cause to be published a booklet or pamphlet describing, in language readily understandable by a layman, the procedures of the small claims division of the district court, the remedies available upon judgment in the small claims division of the district court and such other information as will facilitate the utilization of the small claims procedure and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon and after judgment.
Chapter 636: Judgment	
636-3	Any money judgment or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. ... When any such judgment is fully paid, the creditor or the creditor's attorney of record in the judgment is fully paid, the creditor's attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to

Statute Section	Description of Record and Party with Possession
	the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment shall contain a reference to the book and page of the registration of the original judgment.

Title 35. Appeal and Error

Chapter 641: Appeals
Part I. Appeals in Civil Actions and Proceedings

641-1

(a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court or to the intermediate appellate court, except as otherwise provided by law and subject to the authority of the intermediate appellate court to certify reassignment of a matter directly to the supreme court and subject to the authority of the supreme court to reassign a matter to itself from the intermediate appellate court.

(b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusl of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

Title 36. Civil Remedies and Defenses and Special Proceedings

Chapter 651: Attachment and Execution

651-3

The writ of attachment shall be issued by the clerk of the court in which the action is pending. Before any writ of attachment shall issue, the plaintiff, or someone in the plaintiff's behalf, shall make and file with the clerk an affidavit showing that the defendant is indebted to the plaintiff, specifying the amount of the indebtedness over and above all just credits and offsets, and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

Statute Section	Description of Record and Party with Possession
Chapter 658: Arbitration and Awards	
658-8	The award shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and delivered to one of the parties or the party's attorney. A copy of the award shall be served by the arbitrators on each of the other parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court specified in the agreement, or if none is specified, to the circuit court of the judicial circuit in which the arbitration was had, for an order confirming the award. Thereupon the court shall grant such an order, unless the award is vacated, modified, or corrected, as prescribed in sections 658-9 and 658-10. The reocrd shall be filed with the motion as provided by section 658-13, and notice of the motion shall be served upon the adverse party, or the adverse party's attorney. ...
658-12	Upon the granting of an order, confirming, modifying, or correcting an award, the same shall be filed in the office of the clerk of the circuit court and this shall constitute the entry of judgment. An appeal may be taken from such judgment as hereinafter set forth.
658-13	(a) The party moving for an order confirming, vacating, modifying, or correcting an award shall at the time the motion is filed with the clerk also file the following papers with the clerk: (1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award; and (2) the award. (b) Each notice, affidavit, or other paper, used or to be used upon an application to confirm, vacate, modify, or correct the award, and a coy of each order of the court upon such an application, shall be filed with the clerk the same as in civil action.
Chapter 664: Boundaries, Fences, Ways, Water Rights Part I. Commissioners of Boundaries	
664-1	The circuit judges of the second, third, and fifth judicial circuits of the State for their respective circuits, and the judge of the land court, for the first judicial circuit sitting without a jury, shall act as commissioners of boundaries.

Statute Section	Description of Record and Party with Possession
664-2	Each commissioner of boundaries shall keep a record of the commissioner's proceedings in books, to be furnished the commissioner by the department of land and natural resources, which books, when filled, shall be returned to the department.
664-4	Each commissioner of boundaries shall, within thirty days after issuing a certificate of boundaries, deposit a certified copy thereof in the office of the department of land and natural resources, and also deposit a certified copy of the approved or adopted plan thereof with the department.
664-6	All owners of ahupuaas and portions of ahupuaas, ilis, and portions of ilis and other denominations of lands within the State, whose lands have not been awarded by the land commissioners, patented or conveyed by deed from the king or government, by boundaries decided in such award, patent, or deed, may file with the commissioner of boundaries for the circuit in which the land is situated, an application to have the boundaries of the land decided and certified to by the commissioner or the commissioner's successor in office. The application shall state the name of the land, the names of the adjoining land or lands, and the names of the owners of the same where known, and it shall also contain a general description, by true bearing survey, of the boundaries as claimed connected by coordinates to the government survey triangulation system, and shall have attached thereto and made a part thereof a map or tracing which shall show all natural topographical features, permanent or other marks along the boundary lines, the bearings and distances of each course given in the description of survey, and such other data from field notes as will make it practicable to reestablish any boundary mark or point that may become lost or destroyed.
Chapter 671: Medical Torts Part II. Medical Claim Conciliation	
671-11	(a) There are established medical claim conciliation panels which shall review and render findings and advisory opinions on the issues of liability and damages in medical tort claims against health care providers. (b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. ...

Statute Section	Description of Record and Party with Possession
	The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, or physicians and surgeons, as the case may be, along with their respective specialties who shall then be considered consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists. ...
671-12	Effective July 1 1976, any person or the person's representative claiming that a medical tort has been committed shall submit the claim to the medical claim conciliation panel before a suit based on the claim may be commenced in any court of this State. Claims shall be submitted to the medical claim conciliation panel orally or in writing on forms provided by the panel. If the claim is presented orally, the panel shall reduce the claim to writing. The claimant shall set forth facts upon which the claim is based and shall include the names of all parties against whom the claim is or may be made who are then known to the claimant.
671-13	Every claim of a medical tort shall be heard by the medical claim conciliation panel .... No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 671-14 shall be present except with the permission of the chairperson. ... The hearing shall be informal. Chapters 91 and 92 shall not apply. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall "not be made available" to the parties. At the hearing of the panel and in arriving at its opinion the panel shall consider, but not be limited to, statements or testimony of witnesses, hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statements of fact or opinion on a subject contained in a published treatise, periodical, book, or pamphlet, or statements of experts without the necessity of the experts appearing at the hearing.
671-15	(a) ... The medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereafter mail copies to all parties concerned, their counsel, and the representative of each health care

Statute Section	Description of Record and Party with Possession
	provider's liability insurance carrier authorized to act for such carrier, and the board of osteopathic examiners, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician or surgeon licensed under chapter 453 or an osteopathic physician and surgeon licensed under chapter 460. (c) The decision shall be signed by all members of the medical claim conciliation panel; provided that any member of the panel may file a written concurring or dissenting opinion. (d) The advisory decision required by this section need not be filed if the claim is settled or otherwise disposed of before the decision is written or filed.
671-16	The claimant may institute litigation based upon the claim in an appropriate court only after a party to a medical claim conciliation panel hearing rejects the decision of the panel, or after the eighteen-month period under section 671-18 has expired. "No statement" made in the course of the hearing of the medical claim conciliation panel shall be "admissible" in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action, provided that such statements may be admissible for the purpose of section 671-19, hereof. "No decision, conclusion, finding, or recommendation" of the medical claim conciliation panel on the issue of liability or on the issue of damages shall be "admitted into evidence" in any subsequent trial, nor shall any party to the medical claim conciliation panel hearing, or the counsel or other representative of such party, refer or comment thereon in an opening statement, an argument, or at any other time to the court or jury, provided that such decision, conclusion, finding, or recommendation may be admissible for the purpose of section 671-19, hereof.
671-17	No member of a medical claim conciliation panel shall be liable in damages for libel, slander, or other defamation of character of any party to medical claim conciliation panel proceeding for any action taken or any decision, conclusion, finding, or recommendation made by the member while acting within the member's capacity as a member of a medical claim conciliation panel under this Act.

Statute Section	Description of Record and Party with Possession
671-20	The director of DCCA shall prepare and submit to the legislature annually, twenty days prior to the convening of each regular session, a report containing the director's evaluation of the operation and effects of this chapter. The report shall include a summary of the claims brought before the medical claim conciliation panel and the disposition of such claims, a descrption and summary of the work of the panel under this chapter, an appraisal of the effectiveness of this chapter in securing prompt and fair disposition of medical tort claims, a review of the number and outcomes of claims brought under section 671-12 and recommendations for changes, modifications or repeal of this chapter or parts thereof with accompanying reasons and data.
Chapter 672: Design Professional Conciliation Panel	
672-2	In any action for damages arising out of the alleged professional negligence of actions performed in the professional practice of a person holding a license as a professional engineer, architect, surveyor, or landscape architect under chapter 464, before the time of filing the complaint, the aggreived person shall file a claim with the design professional conciliation panel.
672-2.5	(a) Any claim filed under this chapter shall be accompanied by a certificate which declares one of the following: (1) That the attorney has reviewed the facts of the case, and has consulted with at least one design professional who is licensed to practice and practices in this State or any other state, ... and that the attorney has concluded on the basis of such review and consultation that there is a reasonable and meritorious cause for the filing of the claim. The persons consulted may not be a party to the case; (2) that the attorney was unable to obtain the consultation required by paragraph (1) because of the statute of limitations and that the certificate could not be obtained before the impairment of the action. (3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney has made three separate good faith attempts with three separate design professionals and none of those contacted would agree to a consultation.
672-4	(a) Any person or the person's representative claiming that a tort has been committed by the design professional or entities employing such design professionals shall file a claim with the department of commerce and consumer affairs

Statute Section	Description of Record and Party with Possession
	before a suit based on the claim may be commenced in any court of the State. All claims shall be submitted to the department of commerce and cnsumer affairs in writing. ...
672-5	Every claim of a tort shall be heard by the design professional conciliation panel. No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 672-6 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness, or consultant without the presence of any or all parties. The hearing shall be informal. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall "not be made available" to the parties. ...
672-7	(a) ... The panel shall file a written advisory decision with the director of DCCA who shall thereupon mail copies to all parties concerned, their counsel, the board of registration, and the representative of each design professionals' liability insurance carrier authorized to act for such carrier. The panel shall decide the issue of liability, and shall state its conclusions in writing and after a finding of liability, the panel shall decide the amount of damages, if any, which should be awarded in the case. The decision as to damages shall include in simple, concise terms a division as to which portion of the damages recommended are attributable to economic losses and which to noneconomic losses; provided the panel may not recommend punitive damages. (b) The decisions shall be signed by all members of the panel; provided that any member of the panel may file a written concurring or dissenting opinion. (c) The advisory decision required by this section need not be filed if the claim is settled or disposed of before the decision is written or filed.
672-8	The claimant may institute litigation based on the claim in an appropriate court only after a party to the design professional concilation panel hearing rejects the decision of the panel. No statement made in the course of the hearing of the design professional conciliation panel shall be admissible in evidence either as an admission, to impeach the

Statute Section	Description of Record and Party with Possession
	credibility of a witness, or for any other purpose in any trial of the action, provided that such statements may be admissible for the purpose of section 672-11 hereof. "No decision, conclusion, finding, or recommendation" of the design professional conciliation panel on the issue of liability or on the issue of damages shall be "admitted" into evidence in any subsequent trial, nor shall any party to the design professional conciliation panel hearing, or the counsel or other representative of such party, refer or comment thereon in an opening statement, an argument, or at any other time, to the court or jury, provided that such decision, conclusion, finding, or recommendation may be admissible for the purpose of section 672-11.
672-9	No member of a design professional conciliation panel shall be liable in damages for libel, slander, or other defamation of character of any party to the design professional conciliation panel proceeding for any action taken or any decision, conclusion, finding, or recommendation made by the member while acting as a member of a design professional concilation panel under this chapter.
672-12	The director of DCCA shall prepare and submit to the legislature annually, twenty days prior to the convening of each regular session, a report containing the director's evaluation of the operation and effects of this chapter. The report shall include a summary of the claims brought before the design professional conciliation panel and the disposition of those claims.

Title 37. Hawaii Penal Code

Chapter 704: Penal Responsibility and Fitness to Proceed

704-404	(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may immediately suspend all further proceedings in the prosecution. (2) ... The court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. ... (4) The report of the examination shall include the information as described by subsections (a) through (d) of this subsection.

Statute Section	Description of Record and Party with Possession
	(6) The report of the examination, including any supporting documents, shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant. ... (8) The court shall obtain all existing, medical, social, police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies notwithstanding any other statutes, and make such records available for inspection by the examiners.
Chapter 706: Disposition of Convicted Defendants Part I. Pre-Sentence Investigation and Report, Authorized Disposition, and Classes of Felonies	
706-601	(1) The court shall order a pre-sentence correctional diagnosis* of the defendant and accord due consideration to a written report of the diagnosis before suspending or imposing sentence where: (a) The defendant has been convicted of a felony; or (b) the defendant is less than twenty-two years of age and has been convicted of a crime. (2) The court may order a pre-sentence diagnosis in any other case. (3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney.
706-604	(2) The court shall furnish to the defendant or his counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis* or psychiatric or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them.
Part II. Imprisonment	
706-669	(1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling authority shall, as soon as practicable but no later than six months after commitment ... hold a hearing, and ...

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* Hawaii Rules of Criminal Procedure Rule 32(c)(3) provides that "[t]he court shall upon request seasonably made disclose the information contained in the report to the prosecution or to the defendant's attorney or the defendant without disclosing any source of information which was received in confidence, and in such event the court shall make the same disclosure to the other party (emphasis added).

Statute Section	Description of Record and Party with Possession
	make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole. (2) Before holding the hearing, the authority shall obtain a complete report regarding the prisoner's life before entering the institution and a full report of his progress in the institution. The report shall be a complete personality evaluation for the purpose of determining his degree of propensity toward criminal activity. ... (6) A verbatim stenographic or mechanical record of the hearing shall be made and preserved in transcribed or untranscribed form.
706-670	(3) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of his parole hearing and shall prepare a parole plan, setting forth the manner of life he intends to lead if released on parole, including specific information as to where and with whom he will reside and what occupation or employment he will follow. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of his plan and in securing information for submission to the authority. In addition, he shall be allowed rights as described by subsections (a) through (d) of this section. (4) Authority's decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. If the authority denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. ... (7) Revocation hearing. When a parolee has been recommitted, the authority shall hold a hearing ... after his return to determine whether his parole should be revoked. ... A record of the hearing shall be made and preserved as provided in subsection (4).
706-670.5	(2) The Hawaii paroling authority shall give written notice of the parole or release from parole of a prisoner or parolee to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice. (3) The department of social services and housing shall give written notice of the final unconditional release of a prisoner or parolee, who has not been previously paroled or discharged to the victim or family as described above in section (2). (4) The authority or department, ... may instead give written notice to the witness or victim

Statute Section	Description of Record and Party with Possession
	counselor programs in the prosecuting attorney's office in the county where the victim or the surviving immediate family member resides. (5) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State, the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.
706-671	(1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following his arrest for the crime ... such period of detention shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment. The above shall also apply when a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime.
Chapter 708: Offenses Against Property Rights Part VI. Forgery and Related Offenses	
708-858	(1) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, he destroys, removes, or conceals any will, codicil, or other testamentary instrument. (2) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, he destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording. (3) Each offense defined in this section is a class C felony.
Chapter 712: Offenses Against Public Health and Morals Part IV. Offenses Related to Drugs and Intoxicating Compounds	
712-1256	(1) On the dismissal of such person and discharge of the proceeding against him under section 712-1255, this person, if he was not over twenty years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of

Statute Section	Description of Record and Party with Possession
	guilt, and dismissal and discharge pursuant to this section. ... (3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. (4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose.

Title 38. Procedural and Supplementary Provisions

Chapter 806: Criminal Procedure: Circuit Courts
Indictment and Information, Generally

806-6	In all cases of offenses against the laws of the State, brought in the first instance in a court of record, the accused shall be arraigned and prosecuted upon an information or indictment, as soon after the commitment of the offense of which he is accused as may be expedient. In all cases of felony the defendant shall be furnished before arraignment with a copy of the indictment found against him.

Sentence; Probation

806-73	A probation officer shall investigate any case referred to him for investigation by the court in which he is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer's supervision regarding the terms and conditions of the defendant's probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and shall report thereon to the court and shall use all suitable methods to aid the defendant and to bring about improvement in the defendant's conduct and condition. The probation officer shall keep such records and perform such other duties as the court may direct. All records of the State of Hawaii adult probation divisions are "confidential" and are "not public records," including but not limited to, all records made by any adult probation officer ("APO") in the course of performing

Statute Section	Description of Record and Party with Possession
	official duties; provided that such records, or the content of such records, shall be divulged only as follows: (1) A copy of any adult probation division case record, a portion of it, or the case record itself, shall on request be provided to an APO of the State of Hawaii adult probation division which originated the record; provided that a written summary of the record may be provided upon request to an APO of another State of Hawaii adult probation division or to an APO of a probation department of another state which is providing supervision of a probationer convicted and sentenced by the courts of Hawaii. (2) A copy of a presentence report shall be provided to the persons or entities named in section 706-604; to the Hawaii paroling authority; to any psychiatrist, psychologist, or other mental health practitioner who is treating the defendant pursuant to a court order for mental health care; in accordance with applicable law, to persons or entities doing research; to any APO providing supervision of an offender in Hawaii; or to any APO providing supervision of an offender in another state if the offender was convicted and sentenced in the courts of Hawaii. Any persons or entities not entitled pursuant to this section or pursuant to section 706-604 to receive a copy of a presentence report are "not entitled to receive a summary of a report" and are "not entitled to view a report." ...
General Provisions	
806-76	Whenever in any circuit court, family court, or district court any citizen of eighteen years of age or over is: (11) Convicted of any felony; (2) by reason of insanity acquitted of any such crime; or (3) adjudged insane or feebleminded or otherwise legally incompetent, the clerk of the court shall in each case within ten days thereafter make and promptly transmit to the clerk of each county a certificate showing the fact of the conviction or adjudication and a sufficient identifying description of the citizen.
Chapter 832: Uniform Criminal Extradition Act	
832-23	When the return to this State of a person charged with crime in this State is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, the state

Statute Section	Description of Record and Party with Possession
	in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the Hawaii paroling authority, the director of social services, the sheriff, or chief of police of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of the person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made. The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, paroling authority, director of social services, sheriff, or chief of police may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with the application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the lieutenant governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.
832-25	Any person arrested in this State charged with having committed any crime in any state or alleged to have escaped from confinement, or broken the terms of the person's bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 832-7 and 832-8, and all other procedure incidental to extradition proceedings,

Statute Section	Description of Record and Party with Possession
	by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that the person consents to return to the demanding state provided that before the waiver is executed or subscribed by the person the judge shall inform the person of the person's rights to the issuance and service of warrant of extradition and to obtain a writ of habeas corpus as provided for in section 832-10. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this State and filed therein. The judge shall direct the officer having the person in custody to deliver forthwith the person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this State.
Chapter 841. Inquests, Coroners	
841-4	The testimony of all witnesses examined by any coroner or deputy coroner pertaining to the death of any person wherein a coroner's investigation is required, shall be taken under oath, reduced to writing by the coroner, or deputy coroner or by some other person by the coroner's or deputy coroner's direction, and subscribed to by witnesses.
841-7	(b) Upon receipt of a certificate of death from the person in charge of the disposition of the body, the coroner's physician shall thereupon state the name of the disease or condition directly leading to the death; other significant conditions contributing to the death; day on which death occurred; and such other information as may be required on the certificate of death by the director of health in order to classify the death. The local agent of the department of health shall in order to classify the death. The local agent of the department of health shall be notified in writing of the reason for the delay, if the cause of death cannot be determined within three days.

Statute Section	Description of Record and Party with Possession
841-8	(a) Every coroner, or deputy coroner, shall, without delay, forward to the county attorney in the case of coroners for the counties of Maui and Kauai, and the prosecuting attorney in the case of coroners for the city and county of Honolulu and the county of Hawaii, a true and correct copy of the inquisition. (b) The coroner's physician shall, in addition, make available without delay the death certificate of the person whose death was investigated to the person in charge of the disposition of the body so that he may file the death certificate with the local agent of the department of health as required by section 338-9.
841-14	If, in the opinion of the coroner, or of the coroner's physician, or of the prosecuting attorney, or of the chief of police (in the city and county of Honolulu), an autopsy of the remains of any human body appearing to have come to death under any of the circumstances set forth in section 841-3 is necessary in the interest of the public safety or welfare, he shall perform, such an autopsy. ... Any law to the contrary notwithstanding, the coroner's physician or medical examiner of any county (including the city and county of Honolulu) may perform, or cause to have performed, an autopsy to determine cause of death upon the remains of any human body which is brought into or found within the State and which appears to have come to death under any of the circumstances set forth in section 841-3, even though such circumstances may have occurred without the State. The coroner's physician or medical examiner of any county (including city and county of Honolulu) shall have the right to retain tissues, including fetal material, of the body removed at the time of autopsy to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes.
841-17	The chief of police of the city and county of Honolulu or the chief's deputy, and the coroner or deputy coroner, and the coroner's physician may examine the records of any hospital relating to any patient of the hospital in connection with any investigation under this chapter. The hospital may require written proof signed by the coroner of the fact of the investigation and of the authority of the person desiring to examine the records.

Statute Section	Description of Record and Party with Possession
Chapter 846: Hawaii Criminal Justice Data Center; Civil Identification	
846-1	"Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictions, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals. "Criminal history record information system" or "system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of intrastate, interstate, and national criminal justice data. "Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agenct maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository. "Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

Statute Section	Description of Record and Party with Possession
846-2.5	(a) The Hawaii criminal justice data center, hereinafter referred to as the "data center", shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies, including, the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to ... to prevent crimes and detect criminals so the public may be free from crime and the fear of crime. (b) The attorney general shall select and enforce systems of identification, including fingerprinting, of all persons arrested for a criminal offense, or persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and provide for the collection, recording, and compilation of data and statistics relating to crime. The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of such systems of identification and statistics in their respective jurisdictions; provided that all such expenses in connection with prison matters exclusively within the control of the State shall be borne by the State. The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in such manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics. The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable (1) for the study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law and (2) for the examination of the records of the operations of such officers and the results thereof. ...

Statute Section	Description of Record and Party with Possession
	(d) In order to accomplish this purpose, the data center shall develop systems and provide the structure that support criminal justice information systems, provide statistical research and data analysis, and "make public" periodic reports which shall provide the public with a clear view of the criminal justice systems.
846-3	The chiefs of the police of the counties of the State and agencies of state and county governments having power of arrest shall furnish the data center with descriptions of persons arrested for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule of the attorney general to be a significant offense necessary to be reported .... The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation.
846-4	Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used ... prior to any dissemination ... however, where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements.
846-5	It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition.
846-6	All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

Statute Section	Description of Record and Party with Possession
	(1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released; (2) Establish a delinquent disposition monitoring system; and (3) Verify all record entries for accuracy and completeness.
846-9	This chapter shall not apply to criminal history record information contained in: (1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis; (3) Court records of public judicial proceedings; (4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings; (5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license; (6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State. Nothing in this chapter shall prevent a criminal justice agency from "disclosing, to the public," criminal history record information related to the offense for which an individual is currently within the criminal justice system, including the individual's place of incarceration; nor shall it prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history

Statute Section	Description of Record and Party with Possession
	record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and grating of citizenship.
846-9	Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to: (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment; (2) Individuals and agencies specified in section 846-10; (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the "security and confidentiality" of the data consistent with the provisions of this chapter; (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the "confidentiality and security" of the data consistent with the purposes of this chapter; (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information. These dissemination limitations do not apply to conviction data.

Statute Section	Description of Record and Party with Possession
	Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given. No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that could not be eligible to receive the information itself.
846-10	Criminal history record information may be disseminated to: (1) The governor in individual cases or situations wherein the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to insure that the laws be faithfully executed; (2) The attorney general in connection with the attorney general's statutory authority and duties in the administration and enforcement of the criminal laws and for the purpose of administering and insuring compliance with the provisions of this chapter; (3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation.
846-11	The data center shall coordinate its activities with the records system of the intake service centers of the office of correctional information and statistics. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated to eliminate duplication of efforts.
846-12	"Dissemination" and disposition of records relating to a juvenile as a delinquent or in need of supervision in family court to noncriminal justice agencies is "prohibited," unless a statute, court order, rule, or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section 846-9. Juvenile records disseminated to noncriminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further.

Statute Section	Description of Record and Party with Possession
846-13	The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate the annual audits. Audit of the data center shall be performed by another state agency.
846-14	Any individual who asserts that the individual has reason to believe that criminal history record information relating to the individual is maintained by any information system in this State shall be entitled to review such information to determine its accuracy and completeness by applying to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of individual ... information that is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the relevant individual; provisions for supplying to an individual with a corrected record upon the individual's request, the names of all noncriminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information.
846-16	Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section 846-9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor.
846-27	Every person residing or present in the State may be registered, and have issued to the person a certificate of identification, under this part.

Statute Section	Description of Record and Party with Possession
846-28	The department of the attorney general shall require, collect, secure, make, and preserve a written record of the following items of information so far as it is practicable to secure the same, with respect to each applicant for registration: (1) The name of the person applying to be registered (hereinafter called the "registrant" or "applicant"), the street and number or address of the applicant's place of habitation in the State, and the applicant's residence and business telephone numbers, if any; (2) Whether the applicant has ever been fingerprinted and, if so, where, when, and why; (3) The applicant's occupation and any pertinent data relating thereto; (4) The applicant's nationality or racial extraction; (5) The applicant's citizenship status; (6) The date and place of the applicant's birth; (7) The applicant's personal description including sex, height, weight, hair, eyes, complexion, build, scars, and marks; (8) The fingerprints of both hands of the applicant; provided that this requirement shall not apply to minors until they reach the age of six years, except as may be requested by a parent or guardian; (9) The name, relationship, and address of the nearest relative or other person to be notified in case of sickness, accident, death, emergency, or need of the applicant, if such notification is desired; (10) The social security number of the applicant.
846-30	The department of the attorney general, after taking the fingerprints of each registrant as provided in this part ... and after securing the information under this part, shall issue to each registrant a certificate of identification in such form, and with such information, as the attorney general deems necessary and practicable, the certificate to contain, among other things: the registrant's social security number; the date of issue; the name, residence,

Statute Section	Description of Record and Party with Possession
	citizenship status, date of birth (if known), the registrant's signature, a facsimile signature of the attorney general, the signature of the officer or employee issuing the certificate (to be designated as the "director of the data center"), the fingerprints of the index and middle fingers of each of the registrant's hands ... the name and address of the person to be notified in case of need, and such other personal identification data. ...
846-32	(a) If, after registration, the name of any registrant is legally changed by marriage, divorce, adoption, legitimation, order of the lieutenant governor, or other legal means, or if there is a change in the registrant's citizenship status, the registrant or other person in charge of the registrant (in the case of a minor or incompetent person), within thirty days after the change of name or citizenship status, shall report the change and present the registrant's certificate of identification to the department of the attorney general. ... The department, upon being satisfied as to the change and receiving payment of the fee, shall cancel the certificate and issue a new certificate bearing the new name or citizenship status of the registrant, making appropriate notation of the facts upon the records of the department. (b) If any error has been made in any item of information contained in the records of the department or the certificate of identification concerning any registrant, the department, of its own motion, or upon application by the registrant, and upon receipt of evidence satisfactory to it that error has been committed, with the approval of the attorney general or his authorized representatives, may correct the error and shall make appropriate changes or notations stating the error and the correct information upon the records of the department and the certificate of identification. (c) In case any item of personal information originally correct with respect to any registrant shall change after registration, the change, if material, may be registered by the department and the records and certificate of identification may be altered to conform thereto, upon receipt by the department of satisfactory evidence as to the change and the approval of the attorney general or his specially authorized representative ....
846-35	(a) All information and records acquired by the department of the attorney general under this part shall be "confidential." All such records filed in the custody and

Statute Section	Description of Record and Party with Possession
	control of the department shall at all times be kept separate from any similar records relating to the identification of criminals. The information shall be available only to authorized persons in the department, and such other authorized persons or agencies, under prescribed restrictions. The information and records shall "not be subject to subpoena or other court process." (b) No officer or employee of the department shall divulge any information concerning any registrant acquired from the records of the department or acquired in the performance of any of the officer's or employee's duties under this part to any person not authorized to receive the same pursuant to this part or pursuant to the orders of the attorney general made under subsection (a). No person acquiring from the records any information concerning any registrant shall divulge the information to any person not so authorized to receive the same.
846-36	Any person who (1) knowingly furnishes any false or untruthful information or answer validly required under this part; (2) violates or without adequate excuse fails to comply with any requirement of this part or of any rule issued pursuant thereto, which is legally applicable to the person, and for which no other penalty is specifically prescribed by this part; or (3) without adequate excuse, fails to perform any act lawfully required to be performed by the person pursuant to this part or such rules shall be fined not more than $500, or imprisoned not more than six months, or both; provided that failure of a person to report that the person's certificate is lost, stolen, or destroyed, or to return to the department of the attorney general the person's lost certificate when the person has secured a duplicate and finds the lost certificate for which such duplicate was issued, shall be punishable by fine of not more than $5. "Adequate excuse", as used in this section, means inability to comply with any such requirement or perform any such act, due to any cause beyond the control of the individual concerned and not due to the individual's malfeasance, nonfeasance, or gross negligence.

Report of the Governor's Committee on
Public Records and Privacy

APPENDIX D: SPECIFIC PUBLIC RECORDS,
CONFIDENTIALITY AND PENALTY

Exhibit 2 - Confidentiality Statutes

Statute Section	Description of Confidential Matters
	I. Hawaii Rules of Evidence
Hawaii Revised Statutes	Chapter 626: Part V. Privileges
Rule 502	A person, corporation, association or other organization or entity, either public or private, making a return or report required by law has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring the making of the report so provides. A public officer or agency receiving a return or report made as required by law has a privilege to refuse to disclose the return or report if the law requiring the report so provides. No privilege exists under this rule and actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.
Rule 503	(a) Definitions. As used in this rule: (1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who has rendered professional legal services by a lawyer, or who consults a lawyer with a review to obtaining such services from him. ... (3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation. ... (5) A communication is "confidential" if not intended for disclosure for third persons other than those to whom disclosure would be in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. (b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. (1) Between himself or his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and the lawyer's representative, or (3) by him or his representative or his

Statute Section	Description of Confidential Matters
	lawyer or a representative of his lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and representatives representing the same client. (c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication shall claim the privilege on behalf of the client unless expressly released by the client. (d) Exceptions. There is no privilege under this rule: (1) Furtherance of Crime or Fraud; or ... (3) breach of duty by lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer; or (4) document attested by lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or (5) joint clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any one of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.
Rule 507	Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted under chapter 11, by secret ballot unless the vote was cast illegally.
Rule 508	A person as a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interest of the holder of the privilege and of the parties and the furtherance of justice may require.
Rule 509	To the extent that such privilege exists under the constitution of the United States or the State of Hawaii, a person has a privilege to refuse to disclose any matter that may tend to incriminate him.

Statute Section	Description of Confidential Matters
Rule 510	(a) Rule of privilege. The government or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or a member of the legislative committee or its staff conducting an investigation. (b) Who may claim. The privilege may be claimed by an appropriate representative of the government, regardless of whether the information was furnished to an officer of the government or a state or subdivision thereof. The privilege may be claimed by an appropriate representative of the state or subdivision if the information must furnish to an officer thereof, except that in criminal cases the privilege shall not be allowed if the government objects. (c) Exceptions. (1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government. (2) Testimony on merits. If it appears from the evidence or other showing by party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the government is a party, and the government invokes the privilege, the judge shall give the government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the judge may direct that testimony be taken if he finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the government elects not to disclose his identity, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on his own motion. In civil cases, he may make an order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government. All counsel and parties shall be permitted to be present at every stage of proceedings under this paragraph except as showing in camera, at which no counsel or party shall be permitted to be present.

Statute Section	Description of Confidential Matters
	(3) Legality of obtaining evidence. If information from an informer is relied on to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, he may require disclosure of the informer's identity. The judge shall, on request of the government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality may be present at every stage of proceedings under this paragraph except a disclosure in camera, at which no counsel or party shall be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be "sealed and preserved" to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.
Rule 512	Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (1) compelled erroneously, or (2) made without opportunity to claim the privilege.

II. Hawaii Revised Statutes

Title 2. ELECTIONS

Chapter 11: Elections, Generally
Part VII. Conduct of Election

11-97	Records open to inspection. ... With the following exception: The voted ballots and other sealed election material shall "not be open to the inspection of any voter" until after the end of the contest unless opened on order of the court.
11-152	(b) ... In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be "no printout by the computer or other disclosure" of the number of votes cast for a candidate or on a question prior to the closing of the polls.

Part XII. Expenses

11-216	(d) Until a determination of probable cause is made by the commission, all proceedings, including the filing of a complaint, investigation, and hearing shall be

Statute Section	Description of Confidential Matters
	"confidential" unless the person complained of requests an open hearing. In the event the commission determines that probable cause does not exist, the complaint shall be dismissed and the entire record of the proceedings shall be kept "confidential" at the option of the person complained of.

Title 3. Legislature

Chapter 21: Legislative Hearings and Procedure

21-12	(g) Testimony and other evidence given or induced at a hearing "closed to the public" shall "not be made public" unless authorized by majority vote of all members of the committee, which authorization shall also specify the form and manner in which the testimony or other evidence may be released. (h) All information of a defamatory or highly prejudicial nature received by or for the committee other than in an open or closed hearing shall be deemed "confidential." No such information shall be made public unless authorized by majority vote of all members of the committee for legislative purposes, or unless its use is required for judicial purposes.

Title 6. County Organization and Administration

Chapter 52: Police Departments
Part I. General Provisions Applicable to All Departments

52-44	The dismissal and suspension of any officer or employee under the chief of police shall be the manner provided by the rules of the police commission. The chief of police may suspend or dismiss any officer or employee under him for incompetence, neglect of duty, drunkenness, or failure to obey orders given him by proper authorities or for any other just cause, subject to the following provisions: ... (2) any officer or employee suspended shall, in all cases, have the right to apply in writing to the commission for an informal hearing of an explanation of his conduct and record, and shall be heard within 48 hours of receipt of his application. The right shall "not include any necessity for a public hearing or for a disclosure to the officer or employee" of the ground of his suspension or for the examination of witnesses. The commission on receiving the application shall forthwith call on the chief of police for a "confidential statement" of the reasons for the suspension of the officer or employee, and if after

Statute Section	Description of Confidential Matters
	considering both the statement and the explanation by the officer or employee so suspended, the commission feels either that the suspension is unjust or that the justice of it is questionable, it shall consider the matter as on formal application for review and shall then act with the same power, discretion, and effect as though a formal application for review of the case had been taken in the matter provided by subsection (3) of this section.

Title 7. Public Officers and Employees

Chapter 78: General Provisions on Public Service

78-2.5	No applicant for employment by the state or any political subdivision or agency shall be required to answer, either orally or in writing, as a condition precedent to employment, whether or not the applicant has been arrested; provided that this shall not preclude any question concerning any conviction of the crime or the arrest and other circumstances pertaining to the conviction.

Chapter 84: Standards of Conduct
Part II. Code of Ethics

84-12	No legislator or employee shall disclose information which by law or practice is "not available to the public" and which the legislator or employee acquires in the course of their official duties or use the information for their personal gain or for the benefit of anyone.
84-17	(a) See, Exhibit 1 in this Appendix for text to this section.
84-18	(a) No former legislator or employee shall disclose any information which by law or practice is "not available to the public" and which the former legislator or employee acquired in the course of their official duties or use the information for the former legislator's or employee's personal gain or for the benefit of anyone.

Part IV. Administration and Enforcement

84-31	(c) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge prior to the issuance of a complaint by the commission, or if the investigation discloses that the complaint should not be issued by the commission, at any time divulges any information concerning the original

Statute Section	Description of Confidential Matters
	charge, or divulges the contents of the disclosures except as permitted by this chapter, shall be guilty of a felony which shall be punishable of a fine of not more than $5,000 or imprisonment of not more than five years, or both, or in the case of a legislator, when acting in the legislator's legislative capacity, the subject to discipline pursuant to Article III, Section 12, of the Hawaii Constitution as the case may be. (d) If after 20 days following personal service, a majority of the members of the commission conclude there is reason to believe that a violation of this chapter or the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. ... All hearings shall be in accordance with Chapter 91. All witnesses shall testify under oath and the hearings shall be "closed to the public" unless the party complained against requests an open hearing. ... All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such records shall be available only to complainant and the alleged violator at their own expense.
84-31.5	The state ethics commission shall establish and maintain a list of all persons who examine the financial disclosures statements of any person enumerated in section 84-17(d). Such lists shall specify the name of the person examining the record, the name of the person whose record was examined and the date of examination. Such lists shall be "confidential;" provided that the commission shall notify the person whose financial disclosure statement was examined of the name of the person who examined such statement. The ethics commission may adopt rules under Chapter 91 to implement this section.

Title 8. Public Proceedings and Records

Chapter 92: Public Agency Meetings and Records
Part I. Meetings

92-4	A board may hold an executive meeting "closed to the public" on an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting "closed to the public" shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be

Statute Section	Description of Confidential Matters
	publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting.
92-5	(a) A board may hold a meeting "closed to the public" pursuant to section 92-4 for one or more of the following purposes: (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 226-9 or both; (2) to consider the higher, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, such meeting shall be held; (3) to deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations; (4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities; (5) to investigate proceedings regarding criminal misconduct; and (6) to consider sensitive matters related to public safety or security.
92-6	(a) This part shall not apply: (1) To the judicial branch. (2) To adjudicatory functions exercised by a board or governed by sections 91-8 and -9, or authorized by other sections of these statutes. In the application of this subsection, boards exercising such functions includle, but are not limited to the following: (A) Hawaii Labor Relations Board, Chapters 89 and 377; (B) Labor and Industrial Relations Appeals Board, Chapter 371; (C) Hawaii Paroling Authority, Chapter 353; (D) Civil Service Commission, Chapter 26; (E) Board of Trustees, Employees' Retirement System of the State of Hawaii, Chapter 88; (F) Criminal Injuries Compensation Committee, Chapter 351; and (G) State Ethics Commission, Chapter 84. (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require "open deliberation" of the adjudicatory functions of the Land Use Commission.
Chapter 93: Government Publications Part I. State Publications Distribution Center	
93-2	"Publication" includes any document, compilation, journal, report, statute, regulation, ordinance issued in print by

Statute Section	Description of Confidential Matters
	any state or county agency, and "confidential publications" which shall be deposited in accordance with security regulations to be determined by the issuing agency.
Chapter 96: The Ombudsman	
96-9	(b) The ombudsman is required to "maintain secrecy" in respect to all matters and the identities of the complainants or witnesses coming freely for him except so far as disclosures may be necessary to enable him to carry out the ombudsman's duties and to support the ombudsman's recommendations.
96-17	No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes this chapter. The ombudsman has the same immunities from civil and criminal liability as a judge of this state. The ombudsman and his staff shall not testify in any court with respect to matters coming their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter.
Title 9. Public Property, Purchasing and Contracting	
Chapter 102: Concessions on Public Property	
102-3	Before any prospective bidder is entitled to submit any bid for the occupancy of any such space, the prospective bidder shall, not less than six calendar days prior to opening bids, give written notice to the officer charged with letting the contract of the prospective bidders intention to bid, and the officer shall satisfy himself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the officer may, in his discretion, require prospective bidders to submit answers, under oath, to questions contained in a form of questionnaire setting forth the complete statement of the experience, competence and financial standing of the prospective bidders. ... The officer charged with letting the contract shall "not divulge or permit to be divulged" the names and the number of persons who have submitted their notice of intention to bid until after the opening of bids. All information contained in the answers to questionnaires shall remain "confidential," and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not entitled thereto shall be fined not more than $250. Questionnaires so submitted shall be returned to the bidders after having served their purpose.

Statute Section	Description of Confidential Matters
Chapter 103: Expenditure of Public Money and Public Contracts Part II. Public Works and Contracts	
103-25	Before any prospective bidder shall be entitled to submit any bid for the performance of any contract with the state, or any county, or with any independent board or agency of the state or any county, for the construction of any public building or other public work, not including contracts between government agencies or political subdivisions, he shall. ..., give written notice to the officer charged with letting such contract of his intention to bid and such officer shall satisfy himself of the prospective bidder's financial ability to perform the work, of his experience, and competence in performing similar work. For this purpose, the officer may, in his discretion, require any prospective bidder to submit answers under oath, to questions contained in a standard form questionnaire ... setting forth the complete statement of the prospective bidder's experience, his organization in performing similar work and a statement of the equipment proposed for use, together with adequate proof of equipment availability. ... All information contained in the questionnaire answers shall be and remain "confidential," and any government officer or employee who knowingly divulges or permis to be divulged any such informatin to any person not lawfully entitled thereto shall be fined not more than $250. Questionnaires so submitted shall be returned to the bidders after having served their purpose.
Title 10. Public Safety and Internal Security	
Chapter 132: Fire Protection	
132-1	See, Exhibit 1 in this Appendix for text to this section.
132-4.5	(d) See, Exhibit 1 in this Appendix for text to this section.
Title 11. Agriculture and Animals	
Chapter 144: Feed	
144-14	See, Exhibit 1 in this Appendix for text to this section.

Statute Section	Description of Confidential Matters
Chapter 149A: Hawaii Pesticides Law Part II. Pesticide Licensing and Sale	
149A-11	(b) It shall be unlawful to: ... (3) Use for a person's own advantage or to reveal any information relative to formulas of products acquired in the administration of this chapter, to persons other than to the chairman or proper officials or employees of the state or the federal government, or the courts of this state or the federal government in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes.
Chapter 157: Milk Control Act Part II. Administration, Powers and Duties	
157-16	No person obtaining any information under sections 157-14 and -15 shall divulge the information except as may be necessary or proper to administer and enforce this chapter or as the public interest may require.
Chapter 161: Poultry Inspection Part II. Administration, Powers and Duties	
161-8	For the purpose of enforcing this chapter, the board may: (a) Gather and compile information which relates to the business operations of persons being regulated under this chapter and such other information necessary to effectuate the purposes of this chapter. Information obtained in confidence by the board shall be kept "confidential" and shall not be disclosed by the board except under order of court.
Part VII. Violations, Penalties, Prosecution, Compacts, Construction	
161-47	... Any officer or employee of this state who makes public any confidential information obtained by the board unless directed by a court, shall be fined not more than $1,000 or imprisoned not more than one year, or both.
Chapter 163: Marketing Orders and Agreements Part I. Hawaii Agricultural Marketing Act	
163-5	(a) The board (of Agriculture) may require all processors or distributors subject to any marketing order issued pursuant to this part, to maintain books and records reflecting their operations under the marketing order, and to furnish to the board such information as requested relating to operations under that order, and to permit

Statute Section	Description of Confidential Matters
	inspection by the board of portions of the books and records relating to operations under said order. (b) Information obtained by the board shall be "confidential" and shall "not be disclosed" by the board except when the public interest demands disclosure or under order of court. ... (d) No person shall be excused from attending and testifying or from producing documentary evidence before the board in obediance to a subpoena of the board on the grounds that the testimony, evidence, documentary, or other information, required of the person may tend to incriminate the person or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or information concerning which the person may be required to testify or produce evidence, documentary or otherwise, before the board in obediance to a subpoena issued by the board; except for perjury committed in testifying or producing evidence.
	Title 12. Conservation and Resources
	Subtitle 3. Mining and Minerals
Chapter 182:	Reservation and Disposition of Government Mineral Rights
182-6	See, Exhibit 1 in this Appendix for text to this section.
	Subtitle 5. Aquatic Resources and Wildlife
Chapter 189: Part I.	Commercial Fishing License and Regulation
189-3	See, Exhibit 1 in this Appendix for text to this section.
	Title 14. Taxation
Chapter 235:	Income Tax Law General Provisions
235-116	All tax returns and return information required to be filed under this chapter shall be "confidential," including any copy of any portion of a federal return which may attached to his state tax return, or any information reflected in a copy of such federal return. It shall be unlawful for any person, or any officer or employee of the state to make known intentionally information imparted by any income tax return or estimate made under section 235-92, -94, -95, and

Statute Section	Description of Confidential Matters
	-97 or wilfully to permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or his authorized agent, since duly authorized by the state in connection with their official duties, the multi-state tax commission or the authorized representative thereof, except as provided by law, and any offense against the foregoing provisions shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.
Chapter 237: General Excise Tax Law Returns and Payments	
237-34	(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or the subject matter of the return, shall be "confidential." It shall be unlawful for any person or any officer or employee of the state to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or subject matter of the return, or to wilfully permit any such return, return information, or report so made or any copy to be seen or examined by any person; provided that for tax purposes only the taxpayer, his authorized agent, or persons with a material interest in the return, return information, or report (as specifically described by this subsection) may examine them.
Chapter 237D: Transient Accommodation Tax	
237D-13	(a) The text of this section is the same as that cited above in section 237-34(b)).
	Title 15. Transportation and Utilities
Chapter 267: Boating Law	
267-9	The operator of (1) any vessel involved in a boating accident in state waters, and (2) any vessel required to be registered, or registered, with the Department of Transportation and involved in a boating accident in any waters, shall file a written report with the department truthfully setting forth all relevant information required by the department; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard. The department shall transmit the information

Statute Section	Description of Confidential Matters
	of all boating accidents to the Coast Guard as may be requested by the agency for compilation, analysis and publication of statistics. The accident reports required by this section shall be "used only to enable the department and the Coast Guard to make findings of causes of accidents and recommendations for their prevention, and to compile information for use in making statistical reports; except that they may also be used in the prosecution of the filing of false accident reports.
Chapter 271: Motor Carrier Law	
271-25	(a) The Public Utilities Commission may require annual, periodic or special reports from all motor carriers, prescribed in the manner and form in which the report shall be made, and require from the carrier specific and full, true, and correct answers to all questions on which the commission deems information necessary. The annual reports shall give an account of the affairs of the carrier in such form and detail as prescribed by the commission. The commission may also require any motor carrier to file with it a true copy of any contract, agreement or arrangement between the carrier and any other carrier or person in a relation to any traffic affected by this chapter. The commission shall "not, however, make public" any contract, agreement or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers the action consistent with the public interest; provided that if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier of the motor vehicle as required by section 271-22(a), the commission may, in its discretion, "make public" such of the provisions of the contract as the commission considers necessary to disclose such failure and the extent thereof.
	Title 17. Motor and Other Vehicles
Chapter 287: Motor Vehicle Safety Responsibility Act	
287-14	Neither the report required by section 287-4, the action taken by the administrator pursuant to this chapter, the findings of the administrator on which the action is based, nor the security filed as provided in this chapter shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action to recover damages.

Statute Section	Description of Confidential Matters
Chapter 294: Motor Vehicle Accident Reparations Part I. No-Fault Insurance	
294-13	(f) If the (insurance) commissioner has good cause to believe that a classification, rule, standard, rate, rating territory or rating plan made, followed, or adopted by an insured does not comply with any of the requirements of this chapter or any applicable provisions of the casualty rating law, the commissioner shall, unless he has good cause to believe that non-compliance is willful, give written notice to each insurer stating therein in what manner and to what extent such non-compliance is alleged to exist and specifying a reasonable time, not less than ten days thereafter, within which such non-compliance may be corrected. Notices under this section shall be "confidential" as between the commissioner and the parties unless a hearing is held as provided in subsection (g).
Title 18. Education	
Chapter 297: Personnel of Public and Private Schools Part I. Certification, Employment and Tenure	
297-12	In case of demotion or termination of any contract, the Department of Education shall furnish the teacher a written notice signed by the Superintendent of Education of its intention to consider the demotion or termination of the teacher's contract with full specification of the grounds for such consideration. ... If the teacher within ten days after receipt of notice from the superintendent, demands in writing a hearing before the department, the department shall set a time for the hearing within 30 days from the date of written demand and give at least 15 days' written notice of the time and place of the hearing. ... The hearing shall be "private" unless the teacher requests a public hearing. ...
Chapter 298: Schools and Attendance, Generally	
298-5	(c) If the principal, on a hearing of the charges, has reasonable cause to believe that the people is responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies, the principal shall design a restitution program which shall be submitted to the people and the people's parents or guardian for agreement in writing.

Statute Section	Description of Confidential Matters
	If restitution is made in this fashion, then all records and documents regarding the charges and hearing "shall be destroyed." "No information" about the charges, the hearing and the actions taken shall be "communicated" to any person not directly involved in the proceedings. If the people and parent or guardian do not agree with the determination made by the principal, the principal shall preserve all the records and documents regarding the charges and hearing and shall report to the District Superintendent the determination made by the principal for any further action.
298-27	(d) At the conference (scheduled by the principal with reasonable cause to believe a specific people caused vandalism), the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the people and parents or guardian. If the people and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and people and parent or guardian shall execute a written agreement which shall specify the manner in which restitution will be made. ... If restitution is made in this fashion, then all records and documents regarding the investigation and conference "shall be destroyed." "No information" about the investigation, conference and the actions taken shall be "communicated" to any person not directly involved in the proceedings. If the people and parent or guardian do not agree with the principal's findings the principal shall preserve all the records and documents regarding the investigation and conference and shall report the findings to the District Superintendent who shall review the findings and may refer the matter to the Attorney General for further action pursuant to section 577-3.

Title 19. Health

Chapter 321: Department of Health
Part III. Cancer Control

321-43	The Department of Health shall engage in the collection and analysis of statistical information on the morbidity and

Statute Section	Description of Confidential Matters
	mortality of cancer in the state. ... All statistical material collected under this section shall be considered "confidential" as to the names of persons or physicians concerned, except that researchers may use the names of such persons when requesting additional information for research studies when such studies have been approved by the Cancer Commission of the Hawaii Medical Association.
Part IV. Crippled Children	
321-52.5	See, Exhibit 1 in this Appendix for text to this section.
Part XX. Agent Orange	
321-263	See, Exhibit 1 in this Appendix for text to this section.
321-265	See, Exhibit 1 in this Appendix for text to this section.
Part XXII. Newborn Metabolic Screening	
321-291	(c) The Department of Health shall adopt rules under Chapter 91, necessary for the purposes of this section, including, but not limited to: (1) Administration of newborn screening tests; ... (3) keeping of records and related data; (4) reporting of positive test results; ... and (7) maintaining the "confidentiality" of affected families.
Chapter 324: Medical Research; Morbidity and Mortality Information	
Part I. Maternal and Parinatal Studies	
324-2	The maternal and parinatal mortality study committee of the Hawaii Medical Association or any in-hospital staff shall use or publish said material "only for the purpose of advancing medical research, medical education, or education of the public in the interest of reducing morbidity or mortality." In all events, the identity, or any group of facts which tends to lead to the identity, of any person whose condition or treatment has been studied shall be "confidential" and shall "not be revealed" under any circumstances.
324-3	Any findings, conclusions or summaries resulting from medical studies within the scope of this part shall "not be used or made available" in any legal proceeding. Any information set forth in section 324-1 provided to any research or study committee shall "not be used or made available" in any legal proceeding unless it is unobtainable from the original source. In such event, the

Statute Section	Description of Confidential Matters
	judicial officer shall in camera inspect the committee's findings, conclusions or summaries and "make available" factual information contained therein.
324-4	Any person violating this part shall be guilty of a misdemeanor and fined not more than $500.
Part II. Mental Health and Mental Retardation Studies	
324-12	The material shall be used or published only for the purpose of advancing medical research, medical education, or education of the public in the interest of reducing morbidity or mortality. The identity, or any group of facts which tends to lead to the identity, of any person whose condition or treatment has been studied shall be "confidential" and shall "not be revealed" in any reports or any other matter prepared, released, or published by the research or study committees under any circumstances.
324-13	Any findings, conclusions or summaries resulting from medical studies within the scope of this part shall not be used or made available in any legal proceeding. Any information provided to any research or study committee shall not be used or made available in any legal proceeding unless it is unobtainable from the original source. In such event, the judicial officer shall in chambers inspect the committee's findings, conclusions or summaries and make available factual information contained therein.
324-14	Any person violating this part shall be guilty of a misdemeanor and fined not more than $500.
Part III. Cancer Studies	
324-22	(a) The material collected under this part shall be used or published only for the purpose of advancing medical research, medical education or education of the public in the interest of reducing morbidity or mortality; provided that the Hawaii tumor registry may reveal all relevant information to a patient's attending physician. (b) The identity, or any group of facts which tends to lead to the identity, of any person whose condition or treatment has been studied shall be "confidential" and "shall not be revealed" in any report or any other matter prepared, released, or published. Researchers may, however, use the names of persons when requesting additional information for research studies approved by the cancer commission; provided that when a request for additional information is

Statute Section	Description of Confidential Matters
	to be made directly from a patient, the researcher shall first obtain approval for such request from the patient's attending physician. (c) The use of additional information obtained by researchers shall also be governed by subsection (a) and in addition, where the patient is still living and the information is to be obtained directly from the patient, the researcher shall first obtain the approval of the patient, the patient's immediate family, or attending physician, in that order of priority.
324-23	Except as otherwise provided, findings, conclusions or summaries resulting from medical studies within the scope of this part shall "not be used" or "made available" in any legal proceeding. Any information provided to any researcher or study committee shall not be used or made available in any legal proceeding unless it is unobtainable from the original source. In such event, the judicial officer shall in chambers inspect the findings, conclusions or summaries and "make available" factual information contained therein.
324-24	Any person violating this part shall be guilty of a violation.
Part IV. Health Surveillance	
324-31	The identity, or any group of facts or any system of records which may lead to the identity, of any person whose condition or treatment has been studied shall be "confidential" and shall "not be revealed" in any report, release or publication. The Department of Health may, however, use the names of persons when requesting additional information; provided that approval first be obtained from the individual, the individual's parents or guardian in the case of a minor, or the next of kin in the case of a deceased person; and provided that the identity or facts identifying the person shall "not be released" outside of the Department of Health.
324-32	(a) Consistent with section 324-31 and Public Law 93-380, the Department of Health may, if not otherwise prohibited by law, release statistical records or information relating to the health surveillance program. The materials collected under this part shall only be used for the analysis of health, demographic, socio-economic, environmental and related factors for the evaluation of health problems, health programs, delivery and utilization

Statute Section	Description of Confidential Matters
	of medical care, analysis and interpretation of public health trends, forecasting long and short range public health needs and for the determination of programs to meet such needs. (b) The Department of Health may collect additional information requested by other public or private agencies and may release statistical information from the health surveillance program for research, educational or program purposes to the public or private agencies or individuals.
324-33	Findings, conclusions or summaries pertaining to any individual resulting from studies within the scope of this part shall "not be used" against the individual or "made available" in any legal proceeding without the individual's consent.
324-34	Any person violating this part shall be guilty of a misdemeanor.
Chapter 325: Infectious and Communicable Diseases Part I. General Provisions	
325-4	Reports to the Department of Health provided for by this chapter shall "not be made public" so as to disclose the identity of the persons to whom they relate except insofar as may be necessary to safeguard the public health against those who disobey the rules and regulations relating to these diseases or to secure conformity to state laws. Reports to the Department of Health or persons who have had viral hepatitis may be disclosed by the department to any blood bank to enable it to reject as donors any individual with such a history.
Part III. Congenital Syphilis	
325-54	Any information secured from the tests or the reports in this part required to be made by persons having access to such tests or reports shall be used only in connection with their professional duties or within the scope and course of their employment, but not otherwise, and except to the extent required in connection with enforcement of the laws and ordinances of the state, and its political subdivisions, and valid rules and regulations adopted thereunder, which are for the protection of the public health, shall "not be divulged" to others than the doctor and other persons permitted by law to attend and attending a pregnant woman, laboratory technicians, or the Department of Health and its duly authorized representatives. Any person violating this section shall be fined $500, or imprisoned not more than 90 days, or both.

Statute Section	Description of Confidential Matters
Part IV. Tuberculosis	
325-73	The Department of Health shall cause all reports made according to section 325-71, and also all results of examinations showing the presence of bacilli of tuberculosis, made according to section 325-72, to be recorded in a register. The register shall remain in the care, custody and control of the department, which may disclose the contents of any such report or record to relatives or officials of social and welfare organizations in the state. The information disclosed to such officials shall "not be divulged" by them so as to disclose the identity of any person to whom it relates. Any person who violates this section shall be fined not more than $1,000.
Part VI. Sexually Transmitted Diseases	
325-101	All information and records containing any information which identifies any person who has or may have any condition related to a sexuallly transmitted disease which is required to be reported under this chapter and which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual or organization in the state shall be "strictly confidential." Such information shall "not be released or made public" upon subpoena or any other method of discovery except under the following circumstances specifically set forth by this section, relating to specific medical or epedemiological information for statistical purposes without identity, on written consent of the person identified, in a medical emergency necessary to protect the health, life or wellbeing of the named party, to protect the health of the general public without identities, or for enforcements of this chapter or Chapter 350.
325-102	Any person or institution who willfully violates any provision of this part shall be fined not less than $1,000 nor more than $10,000 plus court costs as determined by the court, which penalty and cost shall be paid to the person or persons whose records were released.
325-103	No officer or employee of the Department of Health shall be examined in any civil, criminal, special or other proceeding as to the existence or content of any individual's records retained by the department pursuant to

Statute Section	Description of Confidential Matters
	this part, or as to the existence or contents of such reports received from any private physician or private health facility, without written consent of the affected individual.
Chapter 328: Food, Drugs, and Cosmetics Part I. Hawaii Food, Drug and Cosmetic Act	
328-25	(a) The director of health or any of his agents may, in the performance of their duties: ... (3) Demand a person to provide records or copies of records relating to the manufacture, distribution or sale of food, drugs, devices, cosmetics or consumer commodity which the director has probable cause to believe is adulterated or misbranded; provided that "no confidential information" concerning secret processes or methods of manufacture secured under this section by any person who is an official or employee of the Department of Health within the scope and course of his employment shall be disclosed by the person except as it relates directly to the adulteration or misbranding of a commodity, and then, only in connection with the person's official duties and within the scope and course of the person's employment. Any officer, employee or agent of the department acquiring "confidential information" concerning secret processes or methods of manufacture who divulges information except as authorized in this section or as ordered by a court or at an administrative hearing regarding an alleged adulteration or misbranding or of any rule or regulation or standard adopted pursuant to this part shall be guilty of a misdemeanor.
Chapter 329: Uniform Control of Substances Act Part V. Enforcement and Administrative Provisions	
329-54	(a) The department shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic and controlled substances and in supressing the abuse or control substances. To this end, it may: ... (3) Cooperate with the bureau (of narcotics and dangerous drugs, U.S. Dept. of Justice), by establishing a centralized unit to accept, catalog, file and collect statistics including records of drug dependent persons or other controlled substance law offenders within the state, and make the "information available" for federal, state and local enforcement purposes. It shall "not furnish" the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); ...

Statute Section	Description of Confidential Matters
	(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the department, nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep "confidential."
Chapter 333: Mental Retardation Part VI. Other Provisions	
333-81	All certificates, applications, records and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept "confidential" and shall "not be disclosed" to any other person except so far (1) as the person identified, or the person's legal guardian, consents, or (2) as disclosure may be deemed necessary by the director of health to carry out this chapter, or (3) as disclosure may be deemed necessary under the federal Developmental Disabilities Act of 1984, P. L. 98-527, to protect and advocate the rights of persons with developmental disabilities who reside in facilities for persons with such disabilities, or (4) as disclosure may be deemed necessary by the family court for any case pending before a court.
Chapter 333E: Developmental Disabilities Part I. General Provision	
333E-6	(The text of this section is the same as that provided in section 333-81 above.)
Chapter 334: Mental Health, Mental Illness, Drug Addiction, and Alcoholism Part I. General and Admnistrative Provisions	
334-5	All certificates, applications, records and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept "confidential" and shall "not be disclosed" by any person except so far (1) as the person identified, or the person's legal guardian, consents, or (2) as disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric facility to carry out this chapter, or (3) as a court may direct under its determination that disclosure is necessary for the conduct of proceedings before and that failure to make the disclosure would be contrary to the public interest.

Statute Section	Description of Confidential Matters
	Nothing in this section shall preclude disclosure on proper inquiry, of any information relating to a particular patient and not clearly adverse to the interest of the patient, to the patient, the patient's family, legal guardian, or relatives, nor, except as provided above affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purposes for which the information was furnished.
Chapter 338: Vital Statistics Part I. State Public Health Statistics Act	
338-7	(a) Whoever assumes the custody of a living child of unknown parentage shall immediately report on an approved form to the local agent of the Department of Health the identifying information set forth by this subsection. ... (c) The foundling report shall constitute the certificate of birth. (d) If a foundling child is identified and a regular certificate of birth is found or obtained, the report shall be "sealed" and filed and may be opened only on order of a court of competent jurisdiction.
338-17.7	(c) When a new certificate of birth is established under this section, it shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence supporting the preparation of the new certificate shall be "sealed and filed." Such sealed document shall be opened only by an order of a court of record.
338-18	(a and b) See, Exhibit 3 in this Appendix for text to this section.
338-20	See, Exhibit 1 in this Appendix for text to this section.
338-20.5	(b) After preparation of the new certificate of birth in the new name of the adopted person, the Department of Health shall "seal and file" the certified copy of the adpted decree, the investigatory report and recommendation of the director of social services, if any, the report constituting the original certificate of birth, and the request for a new certificate of birth. Such "sealed documents" may be opened by the department only by an order the court of record. The new certificate of birth shall show the true or probable foreign country of birth, and that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.

Statute Section	Description of Confidential Matters
338-21	(b) The evidence on which the new certificate is made (under this section relating to legitimation), and the original certificate, shall be "sealed and filed" and may be opened only on order of a court of record.
Chapter 342: Environmental Quality Part I. Definitions and General Provisions	
342-5	See, Exhibit 1 in this Appendix for text to this section.
342-10	... No confidential information secured pursuant to this section (relating to investigations of water, air, noise or other pollution sources, compliance with departmental rules or regulations, or permits or other approval granted by the department and related tests) by any official or employee of the department within the scope and course of their employment and the prevention, control or abatement of water, air, noise, or other pollution shall be disclosed by the official or employee except as it relates directly to air, water, noise, and other pollution and then, only in connection with the official or employee's official duties and within the scope and course of the official or employee's employment.
342-11	(c) See, Exhibit 3 in this Appendix re: penalties.
Part VI. Underground Storage Tanks	
342-69	(b) See, Exhibit 1 in this Appendix for text to this section.
Title 20. Social services	
Chapter 346: Department of Social Services and Housing Part I. General and Administrative Provisions	
346-10	(a) The Department of Social Services and Housing and its agents shall keep such records ... in accordance with this chapter. All applications and records concerning any applicant or recipient shall be "confidential." The use or disclosure of information concerning applicants and recipients shall be limited to those persons, agencies, private institutions and employees legitimately involved with the administration and investigation of the public assistance, medical assistance, food stamps or social service program, all is more specifically described by subsections (1-7) of this subsection.

Statute Section	Description of Confidential Matters
	(b) Disclosure to any committee or legislative body (federal, state or local) of any information that identifies by name and address any such applicant or recipient; and publication of lists or names of applicants and recipients shall be prohibited.
	(c) The department shall promulgate and enforce rules as necessary to prevent improper acquisition or use of confidential information. Any information secured pursuant to this section by the officials or employees may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in "confidential records or files," which shall not be subject to any other law permitting inspection of public records. The department and its agents shall determine whether or not the inspection relates to such official duties or within the scope and course of such employment.
	(d) The use of the records and other communications of the department or its agents by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished.
	(e) Confidential information shall be released if requested by specific written waiver of the applicant or recipient concerned.
	(f) The identity of foster parents, adoptive parents, and foster care facilities staff parents, and the location of the foster home, adoptive home or foster care facility is "confidential" but may be released with the consent of the foster or adoptive parent, or foster care facility staff. If the department determines it is in the best interest of the child and of the adoptive parents, foster parents or facility, the identity and location of the adoptive or foster parents, foster home or facility may be stricken from the individual's case file or withheld from the child's parents, guardians, or other interested persons.
	(g) All reports concerning adult abuse or neglect, as well as records of such reports, are "confidential" and any unauthorized disclosure of a report or a record of a report shall be a violation. The director of social services may adopt, amend, or repeal rules under Chapter 91, to provide for the "confidentiality of reports and records" and for the authorized disclosure of reports and records.

Statute Section	Description of Confidential Matters
346-11	Any person, including any person acquiring information through inspection permitted the person or under section 346-10, who knowing the information to have been acquired from the confidential records or files of the Department of Social Services and Housing, intentionally divulges the same other than as authorized by law, or who intentionally and knowingly aids or abets in the inspection of such applications or records by any person unauthorized to inspect the same under this chapter or other provisions of law, shall be guilty of a violation.
Part VIII. Child Care Facilities (A) General	
346-153	See, Exhibit 1 in this Appendix for text to this section.
346-156	Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined not more than $500.
(B) Group Child Care Home and Group Child Care Center Licensure	
346-166	Every group child care home and group child care center shall keep such records and shall file with the Department of Social Services and Housing such reports as required by rules adopted by the department. All records and all information obtained concerning children or their parents or relatives shall be kept "confidential" by the provider and by members of the department herein named.
Chapter 347: Blind and Visually Handicapped Persons	
347-11	Sections 346-10 and -11 relating to protection of records, divulging confidential information, and penalties and section 346-33 concerning inalienability of payments to the blind are made applicable in the same manner as if such sections were reinacted in this chapter.
Chapter 349: Executive Office on Aging	
349-12	(b)(7) and (8) See, Exhibit 1 in this Appendix for text to this section.
Chapter 349C: Elderly Abuse or Neglect	
349C-8	all reports concerning elderly abuse or neglect made under this chapter, as well as all records of such reports, are "confidential" and any "unauthorized disclosure" of the report or record of a report is a misdemeanor. The

Statute Section	Description of Confidential Matters
	director of Social Services may adopt, amend or repeal rules under Chapter 91, to provide for the "confidentiality" of reports and records and for the authorized disclosure of reports and records.
Chapter 350:	Child Abuse
350-6	All reports concerning child abuse and neglect made under this chapter as well as all records of such reports, are "confidential" and any "unauthorized disclosure" of a report or record of a report is a misdemeanor. The director of Social Services may adopt, amend or repeal rules under Chapter 91, to provide for the "confidentiality" of reports and records and for the authorized disclosure of the same.
Chapter 356:	Hawaii Housing Authority; Low Income Housing
Part I.	General Provisions
356-13	(a) The Authority may: ... (3) Conduct examinations, investigations, hear testimony, and take proof under oath at "public or private hearings" on any matter material for its information; .... .
	Title 21. Labor and Industrial Relations
Chapter 383:	Hawaii Employment Security Law
Part IV.	Administration
383-95	(a) Except as otherwise provided in this chapter, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held "confidential" and shall "not be disclosed or be open to public inspection" in any manner revealing the individual's or employing unit's identity. Any claimant (or the claimant's legal representative) shall be supplied with information from the records of the department to the extent necessary for the proper presentation of his claim in any proceeding under this chapter. Subject to such restrictions as prescribed by regulation, the information and determinations may be made available to such federal and state agencies as specifically described by subsections (1 through 4) of this subsection. (b) Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

Statute Section	Description of Confidential Matters
	(c) On request therefor the department shall furnish to any agency of the United States charged with the administration of public works or assistance to public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter.
	(d) The department may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association under this chapter, and may, in connection with the request, transmit any of the report or return to the comptroller of the currency of the United States as provided in section 3305(c) of the federal Internal Revenue Code.
Chapter 387: Wage and Hour Law	
387-8	Except as otherwise provided herein, information secured from inspection of the records, or from the transcriptions or from the taking of transcriptions thereof, or from inspection of the employer's premises by the director of Labor and Industrial Relations or his representative, shall be held "confidential" and shall "not be disclosed or be open" to any person. The information may be made available: ... to officials, agencies, or employees of the state or federal government as specifically described by subsections (1 through 4) of this section.
Chapter 396: Occupational Safety and Health	
396-13	Information obtained by the department containing or revealing a trade secret shall be "held confidential" and access shall be limited to authorized representatives of the director concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In such proceeding the director, the appeals board, or court shall issue such orders as may be appropriate to protect the "confidentiality of trade secrets."
396-14	No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained or received in connection with the administration or enforcement of this chapter shall be amditted or used whether as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination, statement or report other than an action for enforcement or review under this chapter.

Statute Section	Description of Confidential Matters
Chapter 397: Boiler and Elevator Safety Law	
397-7	(a) The department shall conduct an inspection in response to complaints made to the department where reasonable grounds exist for the department to believe there may be a hazard. (b) Names of all complainants and witnesses shall be held in "confidence" by the department unless prior permission has been given by the complainant or witness to release their name or unless it has been determined by the Attorney General that disclosure is necessary for enforcement and review of this chapter.
397-11	Information obtained by the department containing or revealing a trade secret shall be held "confidential" and access shall be limited to authorized representatives of the director concerned with carrying out this chapter or in relevent in any proceeding under this chapter. In such proceeding the director, the appeals board or the court shall issue such orders as appropriate to protect the "confidentiality of trade secrets."
397-12	No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained or received in connection with the administration or enforcement of this chapter shall be admitted or used whether as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination, statement or report other than an action for enforcement or review under this chapter.
Title 22. Banks and Financial Institutions	
Chapter 401: Commissioner of Financial Institutions	
401-14	(a) Except as otherwise provided in this section or as may be specifically authorized under any law regulating the institutions described in this chapter, neither the commissioner, nor any examiner, nor any other person appointed by the commissioner as provided by law, shall divulge any of the following information nor will it be made available to any person, if that informatin is: (1) Exempt from disclosure by any federal or state statute; (2) contained in or related to examination, operating, or cndition reports prepared by, or on behalf of or for the use of the commission relating to the affairs of any bank, trust company, building and loan association, fiduciary company, industrial loan and investment company or licensee under Chapter 409 or affiliate thereof; (3) privileged or

Statute Section	Description of Confidential Matters
	related to the business, personal or financial affairs of any person and is furnished in confidence; (4) contained in investigatory file compiled for law enforcement purposes, including but not limited to, information related to matters involving: (A) issuance of an order under section 401-5; (B) the issuance of an order or of suspension, revocation or removal; and (C) the granting of revocation of any approval, permission or authority; (5) related solely to the internal personnel rules or other internal practices of the commissioner; (6) contained in personnel, medical and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (7) contained in inter-agency or intra-agency memoranda or letters that would not be routinely available by law to a private party in litigation with the commissioner, including but not limited to memoranda, reports, and other documents prepared by the staff of the commissioner. (b) The commissioner shall furnish a copy of each report of the regular examination of a bank, trust company, building and loan asscociation, industrial loan and investment company, or licensee under Chapter 409 to the financial institution examined. (c) Reports of examination and other information relating to financial institutions may be made available on request by the commissioner to state and federal governmental agencies having supervision of state-chartered financial institutions, and other state and federal agencies when necessary to investigate criminal charges in connection with the affairs of any financial institution under the supervision of the commissioner. All reports or other information made available pursuant to this subsection shall remain the property of the Division of Financial Institutions, and no person, institution, agency or authority to whom the information is made available, or any officer, director or employee thereof, shall disclose any of that information, except published statistical material that would not disclose the identity of any individual or corporation. (d) The commissioner may cause to be published ... in a newspaper of general circulation in the state a combined statement of the statements of conditions of banks, trust companies, building and loan associations, industrial loan and investment companies, and licensees under Chapter 409 ... using information derived from reports made to the commissioner by the respective institutions as previously described.

Statute Section	Description of Confidential Matters
	(e) Any examiner or any other person appointed by the commissioner as provided by law who violates this section shall be immediately discharged.
Chapter 407: Savings and Loan Associations	
Members, Shares, and Reserves	
407-61.4	(a) A person who is not already in control of an association, foreign association, savings and loan holding company, or foreign holding company, shall not acquire control of any such entities, directly or indirectly, individually or in concert with others, unless the commissioner shall have given prior approval to the proposed acquisition. (b) The proposed acquirer shall submit a written application for such approval in such form as may be prescribed by the commissioner. ... (d) Any person submitting information to the commissioner pursuant to this section may request that such information be "kept confidential." The written request shall set forth specific items sought to be kept confidential and the basis for the request. The commissioner may, pursuant to such request or otherwise, determine that good cause exists to keep such information "confidential," and may ... keep the same "confidential and not subject to public disclosure."
Chapter 408: Industrial Loan Companies	
408-23	As soon as possible after the completion of an examination the commissioner shall report in writing all findings to the director of Commerce and Consumer Affairs. A copy of the report may be provided to the licensee examined, but the report or other information made available to the licensee shall remain the property of the commissioner. The licensee, or any officer, director or employee thereof, shall "not disclose any of the information." If the report or other information provided by the commissioner is subpoenaed, the licensee shall immediately advise the commissioner of the service and of all relevant facts, including the documents and information requested.
408-27	The commissioner, examiners, and any other person appointed by the commissioner as provided by this chapter, shall "not divulge any information" acquired by them in the discharge of their duties, except to the extent permitted by section 401-14; provided any information may be furnished to the board of directors of the Thrift Guaranty Corporation of Hawaii in response to a written request by the board.

Statute Section	Description of Confidential Matters
408-29	Any person who willfully or knowingly violates any of the provisions of this chapter for which there is no other penalties specifically provided herein, shall be fined not less than $10 nor more than $500 for each violation.

Chapter 408A: Industrial Loan Company Guaranty Act

408A-18 and 21	See, Exhibit 1 in this Appendix for text to these sections.

Title 23. Corporations and Partnerships

Chapter 415: Hawaii Business Corporation Act

415-138	See, Exhibit 1 in this Appendix for text to this section.

Chapter 415A: Professional Corporation Act

415A-22	(b) Financial information contained in the annual report of a professional corporation, other than the amount of stated capital of the corporation, shall "not be open to public inspection" nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such information is required for evidence in any criminal proceedings or in any other action by this state.
415A-24	(a) Each licensing authority of this state may propound to any professional corporation, domestic or foreign, organized to practice a profession within the jurisdiction of such licensing authority, and to any officer or director thereof, such interrogatories as reasonably necessary and proper to enable the licensing authority to determine compliance with all the provisions of this chapter applicable to such corporation. ... (b) Interrogatories propounded by a licensing authority and the answers thereto shall "not be open to public inspection" nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

Statute Section	Description of Confidential Matters
Chapter 415B: Hawaii Non Profit Corporation Act Part VII. Enforcement, Fees and Penalties	
415B-153 and -154	See, Exhibit 1 in this Appendix for text to these sections.
	Title 24. Insurance
Chapter 431: The Hawaii Insurance Law Insurance Commissioner	
431-48	See, Exhibit 1 in this Appendix for text to this section.
Examinations, Investigations, Hearings and Appeals	
431-58	See, Exhibit 1 in this Appendix for text to this section.
Rates of Property and Marine and Transportation Insurers	
431-716	See, Exhibit 1 in this Appendix for text to this section.
Chapter 431D: Insurance Company Insolvency	
431D-13	See, Exhibit 1 in this Appendix for text to this section.
Chapter 431F: Hawaii Life and Disability Insurance Guaranty Association Act	
431F-11	See, Exhibit 1 in this Appendix for text to this section.
Chapter 431H: Insurance Information Protection Act	
431H-1	No corporation, copartnership, association, individual or group of individuals which has made a loan in connection with which insurance is required to be carried by the borrower, shall disclose any information contained in or relating to the required insurance policy to third parties unless the disclosure is within one of the exceptions as provided by subsections (1 through 7) of this section.
431H-2	No person shall receive or use for any purpose information contained in or relating to a required insurance policy from any corporation, copartnership, association, individual or group of individuals, which has made a loan in connection with which insurance is required to be carried by the borrower, unless such receipt and use is within the exceptions described by subsection (1 through 6) of this section.

Statute Section	Description of Confidential Matters
431H-5	Violation of any provision of this chapter shall constitute a bar to the recovery of any part of the interest in any proceeding at law. Violation of any provision of this chapter shall also be a misdemeanor. The commissioner of insurance, after a hearing under chapter 91, may revoke or suspend the license of any person licensed pursuant to chapter 431 who is guilty of a violation of any provision of this chapter.
431H-6	This section provides for public action by the attorney general or county attorneys to enjoin any violation or threatened violation of this chapter on the attorney general's or county attorney's own complaint or the complaint of any person. The borrower or his insurance broker, agent or solicitor may also bring a private action. The insurance agent or solicitor may sue to recover any lost commissions as a result of an unlawful use of policy information, including reasonable attorney's fees.
Chapter 434: Insurance by Fraternal Benefit Societies	
434-38	Pending, during or after an examination or investigation of a (fraternal benefit) society, either domestic, foreign, or alien, the insurance commissioner shall "make public no financial statement, report, or finding," nor shall the commissioner permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any society until a copy thereof has been served on the society at its principal office and the society has been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.
434-44	(d) Any person guilty of a willful violation of, or neglect or refusal to comply with the provisions of this chapter for which a penalty is not otherwise prescribed shall on conviction be subject to a fine of not more than $200.
	Title 25. Professions and Occupations
Chapter 436M: Alarm Businesses	
436M-4	See, Exhibit 1 in this Appendix for text to this section.
Chapter 437: Motor Vehicle Industry Licensing Act	
437-40	See, Exhibit 1 in this Appendix for text to this section.

Statute Section	Description of Confidential Matters
Chapter 453: Medicine and Surgery	
453-7.5 and -17	See, Exhibit 1 in this Appendix for text to this section.
Chapter 460: Osteopathy	
460-19 and -20	See, Exhibit 1 in this Appendix for text to this section.
Chapter 461J: Physical Therapy Practice Act	
461J-12	See, Exhibit 1 in this Appendix for text to this section.
Title 26. Trade Regulation and Practice	
Chapter 480: Monopolies; Restraint of Trade	
480-18	See, Exhibit 1 in this Appendix for text to this section.
Chapter 485: Uniform Securities Act (Modified)	
485-15	See, Exhibit 1 in this Appendix for text to this section.
Chapter 486E: Fuel Distribution	
486E-3	See, Exhibit 1 in this Appendix for text to this section.
Chapter 487: Consumer Protection	
487-5	See, Exhibit 1 in this Appendix for text to this section.
Chapter 488: Prepaid Legal Services	
488-5	See, Exhibit 1 in this Appendix for text to this section.
Title 28. Property	
Chapter 515: Discrimination in Real Property Transactions	
515-10	See, Exhibit 1 in this Appendix for text to this section.
Chapter 516: Residential Leaseholds Part II. Condemnation of Development Tract	
516-33	See, Exhibit 1 in this Appendix for text to this section.

Statute Section	Description of Confidential Matters
	Title 30A. Uniform Probate Code
Chapter 560: Uniform Probate Code Article V. Protection of Persons Under Disability and Their Property Part 6. Incapacitated Persons Sterilization Rights	
560:5-611	See, Exhibit 1 in this Appendix for text to this section.
	Title 51. Family
Chapter 571: Family Courts Part VI. Termination of Parental Rights	
571-63	See, Exhibit 1 in this Appendix for text to this section.
Part VIII. General Provisions	
571-84	(a) The court shall maintain records of all cases brought before it. In proceedings under section 571-11, and in paternity proceedings under chapter 584, the following records shall be "withheld from public inspection:" the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be "open to inspection" by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings fro the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the minor. (b) Reports of social and clinical studies or examinations made pursuant to this chapter shall be "withheld from public inspection," except that information from such reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, and treatment of the minor. (c) No information obtained or social records prepared in the discharge of offical duty by an employee of the court shall be disclosed directly or indirectly to anyone other

Statute Section	Description of Confidential Matters
	than the judge or others entitled under this chapter to receive such information, unless and until otherwise ordered by the judge. (d) Except for the immediate use in a criminal case, any photograph or fingerprint taken of any child shall not be used or circulated for any other purpose and shall be subject to all rules and standards provided for in section 571-74. (e) The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be "confidential" and shall be "open to inspection only" by persons whose official duties are concerned with the provisions of this chapter, except as provided in subsection (f) herein or as otherwise ordered by the court. (f) Any such police records concerning traffic accidents in which a child or minor coming within section 571-11(1) is involved shall, after the termination of any proceeding under section 571-11(1) arising out of any such accident, or in any event after six months from the date of the accident, be "available for inspection" by the parties directly concerned in the accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party concerned. (g) In all proceedings concerning violations other than traffic violations, in which a minor coming within section 571-11(1) is involved and after the termination of any proceeding under section 571-11(1) arising out of any such violation in which the minor has been adjudicated a law violator, the name and address of the minor, and, when practicable, the name of the parent or guardian shall be disclosed pursuant to the order of the court or the Hawaii Family Court Rules, to the parties directly concerned with the alleged violation, or their duly licensed attorneys acting under written authority signed by either party. For the purpose of this section "parties directly concerned" means any person who may sue because of death, injury, or damage resulting from any violation other than a traffic violation, in which a minor within section 571-11(1) is involved. The minor, and, when practicable, the minor's parents or custodian, and the attorney of the minor shall be notified when the minor's name and address have been released.

Statute Section	Description of Confidential Matters
	(h) Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the child or minor therein involved for any purpose whatever, except in subsequent proceedings involving the same child under section 571-11(1) or (2).
Chapter 572: Marriage	
572-7	See, Exhibit 1 in this Appendix for text to this section.
Chapter 574: Names	
574-5	See, Exhibit 1 in this Appendix for text to this section.
Chapter 578: Adoption	
578-14 and -15	See, Exhibit 1 in this Appendix for text to these sections.
Chapter 584: Uniform Parentage Act	
584-10, -13, -20 and -23	See, Exhibit 1 in this Appendix for text to these sections.
Chapter 587: Child Protective Act Part IX. Miscellaneous	
587-81	See, Exhibit 1 in this Appendix for text to this section.
Title 36. Civil Remedies and Defenses on Special Proceedings	
Chapter 671: Medical Torts Part II. Medical Claim Conciliation	
671-13	See, Exhibit 1 in this Appendix for text to this section.
Chapter 672: Design Professional Conciliation Panel	
672-5	See, Exhibit 1 in this Appendix for text to this section.
Title 37. Hawaii Penal Code	
Chapter 706: Disposition of Convicted Defendants Part I. Pre-Sentence Investigation and Report, Authorized Disposition, and Class of Felonies	
706-601 and -604	See, Exhibit 1 in this Appendix for text to these sections.

Statute Section	Description of Confidential Matters
Chapter 712:	Offenses Against Public Health and Morals Part IV. Offenses Related to Drugs and Intoxicating Compounds
712-1256	See, Exhibit 1 in this Appendix for text to this section.
	Title 38. Procedural and Supplementary Provisions
Chapter 806:	Criminal Procedure: Circuit Courts Sentence; Probation
806-73	See, Exhibit 1 in this Appendix for text to this section.
Chapter 831:	Uniform Act on Status of Convicted Persons
831-3.1	(a) A person shall not be disqualified from public office or employment by the State, its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State, its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission. (b) The following criminal records shall "not be used, distributed, or disseminated" by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate: (1) Records of arrest not followed by a valid conviction; (2) convictions which have been annulled or expunged; (3) convictions of a penal offense for which no jail sentence may be imposed; and (4) conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction. ... For the purpose of this subsection, such refusal, suspension, or revocation (of employment or any permit, license, registration or certificate) may occur only when the agency determines, ... that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, shall be deemed rebuttable prima facie evidence of sufficient rehabilitation.

Statute Section	Description of Confidential Matters
	(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies; except for the specific "denials" of license permit or employment described in subsections (1) through (3) of this section.
831-3.2	(a) The attorney general, ... upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture; (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; and (3) in the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absenting oneself from the jurisdiction. Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general, within 120 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records. (b) On the issuance of the expungement order, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section. (c) On the issuance of the expungment order, all records pertaining to the arrest which are in the custody or control of any law enforcement agency of the state or any county government, and which are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the records in a "confidential file" or, if the records are on magnetic tape or in a computer memory bank, "shall be erased."

Statute Section	Description of Confidential Matters
	(d) Records filed under subsection (c) shall "not be divulged" except upon inquiry by: (1) A court of law or an agency thereof which is preparing a presentence investigation for the court; or (2) an agency of the federal government which is considering the subject person for a position immediately and directly affecting the national security. Response to any other inquiry shall not be different from responses made about persons who have no arrest record.
	(e) The attorney general or the attorney general's duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment or any other adverse action.
	(f) The meaning of the following terms as used in this section shall be as indicated: (1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court. (2) "Arrest record" means the document, magnetic tape or computer memory bank, produced under authority of law, which contains the data of legal proceedings against a person beginning with the person's arrest for the alleged commission of a crime and ending with final dispositin of the charges against the person by nonconviction. ...
	(h) Nothing in this section shall affect the compilation of crime statistics as provided in chapter 846.
Chapter 843:	Hawaii Criminal Justice Commission
843-6	See, Exhibit 1 in this Appendix for text to this section.
Chapter 846:	Hawaii Criminal Justice Data Center; Civil Identification
Part I.	Data Center
846-9 and -12	See, Exhibit 1 in this Appendix for text to this section.
Part II.	Civil Identification
846-35	See, Exhibit 1 in this Appendix for text to this section.

Report of the Governor's Committee on
Public Records and Privacy

APPENDIX D: SPECIFIC PUBLIC RECORDS,
CONFIDENTIALITY AND PENALTY

Exhibit 3 - Penalty Statutes

Statute Section	Description
	I. Hawaii Revised Statutes
	Title 3. Legislature
Chapter 21:	Legislative Hearings and Procedure
21-15	(c) Any person other than the witness concerned or the witness' counsel who violates subsection 21-12(g) or (h) shall be fined not more than $500 or imprisoned not more than six months, or both. The attorney general, on the attorney general's own motion or on the application of any person claiming to have been injured or prejudiced by an "unauthorized disclosure" may institute proceedings for trial of the issue and imposition of the penalties provided herein. Nothing in this subsection shall limit any power which the legislature or either house thereof may have to discipline a member or employee or to impose a penalty in the absence of action by a prosecuting officer or court.
	Title 6. County Organization and Administration
Chapter 53:	Urban Renewal Law
Part I.	Urban Redevelopment Act
53-3	No member or employee of the redevelopment agency shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any such project, nor shall the member or employee have any interest, direct or indirect, in any contract or proposed contract, for materials or services to be furnished or used in connection with the project. If any member or employee owns or controls an interest, direct or indirect, in any property included or planned to be included in any redevelopment project, the member or employee shall immediately disclose the same in writing to the agency and the disclosure shall be entered upon the minutes of the agency. "Failure to do disclose the interest" shall constitute misconduct sufficient to warrant removal.

Statute Section	Description
	Title 7. Public Officers and Employees
Chapter 84: Standards of Conduct Part IV. Administration and Enforcement	
84-31	(c) See, Exhibit 2 in this Appendix for text to this section.
	Title 8. Public Proceedings and Records
Chapter 92: Public Agency Meetings and Records Part V. Public Records	
92-52	Any person aggrieved by the denial of the right to inspect the record or to obtain copies of extracts by the officer having the custody of any public record may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause.
	Title 9. Public Property, Purchasing and Contracting
Chapter 102: Concessions on Public Property	
102-3	See, Exhibit 2 in this Appendix for text to this section.
Chapter 103: Expenditure of Public Money and Public Contracts Part II. Public Works and Contracts	
103-25	See, Exhibit 2 in this Appendix for text to this section.
	Title 11. Agriculture and Animals
Chapter 144: Feed	
144-12	(f) Any person who uses to the person's advantage, or reveals to other than departmental officers or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor; provided that this prohibition shall not be deemed as prohibiting the department, or its duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

Statute Section	Description

Chapter 149: Hawaii Pesticides Law
Part IV. Violations, Warning Notice, and Penalties

149A-41

(a) Warning notice. Any person who violates this chapter or any rule or regulation issued hereunder may upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Civil penalties.

(1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter may be assessed a civil penalty by the board of not more than $5,000 for each offense.

(2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter subsequent to receiving a written warning from the department or following a citation for a prior violation may be assessed a civil penalty by the board of not more than $1,000 for each offense.

(3) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county of the residence of the person charged. In determining the amount of penalty the board shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and the gravity of the violation.

(4) In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover such amount by action in the appropriate court.

(c) Criminal penalties.

(1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

Statute Section	Description
	(2) Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than one year, or both.
	(3) Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.
	(d) Liabilities. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
Chapter 159: Hawaii Meat Inspection Act Part VII. Violations, Penalties, Prosecution, Compacts, Construction	
159-52	... Any officer or employee of the State who shall make public any confidential information obtained by the board, unless directed by a court, shall be fined not more than $1,000, or imprisoned not more than one year, or both.
Chapter 161: Poultry Inspection Part VII. Violations, Penalties, Prosecution, Compacts, Construction	
161-47	See, Exhibit 2 in this Appendix for text to this section.
	Title 14. Taxation
Chapter 231: Administration of Taxes Returns and records, generally; validity	
231-15.5	Any person who is engaged in the business of preparing, or providing services in connection with the preparation of tax returns or any person who for compensation prepares any such return for any other person who, without the written consent or request of such other person, discloses any information furnished to him for, or in connection with, the preparation of any such return or uses any such information for any purpose other than to prepare, or assist in preparing any such return, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Statute Section	Description
Chapter 235: Income Tax Law General Provisions	
235-116	See, Exhibit 2 in this Appendix for text to this section.
	Title 15. Transportation and Utilities
Chapter 271: Motor Carrier Law	
271-27	(a) Any person knowingly and wilfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate or permit for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor. ... (c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of sections 271-9(a)(5), 271-23, and 271-25, except as the special agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor. (d) It shall be unlawful for any motor carrier or any officer, receiver, trustee, lessee, agent, or employee of the carrier, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to the motor carrier for transportation, which information may be used to the detriment or prejudice of the shipper or consignee, or which may improperly disclose the shipper's or consignee's business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used. (e) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the government of the United States or of any state or of any political subdivision of any state, in the exercise of the officer's or agent's power or to any officer or other duly authorized person seeking the

Statute Section	Description
	information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agents, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of the carriers. ...
	(g) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, requirement or order thereunder, may be assessed a civil penalty payable to the State in the sum of $100 for each such offense, and, in the case of a continuing violation, not to exceed $50 for each additional day during which such failure or refusal shall continue. ...
	(i) Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest. ...
	When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the director of commerce and consumer affairs to administer the same.
	Title 17. Motor and Other Vehicles
Chapter 287:	Motor Vehicle Safety Responsibility Act
287-44	(a) Any person convicted of a violation of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Statute Section	Description
	Title 19. Health
Chapter 324:	Medical Research; Morbidity and Mortality Information
Part I.	Maternal and Parinatal Studies
324-4	See, Exhibit 2 in this Appendix for text to this section.
Part II.	Mental Health and Mental Retardation Studies
324-14	See, Exhibit 2 in this Appendix for text to this section.
Part III.	Cancer Studies
324-24	See, Exhibit 2 in this Appendix for text to this section.
Part IV.	Health Surveillance
324-34	See, Exhibit 2 in this Appendix for text to this section.
Chapter 325:	Infectious and Communicable Diseases
Part III.	Congenital Syphilis
325-54	See, Exhibit 2 in this Appendix for text to this section.
Part IV.	Tuberculosis
325-73	See, Exhibit 2 in this Appendix for text to this section.
Part V.	Hepatitis
325-102	See, Exhibit 2 in this Appendix for text to this section.
Chapter 328:	Food, Drugs and Cosmetics
Part I.	Hawaii Food, Drug, and Cosmetic Act
328-6	(12) The using by any person to his own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of sections 328-11, -12, -17, or -23, concerning any method or process which as a trade secret is entitled to protection; ...
328-25	(a)(3) See, Exhibit 2 in this Appendix for text to this section.
328-29	(a) Any person who violates section 328-6 shall be fined not more than $500, or imprisoned not more than one year, or both.

Statute Section	Description
328-30	(a) Any person who violates this part or any rule adopted by the department pursuant to this part shall be fined not more than $10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action. (b) In addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this part, the director may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the administrative penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.
328-31	The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this part or any rule adopted to implement this part. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure.
Chapter 338: Vital Statistics Part I. State Public Health Statistics	
338-18	(a) ... It shall be unlawful for any person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part, or by such regulation as the department of health may make. (b) The department shall not permit inspection of the records, or issue a certified copy of a certificate, or part thereof, unless it is satisfied that the applicant therefor is the registrant, the spouse of the registrant, parent of the registrant, a descendant of the registrant, a person having a common ancestor with the registrant, a legal guardian of the registrant, a person or agency acting on behalf of the registrant, a personal representative of the registrant's estate, or by order of a court of competent jurisdiction, and that the information contained therein is necessary for the determination of personal or property rights.

Statute Section	Description
338-30	(a) Except where a different penalty is provided in this part, any person who violates this part, or neglects or refuses to perform any of the duties imposed upon the person by this part, shall be fined not more than $100. ...

Chapter 342: Environmental Quality
Part I. Definitions and General Provisions

342-5 — See, Exhibit 1 in this Appendix for text to this section.

Title 20. Social Services

Chapter 346: Department of Social Services and Housing
Part I. General and Administrative Provisions

346-10 and -11 — See, Exhibit 2 in this Appendix for text to this section.

Chapter 350: Child Abuse

350-6 — See, Exhibit 2 in this Appendix for text to this section.

Chapter 383: Hawaii Employment Security Law
Part VI. Penalties

383-144 — If any employee or member of the department of labor and industrial relations, or the referee, in violation of section 383-95, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter, or if any person who has obtained any list of applicants for work, or of claimants or of recipients of benefits, under this chapter, shall use or permit the use of such lists for any political purpose, he shall be fined not less than $20 nor more than $200, or imprisoned not more than 90 days, or both.

Chapter 387: Wage and Hour Law

387-12 — (a) Criminal. (1) Any person divulging information in violation of section 387-8, or (2) any employer who wilfully violates this chapter or of any rule, regulation, or order issued under the authority of this chapter, or (3) any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the director, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding

Statute Section	Description
	under or related to this chapter, or has testified or is about to testify in any such proceedings, ... shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment for a period not to exceed one year or by both such fine and imprisonment. (d) Injunctions. (1) Whenever it appears to the director that any employer is engaged in any act or practice which constitutes or will constitute a violation of this chapter, or of any regulation, the director may in the director's discretion bring an action in the circuit court of the circuit in which it is charged the act or practice complained of occurred to enjoin the act or practice and to enforce compliance with this chapter or with the regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.
	Title 22. Banks and Financial Institutions
Chapter 401:	Commissioner of Financial Institutions
401-14	(a) See, Exhibit 2 in this Appendix for text to this section.
Chapter 408:	Industrial Loan Companies
408-29	See, Exhibit 2 in this Appendix for text to this section.
	Title 24. Insurance
Chapter 431H:	Insurance Information Protection Act
431H-5 and -6	See, Exhibit 2 in this Appendix for text to these sections.
Chapter 434:	Insurance by Fraternal Benefit Societies
434-44	(d) See, Exhibit 2 in this appendix for text to this section.
	Title 25. Professions and Occupations
Chapter 437:	Motor Vehicle Industry Licensing Act
437-40	See, Exhibit 1 in this Appendix for text to this section.

Statute Section	Description
Chapter 455: Naturopathy	
455-6	The state board of examiners in naturopathy may: ... (2) revoke or suspend any license issued to any person to practice naturopathy on any of the following causes: ... (d) wilfully betraying a professional secret; .... The board may not suspend or revoke a license, however, for any of these causes unless the person accused has been given at least 20 days' notice, in writing, and a public hearing in conformity with chapter 91. ...
455-9	Any person ... who violates this chapter, shall be fined a sum of not less than $500 nor more than $10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the director of the office of consumer protection on behalf of the state.
Chapter 461J: Physical Therapy Practice Act	
461J-13	See, Exhibit 1 in this Appendix for text to this section.
Chapter 516: Residential Leaseholds Part I. General Provisions	
516-8	No member of the Hawaii Housing Authority or officer or employee administering this chapter shall acquire any interest, direct or indirect, in the ownership or development of any development tract other than by gift, devise, or inheritance, nor shall the member, officer, or employee have or acquire any interest, direct or indirect, in the financing or in any contract or proposed contract for services to be furnished or used in connection with or relating to the development of any development tract. If any such member, officer, or employee has or acquires an interest by gift, devise or inheritance, direct or indirect, in any development tract or is a lessee of any residential lot affected by the eminent domain proceedings instituted under this chapter, the member, officer, or employee shall immediately "disclose the same in writing" to the authority and such disclosure shall be entered on the minutes of the authority. The member, officer, or employee shall not participate in any action by the authority relating to the property, tract or contract in which the member, officer, or employee has or acquires any such interest. Violation of this section constitutes misconduct in office and is cause for dismissal.

Statute Section	Description

Title 37. Hawaii Penal Code

Chapter 708: Offenses Against Property Rights
Part VI. Forgery and Related Offenses

708-858	(1) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, he destroys, removes, or conceals any will, codicil or other testamentary instrument. (2) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, he destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording. (3) Each offense defined in this section is a class C felony.

Chapter 710: Offenses Against Public Administration
Part II. Obstruction of Public Administration

710-1017	(1) A person commits the offense of tampering with a public record if: (a) He knowingly and falsely makes, completes, or alters, or knowingly makes a false entry in, a written instrument which is or purports to be a public record or a true copy thereof; or (b) he knowingly presents or uses a written instrument which is or purports to be a public record or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine; or (c) he knowingly records, registers, or files, or offers for recordation, registration or filing, in a governmental office or agency, a written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information; or (d) knowing he lacks the authority to do so: (i) he intentionally destroys, mutilates, conceals, removes, or otherwise impairs the availability of any public records; or (ii) he refuses to deliver up a public record in his possession upon proper request of a public servant entitled to receive such record for examination or other purposes. (2) For the purpose of this section, "public record" includes all official books, papers, written instruments, or records created, issued, received, or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

Statute Section	Description
	(3) Tampering with public records is a misdemeanor.
Chapter 711: Offenses Against Public Orders	
711-1111	(1) A person commits the offense of violation of privacy if, except in the execution of a public duty or as authorized by law, he intentionally; (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or (b) installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in that place, or uses any such unauthorized installation; or (c) installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the peson or persons entitled to privacy therein; or (d) intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately; but this subsection does not apply to: (i) overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or (ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or (d) divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it. (2) Violation of privacy is a misdemeanor.
Title 38. Procedural and Supplementary Provisions	
Chapter 803: Arrests, Search Warrants Part IV. Electronic Eavesdropping	
803-48	Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this part shall (1) have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose or use such communications, and (2) be entitle to recover from any such person:

Statute Section	Description
	(A) Actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation; immediately following under (A), (B) punitive damages; and immediately aligned under (B) above, (C) a reasonable attorney's fee and other litigation costs reasonably incurred. A good faith reliance on a court order shall constitute a complete defense to any civil action brought under this part.
Chapter 843: Hawaii Criminal Justice Commission	
843-6	Any commission member, except the chairperson, staff member, or employee who, without authorization of the commission, discloses or disseminates any confidential information or matter acquired by the commission during the course of any study or investigation shall be removed from the commission upon a finding by the majority vote of the commission members that the commission member has made an unauthorized disclosure. Any commission member, including the chairperson, staff member, or employee who, without authorization of the commission, wilfully discloses or disseminates any confidential information or matter acquired by the commission during the course of any study or investigation shall be guilty of a class C felony and shall be removed, section 843-1(b) to the contrary notwithstanding in the case of the chairperson, or terminated in employment, as the case may be, in accordance with this section. As used in this section, "confidential information or matter" means information or matter, the release of which constitutes a violation of the right of privacy, information or matter, the release of which would result in substantial detriment to the effectiveness of the commission or to its ability to secure information necessary to the performance of its functions, or information or matter, the release of which may endanger or otherwise compromise or prejudice the rights, interests, safety, or privacy of any person who has assisted the commission in its work.
Chapter 846: Hawaii Criminal Justice Data Center; Civil Identification Part I. Data Center	
846-16	See, Exhibit 1 in this Appendix for text to this section.
Part II. Civil Identification	
846-36	See, Exhibit 1 in this Appendix for text to this section.

APPENDIX E

UNIFORM LAWS

These Acts have been printed through the permission of the National Conference of Commissioners on Uniform State Laws, and copies of the Acts may be ordered from them at a cost of $3.00 (each) at 645 North Michigan Avenue, Suite 510, Chicago, Illinois 60611, (312) 321-9710.

UNIFORM CRIMINAL-HISTORY RECORDS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIFTH YEAR
IN BOSTON, MASSACHUSETTS
AUGUST 1-8, 1986

With Prefatory Note and Comments

UNIFORM CRIMINAL-HISTORY RECORDS ACT

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Final, approved copies of this Act are available on 8-inch IBM Displaywriter diskettes, and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

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UNIFORM CRIMINAL-HISTORY RECORDS ACT

PREFATORY NOTE

The Uniform Criminal-History Records Act provides first for the collection in a single, statewide, centralized compilation of all criminal-history records in the state, recording all arrests and charges under the criminal law of the state and the subsequent history of the processing of those charges through final disposition or completion of sentence, and second, provides rules to govern the dissemination of those records from the central repository, to aid the police, other law enforcement agencies, and the courts, and to meet the justifiable public needs for information about an individual's past convictions of crime or his current involvement as a defendant in criminal proceedings.

The Act is a needed response to technological developments in information management and retrieval that have made feasible a comprehensive statewide system of criminal-history records. The potential contribution of such a system to efficient law enforcement has been widely recognized, often, however, through the establishment of hastily designed or makeshift arrangements. The Act provides for controls to regularize the process of compilation, to lay down clear lines of responsibility for reporting information to the central respository, to require prompt submission of reports, to verify the accuracy of the records, and to safeguard their physical security, since the utility of the system is directly dependent upon the correctness and completeness of the content of its records.

The principal purpose of centralized criminal-history records is to serve the needs of criminal law enforcement agencies, and the files are thus made available upon authorized request to police departments, prosecutors, correctional authorities, parole boards, and probation departments, for example, as well as to courts, to aid in sentencing or conditioning pre-trial release, and to the governor, for pardoning or clemency.

Exchanges of information with other states or the federal government are regulated and in general fostered by the Act. Consistency and uniformity in state laws can facilitate such interstate cooperation and contribute importantly to effective law enforcement in the nation as a whole.

The private sector may also have a legitimate interest in certain kinds of information about an individual's involvement in criminal proceedings. The Act therefore facilitates, for example, the screening of applicants for private employment in sensitive positions, by allowing any person, including a prospective employer as well as the press, a government agency, or any

private citizen, to obtain certain information from the central files concerning a named subject clearly identified in the request. Under policies holding that public disgrace is an appropriate component of punishment for crime, past convictions are disclosable to the public. Pending prosecutions and recent nonconviction dispositions are also available from the central records for a period of one year after the latest reportable event in the processing of the arrest or charge, as matters of current events. Older nonconviction information is restricted to criminal law enforcement purposes.

The Act also undertakes to protect the interests of the individual subject by conferring a personal right to examine the subject's record as maintained, to demand correction of inaccurate information, and to be notified of disclosures of the records to members of the public. Civil and criminal sanctions are provided for specified violations of the protective provisions of the Act.

The purpose of the Act, as a whole, is to deal comprehensively with statewide criminal-history record systems, addressing the salient issues, and providing clear guides that take due account of the interests of law enforcement, the individual, and the public at large.

UNIFORM CRIMINAL-HISTORY RECORDS ACT

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, as used in this [Act]:

(1) "Agency" means a political subdivision or combination of subdivisions, a department, institution, board, commission, district, council, bureau, office, officer, official, governing authority, or other instrumentality of state or local government, or a corporation or other establishment owned, operated, or managed by or on behalf of the state or any political subdivision, but the term does not include the [name of state legislature] or a court of this State.

(2) "Central repository" means the [office or department].

(3) "Criminal-history record" means a record of reportable events maintained by the central repository, but the term does not include an intelligence or investigative record.

(4) "Criminal law enforcement agency" means an agency authorized by law, as one of its primary functions, to arrest, prosecute, incarcerate, parole, supervise, or rehabilitate criminal offenders, but the term does not include the [office of public defender].

(5) "Reportable event" means any of the following occurrences concerning an individual arrested for or charged with a criminal offense other than a petty offense or traffic violation excluded under Section 2(b)(4) or an offense adjudicated under the [juvenile court act]:

(i) an arrest;

(ii) a disposition after an arrest without the filing of a formal criminal charge;

(iii) the filing of a formal criminal charge;

(iv) the disposition of a formal criminal charge, including any sentence imposed, and a modification of the disposition or sentence;

(v) commitment after conviction to a place of detention;

(vi) release from punitive detention; or

(vii) completion of sentence.

(6) "Subject" means an individual who is the subject of a criminal-history record.

COMMENT

Paragraph (1) defines "agency" broadly to include all branches of state and local government, along with any establishment, like a private prison, operated on behalf of the government. The term is used in this Act principally in the context of the "criminal law enforcement agency" as further defined in paragraph (4), and accordingly, the courts are excluded from the definition of "agency," and are expressly named in provisions of the Act that apply to the judicial branch. The state legislature is also excluded.

Paragraph (2) leaves the definition of "central repository" to be completed by designating the appropriate governmental agency vested with the function of statewide recordkeeping.

The term "criminal history record" in paragraph (3) takes much of its meaning from the enumeration of "reportable events" in paragraph (5) of this section, and thus refers to the summary notations and abbreviated entries which record the several steps in the processing of a criminal charge, from the arrest to the final release from any confinement. The information recorded will include dates, places, the nature of the charges, disposition, terms of sentence, and the place of confinement, as well as the agency or court where action was taken. The phrase "criminal-history-record information," often abbreviated to "CHRI," is a widely used term of art in this field.

This definition of criminal-history records operates to exclude from the Act's coverage a variety of other kinds of information. Increasingly, states have begun to establish centralized files listing, for example, "wanted" persons and outstanding warrants, or recording the modus operandi of violent crimes, aliases or "street" names, stolen cars, or firearms registration. Such data banks are outside the Act. The files of the local police department are unaffected; only the records of the central repository, or derived from it, are covered.

The express exclusion of intelligence and investigative records is inserted in this definition to emphasize that such records, often referred to as "I & I," are not the subject of any duty of disclosure. Such files are maintained for purposes of general surveillance of criminal activity or of investigation of particular crimes. They may include incomplete information, hearsay, rumors, or tips of questionable reliability and are by tradition kept in strict confidence.

Paragraph (4) defines the criminal law enforcement agency, triggering a duty borne by such an agency to report events to the central repository and the right of the agency to receive from the repository any criminal-history-record information relevant to its functions. Included are state and local police departments, sheriffs, prosecutor's offices, the correctional authority that operates a penitentiary or jail, the parole board, etc. Government agencies that are only incidentally engaged in criminal law enforcement, such as a highway department with a few security officers as watchmen at the garage, are excluded by the requirement that criminal law enforcement must be one of the agency's primary functions. The office of the public defender is treated by its exception here like privately retained defense counsel, with no greater access to criminal records.

Paragraph (5) defines the general categories of "reportable events" that will be recorded to constitute the criminal-history record. A more detailed specification of particular events, with the format, abbreviations, or codes to be used in reporting and recording, will be formulated by the state's central repository in regulations authorized by Section 2(b)(1) of the Act. Variations from state to state will be necessitated by differences in criminal procedure, in terminology, and in the organization and structure of criminal justice agencies and the judicial branches of the states. For an example of a more detailed listing, reflecting local practice, see Maryland Code, Art. 27, § 747.

Information about petty traffic violations or other petty offenses is of minimal utility in law enforcement, and its compilation in the central file of criminal histories would serve only to clutter the records. At the same time, its disclosure has only a limited impact on privacy interests. The definition therefore excludes such information from coverage under the Act, with authority conferred upon the central repository to

specify which offenses fall within the "petty" category. See Section 2(b)(4). Juvenile records involve special considerations and a different set of values and policies and are left by this Act to other law.

SECTION 2. CENTRAL REPOSITORY.

(a) The central repository shall collect and maintain, as criminal-history records, the information required to be reported to it by this [Act]. The central repository may, but need not, retain information received concerning offenses under the laws of another jurisdiction.

(b) The [central repository], by rule or regulation, shall:

(1) specify the method and details of reporting each reportable event;

(2) designate the criminal law enforcement agency or court in this State that is responsible for reporting a reportable event to the central repository;

(3) specify the nature and form of the information to be used in identifying the individual who is the subject of a reportable event;

(4) specify the petty offenses and petty traffic violations that are excluded from the definition of a reportable event; and

(5) develop and promulgate procedures and formats for reporting and exchanging information under this [Act].

(6) establish a schedule of fees it may charge for disclosure under this [Act].

(c) The central repository shall specify and make public the items of information that it uses to retrieve criminal-history records.

(d) The [central repository] may adopt any other rules or regulations necessary to carry out the purposes of this [Act].

COMMENT

Section 2(a) imposes the central repository's first and underlying duty to gather and store statewide criminal-history information, as the predicate for its function to make this information available for law enforcement purposes under Section 5 and incidentally to the general public under Section 6.

Subsection (b) empowers the central repository to promulgate specifications, by rule or regulation, for the operation of the central recordkeeping system. Under paragraph (1), the repository will be called upon to formulate a list of "reportable events," with descriptive codes and supporting details, to amplify the definition of that term and to set the pattern for CHRI.

Paragraph (2) involves an aspect of the major problem typically encountered in the operation of central data systems: obtaining reports of dispositions from the field to the central repository. Once responsibility for making the report is clearly assigned, it can be hoped that reporting will become a routine part of that office's paperwork. The central repository will assign that responsibility by rule or regulation, designating the appropriate court (trial or appellate) or criminal law enforcement agency (police department, prosecutor, jailer, etc.) bearing the duty to report for each category of listed reportable events. In some states the Act may require supplementation by a rule of court, to impose the duty upon employees of the judicial branch.

Paragraph (3) authorizes the central repository to specify the kind of identifying information to be supplied in communicating with the repository about the records of an individual. Different levels of identification will be appropriate for the different purposes of those communications: to open a file on a new offense and to connect it with earlier records, if any, of the person charged; to report a subsequent event in the processing of that charge; to provide information to the police about possible suspects or about persons sought or in custody; to make information available to the general public; or to allow the subject to examine that individual's own record. Depending upon the specific individual identifiers used in its record

system, the central repository will determine, by adopting rules and promulgating official forms for reports and requests, the detailed information about the individual that must be provided for entering data into the system or for triggering a search in response to a request. Publication of identifiers used for retrieval will be made under subsection (c).

Paragraph (4) authorizes the central repository to specify, by rule or regulation, two kinds of minor criminal offenses to be excluded from the definition of reportable events and thereby from the operation of the Act. If preferred, the exclusion could be stated in the text of the Act, rather than left to administration rule, by a provision excluding, for example, offenses punishable by fine only, or by imprisonment for ten days or less, or misdemeanors of a designated class ("class D").

Paragraph (5) constitutes a general authorization for additional rules and regulations governing the form of communications of CHRI to or from the central repository. Under this authority, the central repository may promulgate official paper forms for reporting information or making requests, or may specify the computer language to be employed in interactive or computer-tape systems, along with codes, abbreviations, and symbols. An important factor in the exercise of this authority will be the development, in cooperation with other states and federal authorities, of compatible procedures to facilitate out-of-state exchanges.

Subsection (d) confers a supplemental regulatory power extending to such subjects as: the central repository's internal processing of requests for CHRI, including priorities; the verification of requests for correction of its records under Section 11; its own security procedures; and standards for out-of-state exchange of information.

SECTION 3. EXAMINATIONS.

In order to ensure the timeliness and accuracy of information in criminal-history records and to evaluate the procedures and facilities relating to the privacy, disclosure, and security of criminal-history records, the [central repository] shall regularly examine the records and practices of the central repository and those of criminal law enforcement agencies. In order to ensure the timeliness and accuracy of the information, the central

repository may examine the public records of the courts of this State required to report information to the central repository.

COMMENT

In the interests of the quality and security of central records, this section requires the central repository to conduct periodic operational audits of its own records and those of criminal law enforcement agencies from which information is derived or where information disseminated by the central repository is received and maintained. The second sentence confers a carefully circumscribed power to examine--rather than broadly to audit--court records, to verify the timeliness and accuracy of the central repository's own records that are predicated upon court reports of reportable events occurring in that court.

SECTION 4. REPORTING.

The court or criminal law enforcement agency responsible for reporting shall report a reportable event to the central repository promptly, but not later than:

(1) 48 hours after an arrest; or

(2) 30 days after any other reportable event.

COMMENT

This section, fixing the maximum time for reporting information to the central repository, requires early reports of actual arrests and allows other events to be handled, if preferable, in the routine of monthly reports. As the two-day period for arrest implies, the time specified is the time for dispatching the report, not for its receipt by the central repository.

SECTION 5. DISCLOSURE TO AGENCY OR COURT.

(a) The central repository shall disclose a criminal-history record and the record of disclosures maintained under subsection (d) and Section 6(d):

(1) to a criminal law enforcement agency that requests the record for its functions as a criminal law enforcement agency or for use in hiring or retaining its employees;

(2) to a court of this State, upon request, to aid in a decision concerning sentence, probation, or release pending trial or appeal;

(3) to the Governor, upon request, to aid in a decision concerning an exercise of the power of pardon, reprieve, commutation or reduction of sentence, executive clemency, or interstate extradition or rendition;

(4) pursuant to any judicial, legislative, or administrative agency subpoena issued in this State; and

(5) as constitutionally required or as expressly required by any statute of this State or the United States.

(b) If the central repository discloses a criminal-history record that contains information concerning offenses under the laws of a jurisdiction other than this State, the information that is disclosed must contain a warning that the information may be inaccurate or incomplete.

(c) If a criminal-history record is disclosable under subsection (a) to an agency or court in this State:

(1) the central repository shall disclose the record for the requested purpose to a like agency or court in another state if that state has enacted the Uniform Criminal-History Records Act containing equivalent limitations on disclosure; and

(2) the central repository may disclose the record for the requested purpose to a like agency or court in any other state or of the federal government.

(d) The central repository shall maintain a record of all disclosures made under this section during the preceding three years, noting the identity of the requester and the subject and the date of disclosure.

COMMENT

The main purpose of the central repository is to serve as the recordkeeper and clearinghouse for the criminal law enforcement agencies in the state. To perform that function, it bears a duty, imposed by subsection (a), to open its records to any such agency upon request, for any lawful purpose of the requesting agency. Those purposes include screening its own employees.

Paragraph (2) makes the defendant's criminal record available to the court for setting bail and to a court, or to the probation office as its agent, for the presentence investigation. A sentence review panel, if established by the state, would also be an eligible recipient.

Since the office of the governor does not fall within the definition of a criminal law enforcement agency, paragraph (3) specifically affords access for the governor's special role in the process.

Paragraph (4), directing compliance with a subpoena, is supplemented by Section 8(d), which directs the central repository promptly to send notice to the subject, to afford that individual, as the only person directly interested in preserving confidentiality, an opportunity to take protective action.

Paragraph (5) incorporates other laws of the state that may expressly require disclosure. Two limits are imposed. First, the command must be a law of the state; a city ordinance would be insufficient to require disclosure. Second, the requirement must be express; a licensing statute generally requiring evidence of "good moral character" or the like would not qualify as an explicit requirement of disclosure of unabridged CHRI. Disclosure is also, of course, required in obedience to preemptive federal law or the constitution.

Under subsection (b), if the central repository chooses in its discretion to retain out-of-state information in its record system, there will be no obligatory procedures for updating or correcting, and a disclaimer must accordingly accompany any disclosure.

Subsection (c) deals with disclosures from this State to courts and agencies of other jurisdictions. If another state has adopted this Act, its courts and agencies are entitled to information to the same extent as their counterparts in this State, under paragraph (1). Disclosure is permissive, not mandatory, to jurisdictions with different applicable laws, under paragraph (2).

Subsection (d), requiring maintenance of a log to record disclosures under this section, is intended to serve criminal law enforcement purposes only. The log is available to an authorized recipient who may use it, for example, to identify other criminal law enforcement agencies that are inquiring about the subject and may possess additional investigatory information or to monitor patterns of inquiry indicating improper police activity. The log is not available, however, to the general public or to the subject, in light of the need to protect the confidentiality of ongoing investigations and of investigatory techniques. The subject will of course be on notice, through his participation in the proceedings, of disclosures to the court or to the governor for clemency under subsection (a), paragraphs (2) and (3) and will be sent mailed notice of a subpoena under paragraph (4) pursuant to the requirements of Section 8(d).

All the provisions of this section should be considered in conjunction with Section 6(a), entitling "any person" to obtain, upon suitable identification of the subject, a partial criminal-history record showing all convictions and all recent or pending actions where any reportable event has occurred within a year. In its operation, therefore, this Section 5 will apply to specify the particular agencies and purposes for which full disclosure of all CHRI is required, including acquittals, arrests, and other proceedings not resulting in conviction, and not occurring within the past year.

SECTION 6. GENERAL DISCLOSURE.

(a) Upon request by any person under subsection (b) and subject to subsection (c), the central repository shall disclose information in a criminal-history record that has not

been sealed or expunged and concerns an offense under the laws of this State for which:

(1) the subject has been convicted; or

(2) a reportable event has occurred within one year preceding the request.

(b) A request for disclosure must contain the name of the requester and of the subject and:

(1) the fingerprints of the subject;

(2) the personal identification number assigned to the subject by the central repository; [or]

(3) at least two other items of information that the central repository uses to retrieve criminal-history records, as specified under Section 2(c) [; or

(4) a specific reportable event identified by date and either agency or court].

(c) If the identifying information supporting a request for disclosure matches the criminal-history record of more than one individual, the central repository may not disclose any of the records.

(d) The central repository shall maintain a record of all disclosures made under this section during the preceding three years, noting the identity of the requester and the subject and the date of disclosure.

COMMENT

Disclosure under this section is available upon the request of "any person" in the traditional legal sense of that term including any natural person or legal entity, whether a member of the general public, a representative of the press, or an agency of government whether or not qualified as a recipient

under Section 5. There is no requirement of any reason for the request, nor of any showing of a need to know. Persons in or out of the state are equally entitled to the records.

Paragraph (1) of subsection (a) adopts the basic policy that all convictions should be open to the public, and paragraph (2) makes other records similarly available temporarily, while proceedings are still pending, as evidenced by the occurrence of some reportable event within the past year, and after a final disposition other than a conviction for a period of one year. Compare Oregon Revised Stats. 181.560.

Subsection (b) specifies the identifying information that must be supplied in a request for disclosure to describe and locate the records of the individual inquired about. The record subject's name is required in all cases. Additional supporting identifiers are necessary to assure that the record released pertains in fact to the person inquired about and not to another with the same name.

Various kinds of identifiers may be employed under the section. Fingerprints, as the most accurate identifier, are sufficient and can be used if supplied by the subject or otherwise available under paragraph (1). To avoid wholesale fingerprinting of job applicants, on one hand, and to avoid closing the records, de facto, by impracticably difficult requirements on the other hand, the draft authorizes identification by alternative means.

If a criminal-history record for the individual exists in fact, a personal identifying number will have been assigned to the subject by the central repository and may be available to the requester from court records or otherwise. Alternatively, the requester may support the inquiry with not less than two items of information of the kind regularly used by the central repository in its recordkeeping system for retrieval of records, as specified in regulations promulgated under Section 2(b)(3). The authorized identifiers typically will include such items as Social Security number, drivers license number, date of birth, sex, physical characteristics (height, weight, hair and eye color, ethnicity, and distinguishing marks or features), residence address, and occupation or employment.

As an additional alternative, bracketed paragraph (4) would allow identification through specifying a reportable event that involved the individual, as by a request for the records of the "John Smith who was acquitted of rape by the Jackson County Circuit Court on May 1, 1986." Brackets are added to permit deletion in a state whose record system is not programmed to retrieve records through such a search.

In connection with alternative means of identification, it should be noted that unless positive identification is provided by fingerprints or a personal identification number, a warning of uncertainty, under Section 8(c), must accompany any disclosure.

Under subsection (c), no disclosure will be made if the identifying information supporting the request matches more than one individual in the record system, making it impossible for the central repository to single out the record of the person actually inquired about. In that event, the requester may seek to supply additional identifiers and resubmit the request.

Subsection (d) requires a log of general disclosures under this section, open to agencies engaged in enforcement of the criminal law under Section 5, but not to the public at large under Section 10(a). The log will be made available to the subject on request under Section 7 to advise him of the disclosures that have been made that might affect his interests and to allow him to follow the record into the recipient's hands in order to correct any error in the record under Section 11. The record embodied in the log thus supplements the notice mailed to his last known address when the disclosure was made, under Section 8(e).

SECTION 7. DISCLOSURE TO SUBJECT.

Upon a request by a subject or the subject's attorney, accompanied by the fingerprints of the subject, the central repository shall disclose to the person designated by the requester the entire criminal-history record of the subject and the record of disclosures maintained under Section 6(d).

COMMENT

This section gives the individual the right to obtain his own rap sheet, to find out whether the central repository maintains a record on him, and if so to check it for accuracy. Such a right is commonly conferred by criminal record statutes and by privacy acts. See, e.g., Uniform Information Practices Code, § 3-105. The right extends to the full record maintained, not merely to the portions disclosable to the public. The request must be made by the subject personally or by his attorney; no other agent or representative is authorized. As a consequence, a waiver or release in an application form for a job, credit, or a license would not suffice to give access to this full rap sheet. Positive identification by fingerprints is required. The individual is also given the right to know of

disclosures that have been made to the public or to noncriminal government agencies under Section 6, by requesting disclosure of the log maintained under Section 6(d).

The subject has a choice between two different forms of rap sheets. He may make his request under this section, providing fingerprints, and obtaining all CHRI pertaining to him. Or he may instead make his request under Section 6, providing either fingerprints or some other less intrusive form of identification, and obtaining only the records disclosable to the general public, that is, convictions, and records of charges with a reportable event occurring within the past year. The latter course would be chosen, for example, where a prospective employer is interested only in past convictions and in pending or recent charges but needs the cooperation of the subject to supply the necessary identifying information for the request.

SECTION 8. PROCEDURES FOR REQUESTS.

(a) A requester may submit a request for disclosure under Section 6 or 7 directly to the central repository or indirectly through a [local police department or sheriff's office], which shall transmit the request to the central repository within three days.

(b) Promptly, but not later than [14] days after receiving a request for disclosure under Section 6 or 7, the central repository shall:

(1) transmit the available information, including an explanation of any code or abbreviation, to the person designated by the requester;

(2) inform the requester that there is no available information; or

(3) inform the requester of any deficiency in the request.

(c) If a request for disclosure under Section 6 is not accompanied by fingerprints or a personal identification number,

the information that is disclosed must contain a warning that the record may not pertain to the individual named in the request.

(d) Within 24 hours after receipt of a subpoena under Section 5(a)(4), the central repository shall mail a copy of the subpoena to the subject at the subject's last known address.

(e) If information in a criminal-history record is disclosed under Section 6 at the request of a person other than the subject, the central repository shall notify the subject by mailing, within three days, a notice of the disclosure to the subject's last known address by a form of mail deliverable to the addressee only. The notice must contain the identity of the requester, the date of disclosure, a statement of the right of the subject to disclosure of the record and to correct or amend any incomplete or inaccurate information, and a statement of the sanctions for a violation of this [Act].

(f) The central repository may charge a requester a reasonable fee for processing a request for disclosure under Section 6, 7, or 9 and for notifying the subject under subsection (e).

COMMENT

Subsection (a) serves the convenience of the requester by offering him the option to make the request to a local criminal law enforcement agency in his community or to the central repository directly. The brackets permit the enacting state to relieve the prosecutor's office of this function, for example, and to designate as the appropriate local conduit for the request the police headquarters or sheriff's office that routinely deals with the public. The designated local agency may transmit the request by on-line electronic data retrieval equipment, if available, or by mail.

Subsection (b) specifies the maximum time limits for the central repository's response to a request. The number of days is bracketed to allow a state to make adjustments in light of expected volume, available personnel, and the need to give priority to criminal law enforcement requests. The rap sheet provided must be accompanied by whatever explanation is needed to make its abbreviated or codified notations reasonably comprehensible to a member of the general public. To assure the authenticity of the record and guard against alteration or falsification, the requester—whether the subject or another--may direct that the record shall be transmitted directly by the central repository to another person designated in the request.

Subsection (c) requires a warning to accompany disclosures made on the basis of nonpositive identifying information under Section 6(b)(3) or (4) (other than fingerprints or the personal identification number) to alert the recipient to the possibility of misidentification and to counsel caution in the use of the record.

Subsections (d) and (e) require notice to alert the subject to the fact that his record is being disclosed, to afford him an opportunity to communicate with the requester and to take action to protect his interests. A provision concerning notice of a subpoena, similar to subsection (d), is included in the Uniform Information Practices Code, § 3-101, pars. 7 and 8. Recognizing that in many cases the address of the subject last known to the central repository will no longer be valid, and seeking to avoid revealing to unauthorized persons who might come into possession of his mail that the subject in fact has a criminal-history record, subsection (e) requires that the notice must be sent by some form of mail, registered or otherwise denominated, that permits delivery to the addressee only. For like reasons, a copy of the record disclosed should not be enclosed with the notice, and the subject will be remitted to Section 7 to discover the content of the disclosure.

Subsection (f) allows the repository to charge a fee for responding to a request for disclosure under Section 6, 7, or 9, and for mailing notice, to defray in whole or in part the cost of providing the service. The fee need not be limited to the costs of copying.

SECTION 9. LIMITED DISCLOSURE FOR RESEARCH OR STATISTICAL PURPOSES.

(a) The central repository may disclose criminal-history-record information in a form that identifies a subject for the purpose of developing, studying, or reporting

aggregate or anonymous information not intended to be published in any way in which the identity of the subject is disclosed, if the central repository:

(1) determines that the purpose cannot reasonably be accomplished without use of the information in that form; and

(2) secures from the recipient of the records a written agreement that the recipient will establish safeguards to assure the integrity, confidentiality, and security of the records.

(b) A recipient of records under this section may not use the records for purposes other than those specified in the agreement or disclose information in a form that identifies a subject without the express written authorization of the subject.

COMMENT

This section permits, but does not require, the central repository to make criminal-history records available to a requester who wishes to use the data for research or statistical analyses. The purposes for which disclosure is authorized are limited to studies and analyses of such matters as the incidence of crime, recidivism, demographic trends, or the administration of criminal justice, where the results will be released to the public in statistical, aggregate, and anonymous form without identifying any individual or disclosing information that can readily be associated with his identity. The Act would not in any event prohibit the release of records in anonymous form, with individual identifiers deleted. See Section 10(a). This special provision is thus required only for studies that can be conducted only if the researcher has access to identifiers, to allow matching and cross-analysis with other data on the individual, such as school records or family history.

SECTION 10. PROHIBITED DISCLOSURE.

(a) Except as authorized under this [Act], the central repository may not disclose (i) criminal-history-record information in a form that identifies or can readily be associated

with the identity of the subject, or (ii) the record of disclosures maintained under Section 5(d) or 6(d).

(b) The central repository may not disclose whether criminal-history-record information exists if disclosure of existing information is prohibited under subsection (a). If disclosure is prohibited or there is no information, the central repository shall answer: "No information is available because either no information exists or disclosure is prohibited."

(c) A criminal law enforcement agency receiving a criminal-history record under Section 5(a)(1) or from a central repository in another jurisdiction may disclose the information in the record only for the limited purpose for which its receipt was authorized, but may disclose the information in compliance with a subpoena or to another criminal law enforcement agency for its functions as a criminal law enforcement agency.

COMMENT

Subsection (a) makes explicit what is implicit throughout the Act: that the disclosure of information in a criminal-history record by the central repository is prohibited if neither required nor permitted by the preceding sections, unless the information is disclosed in a form not individually identifiable. Since only an individual, that is, a natural person, falls within the definitions of criminal-history record and reportable event in Section 1, the disclosure of records concerning criminal proceedings wholly against a corporation or other artificial legal person is not prohibited.

Confirming that a nondisclosable record in fact exists will often be equivalent to the disclosure of its content and equally harmful. Subsection (b) attempts to close that loophole.

Subsection (c) concerns secondary disclosure by a criminal law enforcement agency that has received criminal-history record information for an authorized purpose from a central repository. To protect the policy of limited disclosure of the central repository's records, further disclosure by the recipient must be within the scope of the authorizing purpose, that is, in

furtherance of criminal law enforcement. Even though the information is of the kind disclosable to the public under Section 6(a), the prohibition of secondary disclosure by the local agency without transmission of the request to the central repository will serve to assure that the record is still accurate and current, and that its information has not been superseded by later events or corrections. Lateral exchanges of information between criminal law enforcement agencies in the state are expressly permitted, however. No mandatory duty is imposed, since an inquiring agency has direct access to records throughout the state through the central repository. Cooperative exchanges may be useful, however, in emergency situations, or for recent reportable events not yet reported or centrally recorded.

SECTION 11. CORRECTION OF RECORDS.

(a) A subject may request in writing that the central repository correct or amend any incomplete or inaccurate information in the criminal-history record.

(b) Promptly, but not later than [14] days after receiving the request, the central repository shall:

(1) make the requested correction or amendment and inform the subject of the action; or

(2) inform the subject, in writing, of its refusal to correct or amend the information, of the reason for the refusal, and of the subject's right to [administrative review under [the administrative procedure act] and to] maintain an action pursuant to Section 13.

COMMENT

As a corollary to the right to examine one's own record, conferred in Section 7, the subject is given the right by this section to point out errors or omissions in that record, and to request the central repository to make the needed correction. The time limit for the repository's response is bracketed to allow local variations. The time allowed should be sufficient to permit communication with and verification by the court or criminal law enforcement agency that originally reported the questioned information to the central repository.

SECTION 12. SECURITY.

A criminal law enforcement agency and the central repository shall ensure that:

(1) direct access to criminal-history records is available only to authorized officers or employees;

(2) each officer or employee working with or having access to criminal-history records is familiar with the requirements of this [Act]; and

(3) criminal-history records are physically secure.

COMMENT

To protect against unauthorized disclosure, and to protect records from tampering, alteration, or destruction, this section requires the central repository to take security measures to prevent access by unauthorized persons, to make authorized personnel aware of the Act, and to provide for the physical security of the records. If a local criminal law enforcement agency is holding criminal-history records received from the central repository, it is subject to the same duties.

SECTION 13. SANCTIONS AND REMEDIES.

(a) For a violation of Section 5, 6, 7, 8, or 11, the requester or subject may maintain an action to compel the central repository to disclose, correct, or amend information in a criminal-history record. The court may examine the information at issue in camera.

(b) For disclosure in violation of Section 9 or 10, the subject may maintain an action for appropriate relief against the central repository, criminal law enforcement agency, or the recipient of information under Section 9 and recover compensatory damages sustained as a result of the violation [,

but not less than $1,000,] and reasonable attorney's fees. This subsection does not affect any other right or remedy under law.

(c) An officer or employee of the central repository, of a criminal law enforcement agency, or of a court, or an individual who receives information under Section 9, is guilty of a [misdemeanor] if the individual intentionally:

(1) discloses information in a criminal-history record in violation of this [Act] with knowledge that the disclosure is prohibited;

(2) reports an event as a reportable event or intentionally discloses information in a criminal-history record, with knowledge that the report or information has been falsified; or

(3) fails to report a reportable event or intentionally fails to disclose, correct, or amend information in a criminal-history record, for the purpose of causing harm to the subject and with knowledge that the report, disclosure, correction, or amendment is required.

(d) A person who, by conduct that would constitute the offense of [false pretenses or theft] if property were involved, gains access to a criminal-history record the disclosure of which is prohibited to that person is guilty of a [misdemeanor].

COMMENT

The section specifies the sanctions and remedies that may be sought in judicial proceedings for violation of the several sections of the Act. In practice, the effectiveness of the Act is likely to depend more upon the establishment and acceptance of its requirements as a normal part of internal office routine than upon the threat of formal sanctions. In addition to the sanctions that may be imposed by a court, it should be clear that violation

of the Act by a public employee will constitute sufficient cause, under the civil service system, for disciplinary action against the offending employee, including censure, suspension, or discharge. Subsection (d) will be unnecessary if the state's criminal code otherwise makes it an offense to gain unauthorized access to confidential records.

SECTION 14. APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

SECTION 15. SHORT TITLE.

This [Act] may be cited as the Uniform Criminal-History Records Act.

SECTION 16. SEVERABILITY.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 17. TIME OF TAKING EFFECT.

This [Act] takes effect _____.

SECTION 18. REPEAL.

The following acts and parts of acts are repealed:

(1)

(2)

(3)

UNIFORM INFORMATION PRACTICES CODE

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-NINTH YEAR
ON KAUAI, HAWAII
JULY 26 - AUGUST 1, 1980

WITH PREFATORY NOTE AND COMMENTS

UNIFORM INFORMATION PRACTICES CODE

ERRATA SHEET

Page 11, SECTION 2-102, Comment, Second Paragraph should read:

"Subsection (b) specifies that an agency is not under a duty to compile or summarize information in its records unless readily available to the agency in the form requested. In brief, it makes plain that the agency's duty is to provide access to existing records; the agency is not obligated to create 'new' records for the convenience of the requester. See Mich. Comp. Laws Ann. §15.233(3); Forsham v. Harris, 445 U.S. 169, 100 S.Ct. ~~978~~ 977, 987 (1980); Renegotiation Board v. Grumman Aircraft Engineering Corp., 421 U.S. 168, 192 (1975). To illustrate: a request is made for the age, sex, race and evidence of alcohol consumption of all...."

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UNIFORM INFORMATION PRACTICES CODE

PREFATORY NOTE

The Uniform Information Practices Code provides a uniform statutory approach to privacy and freedom of information. The Code attempts to strike coherent, practical, and conceptually unified balances in a recently expanding area of inconsistent and often confusing state statutes and practices.

The Code recognizes the significance of both access and privacy to the individual and to society. Its concepts and provisions are designed to identify and clarify applications, relationships, and boundaries in law and, in the process, to preserve and enhance established values.

The Code relates to recorded information which is collected and maintained by state or local government. The policies and principles concerning government records underlying the Code are (1) to enhance governmental accountability to citizens and society through a general policy of access to all governmental records, (2) to make government accountable to individuals in the collection, use, and dissemination of personal information, (3) to protect individual privacy and related interests where the public interest in disclosure does not outweigh them, and (4) to make uniform the law relating to freedom of information and privacy in the states.

In order to accomplish these goals the Code requires (1) the right of an individual to see and copy personal data records relating to self, (2) the opportunity to have those records corrected or amended, (3) government to maintain no secret systems of records concerning an individual, (4) government to limit the types of information it can collect, and (5) government to limit the manner of collection, use and disclosure of individually identifiable information. In order to ensure compliance with these requirements, the Code suggests the creation of a responsible and responsive agency to oversee government information practices and to assure citizen recourse. The Code also provides for an enforcement mechanism through disciplinary action, civil remedies, and criminal penalties.

The Code takes into account the increasing expectations of citizens and government of one another, the proliferation and spread of individually identifiable records, and the effects of rapid computerization. The Code balances this interest with the public's right to know and creates workable standards to govern disclosure of government records. The Code provides a unique opportunity for states to unify and update law and practice in a tantalizing and often frustrating area.

Uniformity has special meaning in that state and local government records now cross state lines with ease. The individual inevitably is

the subject—and sometimes target—of expanding dossiers of vital statistics, medical, educational, tax, social services, and criminal justice records, among others. At the same time access to public records and other information that should be public must be assured in law and fact.

Uniformity has other advantages including (1) greater consistency and efficiency in record handling, (2) increased awareness and respect by private citizens and government personnel for the law, (3) assurance of consistent rights relating to the existence, protection, correction, and disclosure of government records, and (4) harmony and balance in records principles, standards, and goals.

The design of the Code permits growth and adaptation. Records relating to law enforcement and to health and medical records could be treated in greater detail. Records maintained by the private sector (e.g., insurance, credit, banking) could also be included. A new section setting forth uniform open meetings ("sunshine") law could be considered as well. Yet, whatever its potential, the Code in its present form can stand alone, for it constitutes a rounded, workable uniform law, balancing light and shade to assure a healthy juxtaposition of freedom of information and privacy for states.

UNIFORM INFORMATION PRACTICES CODE

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

§1-101. [*Short Title.*] This Act may be cited as the Uniform Information Practices Code.

§1-102. [*Purposes; Rules of Construction.*] This Code shall be applied and construed to promote its underlying purposes and policies, which are:

(1) to enhance governmental accountability through a general policy of access to governmental records;

(2) to make government accountable to individuals in the collection, use, and dissemination of information relating to them;

(3) to protect individual privacy and related interests whenever the public interest in disclosure does not outweigh those interests; and

(4) to make uniform the law with respect to the subject matter of this Code among states enacting it.

COMMENT

This Code attempts to accommodate two fundamental public interests: openness in government and the privacy of individuals about whom the government maintains records. This section sets forth the general policy framework of the Code. Articles 2 and 3 provide the details of the accommodation. Article 2 establishes a broad right of public access to government records. Recognizing that an informed citizenry can influence constructively the quality of government, this right augments existing mechanisms of governmental accountability. Yet, inevitably, this interest in openness must yield at times to competing interests of greater magnitude. These competing interests, relatively few in number, are enumerated in Section 3-103. Among them, the concern for individual privacy is perhaps the most complex and pervasively important. For that reason, the disclosure of personal records is dealt with separately in Article 3 of this Code.

Article 3 permits disclosure of such records only where the public interest in access outweighs the individual interest in privacy. The first three sections of Article 3 set the criteria for this delicate balancing process. Other provisions of Article 3 are designed to insure accuracy, relevancy, timeliness and completeness in the maintenance by government of personal records. Although Article 3 limits general public scrutiny of government decision-making to some degree, it parallels the purpose of the access provisions in Article 2 by enhancing governmental accountability to individuals.

§1-103. [*Severability.*] If any provision of this Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Code which can be given effect without the invalid provision

or application, and to this end the provisions of this Code are severable

§1-104. [*Construction Against Implied Repeal.*] This Code is a general act intended as a unified coverage of its subject matter and no provision of it is impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§1-105. [*General Definitions.*] Subject to additional definitions in subsequent Articles which are applicable to specific Articles, and unless the context otherwise requires, in this Code:

(1) "Accessible record" means a personal record, except a research record, that is:

(i) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(ii) otherwise retrievable because an agency is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources.

(2) "Agency" means a unit of government in this State, any political subdivision or combination of subdivisions, a department, institution, board, commission, district, council, bureau, office, officer, official, governing authority or other instrumentality of state or local government, or a corporation or other establishment owned, operated, or managed by or on behalf of this State or any political subdivision, but does not include the [name of legislative body] or the courts of this State.

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

(4) "Individual" means a natural person.

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

(6) "Maintain" means hold, possess, preserve, retain, store or administratively control.

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

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

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

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

COMMENT

The principal purpose of this section is to define the entities of state and local government and the types of records to which this Code applies.

The definition of the term "agency" in Section 1-105(2) is intended to be comprehensive. Consistent with much existing public record legislation, it includes all units of state and local government ranging from the largest to the one-person office. *See, e.g.*, Ark. Stat. Ann. §12-2803; Cal. Gov't. Code §6252; Mich. Comp. Laws Ann. §15.232; N.Y. Pub. Off. Law §86. It also includes any combination of political subdivisions of state or local government and any corporation or other establishment operated on behalf of the state or any political subdivision. The duties and responsibilities under this Code are coextensive with this definition except where the limited Article 5 exemption procedures are used.

Not included within the definition of "agency" are the legislature and the courts of a state. Although not found persuasive in some jurisdictions, *see, e.g.*, Conn. Gen. Stat. Ann. §1-18a; Tex. Pub. Off. Code Ann. tit. 110A, §6252-17a, the rationale for these exceptions is threefold: (1) the executive branch is by far the major recordkeeper in state government and has been chiefly responsible for excessive governmental secrecy and abuses in the collection, use and dissemination of personal records; (2) potential separation of powers issues would arise if the requirement of this Code were extended to the judiciary and to records held or controlled by legislators; and (3) the legislative and judicial branches are held to a high level of public accountability through other means such as the electoral process and appellate review.

"Government record" is the key operative definition in Article 2 of this Code. It includes all information maintained by an "agency" as long as the information exists in some physical form. For example, the personal recollection of an agency employee would not be a "government record" but his handwritten notes summarizing an event or conversation would. This definition triggers the general public right of access to information established in Sections 2-101 and 2-102. "Personal record" and the several terms derived from it are also "government records," but they are more limited in scope. They relate only to information about individuals and their application is confined almost exclusively to Article 3.

As indicated, Article 3 is concerned with "personal records" and their two principal derivatives, "individually identifiable records" and "accessible records." Section 1-105(8) provides that a "personal record" is an item of information in a government record that refers *in fact* to a particular individual. The distinctive function of this term is to trigger certain general agency recordkeeping duties. *See, e.g.*, Sections 3-107(f), 3-108 and 3-116. These duties are prophylactic in nature and arise without regard to a request for disclosure of information about an individual. Thus, the inclusive term "personal record" becomes applicable whenever an agency maintains information about individuals but may not maintain it either as an "individually identifiable record" or an "accessible record."

Section 1-105(5) defines "individually identifiable record" as a personal record

which reveals or can readily be associated with the identity of the individual or individuals to whom it pertains. As used in this Code, this term limits public access to information in government records about individuals, *e.g.*, Sections 2-103(12), 3-101 and 3-102, and disclosure of such information between agencies, Section 3-103. The test is objective: (1) does the record *on its face* identify the individual to whom it pertains; or (2) can the record be associated with the individual to whom it pertains by reference to *extrinsic facts* known or reasonably available to the requester? If neither part of this test is met, an agency may deal with the record free of the access and disclosure restrictions previously noted.

Section 1-105(1) defines "accessible record" in terms of an agency's ability to locate it. A personal record is "accessible" if the agency can locate it through: (1) a retrieval scheme or indexing structure based on the identity of individuals; or (2) the use of information given by the record requester provided that the search process is not unreasonably burdensome or costly. "Accessible record" is used in Article 3 to trigger an agency's duty to grant an individual access to his own personal records. *See* Sections 3-105 and 3-106.

Section 1-105(10) defines "research record" as an individually identifiable record that is collected or maintained by an agency solely for a research purpose. "Research purpose" is defined in Section 1-105(9) as the objective to study or report information in aggregate or anonymous form so that the identity of individuals is not material to the results. These terms apply whenever an agency, which has gathered information about individuals for agency purposes, *see* Section 3-108(4), is asked to disclose that information to a third party—including another agency—for a purpose not contemplated when the information was originally collected. Disclosure is permitted subject to the restrictions set forth in Sections 3-109 and 3-110.

"Maintain" is defined in Section 1-105(6) to sweep as broadly as possible. It includes information possessed or controlled in any way by an agency. The administrative control component of the definition is especially important since it prevents an agency that does not have physical custody of government records from evading its obligations under this Code.

Finally, the terms "individual" and "person" are separately defined in Sections 1-105(4) and 1-105(7) respectively. "Individual" means simply a natural person. "Person" includes an "individual" and, in addition, any entity recognized by law. Under Article 2, the general public right of access to government records extends to any person upon request. *See* Section 2-102(a). In contrast, the right of access to a personal record generally extends to the individual to whom it pertains. *See* Section 3-101. Only a natural person can request access to individually identifiable records and such records must be made available to the individual unless one of the exceptions in Article 3 is applicable.

ARTICLE 2
FREEDOM OF INFORMATION

§2-101. [*Affirmative Agency Disclosure Responsibilities.*] Each agency shall make available for public inspection:

(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.

COMMENT

Under this section, the "law of the agency" must be made available to the public. In other words, an agency may not maintain "secret law" relating to its own decisions and policies. This section is similar in general requirement to Sections (a)(1), (2) and (3) of the federal Freedom of Information Act. 5 U.S.C. §552(a)(1), (2) and (3). *See Department of Air Force v. Rose*, 425 U.S. 352, 369 (1976); *Jordan v. Department of Justice*, 591 F.2d 753, 757-763 (D.C. Cir. 1978). *See also* Mich. Comp. Laws Ann. §15.241; Wash. Rev. Code Ann. §42.17.250 and .260. The affirmative disclosure responsibility extends to agency policies, rules and adjudicative determinations and procedures. In addition, this section mandates disclosure in the form in which the records are used or relied upon by the agency. The section, however, is not applicable unless the information is maintained in physical form as contemplated by the term "government record." *See* Section 1-105(3).

Nothing in the section requires an agency to make rules or to formalize its decision-making processes. Nor does it require the agency to reduce its rules or policies to written or other permanent form. If preferred, an administrative procedure act or similar legislation could serve those purposes. Requests for information pursuant to this section are not subject to the procedures of Section 2-102; production, therefore, must be immediate. Consequently, each agency must determine which of its records are covered and maintain these records in a place where they will be available on demand.

§2-102. [*Duties of Agency.*]

(a) Except as provided in Section 2-103, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

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

(c) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts from them. If a government record is not immediately available or a request for access is denied, the agency shall inform the requester of the right to make a written request for access under subsection (d).

(d) Promptly, but no later than 7 days after receiving a written request for access which reasonably identifies or describes a government record, the agency shall:

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

(2) inform the requester that the record is in use or that unusual circumstances have delayed or impaired the handling of the request and specify in writing the earliest time and date, not later than 21 days after receipt of the request, when the record will be available;

(3) inform the requester that the agency does not maintain the requested record, and provide, if known, the name and

location of the agency maintaining the record; or

(4) deny the request.

(e) Unless otherwise provided by law, whenever an agency provides a copy of a government record, it may charge the currently prevailing commercial rate for copying. An agency may not charge for the services of government personnel in searching for a record, reviewing its contents, and segregating disclosable from non-disclosable information or for expenses incurred in establishing or maintaining the record. The agency shall establish a schedule of its charges and make it available to the public.

(f) If a request for access to a government record is denied, in whole or in part, the agency in writing shall notify the requester of the specific reasons for its denial, and identify by name and position or title the individual responsible for its denial. In addition, the agency shall inform the requester that review of a denial of access may be sought from the head of the agency and that a request for review must be filed within 90 days after notification of the denial. The head of the agency, within 10 days after a request for review is filed, shall decide whether the denial of access will be upheld. If the decision is to disclose, the agency shall immediately notify the requester and make the record available. If the denial of access is upheld, in whole or in part, the head of the agency in writing shall notify the requester of the decision, the specific reasons for the decision and the right to bring a judicial action under this Code.

(g) Each agency may adopt reasonable rules to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent undue interference with the discharge of its functions.

COMMENT

Subsection (a) states a policy of liberal access to governmental records. It requires each agency to make its records accessible to any person during regular business hours. The right of access includes the right to inspect and copy any government record subject to the limitations of Section 2-103. The approach reflected in this subsection is typical of the more recently enacted public records statutes.

Subsection (b) specifies that an agency is not under a duty to compile or summarize information in its records unless readily available to the agency in the form requested. In brief, it makes plain that the agency's duty is to provide access to existing records; the agency is not obligated to create "new" records for the convenience of the requester. *See* Mich. Comp. Laws Ann. §15.233(3); *Forsham v. Harris*, _____ U.S. _____, 100 S.Ct. 978, 987 (1980); *Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 192 (1975). To illustrate: a request is made for the age, sex, race and evidence of alcohol consumption of all

individuals involved in traffic accidents within the past five years. Information pertaining to all accident reports is maintained in the files of a particular agency. The policy question is whether the agency must expend the time, money and effort to locate and supply the requested information. Subsection (e), discussed *infra*, does not permit the agency to charge for record searches or review of documents. Thus, under subsection (b) the agency may deny the request to compile if such a compilation does not already exist.

As a general rule, subsection (b) should be invoked selectively because the requester has the option of having the full record system duplicated. *Disabled Officers' Association v. Rumsfeld*, 428 F. Supp. 454 (D.D.C. 1977). If that option is taken, the agency under Section 2-103 would have the burden of screening all records for non-disclosable material. The costs of duplication, while imposing, might not be great enough to discourage the requester. Thus, the agency might find it easier to produce the compilation than to screen the records from which the compilation would have to be derived.

The policy of subsection (b) is most important to agencies with manual record systems. In computerized record systems, however, agency retrieval capabilities are significantly greater. The request in the earlier example would have to be granted if the data could be routinely compiled, given the existing programming capabilities of the agency.

Under subsection (c) each agency is obligated to provide reasonable facilities for duplicating records. While this does not require each agency to have its own duplicating equipment, it does impose an obligation to establish agency procedures for having copies of records made when requested. A number of state public records statutes have this provision, *e.g.*, Ariz. Rev. Stat. Ann. §39-121.01D; Colo. Rev. Stat. §24-72-205; Mich. Comp. Laws Ann. §15.233(5); Vt. Stat. Ann. tit. 1, §316. To assure the feasibility of the right to inspect, this subsection contemplates the availability of counterspace or a table where records can be examined and notes taken conveniently. What constitutes reasonable facilities will vary with the agency and the volume of access requests. Finally, subsection (c) assumes that requests for access frequently will be oral. Whenever an agency denies an oral request for access, it must inform the requester of the right to file a written request for access pursuant to subsection (d).

Under subsection (d), a request for access must be in writing and reasonably identify or describe the government record sought. The purpose is to establish a readily ascertainable standard against which the adequacy of the agency's response to a request for access can be judged. Subsection (d) does not mean that *only* written requests for access can be entertained by an agency. In many cases public use of records may be so commonplace that oral or informal requests for access are accepted agency practice. On the other hand, it should be clearly understood that those requests do not trigger the administrative and judicial review mechanisms of this Article. A written request is necessary for that purpose.

A chief reason for the subsection (d) specificity requirement is to facilitate prompt agency compliance with requests for access to records. This standard also enables an agency to resist requests which impose unreasonable search burdens. Though formulated in general terms, the test is practical in application: a request must be specific both as to subject matter and location of the record. The touchstone is whether the request would enable a professional employee of the agency who is familiar with the subject area to locate the record with a reasonable amount of effort. *Marks v. United States (Department of Justice)*, 578 F.2d 261, 263 (9th Cir. 1978). Under the federal Freedom of Information Act, 5 U.S.C. §552, the courts have demonstrated a capacity for applying this standard without undue deference to agencies. *See, e.g., Mason v. Callaway*, 554 F.2d 129 (4th Cir. 1977);

Bristol-Myers v. FTC, 424 F.2d 935 (D.C. Cir. 1970); *Fonda v. Central Intelligence Agency*, 434 F. Supp. 498, 501 (D.D.C. 1977).

Paragraphs (1) through (4) of subsection (d) enumerate the responses of the agency to a valid request for access to its records. One of those responses must be given by the agency within 7 days after receipt of the request. The agency either can deny the request under paragraph (4) or grant it in full or in part under paragraph (1). If the latter, the agency must make the record available in reasonably intelligible form, including, if necessary, an explanation of any symbols, codes or abbreviations used by the agency. *Cf.* Privacy Act of 1974, 5 U.S.C. §552a(d)(1) (copy must be produced in "form comprehensible to" requester).

Paragraph (2) deals with two situations: (1) when the record requested is in use; and (2) when unusual circumstances delay or impair the handling of the request for access. In either case, the agency is allowed a maximum of 21 days from the receipt of the request to produce the record. A written explanation from the agency is required and must specify the earliest reasonable time and date when the record will be available. Paragraph (2) does not define "unusual circumstances," but among the more typical reasons for delay are the need to: (1) locate, collect or examine a large number of records under a single request; (2) collect records from locations away from the agency offices where the request for access is being processed; and (3) consult with other agencies having an interest in resolution of the request. *See* Colo. Rev. Stat. §24-72-203; D.C. Code Ann. §1-1522(d); Mich. Comp. Laws Ann. §15.232(d).

Finally, under paragraph (3) the agency may respond that it does not maintain the requested records. In that event, the agency must inform the person seeking access of the name and location of the agency maintaining the record. If the agency does not know the location of the requested record, it has no duty to inquire on behalf of the requester.

Subsection (e) authorizes an agency to charge the prevailing commercial rate for copying government records. In this connection, it must establish a schedule of its charges and publish it. A provision of this kind is in virtually all public records and freedom of information legislation. *See, e.g.*, Conn. Gen. Stat. Ann. §1-15 (charge not in excess of 25 cents per page); Or. Rev. Stat. §192.440 (fees reasonably calculated to reimburse the actual cost to agency). No charge is permitted under this subsection, however, for a record search, record review, or for the cost of maintaining the record system. This policy obtains in a number of states, *e.g.*, Md. Ann. Code Art. 76A, §4; Tex. Pub. Off. Code Ann. tit. 110A, §6252-17a(9), but by no means in all, *e.g.*, D.C. Code Ann. §1-1522(b); Mich. Comp. Laws Ann. §15.234(a). *See also* 5 U.S.C. §552(a)(4).

The policy underlying subsection (e) reflects an accommodation between promoting public access to government records and fairly allocating the costs of agency compliance on a case-by-case basis. If the cost of exercising rights under this Article is too high, the Article will not achieve its broad purposes, *see* Section 1-102. The public as a whole benefits from the policy of access to governmental information. For that reason, subsection (e) requires each agency to absorb all costs of compliance except the cost of copying. But when a person receives a copy of a government record, the character of the benefit conferred on the person is direct and immediate. This justifies shifting the cost of duplication to the record requester.

Subsection (f) requires the agency to observe certain formalities in denying a request for access. They include a written statement of reasons for an initial denial and notice to the requester of the right to seek review by the head of the agency. A request for review by the head of an agency must be filed within 90 days after the initial denial of access has been mailed. The head of the agency has 10 days to complete review and communicate his decision which also must be in writing

and, if adverse to the requester, must contain a statement of reasons. Intra-agency review is a mechanism to settle access disputes which should reduce the need for judicial intervention. Even so, the requester must be apprised of the right to seek judicial enforcement of the request for access pursuant to the appropriate enforcement provisions of this Code.

Subsection (g) makes clear that the agency can take reasonable measures to protect the security and integrity of its records and establish access procedures to prevent undue disruption of agency functions.

§2-103. [*Information Not Subject to Duty of Disclosure.*]

(a) This Article does not require disclosure of:

(1) information compiled for law enforcement purposes if disclosure would:

(i) materially impair the effectiveness of an ongoing investigation, criminal intelligence operation, or law enforcement proceeding,

(ii) identify a confidential informant,

(iii) reveal confidential investigative techniques or procedures, including criminal intelligence activity, or

(iv) endanger the life of an individual;

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

(i) communicated for the purpose of decision-making, and

(ii) disclosure would substantially inhibit the flow of ideas within an agency or impair the agency's decision-making processes;

(3) material prepared in anticipation of litigation which would not be available to a party in litigation with the agency under the rules of pretrial discovery for actions in the [designate appropriate court] of this State;

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

(5) information which, if disclosed, would frustrate government procurement or give an advantage to any person proposing to enter into a contract or agreement with an agency;

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

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

(8) proprietary information, including computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by the agency or entrusted to it;

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

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

(11) information that is expressly made non-disclosable under federal or state law or protected by the rules of evidence; or

(12) an individually identifiable record not disclosable under Article 3.

(b) If an agency pursuant to Section 2-102(a) decides to grant a request to inspect or copy a government record to which subsections (a)(8), (10) or (12) may apply, the agency shall make reasonable efforts to notify the person to whom the record relates and provide him an opportunity to object prior to disclosure of the record.

(c) If a person submits information claimed to be subject to subsection (a)(9), the agency shall upon such person's request make reasonable efforts to notify the person making the claim and provide him an opportunity to object prior to disclosure of the record.

(d) If, over objection, the agency decides to grant the request for access, it shall inform each objector of the agency's decision and the right to seek review from the head of the agency.

(e) If the head of the agency decides to grant the request, he shall give reasonable notice to each objector of his decision to release information. If the head of an agency denies a request for access because information is within subsections (a)(8), (9), (10) or (12) and the agency is subsequently sued as a result of that denial, it shall make reasonable efforts to inform each objector of the suit.

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

COMMENT

Subsection (a) recognizes twelve exemptions from the agency's mandatory disclosure obligation under Section 2-102. These exemptions apply only to specific categories of information within government records; they do not exempt entire record systems as such. *See* Privacy Act of 1974, 5 U.S.C. §552a(j); Report of the Privacy Protection Study Commission, The Privacy Act of 1974: An Assessment 123

(1977) (App. 4). Furthermore, subsection (a) only gives an agency the *authority* to withhold exempt material. It does not compel the agency to withhold if its officers believe that disclosure would be in the public interest. State or federal law independent of Section 2-103, however, could limit or preclude agency discretion to release. For example, while subsection (a) does not explicitly prohibit the disclosure of individual income tax records, most states have statutes that do and those would override subsection (a). *See, e.g.*, Ga. Code Ann. §§91A-212 and -3711. Certain provisions in Article 3 would have a similar effect. *See* Sections 3-101 and -102.

These exemptions protect three important public interests: (1) the effectiveness and integrity of certain essential governmental processes; (2) the reliance of persons who submit confidential information to government either voluntarily or under compulsion; and (3) the privacy of individuals about whom the government possesses information.

Subsections (a)(1) and (a)(2) exempt certain law enforcement information and inter- and intra-agency communications which are deliberative and predecisional in nature. These government functions need to be insulated from immediate, though not ultimate, public scrutiny. Although exemptions of this kind are typical in state public record or freedom of information statutes, *e.g.*, Conn. Gen. Stat. Ann. §1-19(b)(1) and (3), Mich. Comp. Laws Ann. §15.243(1)(b) and (n), it is difficult to state with precision how much confidentiality is crucial to effective law enforcement and agency decision-making. The exemptions, therefore, must be read against the background of case law developed at the federal and state level. Agency attempts to abuse these exemptions should be amenable to judicial control. It should not be forgotten, however, that numerous other mechanisms exist to insure the accountability of public officials in law enforcement activity and general decision-making: criminal sanctions, civil sanctions, exclusionary rules, judicial review of agency action, legislative oversight and ultimately the electoral process. Subsections (a)(1) and (a)(2) supplement the established structure of checks and balances; they do not supplant it.

Subsection (a)(3) prevents the use of the access provisions of this Article to evade discovery protections available to an agency in litigation with a third party. As a general rule, these protections consist of the attorney-client privilege and the attorney work-product rule. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 862-66 (D.C. Cir. 1980). Typical of this type exemption, subsection (a)(3) places no time limitation on its availability to the agency, *e.g.*, D.C. Code Ann. §1-1524(a)(4); Iowa Code Ann. §68A.7-4; Mich. Comp. Laws Ann. §15.243(1)(h). In a few states, however, this exemption does not apply after the conclusion of litigation. *See* Cal. Gov't. Code §6254(b); Conn. Gen. Stat. Ann. §1-19(b)(4).

Subsection (a)(4) protects the integrity of agency administered licensing, employment or academic examinations. A number of states have this exemption in one form or another. Some appear to permit an agency to withhold this information indefinitely, *e.g.*, Vt. Stat. Ann. tit. 1, §317(b)(8); Wash. Rev. Code Ann. §42.17.310(f). Others allow public access after the examination, N.Y. Pub. Off. Law §87(2)(h); a few do so only if the examination is not going to be used again, D.C. Code Ann. §1-1524(a)(5); Or. Rev. Stat. §192.500(1)(d), or where the public interest in disclosure is paramount, Mich. Comp. Laws Ann. §15.243(1)(l). Subsection (a)(4) requires public disclosure of examination material only if the fairness or objectivity of the examination process would not be compromised. For example, essay questions of a type not ordinarily used in future testing probably would be available after the examination is administered. On the other hand, disclosure of multiple choice or other objective questions would be unlikely since they are commonly used again. The right of an individual to examine but not copy his own test questions and

answers is made effective through a limited form of access authorized by Section 3-106 of this Code. *See also* Colo. Rev. Stat. §24-72-204(2)(a)(II); Md. Ann. Code Art. 76A, §3(b)(ii).

Subsection (a)(5) protects the integrity of the procurement and competitive bidding process. A few states include this type of provision in their freedom of information statutes, Mich. Comp. Laws Ann. §15.243(1)(j); N.Y. Pub. Off. Law §87(2)(c); Vt. Stat. Ann. tit. 1, §317(b)(13). Most states, however, have legislation specifically regulating the procurement practices of state or local government, *e.g.*, Ga. Code Ann. §§23-1702, -1711; 40-1909-1913; 95A-1205. In that case, subsection (a)(5) does not restrict access to any information *expressly* made available to the public by that legislation. Otherwise, an agency in its discretion could use this exemption to withhold information unless, under the circumstances, state law prohibits disclosure of procurement and bidding information altogether. *See* Section 2-103(a)(11). Once a contract is let or a purchase is made, the exemption generally will no longer apply.

Subsection (a)(6) protects an agency's purchasing power and bargaining position against erratic and artificial change when the acquisition of real property is contemplated. This exemption is among the most common in state freedom of information statutes, *e.g.*, Cal. Gov't. Code §6254(h); Md. Ann. Code Art. 76A, §3(b)(iv). It does not affect access to information otherwise available under the eminent domain law of the state. An agency cannot claim this exemption after property is acquired or, in the case of condemnation, after a purchase agreement is reached for the property.

Subsections (a)(7) and (a)(8) deal specifically with the confidentiality needs of agencies that have computerized record systems. Subsection (a)(7) permits the withholding of information that would create a risk of unauthorized use of agency computers and unauthorized access to data stored in them. Subsection (a)(8) allows the agency to preserve the confidentiality of operational information for computer and telecommunications systems. This subsection applies only to proprietary information held by the agency pursuant to contract or state law.

Many agencies in the exercise of regulatory powers must have access to confidential information from the businesses that they regulate. The purpose of subsection (a)(9) is to enable an agency to protect the confidentiality expectation of those submitting information. This exemption is fundamental to freedom of information legislation, *e.g.*, Cal. Gov't. Code §6254.7(d); Colo. Rev. Stat. §24-72-204(3)(a)(IV); Conn. Gen. Stat. Ann. §1-19(b)(5); N.Y. Pub. Off. Law §87(2)(d). This subsection actually consists of two analytically separate parts: (1) trade secrets as determined by reference to state law and (2) information that is (a) commercial or financial, (b) confidential and (c) obtained from a person. *Consumers Union of United States, Inc. v. Veterans Administration*, 301 F. Supp. 796, 802 (S.D.N.Y. 1969). All three elements of the second component must be present for the exemption to apply. This means that the agency must have obtained commercial or financial information from a non-governmental source, *Soucie v. David*, 448 F.2d 1067, 1079 n. 47 (D.C. Cir. 1971), *and* the information must be confidential. Material has been held to be confidential if: (1) it would not customarily be released to the public by the person from whom it was obtained, *Sterling Drug, Inc. v. FTC*, 450 F.2d 698, 709 (D.C. Cir. 1971); (2) disclosure would impair an agency's ability to obtain similar information in the future, *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); or (3) disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained, *National Parks & Conservation Association v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976).

The purpose of subsection (a)(10) is to overcome the reluctance of many private

individuals to donate personal papers or other materials to the state for preservation. This reluctance stems from the natural desire to spare family, friends and one's self the discomfort or embarrassment of public scrutiny. A donor may wish to condition a gift on a state's agreement to deny public access prior to his death or some other eventuality. Although postponement of access to the material could cause some inconvenience, the policy of subsection (a)(10), in the long run, advances the fundamental purposes of this Code by eliminating a significant disincentive to the preservation of potentially important historical information.

Subsection (a)(11) is a catch-all provision which assimilates into this Article any federal law, state statute or rule of evidence that expressly requires the withholding of information from the general public. The purpose of requiring an express withholding policy is to put a burden on the legislative and judicial branches to make an affirmative judgment respecting the need for confidentiality.

Subsection (a)(12) exempts individually identifiable records from disclosure unless permitted by the provisions of Article 3. The policy considerations underlying this exemption are set forth in the comment accompanying Sections 3-101 through 3-103.

Subsections (b) and (c) establish notice procedures to protect individual privacy interests and the interests of those submitting information. The duty under subsection (b) arises whenever the agency has decided to disclose material that may come within exemptions (a)(8), (a)(10) or (a)(12). The agency in all instances must make reasonable efforts to notify interested persons of the tentative decision to disclose and offer them an opportunity to present objections before the decision becomes final. The purpose of this procedure is to make certain that the agency is fully apprised of considerations favoring non-disclosure before declining to assert an applicable exemption.

The notice requirement in subsection (c) applies only to persons who (1) submit information arguably exempt under subsection (a)(9) and (2) request notice from the agency prior to the release of such information pursuant to this Article. Without the request for notice, subsection (c) does not apply. A person entitled to receive notice has the same right as under subsection (b) to appear and raise objections to disclosure.

Subsection (d) applies whenever, despite objections based on subsections (a)(8), (a)(9), (a)(10) and (a)(12), an agency decides to grant a request for access. In that event, the agency must inform any person raising objections of the right to seek review from the head of the agency.

Subsection (e) requires the head of the agency to give notice of his decision to release disputed information to objectors under this section. Objectors who attempt to prevent disclosure of information possibly exempt under subsections (a)(8), (a)(9), (a)(10) and (a)(12) have no further procedural rights under this Code. Their only recourse will be to bring an independent action under the state administrative procedure act or under a statute prohibiting disclosure of the information in question. This Article does not create a substantive right to enjoin agency release of exempt information. *Cf. Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (decided under the federal Freedom of Information Act, 5 U.S.C. §552).

On the other hand, if the head of an agency is persuaded by objections raised to disclosure and denies the request for access to information based on subsections (a)(8), (a)(9), (a)(10) or (a)(12), subsection (e) establishes one additional procedural right. If an agency is sued as a result of its denial of access, it shall make reasonable efforts to notify those persons who objected to disclosure of the existence of the suit. The objectors may choose to bring an independent action (as indicated above) or they may seek to intervene in the suit to compel disclosure and assert their rights in that forum. Again, this Article does not create any substantive right on behalf of any person to compel the agency to assert exemptions.

Subsection (f) states a segregation of information principle. Since exemptions extend only to categories of information, the agency must delete all non-disclosable information and produce the remainder of the record, provided it can be separated without compromising the agency's exemption claim. The decision here would depend upon the specific justification given for the exemption. *See Vaughn v. Rosen (I)*, 484 F.2d 820 (D.C. Cir. 1973).

§2-104. [*Judicial Enforcement.*]

(a) A person aggrieved by a violation of Section 2-101 or 2-102 may bring an action against the agency to compel disclosure. In an action to compel the agency to disclose a government record, the court shall hear the matter *de novo*. The court may examine the record at issue *in camera* to determine whether it or any part of it may be withheld. The agency has the burden of proof to establish the justification for non-disclosure, unless the record is non-disclosable under Article 3.

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

[(c) The court in the [district] [judicial circuit] in which the requested record is maintained or the agency's headquarters are located has jurisdiction over an action brought under this section.]

[(c)] [(d)] If the agency fails to comply with the time limits of Section 2-102, the requester may bring an action under this section.

COMMENT

Subsection (a) authorizes any person whose request for access to a government record has been denied to bring an original action for judicial enforcement of his right of access. The court must determine *de novo* the correctness of the agency's decision; the burden of proof is on the agency in this proceeding except in cases in which the refusal to disclose is based on Article 3. *Vaughn v. Rosen (I)*, 484 F.2d 820 (D.C. Cir. 1973). The court has authority to review *in camera* any government record that is claimed to be non-disclosable.

Subsection (b) provides for an award of attorney's fees and litigation expenses against the agency in cases in which the complainant prevails. This award is discretionary. Many state and federal statutes authorize recovery of this nature where primary or exclusive reliance is placed on the private litigation mechanism to enforce the public policy of important legislation.

Subsection (c) is an optional provision establishing venue in judicial enforcement actions under this section.

Subsection (d) makes clear that if an agency fails to meet the time limits in Section 2-102 for processing a request for access to records the requester may bring an immediate judicial enforcement action.

§2-105. [*Disciplinary Action.*] An agency shall take disciplinary action, which may include suspension or discharge, against any officer or employee of the agency who knowingly

and willingly violates any provision of this Article. Any other violation of this Article is cause for disciplinary action.

COMMENT

Since damages actions against public employees for violating freedom of information statutes are unusual and criminal provisions are rarely invoked, this section provides an alternative deterrent mechanism. If a violation of this Article is knowing and willful, an agency is required to take disciplinary action and may impose sanctions as severe as suspension or discharge of the employee. Other violations involving a lesser degree of culpability may result in disciplinary action, but such action is not required. This section is not intended to alter or affect established civil service or other procedures which an agency is bound to follow in taking disciplinary action against an employee.

ARTICLE 3
DISCLOSURE OF PERSONAL RECORDS

§3-101. [*Limitations on Disclosure to Public.*] An agency may not disclose or authorize the disclosure of an individually identifiable record to any person other than the individual to whom the record pertains unless the disclosure is:

(1) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(2) pursuant to the prior written consent of the individual to whom the record refers;

(3) of information collected and maintained for the purpose of making information available to the general public;

(4) of information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public;

(5) pursuant to federal law or a statute of this State that expressly authorizes disclosure;

(6) pursuant to a showing of compelling circumstances affecting the health or safety of any individual, in which case the agency shall make reasonable efforts to notify the individual to whom the record refers;

(7) pursuant to an order of a court in which case the agency shall notify the individual to whom the record refers by mailing a copy of the order to his last known address;

(8) pursuant to a subpoena from [either House of] the [name of legislative body] or any committee or subcommittee, in which case the agency shall notify the individual to whom the record refers by mailing a copy of the subpoena to his last

known address;

(9) for a research purpose as provided in Sections 3-109 and 3-110; or

(10) in any other case, not a clearly unwarranted invasion of personal privacy.

COMMENT

Article 3 establishes a statutory framework similar to the Federal Privacy Act, 5 U.S.C. §552a, and several state statutes generally referred to as Information Practices Acts. *See, e.g.*, Minn. Stat. §15.162. This legislation concerns the use, collection and dissemination of governmental records about individuals. This Code attempts to integrate the concepts of freedom of information and privacy. The federal act and most state information practices schemes were drafted at different times and often without explicit reference to each other. This section recognizes the interaction between freedom of information and privacy. Section 2-103 directs that government information be made public. Section 2-103(a)(12) creates an exemption to this rule of disclosure for "individually identifiable record(s) not disclosable under Article 3."

Sections 3-101, 3-102, 3-103 and 3-104 identify circumstances in which disclosure of individually identifiable records is either permissible or in some instances mandatory. The overall intent of these sections is not so much to establish hard and fast rules of disclosure, but rather to establish basic standards and guidelines under which the disclosure of individually identifiable information can be made. There have been attempts by various state statutes to establish categories of releasable and non-releasable records. That categorical approach has proven to be too inflexible to deal with what in practice is a dynamic problem. For example, various amendments of the Minnesota statute have been necessary since its enactment to accommodate situations not previously anticipated.

A number of distinct rationales support the standards set forth in this and the following sections. There is certain information which, while individually identifiable information, is deemed not to be an invasion of personal privacy when disclosed. Subsection (1) permits the disclosure and indeed, when read together with Article 2 requires, upon request, the disclosure of government job related information about current and former public employees. Based upon a concept of public accountability, information as listed in subsection (1) is determined in all cases to be public information notwithstanding the privacy interest of the individual. It is important to note, however, that in some very limited circumstances involving law enforcement personnel or agents as set forth in Section 2-103(1), disclosure of job related information may be withheld if the law enforcement interests set forth in that section are applicable.

Similarly, subsection (3) recognizes that certain individually identifiable information is collected and maintained by state and local governments for the purpose of public disclosure. Examples of this would be grantor-grantee land records, business and professional license information, and records such as prospectuses and similar records collected at least in part for the purpose of public disclosure. Subsection (4) recognizes that the written records of public proceedings should also be publicly available even if they contain individually identifiable information. Finally, subsection (5) provides that information cannot be withheld if its disclosure is pursuant to a federal law or state statute. The general non-disclosure policy of Section 3-101 is not intended to supersede other express legal requirements.

The remaining standards of this section recognize that there are privacy interests to be protected, but that there may be superseding circumstances justifying release.

The provision in subsection (2) for instance permits disclosure "pursuant to the prior written consent of the individual." It is important to note that there is a similar provision in the Federal Privacy Act of 1974, 5 U.S.C. §552a(b). The voluntary consent issue is particularly significant in the private employment context whenever an employer or prospective employer requires an employee or applicant to execute a consent form for the disclosure of government records to the employer. Several agencies have not recognized these consents, if it is clear that the employee or applicant executed the consent as a condition of employment.

Government agencies under subsection (9) are permitted to disclose individually identifiable information for research purposes under the detailed requirements of Section 3-109. This section further recognizes in subsections (7) and (8) that subpeonas by either a court of law or from the state legislature may order the disclosure of individually identifiable information. Both of these subsections, however, require the agency to attempt to make actual notice to the individual identified in the record. Under this subsection the record subject would be able to seek a protective order limiting the further release of the subpoenaed information.

Finally, this section incorporates two concepts balancing privacy on one side and the need for public disclosure on the other. Subsection (6) gives an agency discretion to release individually identifiable information if there are compelling circumstances affecting the health or safety of any individual.

Subsection (10), perhaps the most significant of the exemptions in this section, provides for the release of individually identifiable information where release would not be "a clearly unwarranted invasion of personal privacy." This is a catch-all category. It incorporates a general balancing standard that must be applied on a case-by-case basis. Section 3-102 elaborates on the balancing standard and sets forth examples of information which possess significant individual privacy interests.

§3-102. [*Clearly Unwarranted Invasion of Personal Privacy.*]

(a) Disclosure of an individually identifiable record does not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

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

(1) information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information concerning an individual's presence at any facility;

(2) information compiled and identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(3) information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

(4) information in an agency's personnel file, or applications, nominations, recommendations or proposals for public employment or appointment to a governmental position; except information relating to the status of any formal charges against the employee and disciplinary action taken;

(5) information relating to an individual's non-governmental employment history;

(6) information in an income or other tax return measured by items of income or gathered by an agency for the purpose of administering the tax;

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

(8) information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except the record of any proceeding resulting in revocation or suspension of a license and the grounds for revocation or suspension; and

(9) information comprising a personal recommendation or evaluation.

COMMENT

The "clearly unwarranted invasion of personal privacy" standard is a widely accepted starting point for analyzing and reconciling the often conflicting interests of public access and individual privacy. *Department of Air Force v. Rose*, 425 U.S. 352 (1976). It differs from an earlier standard enunciated in *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir.) *stay denied*, 404 U.S. 1204 (1971), which balanced the privacy interest of the record subject against the access interest of the requester. This approach, while perhaps easier to apply, was deficient because it did not impose any redisclosure limitations. Thus, information properly disclosed to the initial requester could be redisclosed to a third party who would have been unable to justify disclosure if he had sought access in his own behalf. Under the standard adopted here, the subordination of an individual's privacy interest depends upon an assessment of the *public* need for the information rather than the interest of a particular requester.

Despite its imprecision, the "clearly unwarranted invasion of personal privacy" standard is preferable to a statutory scheme that enumerates individual privacy interests as confidential without regard to context or to the public interest in disclosure. Privacy and access issues are rarely susceptible to such categorical treatment.

Subsection (a) rests on the premise that case-by-case determinations will ultimately produce a fairer and more refined accommodation of these interests. Disclosure of an individually identifiable record under this subsection, therefore, is permissible only if the public interest in disclosure outweighs the privacy interest of the individual. The initial judgment under the standard lies with the agency administrator. Ultimately, however, the courts, exercising *de novo* review, will determine the scope of this standard on a case-by-case basis.

Subsection (b) provides examples of information that possess significant individual privacy interests. The enumeration is not intended to be exhaustive. But once a subsection (b) or comparable privacy interest is demonstrated, the agency will have to assume the burden of carefully balancing such an interest with the public interest and need for access to those documents. If one of the nine examples applies to a request, there is a strong privacy interest in not publicly releasing the records.

The requester must demonstrate why the public interest weighs in favor of disclosure. *See* Section 2-104(a).

The burden is not to show individualized needs for the information, but rather the nature of the public interest in release. Only if the requester satisfies this burden must the agency respond with evidence that disclosure does not benefit the public.

Portions of subsections (b)(1), (2), (4), and (8) not only identify information possessing a significant individual privacy interest, but also identify *closely* related information which is *outside* the scope of the privacy interest. This latter information is subject to disclosure as though it were a part of the Section 3-101 enumeration of disclosable information. The exceptions in these subsections reflect the importance of the segregation doctrine in Section 2-102(f) which requires disclosure of all information even though some parts of a document may be exempt.

Many of the examples in subsection (b) represent privacy interests which are subject to other statutory prohibitions on disclosure. In that event, it is not the intent of this section to override those prohibitions. For example, whenever a statute prohibits the disclosure of tax return information or hospital psychiatric records, this section does not authorize release of those records, regardless of the public interest in disclosure.

§3-103. [*Disclosures to Agencies of Government.*]

(a) In addition to disclosures permitted under Section 3-101, an agency may disclose or authorize the disclosure of an individually identifiable record if made to:

(1) another agency if disclosure is:

(i) certified by the requesting agency as being necessary to the performance of its duties and functions, and

(ii) compatible with the purpose for which the information in the record was originally collected or obtained;

(2) the State Archives for purposes of historical preservation, administrative maintenance, [or destruction];

(3) another agency, another state, or the federal government, if disclosure is:

(i) for the purpose of a civil or criminal law enforcement investigation,

(ii) specifically authorized by statute or compact, and

(iii) pursuant to agreement or written request;

(4) an agency for transmission to courts of this State, another state or the United States for pre-sentence or probationary purposes;

(5) a foreign government pursuant to executive agreement, compact, treaty, or statute;

(6) a criminal law enforcement agency of this State, another state, or the federal government if the information requested is limited to an individual's name and other identifying particulars, including present and past addresses and present and past places of employment;

(7) authorized officials of the federal government or of an agency of this State for audit or review purposes if:

(i) the audit or review is expressly authorized by law, and

(ii) 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) is subject to the same restrictions on disclosure of the information as the originating agency.

COMMENT

Section 3-103 deals with inter-agency disclosure of individually identifiable records. Intra-agency use and disclosure of those records are not regulated in this section or elsewhere in this Article. The policy of this Act is that individually identifiable records can be freely used within an agency. The additional layer of controls necessary to limit intra-agency use and disclosure would be costly and administratively burdensome and add marginally at best to the already extensive duties of the agency to protect the privacy of individually identifiable records.

Subsection (a) prohibits inter-agency disclosure of individually identifiable records unless one of the enumerated exceptions is applicable. Agencies receiving individually identifiable information under subsection (b) are similarly limited in the redisclosure of records. Such information may be under the same standards and procedures applied by the originating agency. The decision on public disclosure generally should be made by the originating agency. This approach tends to require agencies to collect information directly from the individual to whom it pertains and thus reinforces a central principle of this Article. *See* Section 3-108(a)(2). There are circumstances, however, in which the second agency may release information without reference to the standards and procedures of the first agency. For example, in connection with a criminal or civil case, a state law enforcement agency or prosecutor may release information without consultation.

The rationales underlying subsections (a)(2), (4), (7), and (8) are self-evident. Some comment about the remaining subsections, however, is necessary.

Subsection (a)(1) deals with the inter-agency request for information that is not law enforcement related. It requires: (1) certification by the requesting agency that disclosure of an individually identifiable record is necessary to the performance of its duties and functions; and (2) a finding by the record holding agency that disclosure would be compatible with the purpose for which the information was originally gathered. The latter limitation satisfies the individual's expectation as to use when he provides information to an agency. It prevents an agency from collecting information ostensibly for one purpose and later delivering it to another agency for different and unrelated uses. Where the second use is not compatible with the reasons for which the information was originally collected, then the second agency should be required to collect the information directly from the individual.

Subsections (a)(3) and (a)(6) establish standards for the release of law enforcement related information. Subsection (a)(3) permits disclosure to any agency of this State, another state or the federal government if the conditions in paragraphs (i), (ii) and (iii) are satisfied. The subsection applies to both *civil* and *criminal* law enforcement investigations. Subsection (a)(6) provides for release to a criminal law enforcement agency of identifying, locating or general background information relating to an individual. It does not require the requesting criminal law enforcement agency to make the showing required by subsection (a)(3). Such a requirement would impose too great a burden on law enforcement investigations.

Finally, subsection (a)(5) generally authorizes disclosure of individually identifiable records to foreign governments pursuant to executive agreement, compact, treaty or statute. Informal exchanges of information between agencies and foreign governments are forbidden under this subsection.

§3-104. [*Prohibitions On Disclosures Not Affected.*] Nothing in Sections 3-101 through 3-103 authorizes the disclosure of an individually identifiable record if disclosure is otherwise prohibited by law.

COMMENT

The purpose of this section is to make clear that the provisions of Sections 3-101 through 3-103 are subordinate to laws independent of this Code, which prohibit disclosure of individually identifiable records.

§3-105. [*Access to Records by Record Subject.*] Except as provided in Section 3-106, an individual or his duly authorized representative may examine or copy, during the regular business hours of the agency, any accessible record that pertains to him. In implementing the rights under this section, the agency shall follow the procedures established in Section 2-102, subject to the following additional requirements:

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

(2) the agency, if specifically requested, shall inform the requester of all disclosures of the record outside the agency as required in Section 3-108(a)(2).

COMMENT

This section gives the individual or his duly authorized representative the right of access to any accessible record pertaining to him. The definition of an "accessible record" provided in Section 1-105(1) should be recalled. This definition means a personal record that can be retrieved as a result: (1) of the agency's use of a retrieval scheme or index based on the identity of the individual; or (2) of the requester providing sufficiently detailed information to enable the agency to locate the record without an unreasonable expenditure of time, effort, money or other resources. The compliance timetable and procedures of Section 2-102 are incorporated by reference. Consequently, the same procedures apply if the individual is requesting access to any record whether or not his own. An individual, under the definition of accessible records, however, may be required to give a more detailed description of the information sought than would a general requester under the freedom of information standards contained in Article 2.

Two other features of this section should be noted. First, each agency must verify the identity of an individual purporting to seek access to his own personal records. Second, the agency is required to account for disclosures of a personal record outside the agency only if a specific request is made. Section 3-108(a)(2) sets forth the agency duty to maintain an accounting of the release of personal records to recipients outside the agency.

§3-106. [*Limitations on Individual Access.*]

(a) An agency is not required by Section 3-105 to disclose:

(1) information that may be withheld pursuant to Section 2-103(a)(1) and (3) through (11) except to the extent that the

information sought was submitted by the requester, but under appropriate safeguards designed to protect the integrity of the examination process, an individual may examine, but not copy, his own test questions and answers in any examination used for licensing or employment;

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

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

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

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

COMMENT

This section imposes limits on the individual's right of access to his personal records. Subsection (a)(1) incorporates the relevant freedom of information exemptions of Section 2-103 except for: (1) inter-agency or intra-agency advisory, consultative or deliberative material that refers to the requester; and (2) individually identifiable records that refer to the requester. Additionally, subsection (a)(1) allows disclosure of information that would otherwise be exempt under Section 2-103(a)(1) and (3) through (11) if the information was originally submitted to the agency by the requester.

Subsection (a)(2) protects the anonymity of individuals who write letters of recommendation or provide character and fitness evaluations. A record requester is entitled to access, however, provided that the identity of the source of the evaluation is not revealed. Finally, subsection (a)(3) limits an individual's access to his personal records to the extent necessary to prevent a clearly unwarranted invasion of another individual's personal privacy. *See* Sections 3-101 and 3-102. The agency should, of course, balance the public interest in disclosure against the privacy interest of the individual to whom the records pertain.

This section also confirms that an individual shall have access to his own test questions and answers in any examination used for licensing or public employment. This applies to examinations that the individual must take and pass in order to practice a trade or profession such as bar and real estate examinations. This right is limited to access and does not include copying. This limitation enables government agencies to protect the integrity of test questions that may be used for future examinations.

Many states provide by statute for the confidentiality of records of minors who seek treatment or counseling for venereal disease, pregnancy, and alcohol or other drug abuse. The purpose of these statutes is to remove the fear of parental discovery and thus encourage minors to seek appropriate aid. Subsection (b) prevents parents and guardians from circumventing these statutes by asserting, in a representative legal capacity, the access rights of their children under section 2-105.

Subsection (c) is identical in intent to subsection 2-103(f) and follows the mandate of the Federal Freedom of Information Act that non-exempt information should be segregated from exempt information and released to the requester.

§3-107. [*Correction and Amendment of Records; Propagation.*]

(a) An individual may request an agency to correct or amend any incomplete or inaccurate information pertaining to him if it is contained in an accessible record and the record is available under Section 3-105.

(b) Not later than 7 days after receiving a request from an individual in writing to correct or amend an accessible record pertaining to him, an agency shall:

(1) make the requested correction or amendment and inform the requester of the action;

(2) inform the requester that the agency does not maintain the record and, if it knows, provide the name and location of the agency maintaining it; or

(3) inform the requester in writing of its refusal to correct or amend the record as requested, the reason for the refusal, the agency procedures for review of the refusal by the head of the agency, and the name and position or title of the individual responsible for the refusal.

(c) Not later than 30 days after an individual requests review of an agency's refusal to correct or amend his record, the agency shall make a final determination.

(d) If, after the review provided for by subsection (c) the agency refuses to correct or amend the record in accordance with the request, the agency shall:

(1) permit the requester to file with the record a concise statement of his reasons for the requested correction or amendment and his reasons for disagreement with the agency's refusal; and

(2) notify the requester of his right to bring an action pursuant to Section 3-112.

(e) Whenever an agency discloses information to a third party about which an individual has filed a statement pursuant to 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 rea-

sonable 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 3 years.

COMMENT

In combination with Sections 3-105 and 3-106, this section is designed to promote fairness to the individual in his relationships with government. Under Sections 3-105 and 3-106, the individual can ascertain the factual basis of agency action affecting him. Under this section he can attempt to correct or amend information in his personal record.

Subsection (a) gives the individual the right to correct or amend any incomplete or inaccurate information contained in a record accessible to him under Section 3-105. The request to correct or amend must be made to the agency maintaining the record.

Subsection (b) specifies that a request to correct or amend must be in writing and requires an agency to respond within 7 days after receipt of the request. If the agency makes the correction or amendment or does not maintain the record, the matter comes to an end. If the agency refuses to correct or amend as requested, it must inform the individual in writing of its decision and state the reasons. The agency also must inform the individual of the procedures for review by the head of the agency and disclose the name and position or title of the official responsible for the refusal to correct or amend. Subsection (c) provides that the head of the agency must make a final determination within 30 days after the request for review.

If the head of the agency refuses to order the correction or amendment, subsection (d) permits the individual to file a statement of disagreement with his record and requires the agency to notify the individual of his right to bring a judicial action pursuant to Section 3-112. Whenever an agency discloses disputed information to a third party, subsection (e) compels the agency to: (1) identify the disputed information; (2) provide a copy of the individual's statement of disagreement or pending request for amendment or correction; and (3) provide a statement of the agency's current position concerning the requested amendment or correction, including final action if any has been taken. The agency must also transmit a copy of the statement of its current position to the last known address of the individual whose record is released.

Finally, subsection (f) requires the agency to take reasonable steps to disseminate statements of disagreement and amendments or corrections to all persons and agencies who provided or received information within the preceding 3 years relating to the disputed portion of the individual's record. This propagation requirement assures that records disseminated outside the originating agency are corrected in the same manner as within the originating agency.

§3-108. [*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 statute or executive order, or local ordinance or resolution;

(2) maintain a record of all disclosures of individually

identifiable records to recipients outside the agency during the preceding 3 years, including the identity of each recipient and the date of each disclosure, but an agency is not required to maintain an accounting of disclosures made pursuant to Sections 3-101(1) through (4) and Sections 3-103(a)(2), (5) and (7);

(3) collect information, whenever practicable, directly from the individual to whom the information pertains;

(4) inform each individual from whom information is requested:

(i) of the principal purposes for which the agency intends to use the information;

(ii) of the consequences to the individual of not providing the information; and

(iii) whether the information collected and the identity of the person providing it will be accessible to the individual to whom the information pertains;

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

(6) establish reasonable safeguards to assure the integrity, confidentiality, and security of individually identifiable records.

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

COMMENT

This section sets forth the general agency duties with respect to the collection and maintenance of personal records.

Subsection (a)(1) seeks to limit the amount of information collected by government agencies. It restricts the collection of information to that which is necessary to accomplish an agency function.

Subsection (a)(2) requires each agency to maintain a record of all disclosures of personal records outside the agency within the preceding 3 years. This accounting includes the identity of each recipient and the date of each disclosure of personal records. Several categories of disclosures are exempt from the accounting requirement for one or more of the following reasons: (1) the individual privacy interest at stake is *de minimis*, *see* Section 3-101(1); (2) waiver, *see* Section 3-101(2); (3) the large volume of routine disclosures, *see* Section 3-101(3); or (4) the personal privacy safeguards followed by the recipient, *see* Sections 3-103(a)(2) and (7).

Subsection (a)(3) establishes the standard that an agency should, whenever practicable, collect information directly from the individual to whom it pertains. This gives the individual some control over the type of information being compiled about him plus a degree of choice in determining whether to provide information to the government. Subsection (a)(4) augments the direct collection principle by requiring each agency to explain to the individual why information is needed, the

consequences of refusing to cooperate and, finally, in the case of a person providing personal information about another individual, whether his identity will be revealed to the individual about whom information is sought.

Subsection (a)(5) establishes an affirmative responsibility to collect and maintain accurate, complete, timely, and relevant information. If the collection or maintenance of such information results in unfairness to the record subject, then the individual may have a cause of action against the agency. *See* Section 3-112.

Subsection (a)(6) also establishes an affirmative agency responsibility to protect individually identifiable information in its possession. The standards called for are "reasonable" protections and, thus, may vary from agency to agency depending upon the nature of the records to be protected and the sensitivity of the information contained in those records. For example, the protection required for a list of public assistance beneficiaries may require less protection than psychiatric records in a state hospital.

Subsection (b) relieves criminal law enforcement agencies of subsection (a)(5) duties. The necessarily broad scope and highly exploratory nature of investigative activities require an exemption from subsection (a)(5). Such agencies, however, must clearly identify, to users and recipients, potentially inaccurate, untimely, incomplete or irrelevant information.

§3-109. [*Disclosure of Individually Identifiable Records for Research Purposes; Limitations on Redisclosure.*]

(a) An agency may disclose or authorize disclosure of an individually identifiable record for research purposes only if the agency:

(1) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information in individually identifiable form and the additional risk to individual privacy as a result of the disclosure will be minimal;

(2) receives adequate assurances that the recipient will establish the safeguards required by Section 3-108(a)(6) and will remove or destroy the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(3) secures from the recipient of the records a written statement of his understanding of an agreement to the conditions of this subsection; and

(4) prohibits any subsequent use or disclosure of the record in individually identifiable form without express authorization of the agency or the individual to whom the record pertains.

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

(1) the person or agency reasonably believes that use or disclosure will prevent or minimize physical injury to an individual and the disclosure is limited to information necessary to protect the individual who has been or may be injured;

(2) the record is disclosed in individually identifiable form for the purpose of auditing or evaluating a research program and:

(i) the audit or evaluation is expressly authorized by law, and

(ii) 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 3-110(a).

COMMENT

Subsection (a)(1) strictly limits the accessibility of individually identifiable records for research purposes. As a threshold matter, the agency must determine that the research purpose cannot reasonably be accomplished without disclosure of records in individually identifiable form and further that the additional risk to individual privacy as a result of disclosure will be minimal.

Subsections (a)(2) and (3) are to ensure that the researcher adopts adequate safeguards to protect the confidentiality of research records and fully understands his responsibilities under this Article.

Subsection (a)(4) prohibits the researcher from disclosing individually identifiable records outside the framework of the research project unless the agency or the individual to whom the record pertains has given the researcher express authorization.

Under limited circumstances, subsection (b) allows disclosure of research records in the absence of the consent of the agency or the individual. Disclosure under subsection (b)(1) is deemed appropriate when the interests in the life or physical safety of an individual subject to injury would outweigh the privacy interest of the individual whose record is released. Release of research records for auditing purposes, as provided in subsection (b)(2), is plainly necessary to ensure that public funds are being spent properly. Subsection (b)(2) requires, however, that the audit not only be expressly authorized by law, but also that the auditor accept the prohibition on subsequent use or disclosure of information in individually identifiable form.

Finally, subsection (b)(3) permits disclosure of a research record in response to a judicial subpoena or search warrant for the substantial law enforcement reason provided in Section 3-110(a) to investigate alleged violations of law by a researcher or by a person or an agency maintaining research records. Without this provision, Section 3-109 would offer shelter to researchers who misspend public funds, misrepresent their purposes to research subjects or engage in other unlawful activity.

§3-110. [*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 by a person using the record for a research purpose or by a person or agency maintaining the record.

(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 the person using the record for a research purpose or a person or agency maintaining the record.

COMMENT

Subsection (a) restricts the issuance of search warrants or judicial subpoenas to obtain research records. Their issuance must be to assist the investigation of alleged violations of law by the researcher or by a person or agency maintaining research records. The prosecution of such violations is not only in the government's interest, but it also protects the rights of the research subjects, particularly those whose records were disclosed for research purposes by the agency. Evidence of other violations of law (primarily by research subjects) may appear in research records, but the policy underlying this section is to protect the confidentiality of the information provided. Thus, law enforcement officials must detect and prosecute such violations by independent investigative methods.

Subsection (b) supplements the provisions of subsection (a) my making research records and the fruits derived from them inadmissible as evidence in any administrative, judicial or legislative proceeding except against the researcher or a person or agency maintaining research records.

The provisions of this subsection apply only to "research records" as defined in Section 1-105(10). This section does not create a general researcher's privilege.

§3-111. [*Government Contractors and Grant Recipients.*]

(a) Any contractor, grant recipient, or subcontractor of either, who performs any function of an agency that requires the contractor or grant recipient to maintain individually identifiable records is subject to Sections 3-101 and 3-102 with respect to those records.

(b) The agency with which the contract or grant is established is responsible for assuring compliance with the provisions of this Article.

(c) For purposes of the civil remedies of Section 3-112, a contractor or grant recipient is a separate agency and in that capacity is subject to injunctive or other relief, and is liable for damages, attorney's fees, and all other expenses reasonably incurred in the litigation.

(d) An official or employee of an agency may not obligate the agency to indemnify a contractor, grant recipient, or subcontractor of either, for losses suffered as a result of its liabilities under Section 3-112.

COMMENT

A contractor or grant recipient who performs any function for an agency requiring the maintenance of individually identifiable records is subject to the provisions of this Article insofar as those records are concerned. The agency is responsible for ensuring a contractor's or grant recipient's good faith compliance with this Article. Yet, for the purposes of civil liability under Section 3-110, the contractor or grant recipient is a separate agency and as such is assessable damages, attorney's fees and litigation expenses if proven to have been in violation of the provisions of this Article. The agency cannot obligate itself to indemnify a contractor or grant recipient for any losses incurred as a result of liability under Section 3-112. This provision is necessary to protect against agencies avoiding the coverage of this Article by having records maintained by contractors or grant recipients.

§3-112. [*Civil Remedies.*]

(a) Any individual aggrieved by a violation of Sections 3-101 through 3-111 with respect to his personal records may bring an action for relief as provided in this section.

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

(c) In any action brought under this section alleging an agency's refusal to comply, in whole or in part, with a request for access under Section 3-105, the court shall hear the matter *de novo*, may order the agency to disclose the records or account for the uses and disclosures thereof, and may order the production of any agency records or other information withheld from the requester. The court may examine the contents of any agency records *in camera* to determine whether the records or any portion thereof may be withheld under Section 3-106. The burden of proof is on the agency to establish the nondisclosability of a record.

(d) In any action brought under this section in which the court determines that the agency has violated any provision of Sections 3-101 through 3-111, the claimant is entitled to recover from the agency damages sustained as a result of the violation; but he may not recover more than [$10,000] exclusive of any pecuniary loss. An officer or employee of an agency is not personally liable to the claimant for damages sustained as a result of a violation of this Article.

(e) An agency is entitled to indemnification from an employee or officer of the agency who:

(1) willfully discloses or provides a copy of an individually identifiable record to any person or agency not entitled to receive it; and

(2) has knowledge that disclosure is prohibited.

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

(g) If an agency fails to comply with the time limits of Sections 3-105 and 3-107, the requester may bring an action pursuant to this section.

COMMENT

Subsection (a) authorizes judicial relief for violations of Sections 3-101 through 3-111 of the Article. An action may be brought by an aggrieved individual, but only with respect to his own personal records. To be "aggrieved" under subsection (a), an individual must establish that: (1) the alleged violation caused injury in fact; and (2) the injury was to an interest within the zone of interests sought to be protected by this Article. *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973); *Association of Data Processing v. Camp*, 397 U.S. 150 (1970). As indicated in subsections (b), (c) and (d), relief can be sought only against the agency. The only departure from the policy of agency liability arises under subsection (e) which authorizes agency indemnification from an employee or officer who willfully and knowingly discloses an individually identifiable record to a third party not entitled under this Article to receive it.

Subsection (b) defines the scope of an action to compel agency compliance with Sections 3-101 through 3-111. Subsection (c) deals with the special procedures associated with an individual's attempt to gain access to his own records pursuant to Section 3-105. In that situation, the court is empowered to review the requested records *in camera* to determine whether they may be withheld on one of the grounds set forth in Section 3-106. The burden of proof is on the agency to establish the non-disclosability of all or a portion of an accessible record.

Judicial review under subsections (b) and (c) is *de novo*.

Subsection (d) makes the agency liable for damages sustained as a result of any violation of Sections 3-101 through 3-111. There is no ceiling on recovery for pecuniary loss. Recovery for general damages, however, cannot exceed $10,000 exclusive of any recovery for pecuniary loss. Agency employees or officers are not subject to individual liability under this subsection. But under subsection (e) the agency may seek indemnification from employees or officers who willfully disclose an individually identifiable record with knowledge that disclosure is prohibited by this Article. The policy of shielding employees and officers from individual liability cannot be justified in the face of a violation that so grossly undermines the fundamental premise of this Article.

Subsections (f) and (g) are identical to subsections (b) and (d) of Section 2-104. See the comment accompanying those subsections.

§3-113. [*Disciplinary Action.*] Any agency shall take disciplinary action, which may include suspension or discharge, against any officer or employee of the agency who knowingly and willfully violates any provision of this Article. Any other violation of this Article is cause for disciplinary action.

COMMENT

This section is identical to Section 2-105. See the comment accompanying that section.

§3-114. [*Criminal Penalties.*]

(a) An officer or employee of an agency or authorized recipient of records under Section 3-109(a) who willfully discloses or provides a copy of an individually identifiable record to any person or agency, with knowledge that disclosure is prohibited, is guilty of a [_____].

(b) A person who, by false pretenses, bribery or theft, gains access to or obtains a copy of an individually identifiable record whose disclosure is prohibited to him is guilty of a [_____].

COMMENT

Criminal provisions are contained occasionally in legislation similar to this Code. Some criminal provisions authorize sanctions for willful or purposeful violations of *any* provision of the Act. Minn. Stat. §15.167 (1977); Ohio Rev. Code Ann. §1347.99 (1980); Utah Code Ann. §63-50-9 (1953). Others limit criminal penalties to knowing and willful violations of provisions that may be regarded as central to the privacy protection mechanism of the statute. Such statutes, almost without exception, single out disclosure of personal records to unauthorized persons and obtaining records by false pretenses or other unlawful means as the kinds of violations which warrant the extreme response of criminal prosecution. *See, e.g.*, Federal Fair Credit Reporting Act, 15 U.S.C. §§1681q-r; California Information Practices Act, Cal. Civ. Code §1798.56 (Supp. 1980).

This section adopts the latter approach. Subsection (a) makes it criminal to disclose an individually identifiable record to any person or agency not entitled to receive it if: (1) the disclosure is willful; and (2) the disclosure is made with knowledge that it is in violation of this Article. This prohibition applies not only to employees or officers of an agency, but also to an authorized recipient of records under Section 3-109(a). Subsection (b) makes it criminal for a person to obtain an individually identifiable record by false pretenses, bribery, or theft when disclosure is prohibited to him by this Article.

This section does not establish a grade for these offenses. But among the existing statutes protecting the privacy of individual records, those which include criminal penalties treat such violations as misdemeanors not felonies.

§3-115. [*Agency Implementation.*] Each agency shall:

(1) issue instructions and guidelines necessary to effectuate this Article, and

(2) take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of personal records are informed of the requirements of this Article and the requirements and procedures adopted by the agency pursuant to this Article.

COMMENT

This section requires each agency to take measures reasonably calculated to achieve compliance with this Article. The principal requirement is to issue guidelines or instructions concerning agency compliance responsibilities. Other steps are left to the judgment of the head of the agency. It should be noted that Section 5-101 authorizes an exemption from the requirements of this section under certain circumstances. The basic purpose of the exemption provision is to relieve smaller agencies with limited resources of the obligations imposed by this section when the public benefit derived from full compliance would be minimal.

§3-116. [*Report of Recordkeeping Policies and Practices.*]

(a) Each agency shall compile a report each year describing the personal records it maintains. The report must be made available to the [Office of Information Practices] [Secretary of State] upon request. The report must include:

(1) the name and location of each set of records;

(2) the authority under which the records are maintained;

(3) the categories of individuals concerning whom records are maintained;

(4) the categories of information or data maintained in the records;

(5) the categories of sources of information in the records;

(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:

(i) another agency, or

(ii) a person other than an agency;

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

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

(11) the agency procedures whereby an individual can request access to personal records; and

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

(b) The agency shall make the reports available for public inspection.

COMMENT

The general policy of this section is to facilitate centralized review of agency recordkeeping practices and to inform the public of those practices so that individuals can effectively assert their rights under this Article.

Under subsection (a), each agency is required annually to prepare a report describing the personal records it maintains. Subsections (a)(1) through (a)(12) set forth the contents of the annual report. This report must be made available upon request to the Office of Information Practices or Secretary of State (depending on whether Article IV is adopted).

The agency under subsection (b) must also make the report available to the public for inspection.

[OPTIONAL]

ARTICLE 4

OFFICE OF INFORMATION PRACTICES

§4-101. [*Organization; Appointment of Director.*]

(a) The Office of Information Practices is created.

(b) The Governor shall appoint with the advice and consent of the [name of legislative body] a director of the Office of Information Practices who is its chief executive officer.

(c) All powers and duties of the Office of Information Practices are vested in the director.

(d) The director may delegate any of his powers and duties to any other officer or employee of the Office.

COMMENT

The establishment of an Office of Information Practices is not fundamental to the effectiveness of this Code. But, as Section 4-102 should indicate, the Office can serve the following important administrative functions: (1) monitoring general agency compliance; (2) advising agencies concerning compliance responsibilities; and (3) informing the public of its rights under this Code and how those rights can be exercised.

Oversight agencies for privacy and freedom of information acts exist in a number of states. *See, e.g.*, Ark. Stat. Ann. §16-804 (privacy); Cal. Civ. Code §1798.4 *et seq.* (privacy); Conn. Gen. Stat. Ann. §1-21j (freedom of information); Minn. Stat. Ann. §15.169 (privacy); N.Y. Pub. Off. Law §89 (freedom of information). Although their responsibilities vary from state to state, Section 4-102 offers guidance to the states by enumerating the powers and duties of the Office of Information Practices. Each state will have to weigh for itself the advantages of centralizing the powers and duties vested in this Office by Section 4-102.

§4-102. [*Powers and Duties of the Office of Information Practices.*]

(a) With respect to Article 2, [Freedom of Information], the Office of Information Practices:

(1) upon request by an agency, shall provide advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;

(2) upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies;

(3) may conduct inquiries regarding compliance by an agency and investigate possible violations by any officer or employee of any agency;

(4) may examine the records of any agency for the purpose of paragraph (3) and seek to enforce that power in the courts of this State;

(5) may recommend disciplinary action to appropriate officers of an agency;

(6) shall report annually to the Governor and the [name of legislative body] on the activities and findings of the Office, including recommendations for legislative changes; and

(7) shall receive complaints from and actively solicit the comments of the public regarding the implementation of the Article.

(b) With respect to Article 3, [Disclosure of Personal Records], the Office of Information Practices:

(1) shall review the official acts, records, policies and procedures of the officer designated for each agency pursuant to Section 3-116(10);

(2) shall assist agencies in complying;

(3) upon request by an agency, shall provide [an] [a binding] interpretative ruling concerning any question arising under the Article;

(4) upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies;

(5) may conduct inquiries regarding agency compliance by an agency and investigate possible violations by any officer, employee, contractor, grant recipient, subcontractor or agent of any agency;

(6) 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;

(7) may recommend disciplinary action or criminal prosecution to the appropriate officers of an agency;

(8) shall receive complaints from and actively solicit the comments of the public regarding the effectuation of the Article;

(9) report annually to the Governor and the [name of legislative body] summarizing the expressed complaints, comments and concerns;

(10) may conduct any other investigations and prepare and publish any other reports and recommendations necessary or desirable to protect an individual's right of privacy; and

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

(i) the right of access to records pertaining to him;

(ii) the right to obtain a copy of records pertaining to him;

(iii) the right to know the purposes for which records pertaining to him are kept;

(iv) the right to be informed of the uses and disclosures of records pertaining to him;

(v) the right to correct or amend records pertaining to him; and

(vi) the right to place a statement in a record pertaining to him.

(c) The officer may bring an action against another agency, other than for damages, to enforce the provisions of this Code.

COMMENT

This section enumerates separately for Article 2 and Article 3 the powers and duties of the Office of Information Practices. Thus, if a state prefers to empower the Office with responsibilities under one of the Articles, it may easily do so under this Code without undermining the oversight concept. An office with unified responsibility for both areas, however, has strong appeal because of the inherent tension between freedom of information and privacy and the need for a sound and authoritative reconciliation of those interests. The least workable format would be creation of separate offices to monitor compliance with the two Articles. This would tend to institutionalize the tensions rather than resolving them. Exclusive reliance on judicial enforcement of Articles 2 and 3 would be preferable to that alternative.

Subsections (a) and (b) list the powers and duties of the Office for Articles 2 and 3 respectively and are self-explanatory.

Subsection (c) authorizes the Office to bring an action against another agency to enforce the provisions of this Code. This enforcement power is limited to injunctive, declaratory and similar relief. The Office may not bring an action for damages on behalf of individuals.

ARTICLE [4] [5]
EXEMPTIONS

§[4-101] [5-101] [*Grant of Exemption.*]

(a) Pursuant to the administrative rule-making procedures of this State, the [Office of Information Practices] [Governor] may adopt rules under which it may exempt an agency from compliance with this Code.

(b) An [annual] exemption may be granted to an agency only if the [Office of Information Practices] [Governor] determines that the benefit to the agency from the exemption outweighs the public interest in full compliance with this Code.

(c) In determining whether to grant an exemption, the [Office of Information Practices] [Governor] shall consider, among other relevant factors:

(1) the number and type of government records that would be affected by the exemption;

(2) the probable number of requests for disclosure of government records to be received in a year by the agency requesting exemption; and

(3) the likelihood of an abuse of freedom of information or privacy interests that may result from the grant of the ex-

emption.

(d) A grant of an exemption will relieve an agency from the duty to comply with:

(1) Section 2-102(c) to the extent that it requires the agency to provide access to facilities for duplication;

(2) Section 2-102(f) but the agency shall notify the requester in writing the reasons for its determination; and

(3) Sections 3-115 and 3-116.

(e) Exemptions granted under this section must be general. Each exempt classification must be established on reasonable terms and must reasonably identify the agencies entitled to exemption. All agencies falling within a classification established for exemption are entitled to the exemption.

(f) An exemption must set forth the grounds upon which it is based.

(g) This section shall be strictly construed and an exemption may be granted only in a situation in which it is found impractical to require compliance.

COMMENT

This section authorizes either the Office of Information Practices or the Governor to adopt rules making possible the grant of an exemption from compliance with certain potentially burdensome provisions of Articles 2 and 3. The grant of exemption is subject to annual renewal and must be in accord with the balancing standard of subsection (b). The benefit to the agency from the exemption must outweigh the public interest in full compliance with the sections for which an exemption is sought.

Subsection (c) enumerates the principal factors bearing on the decision to exempt.

Subsection (d) lists the sections of Articles 2 and 3 for which exemption is available.

Subsections (e) and (f) require that grants of exemption be general in form and that the grounds for exemption be stated. Finally, subsection (g) states the policy that this section should be construed strictly to allow exemptions only when compliance with the relevant provisions of this Code would be impractical.

UNIFORM HEALTH-CARE INFORMATION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FOURTH YEAR
IN MINNEAPOLIS, MINNESOTA
AUGUST 2-9, 1985

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Baltimore, Maryland, February 11, 1986

UNIFORM HEALTH-CARE INFORMATION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
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UNIFORM HEALTH-CARE INFORMATION ACT

PREFATORY NOTE

The critical role that confidentiality plays in the provision of health care has been recognized almost from the inception of the medical profession. It is well accepted that confidentiality is essential to a patient's trust in a health-care provider and to a patient's willingness to supply information candidly for his or her benefit. See, generally, Gellman, *Prescribing Privacy: The Uncertain Role of the Physician in the Protection of Patient Privacy*, 62 N.C.L. Rev. 255 (1984) (hereinafter cited as Gellman).

Over the last several decades, a number of fundamental developments have increased the threat to confidentiality of health-care information. The emergence of third-party payment plans; the use of health-care information for nonhealth-care purposes; the growing involvement of government agencies in virtually all aspects of health care; and the exponential increase in the use of computers and automated information systems for health-care record information have combined to put substantial pressure on traditional confidentiality protections. Privacy Protection Study Commission, *Personal Privacy in an Information Society*, 283 (1977) (hereinafter cited as Privacy Commission Report).

To make matters worse from a privacy standpoint, the sheer amount of personal data kept in health-care records, and the number of individuals who monitor those records have mushroomed over the same period. It goes without saying that much of the information in health-care records is highly personal and, if disclosed improperly, may cause emotional, psychological, and physical harm to the patient. The Privacy Commission (1975-1977) and the National Commission on the Confidentiality of Health Record (1976-1979) received hundreds of complaints from patients describing harms they suffered as a result of the misuse of their health records. The Canadian "Krever Commission" *(Report of the Commission of Inquiry into the Confidentiality of Health Information* (1980)) documented several hundred instances of abuse of medical records.

For all of these reasons Congress, state legislatures, courts, and health professional organizations have struggled over the last 20 years to develop law and policy that restore patient privacy and confidentiality protections. Nevertheless, the great majority of states have not yet adopted comprehensive statutes that regulate the record-keeping practices of health-care providers.

In almost one-fifth of the states, comprehensive privacy acts -- based more or less on the 1974 federal Privacy Act, 5 U.S.C. § 552(a) -- provide some assurance that state-held medical records will not be disclosed to third parties without first obtaining the patient's consent. E.g., Ark. Stat. Ann. § 16-802 *et seq.*; Conn. Gen. Stat. Ann. § 4-190 *et seq.*; Ind. Code Ann. § 4-1-6-1; Mass. Gen. Laws ch. 30 § 63, ch. 66A §§ 1-3, ch. 214 § 3B; Minn. Stat. Ann. § 15.162 *et seq.*, Ohio Rev. Code Ann. 1347.01 *et seq.*; Utah Code Ann. § 63-50-1 *et seq.*; Va. Code § 2.1-377 *et seq.*

However, only two types of health-record legislation are common to virtually every state. First, statutes in every state require health-care providers to report certain types of patient information to state agencies. Typically, these statutes require providers to report health data concerning their patients who have: violent injuries (gunshot and knife wounds are most common); contagious or infectious diseases; tuberculosis; venereal disease; occupational illnesses or injuries; certain congenital defects; and injuries from child abuse.

Secondly, almost every state recognizes some type of provider-patient privilege. The privilege permits the patient to restrict his physician (and occasionally other types of health professionals) from disclosing in many types of judicial proceedings, information received in confidence from the patient about the patient's health. Because a physician-patient privilege did not exist at common law, courts do not recognize a privilege in states without statutory provisions. (South Carolina, Texas, and Vermont do not have health-care provider-patient privilege statutes and are thus the exception to the rule.)

Most privilege statutes expressly provide that the privilege belongs to the patient and thus can be waived by the patient. Other circumstances in which physicians can be compelled to provide information to a court include court-ordered examinations, where child abuse is at issue, where involuntary hospitalization is at issue, and where the patient relies upon his medical condition as a defense.

It is difficult to generalize about privilege case law since it involves statutory, common law, and occasionally constitutional doctrines. However, privilege decisions seem increasingly to narrow the circumstances under which privilege can be claimed, and to expand exceptions requiring providers to provide health-record information. This trend confirms the opinion of many health-care professionals that the privilege doctrine is an increasingly fragile shield to protect the confidentiality of the health-care relationship. Gellman, *supra*, p. 3, at 272.

Virtually all major health professional groups, including the American Medical Association, the American Hospital Association, the American Nurses' Association, the American Psychiatric Association, the American Medical Record Association, and the American Psychological Association, have adopted formal codes, guidelines, or policies regarding the handling of health records. For legislative audiences, the American Psychiatric Association, the American Medical Records Association, and the American Medical Association, among others, developed model health-record confidentiality statutes.

In drafting this Act, the Conference took into account the proposed standards and model statutes written by these health professional groups and national commissions. The Act embodies many of the standards and all of the principles found in the recommendations of the federal Privacy Protection Study Commission. Existing and proposed state and federal statutes were also reviewed and utilized.

Many of the organizations with a direct interest in the subject of this Act participated directly in the Conference's drafting process. These included the American Medical Association, the American Hospital Association, the American Medical Records Association, the American Psychiatric Association, the Health Insurance Association, the United States Department of Health and Human Services, the United States Department of Justice, and the American Bar Association. In addition, the Conference sought and received written input from numerous other interested organizations and individuals including the National Blood Bank Association, the Hospital Pharmacists Association, the American Society of Internal Medicine, the American Society of Law and Medicine, and others. Although such assistance is gratefully acknowledged, the Conference is solely responsible for the final product which was the subject of three years of effort by the Drafting Committee and was debated by the entire Conference in two separate years.

The contents of Article I address more specifically the underlying reasons for the Act, as Legislative Findings.

UNIFORM HEALTH-CARE INFORMATION ACT

ARTICLE I

FINDINGS AND DEFINITIONS

Section 1-101. Legislative Findings

The [Legislature] finds that:

(1) Health-care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health-care, or other interests.

(2) Patients need access to their own health-care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health-care providers have an interest in assuring that health-care information is not improperly disclosed and in having clear and certain rules for the disclosure of health-care information.

(4) Persons other than health-care providers obtain, use, and disclose health-record information in many different contexts and for many different purposes. It is the public policy of this State that a patient's interest in the proper use and disclosure of the patient's health-care information survives even when the information is held by persons other than health-care providers.

(5) The movement of patients and their health-care information across state lines, access to and exchange of health-care information from automated data banks, and the emergence of multi-state health-care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health-care information.

COMMENT

The inclusion of a statement of legislative findings is a common practice in privacy legislation. These findings aid agency officials, courts, and the public in identifying and properly applying the Act's purposes. For example, the Conference's Uniform Information Practices Code contains a statement of "General Provisions" which sets forth the purposes to be served by the Information Practices Code.

The first statement recognizes the extraordinary sensitivity of health-care information. The second expresses the Act's view that patients should have access to their own health-care information and an opportunity to correct inaccurate or incomplete information. The Act seeks to give patients more control over their health-care information by giving them a right to see and copy their own records and to correct and amend their records when these records are in the hands of health-care providers.

The third statement expresses the view that health-care providers have an interest in assuring the confidentiality of health-care information and in being able to rely upon clear and certain rules to govern disclosure decisions. In this regard the Act permits patients to approve or disapprove disclosures by health-care providers to third parties in most instances. Moreover, the Act seeks to restrict and regulate the flow of health-care information to third parties by carefully limiting disclosures that can be made without patient consent; by restricting the acquisition of health-care information by compulsory process; and by imposing security requirements on health-care providers maintaining such data.

The fourth statement makes the point that many nonhealth-care providers obtain, use, and disclose health-care information for innumerable nonhealth-care purposes. It is the public policy of the state that a patient has an interest in the proper use and disclosure of the patient's health-care information even when the information is held by nonhealth-care providers. The statement recognizes that such rights exist as a matter of case law and other expressions of public policy and to assure that enactment of the Act — notwithstanding its general limitation to health-care providers — does not undercut health-record privacy rights that may exist under other law and in other contexts.

There are two reasons why the Act does not attempt to regulate the use or redisclosure of health-care information once such information is held by nonhealth-care providers (except in those limited circumstances set forth in Article II where a health-care provider makes health-care information available to third parties without the patient's consent and in order to meet the provider's needs or interests). First, the expectations that a patient and society can rightfully have concerning the use and disclosure of health-care information must necessarily change when health-care information is held by nonhealth-care providers. The type of relationship that nonhealth-care providers have with patients is inevitably different than the relationship that health-care providers have with patients. The interests that will be advanced or deterred by confidentiality are different; the needs of the nonhealth-care providers to use and disclose the information are different; and the threat to patient privacy interests is different. These issues are complex, and require different responses, depending on the identity of the particular holder of the record and the reasons for which the records are held.

Second, in recognition of these differing interests and needs Congress and state legislatures have already adopted, or are well along in the process of adopting, statutes that regulate the handling of personal information, including health-care information, when held outside of the health-care relationship. For example, the Fair Credit Reporting Act regulates the handling of health-care information by consumer reporting agencies. The Privacy Act of 1974 regulates the handling of health-care information by federal agencies. Over a dozen states have adopted statutes which regulate the handling of health-care information by state agencies. A model privacy protection act, promulgated by the National Association of Insurance Commissioners, and thus far adopted in some ten states, addresses the handling of health-care information by insurance carriers. Several states have adopted statutes which regulate the handling of health-care information by private employers.

These legislative developments indicate as an empirical matter that a health-care information statute should not cover the handling of health-care information by nonhealth-care providers. As a conceptual matter a health-care information statute should not attempt to cover health-care information in other record-keeping settings because the expectations, interests, needs, and threats posed by the use and disclosure of health-care information in these different record-keeping relationships vary so significantly.

No doubt for these reasons, virtually every record-keeping and privacy statute that has been adopted, including the Conference's Uniform Information Practices Code, regulates personal information according to the type of record-keeper holding the information, and not according to the type of personal information being held. In taking this approach Congress, state legislatures, and other legislative authors are acting in a manner that is consistent with the recommendations of the Privacy Protection Study Commission.

The fifth and final statement in the Findings section explains that a uniform law is necessary due to the movement of patients and their health-care information across state lines; the use of automated information systems; and the emergence of multi-state health-care providers.

It is increasingly common for patients to have health-care information created in one state but used in another state. Given the mobility of patients, and the patients' use of providers located in different states, it is important for patients to be able to rely on uniform rules for patient access and confidentiality. Moreover, health-care information is increasingly maintained and communicated via automated information systems. The effective operation of these systems and their operation in a manner protective of patient interest is advanced by uniform confidentiality standards.

Furthermore, health care increasingly is provided by many different types of providers. In the early part of this century roughly 85 percent of all health professionals were physicians. Today physicians make up only about five percent of the total. *Dilemma, A Report of the National Commission on the Confidentiality of Health Records* (1977), at p. 2. Thus, physician's ethical tradition of confidentiality plays a diminishing role in assuring health-record privacy.

Moreover, not only are health-care occupations changing, so too is the corporate status of health-care providers. Increasingly, health care is provided by national corporations with health-care operations in many different states. Some of these corporations have begun to centralize their record-keeping operations. As a result of these changes in the health-care industry, it is of growing importance that providers be able to rely upon uniform confidentiality standards.

Section 1-102. Definitions

As used in this [Act] unless the context otherwise requires:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health-care provider by a person not employed by or affiliated with the provider to determine compliance with:

(i) statutory, regulatory, fiscal, medical, or scientific standards;

(ii) a private or public program of payments to a health-care provider; or

(iii) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a particular patient who is an in-patient in a health-care facility or who is currently receiving emergency health care in a health-care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health-care provider:

(i) to diagnose, treat, or maintain a patient's physical or mental condition, or

(ii) that affects the structure or any function of the human body.

(5) "Health-care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health-care provider provides health care to patients.

(6) "Health-care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health-care information.

(7) "Health-care provider" means a person who is licensed, certified, or otherwise authorized by the law of this State to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain,"as related to health-care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

COMMENT

This section contains the Act's definitions.

Subsection (1) defines the term "audit." The definition of audit is important because the Act allows nonconsensual disclosure for the purpose of an "audit." See Section 2-104(a)(8). Audit is defined broadly to include government and private assessments, evaluations, determinations, or investigations relating to compliance with statutory, regulatory, fiscal, medical, or scientific standards, or compliance with a private or public program of payments to health-care providers. Thus, audit may include traditional governmental auditing as well as private health program auditing, including rate setting and rate review, where applicable.

Audits also include assessments and investigations for licensing, accreditation, or certification of health-care facilities or providers by such organizations as the Joint Commission on Accreditation of Hospitals.

Organizations, such as hospital management companies, Blue Cross/Blue Shield and commercial insurers, which evaluate utilization, financial, or management practices under contractual arrangements with health-care facilities or providers also are included in this definition. These organizations, however, may not use their audit authority to obtain information to make decisions about payment of a particular patient's claim. Insurers can obtain information for claim purposes only by first obtaining the patient's consent, pursuant to Section 2-102.

Subsection (2) defines "directory information" as the disclosure of the presence and general health condition of an in-patient in a health-care facility or one who is receiving emergency treatment in a health-care facility. Under the terms of Section 2-104(b)(1), a health-care provider may disclose directory information without the patient's consent, unless the patient has instructed the health-care provider not to make the disclosure.

Disclosure of a patient's presence can include sufficient information to identify the patient and his location, including room and telephone numbers within the facility. While a facility is expected to exercise appropriate discretion to minimize the extent to which the disclosure of directory information jeopardizes patient privacy, disclosure of such information is common, absent instructions from the patient.

Subsection (3) defines "general health condition" to mean a generic description of the patient's health status such as "critical," "fair," "good," etc. The term "general health condition" does not include information about the diagnosis, symptomatology, or prognosis for the patient.

Subsection (4) defines "health care" broadly to include any type of service to diagnose, treat, or maintain a patient's physical or mental condition. The second part of the definition is included to make clear that medical procedures performed on one patient to help another, such as the withdrawal of blood by a bloodbank or a kidney transplant, are included.

Subsection (5) defines "health-care facility" to mean any physical location, such as a hospital, clinic, laboratory, or office which is maintained to permit a health-care provider to dispense health care.

Subsection (6) defines "health-care information" as any information in any form which relates to the patient's health care and can identify the patient. This definition is broad and includes all provider-maintained information, including a patient's personal health history, that both relates to health care and can be used to identify the patient. Health-care information does not include information which cannot be linked to a particular patient. Health-care information includes the record of disclosures of health-care information (the disclosure log). Providers are required to maintain such a log under Section 2-101(b) of the Act. If a state has an act which makes birth and death certificates public information, this Act would not affect that if an appropriate reference is made in Section 9-106.

Subsection (7) defines "health-care provider" to mean any person licensed, certified, or otherwise authorized by state law to provide health care as a business or a profession. The term "otherwise authorized" connotes some kind of formal recognition by appropriate authorities that the person is entitled to provide health care as a business or profession. Thus, family members providing health care are not covered, whereas licensed laboratories are covered.

However, this definition does not include pharmacists (except pharmacists that are employed by health-care providers, such as hospitals and those who perform services in addition to dispensing prescriptions) or others who provide health care solely through the sale or dispensing of drugs or medical devices. Persons who dispense health care exclusively through the sale of drugs and medical devices — pharmacists primarily — are excluded because they traditionally have a different relationship with their patients than do health-care providers. The relationship more closely resembles a seller-customer relationship than a provider-patient relationship. In addition, pharmacists and drug companies have an information relationship that should not be disturbed in an Act designed to address problems in the provider-patient relationship.

Subsection (8) defines "institutional review board" (IRB) to mean any board, committee, or other group designated by an institution to protect the rights of human research subjects. The definition includes IRB's established under Section 474 of the Public Health Service Act and state law.

In the last few years, IRB's have become a familiar part of the medical landscape. Federal health-care facilities and most other medium to large health-care facilities have created IRB's to review requests for the conduct of human experimentation research. IRB's are used in this Act as the necessary approval mechanism for research projects which are authorized to obtain access, in the provider's discretion, to health-care information, without patient consent. If a particular facility does not have an IRB, it is expected that researchers will find an appropriate IRB. The Act authorizes providers to rely on a finding by any qualified IRB, even if that IRB is not affiliated with the provider.

Subsection (9) defines "maintain" broadly to mean any act of holding or controlling health-care

information. A provider who maintains health-care information is subject to the requirements of the Act.

Subsection (10) defines "patient" to include both living and deceased individuals who receive or have received health care. The right of privacy survives death because reputation may be substantially harmed by the release of health-care information. When this occurs, family members, the deceased's estate, and others may be hurt or damaged. The personal representative of the deceased (by whatever name known in the particular state), as set out in Section 6-102, has the right to exercise this surviving right of privacy. *See Boggess v. Aetna Life Insurance Co.*, 196 S.E.2d 172 (Ga. 1973).

Subsection (11) defines "person" broadly to include any natural person or organizational entity, including trusts, partnerships, and corporations.

ARTICLE II

DISCLOSURE OF HEALTH-CARE INFORMATION

Section 2-101. Disclosure by Health-Care Provider

(a) Except as authorized in Section 2–104, a health-care provider, an individual who assists a health-care provider in the delivery of health care, or an agent and employee of a health-care provider may not disclose health-care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(b) A health-care provider shall maintain, in conjunction with a patient's recorded health-care information, a record of each person who has received or examined, in whole or in part, the recorded health-care information during the next preceding [three] years, except for a person who has examined the recorded health-care information under paragraph (1) or (2) of Section 2–104(a). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health-care information, the date of the receipt or examination, and, to the extent practicable, a description of the information disclosed:

COMMENT

This section prohibits a health-care provider from disclosing any health-care information about a patient without the patient's written authorization, unless the disclosure is permitted by Section 2-104 of this Act. An authorization must comply with the requirements of Section 2-102. Disclosures made pursuant to an authorization must be limited to the terms of that authorization.

Subsection (b) requires the health-care provider to maintain for three years a record of disclosures of written or otherwise recorded health-care information that the provider makes to any person who is providing the health-care provider with certain specified services. The subsection does not require that a record of oral disclosures be established or maintained. The disclosure record must contain the name and address of each recipient, the date of disclosure, and a description of the disclosed information (e.g., "x-rays," "full chart," or "all records relating to hospitalization for pneumonia"). The record of disclosure is to be maintained with the patient's health-care information where possible; however, if the records are kept in a form where that is not possible, the disclosure record should be readily accessible.

Nothing in this subsection requires a health-care provider to keep the underlying health-care records for a specific period of time, or indeed, to keep them at all. Indeed, the same is true for the rest of the Act, except for the provisions of Section 7-102, which requires retention of records while either a request for access by a patient or a request for disclosure pursuant to a disclosure authorization is pending. The purpose of this Act is to protect patient confidentiality; record retention practices raise a different set of considera-

tions and are governed by another body of law.

The categories of persons to whom disclosure can be made without the need for a disclosure record include independent contractors performing services for a health-care provider, such as data processing, as well as students or faculty of health-professional schools affiliated with a health-care facility. Persons who are not employees of a health-care provider, however, are subject to the special restrictions on redisclosure provided in Section 2-104(a)(2).

Section 2-102. Patient Authorization to Health-Care Provider for Disclosure

(a) A patient may authorize a health-care provider to disclose the patient's health-care information. A health-care provider shall honor an authorization and, if requested, provide a copy of the recorded health-care information unless the health-care provider denies the patient access to health-care information under Section 3–102.

(b) A health-care provider may charge a reasonable fee, not to exceed the health-care provider's actual cost for providing the health-care information, and is not required to honor an authorization until the fee is paid.

(c) To be valid, a disclosure authorization to a health-care provider must:

(1) be in writing, dated, and signed by the patient;

(2) identify the nature of the information to be disclosed;

(3) identify the person to whom the information is to be disclosed.

(d) Except as provided by this [Act], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(e) A health-care provider shall retain each authorization or revocation in conjunction with any health-care information from which disclosures are made.

(f) Except for authorizations to provide information to third-party health-care payors, an authorization may not permit the release of health-care information relating to future health care that the patient receives more than 6 months after the authorization was signed.

(g) An authorization in effect on the effective date of this [Act] remains valid for 30 months after the effective date of this [Act] unless an earlier date is specified or it is revoked under Section 2–103. Health-care information disclosed under such an authorization is otherwise subject to this [Act]. An authorization written after the effective date of this [Act] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires six months after it is signed.

COMMENT

This section provides the mechanism by which a patient may authorize the disclosure of health-care information. It is important to note that all of a patient's rights under this section, and indeed under this Act, can be exercised by a person authorized to act on behalf of the patient under Article 6. Under subsection (a), the recipient of such an authorization must honor the patient's request.

Subsection (b) provides that the person making a disclosure pursuant to an authorization may charge the person seeking the record a reasonable fee, not to exceed actual cost, for providing copies of documents. Thus, the provider would be able to recover a reasonable fee for providing copies or actual expenses, whichever is less. See also Comment to Section 3-101.

To be valid, an authorization must meet the criteria set forth in subsection (c).

A patient should have wide latitude in executing an authorization form. It can be very specific (e.g., "x-rays of my broken leg, disclosed by ABC Hospital to EKG Insurance Company") or very general (e.g., "all my health-care information to any life insurance company"), depending on the patient's wishes.

A patient will often have a right to privacy or confidentiality, pursuant to the physician-patient privilege, under other statutory or common law. Common law rights may arise under either tort law or a theory of implied contract. Subsection (d) provides that the signing of an authorization under this law does not, by itself, constitute a waiver of any of these privileges or rights.

Subsection (e) requires health-care providers to maintain authorizations in conjunction with the patient's health-care information.

Subsection (f) limits authorizations to information that already exists or will exist within six months, and prohibits general releases for any information that may be thereafter created. However, an exception is made for authorizations given to third-party payors (for example, insurance companies and employers who are self-insurers) in order to avoid disrupting and delaying patient reimbursement. It should be noted that Article VI provides for a similar exception where under state law, a second individual is authorized to "stand in the shoes" of a patient who may be incompetent or who has provided a general power of attorney.

Subsection (g) provides a "grandfather" clause for authorizations in effect prior to the passage of this Act. It would create considerable confusion to nullify those authorizations that do not meet the technical requirements of Section 2-102. Therefore, any authorization in effect prior to the passage of this Act will remain in effect for a period of 30 months unless an earlier date was specified or the patient elects to revoke the authorization by written notice pursuant to Section 2-103. Except for the technical requirements of the authorization, health-care information created prior to the effective date of this Act is fully subject to its requirements.

The subsection also provides for a 30-month cap on the length of authorizations signed after the effective date of the Act, although the patient would of course be free to specify a shorter period. The Privacy Protection Study Commission recommended a one-year authorization period; however, it was felt that such a short limit could create logistical problems for patients and providers without an accompanying increase in patient protection. The 30-month period was chosen to permit life insurers access to patient records, pursuant to a disclosure authorization, during the two-year contestability period found in most life insurance policies, and to provide them with a short grace period thereafter to initiate legal action.

The time limits in subsections (f) and (g) must be read together to determine the validity of a particular authorization. For 30 months after an authorization is signed, the holder may obtain access to any records in existence on the date the authorization was signed, or which were created within six months thereafter. Health-care information created more than six months after an authorization is signed cannot be obtained without a new authorization.

Section 2-103. Patient's Revocation of Authorization for Disclosure

A patient may revoke a disclosure authorization to a health-care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health-care provider for disclosures made in good-faith reliance on an authorization if the health-care provider had no notice of the revocation of the authorization.

COMMENT

A patient may, as a general rule, revoke any prior disclosure authorization. The form of revocation and the effective date of any revocation is left to existing state law. There is an exception to this rule when health care has been provided or other action taken in reliance on a prior authorization.

In this context, "action" means substantial or significant action and not trivial or incidental action. This limitation might be operative, for example, when a claim under a life insurance policy is made or when a patient on public assistance has signed an authorization permitting disclosure of information to the state Medicaid authority that will pay for the treatment. It would be inequitable to permit the patient to revoke the authorization upon completion of treatment but prior to submission of the claim by the hospital.

When a health-care provider maintaining a patient's records is presented with an authorization form by an insurance company or other party, it generally has no independent means of determining whether the authorization has been revoked. A health-care provider who relies in good faith on an authorization that conforms on its face to the requirements of this Act is not liable under this Act for improper disclosure that arises from that reliance.

Section 2-104. Disclosure Without Patient's Authorization

(a) A health-care provider may disclose health-care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health-care to the patient;

(2) to any other person who requires health-care information for health-care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health-care provider, or for assisting the health-care provider in the delivery of health care and the health-care provider reasonably believes that the person:

(i) will not use or disclose the health-care information for any other purpose; and

(ii) will take appropriate steps to protect the health-care information.

(3) to any other health-care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health-care provider not to make the disclosure;

(4) to any person if the health-care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;

(5) to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health-care provider not to make the disclosure;

(6) to a health-care provider who is the successor in interest to the health-care provider maintaining the health-care information;

(7) for use in a research project that an institutional review board has determined:

(i) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) is impracticable without the use or disclosure of the health-care information in individually identifiable form;

(iii) contains reasonable safeguards to protect the information from redisclosure;

(iv) contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(8) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health-care by a health-care provider or patient, or other unlawful conduct by the health-care provider;

(9) to an official of a penal or other custodial institution in which the patient is detained.

(b) A health-care provider may disclose health-care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health-care provider not to make the disclosure;

(2) to federal, state, or local public-health authorities, to the extent the health-care provider is required by law to report health-care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) pursuant to compulsory process in accordance with Section 2-105.

COMMENT

Subsection (a) enumerates certain circumstances under which disclosure can be made without patient consent. Disclosure under this subsection is on a need-to-know basis only.

Paragraph (a)(1) permits consultation within a health-care facility and with other health-care providers who are currently treating a patient. Such disclosures are often necessary to permit proper treatment.

Paragraph (a)(2) allows disclosure to persons who are not themselves health-care providers for planning, financial, administrative, or legal purposes. Thus billing services, outside laboratories, independent x-ray facilities, and other outside persons performing functions on behalf of the health-care facility can obtain records without patient authorization. Under this subsection records might be used by or disclosed to staff doctors, research fellows, student doctors and nurses, hospital accountants, and the hospital legal staff. Similarly, records would also be available to an attorney or insurance company acting on behalf of a health-care facility. Although subject to the need-to-know limitation, this paragraph adds restrictions on use and redisclosure of records by nonemployees performing services for a facility. Health-care providers must be satisfied that recipients have agreed to refrain from using the information for any purpose other than for the reason it was disclosed, and to take appropriate steps to protect its confidentiality. Thus, this provision, like other provisions in this Act which authorize nonconsensual disclosures, imposes restrictions on redisclosure. Such restrictions are appropriate and conceptually consistent with other provisions in the Act in that when disclosure is authorized by the patient the Act leaves the question of redisclosure to be worked out by the patient and the recipient or by other law. However, when the disclosure is not authorized by a patient, limits on redisclosure are appropriate because the patient does not have a basis to impose redisclosure limitations on the recipient.

Paragraph (a)(3) permits a health-care provider to consult with other health-care providers who have previously treated the patient. Under this provision, for example, a specialist might consult with the patient's general practitioner to help establish a diagnosis or recommended course of treatment. The patient is given the option of prohibiting such disclosures.

Paragraph (a)(4) permits a health-care provider to disclose information from a patient's record where the health-care provider has reason to believe that disclosure will avoid or minimize imminent danger to the health or safety of the patient or any other individual. Once it is apparent that an individual's health or safety is in imminent jeopardy, privacy concerns can become secondary. In some instances, such as after a serious accident, a patient may be unconscious and unable to consent to the release of information. This subsection would thus permit disclosure to a physician for purposes of emergency treatment. In other cases, such as where the patient is threatening the lives of hostages, the patient will obviously refuse to authorize disclosure. In such cases, immediate access to health-record information by appropriate personnel may be vital. For example, if a psychotic patient tells a physician he will kill another person as soon as he leaves the offices of the physician, that physician should disclose this threat of imminent danger to the threatened person or to the authorities. *See Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976) (physician has duty to exercise reasonable care to protect third persons who may be injured by a patient's actions; thus physician may be liable for failure to warn victim of patient's violent threats).

Paragraph (a)(5) permits a disclosure in those instances where it now generally occurs. For example, if a patient is in a coma or in intensive care after surgery, generally the patient's family is informed of the patient's condition, even if an authorization was not completed beforehand.

There are two restrictions on such disclosures. First, they must be in accordance with good health-care practice. This means that the patient's health-care provider must believe that such a disclosure is appropriate under the circumstances of each individual case. Secondly, the patient may prohibit any disclosure by so informing the health-care provider.

Even where a relative objects to disclosure to another relative, the person seeking information still has the option of going to court to seek release under Section 2-105(a)(9). This might be necessary, for example, if a mother denies her daughter access to records concerning the mother's use of DES or other drugs that could affect descendants.

Paragraph (a)(6) is intended to deal with those situations in which a health-care facility or health-care practice is sold. Such sales normally include a transfer of existing patient files. This practice would be permitted to continue, without the need to obtain consent from each individual patient.

Paragraph (a)(7) permits disclosure to health researchers provided that the research project has first been reviewed and approved by an institutional review board (IRB). IRB's established pursuant to Section 474 of the Public Health Service Act or other federal or state law already review all medical research subject to FDA approval to determine, *inter alia*, whether patient confidentiality has been sufficiently protected. *See* 21 C.F.R. § 56.111(7). This Act extends the concept of the IRB to all medical research utilizing individually identifiable health-record information and instructs the review board to make a number of determinations before it can approve the release of identifiable health-record information to a researcher. This requires a decision that the research is sufficiently important to outweigh the patient's privacy interests; is impractical to conduct without health-record information in individually identifiable form; and that the research plan contains adequate safeguards to protect against disclosure of patient identities and other unauthorized redisclosure. While subparagraph (a)(7)(v) permits a researcher to retain health-record information, the researcher must obtain IRB approval before undertaking the project.

Recognizing the importance of medical research to society, the subsection authorizes researchers to redisclose health-record information under certain carefully circumscribed conditions. For example, this provision will permit routine disclosure of health-record information to "registries" established to monitor various diseases such as cancer. Before any such disclosure can be made, however, the registry, like any other research project, would have to be reviewed by an IRB. Registries, which in large measure exist to provide a database for other research, would also be able to redisclose health-record information, provided that the redisclosure is first approved by an IRB.

There are many other situations in which redisclosure of health-record information to other researchers may be necessary. For example, when results of a medical study are published and then reviewed by other researchers and scholars, questions about the conduct of the research or adequacy of the data may arise. If the data may not be redisclosed, there may be no way to verify its accuracy. Further, some studies require that medical records be checked many years after treatment. In a recent example, the link between vaginal cancer and the drug DES was established only after researchers were able to check the records of the victims' mothers, and learned that the mothers had taken DES 20 years before. Indeed, the term "research project" should be broadly construed, and may encompass a series of linked projects. The need to retain information or redisclose it, and the adequacy of the security safeguards should be determined by the IRB on a case-by-case basis.

At the same time, this subparagraph prevents researchers from becoming information resources for law enforcement personnel or for others who might be curious about such data. Health-care providers and patients must be confident that information supplied to researchers will not be used to make decisions directly affecting patients. Thus, the Act permits redisclosure only to other researchers in conformity with a researcher's plan approved by an appropriate institutional review board.

Paragraph (a)(8) is intended to strike a balance between the individual's right of privacy and society's interest in controlling and managing health-care programs, including third-party payment programs. It permits disclosure for purposes of an audit, provided that the auditor not publicly release patient-identifiable information, unless it is essential to do so and, in any event, removes or destroys such information from any copies of the original material that are retained by the auditor at the earliest opportunity consistent with the purposes of the audit.

Paragraph (a)(9) permits a health-care provider to release patient records to a prison or other custodial facility while an individual is in custody, regardless of whether the health care was provided by the custodial facility or any other health-care facility. Once an individual is released from custody, the individual will have all of the rights accorded by this Act, regardless of whether the records were compiled while the individual was in custody.

Subsection (b) also permits certain disclosures without patient consent. However, it recognizes that there are certain situations in which disclosures should be made without the "need-to-know" restriction of subsection (a), either because that restriction is impractical or because disclosure is legally mandated.

Paragraph (b)(1) provides that the health-care provider may release directory information without a patient's express consent. Directory information is limited to the name and general medical status (e.g., good, fair, stable, poor, or critical condition) of a patient currently receiving treatment on an in-patient or emergency basis. As is the case with disclosure to family members under paragraph (a)(5), the patient may object to the release of such information, in which case the information cannot be released. Additionally, as with all paragraphs in this section, the Act does not require a health-care facility to release any information; it merely permits it to do so. Thus, if a psychiatric hospital has a policy of refusing to release directory information, this Act does not require it to change that policy.

Paragraphs (b)(2) and (b)(3) recognize that many states have adopted statutes or regulations that require the reporting of particular kinds of health-care information to public health or law enforcement authorities. *See*, e.g., Cal. Lab. Code § 6409 (West 1979) (physician reporting of occupational injuries and illnesses); Ark. Stat. Ann. § 42-615 (1979) (reporting deaths from violence or unusual circumstances; Mass. Gen. Laws Ann. ch. 111, § 191 (West 1979) (reporting of lead poisoning cases). In some instances, for example, health-care providers are required to report information about individuals with highly communicable diseases, such as diptheria, so that appropriate countermeasures can be taken. *See*, Ala. Code § 22-11-2 (1979); Ariz. Rev. Stat. Ann. § 36-623 (1979); N.J. Stat. Ann. §§ 26:4-15, 26:4-19 (West 1979). Such disclosures not always have to be made in individually identifiable form. However, laws vary from state to state, and many such laws require disclosure of individually identifiable information. Similarly, a number of states require that health-care providers report conditions such as gunshot or knife wounds or child abuse. *See* Ind. Code Ann. § 35-23-11-1 (Burns 1979); Mich. Comp. Laws § 750.411 (1970); Va. Code § 54-276.10 (1979); Colo. Rev. Stat. § 19-10-104 (1979); Ohio Rev. Code Ann. § 2151.421 (Page 1979); Wis. Stat. Ann. § 48.981 (West 1979). This provision recognizes these statutes which often also restrict redisclosure.

Only the information necessary to meet the needs of the compulsory reporting statute should be released. *See Minnesota v. Andring*, 342 N.W.2d 128 (Minn. 1984) (state child abuse reporting law does not totally abrogate the physician-patient privilege). It should be noted that, even though this subsection is narrowly drafted, paragraph (a)(4) permits complete disclosure to law enforcement personnel in emergency situations. Recognizing that society has a larger interest in rapid investigation of public health problems, such as Acquired Immune Deficiency Syndrome (AIDS), paragraph (b)(2) dealing with public-health investigations is more permissively drafted, permitting disclosure where authorized by law. This section does not require specific statutory authority for a specific piece of information; it is enough if a public-health agency has general statutory authority to request information, and believes it has a need for the information it is requesting.

Paragraph (b)(4) permits disclosure of health-care information pursuant to compulsory process in those situations where compulsory process is permitted under Section 2-105.

Section 2-105. Compulsory Process

(a) Health-care information may not be disclosed by a health-care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health-care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health-care information sought;

(3) the patient is a party to the proceeding and has placed his [or her] physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health-care information is to be used in the patient's commitment proceeding;

(7) the health-care information is for use in any law enforcement proceeding or investigation in which a health-care provider is the subject or a party; but, health-care information so obtained may not be used in any proceeding, against the patient, unless the matter relates to payment for the patient's health care, or unless authorized under paragraph (9).

(8) the health-care information is relevant to a proceeding brought under Article 8; or

(9) a court has determined that particular health-care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that the interest in access outweighs the patient's privacy interest.

(b) Unless the court, for good cause shown, determines that the notification should be waived or modified, if health-care information is sought under paragraph (2), (4), or (5) of subsection (a) or in a civil proceeding or investigation under paragraph (9) of subsection (a), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least [ten] days before presenting the certificate required under subsection (c) to the health-care provider.

(c) Service of compulsory process or discovery requests upon a health-care provider must be accompanied by a written certification, signed by the person seeking to obtain health-care information, or his [or her] authorized representative, identifying at least one paragraph of subsection (a) under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under paragraph (2), (4), or (5) of subsection (a), or in a civil proceeding under paragraph (9) of subsection (a), that the requirements of subsection (b) for notice have been met. A person may sign the certification only if the person reasonably believes that the paragraph of subsection (a) identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health-care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health-care information.

(d) Production of health-care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

COMMENT

Many of the protections contained in this Act would be of little value if government agencies or others were free to obtain health-care information from health-care providers through the unconditional use of compulsory process or discovery. A hospital or other health-care provider faced with a subpoena, search warrant, or discovery request is now generally required to turn over sensitive health-record information about a patient before the patient who is the subject of the record even knows the information has been requested. *See* Gellman, *supra*, at 287-292; Note, *Privacy in Personal Medical Information: A Diagnosis*, U. Fla. L. Rev. 394, 396-400 (1981). And, under current law in most jurisdictions, since the patient does not have possession of the documents sought through compulsory process or discovery, there is little he can do to contest their release, even when he does have knowledge. *Cf. United States v. Miller*, 425 U.S. 435 (1976) (customer has no right to challenge subpoena issued to a financial institution to produce the customer's records, which were in the possession of the financial institution).

There are several different ways that this problem can be addressed. The traditional physician-patient privilege, which exists in some form in nearly every state, precludes testimony by a health-care provider about a patient's health-care information. *See* Gellman, *supra*, at 272-274. The privilege does not, however, shield health-care information from disclosure pursuant to legal process, and the recipient is free to use information so obtained to pursue investigatory leads. *See*, e.g., Idaho Code § 9-203 (1982) (physician-patient privilege applies only where physician is subject to examination as a witness in litigation). Thus, the privilege, while it does protect a patient from some potential adverse consequences, does little to protect a patient's privacy interests.

The Federal Right to Financial Privacy Act attempted to address this problem as to bank records by requiring the notification of the subject of records sought through compulsory process before his or her records were released. *See* 12 U.S.C. §§ 3401-3422 (1982). The subject was then given the right to go to court to bring an action to block release of the records. This approach has not worked well in practice. Few individuals have the knowledge or resources necessary to pursue a legal action, and it would place a considerable burden on the patient. Further, such actions could potentially clog the courts and are cumbersome, requiring a number of expedited procedures and exceptions.

Section 2-105 embodies a different approach, which has already been adopted by some states. *See*, e.g., Cal. Evid. Code § 994 (West 1980); Mont. Code Ann. § 50-16-314 (1980); R.I. Gen. Laws § 5-37.3-6 (1980). Under this section, production of health-care information can be compelled in legal proceedings only in conformity with the section. It thus extends a physician-patient type privilege to encompass investigations and discovery. In a few states, this Act would create, for the first time, a comprehensive physician-patient type privilege. The general prohibition on the use of compulsory process or discovery in investigatory proceedings represents a major change in policy, modifying long-standing state privilege rules.

This general restriction on compulsory process and discovery does not apply where one of the exceptions contained in subsection (a) apply. Subsection (a) authorizes the use of discovery and compulsory process in nine specified situations. These situations generally include cases where a patient has consented to release of information, litigation, such as malpractice cases, where the patient is a party to a lawsuit, litigation involving a will or a deceased patient, health-care information obtained pursuant to a court-ordered examination, health-care fraud investigations, or pursuant to court order in cases where the interest in access outweighs the patient's privacy interest. In such cases, a patient may assert any of the usual procedural rules or defenses that existed prior to the passage of this Act. Nothing in this Act is intended to reduce current patient rights or to provide any new grant of subpoena authority.

It is important to note that this section in no way supersedes or modifies a state's rules of evidence. While the section does provide a new threshold test that must be met before health-care information is subject to discovery or subpoena, that test is an easier one to meet than the requirements of the rules of evidence. Thus, once health-care information has been discovered or produced under this section, the normal rules of evidence govern its use at trial. There should be no situation in which health-care information would be admissible at trial, but shielded from discovery by this section; on the other hand, it may often be the case that discoverable health-care information will prove inadmissible at trial.

Subsection (a)(2) is intended to permit discovery or compulsory process where the patient has waived confidentiality. It would make little sense, for example, to protect a patient's records from compulsory process where the patient has already granted a newspaper interview about his health condition.

Subsection (a)(3) permits the use of a patient's health-care information where the patient is a party to a lawsuit and has placed his health at issue. This section should be narrowly interpreted, however. If a patient has placed his physical condition at issue, there should not be automatic access to his mental-health records. Where broader access is desired, or where the patient is a witness or a party that has not placed his health information at issue, the party seeking access must proceed under subsection (a)(9), which permits a patient to raise his privacy interests.

Subsection (a)(4) allows for patient records to be used where mental or physical condition is relevant to execution or witnessing of a will. In litigation over testamentary capacity, for example, the best evidence of whether the testator had a "sound mind" may be the testator's medical record at the time of execution of the will. Subsection (b)(4) allows compulsory process as to that evidence. *See* Mont. Code Ann. § 50-16-314(2)(a) (1980) (adopting the same exception to a general ban on compulsory process or discovery of health-care information).

Subsection (a)(6) allows disclosure of relevant health-care information in civil or criminal commitment proceedings. The purpose of such a proceeding is for the court to assess a patient's health to determine whether that patient is in need of treatment. Without access to the patient's health-care record, a commitment proceeding

would be meaningless. *See* R.I. Gen. Laws § 5.37.3-6(2)(B) (1980).

Subsection (a)(7) recognizes that patient records are often the only evidence available to investigate and prosecute health-care providers or researchers who may have violated the law. A privacy statute intended to protect patients must not shield illegal behavior by providers. Therefore, this subsection permits the use of compulsory process or discovery to obtain information as part of an investigation or proceeding in which a health-care provider is suspected of a violation of law, is a defendant, or is otherwise a party. However, no information obtained under this section can be used in an investigation of, or action against, a patient, unless the action or investigation directly relates to payment by third-party payors for a patient's health care. However, this section does not prohibit use of information obtained by law enforcement personnel that, coincidentally, was also obtained independently under this subsection.

Subsection (a)(9) permits the use of compulsory process or discovery to obtain health-care information where the party seeking access establishes, in an individual case, that its interests outweigh the privacy interests of the patient involved. This section, with its balancing test, should be used wherever patient health-care information is sought to challenge the competency or credibility of a witness, or a party who has not placed his health-care information at issue. This test is also applicable to a case where the subject of information receives notice that his or her records are being sought and has the opportunity to contest access.

This subsection will also permit the use of *ex parte* or *in camera* proceedings to obtain a patient's health-care information. Such proceedings should be rarely used, but might be necessary, for example, where a prosecutor is seeking a search warrant and does not want the patient to know.

Subsection (b) provides that a person seeking compulsory process for discovery purposes under subsections (a)(2), (4), (5), or in a civil action under (a)(9) must notify the patient by first-class mail. Obviously, this requirement will also be satisfied by personal service. In the case of access under the other paragraphs of subsection (a), the patient will either know, or should not be told, that his records are being sought, and no notice is necessary.

Subsection (c) provides that the use of compulsory process or discovery must be accompanied by a written certification, signed by the person seeking to enforce such process or that person's representative, identifying the specific paragraph of subsection (a) under which compulsory process or discovery is being sought. The person making the certification must have a reasonable basis for believing that the paragraph of subsection (a) relied upon is applicable. A copy of the certification must be made a permanent part of the patient's health-care information.

Subsection (d) is included to make clear that nothing in the Act is intended to waive any rights that any person might have under existing state law or procedural rules to challenge the disclosure of health-care information through compulsory process or discovery, or its admissibility into evidence. By the same token, nothing in the Act should be construed so as to restore any privilege or right that has otherwise been waived.

ARTICLE III

EXAMINATION AND COPYING OF RECORD

Section 3-101. Requirements and Procedures for Patient's Examination and Copying

(a) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health-care information, a health-care provider, as promptly as required under the circumstances, but no later than ten days after receiving the request shall:

(1) make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(2) inform the patient if the information does not exist or cannot be found;

(3) if the health-care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health-care provider who maintains the record;

(4) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(5) deny the request, in whole or in part, under Section 3-102 and inform the patient.

(b) Upon request, the health-care provider shall provide an explanation of any code or abbreviation used in the health-care information. If a record of the particular health-care information requested is not maintained by the health-care provider in the requested form, the health-care provider is not required to create a new record or reformulate an existing record to make the health-care information available in the requested form. The health-care provider may charge a reasonable fee, not to exceed the health-care provider's actual cost, for providing the health-care information and is not required to permit examination or copying until the fee is paid.

COMMENT

In recent years a consensus has emerged that patients should be allowed to inspect their health-care information. In 1945 Massachusetts became the first state to adopt a statute giving patients a right to see their health-care information. Mass. Gen. Laws, ch. 111, § 70. By the early 1980's the number of states which had adopted patient access statutes had grown to approximately 25. Auerbach & Boque, *Medical Records: Getting Yours*, Public Citizen Health Research Group (1980). That number continues to increase due, in some measure, to a recommendation by the Privacy Protection Study Commission in 1977 that states adopt patient access statutes. *Privacy Commission Report* at 295.

The consensus supporting patient access to health-care information is also illustrated in the federal Privacy Act, 5 U.S.C. § 552a, which gives patients in federal health-care facilities a right of access to their health-care information, subject to certain limitations.

In addition to statutory patient access requirements, medical licensing boards in several states have adopted rules which require physicians to allow patients to inspect or copy their records in at least most circumstances. Moreover, courts in a number of states have held, even in the absence of a statute, that patients have a common-law right of access to their health-care information. In *Hutchings v. Texas Rehabilitation Commission*, 544 S.W.2d 802 (Tex. 1976), for example, a former patient sought to compel the Texas Rehabilitation Commission to provide him with access to his medical records. The court held that patients in Texas have a common-law right to inspect their health records. (For other cases holding that patients have a right of access to their records, *see* National Commission on the Confidentiality of Health Records, *Judicial Decisions in Health Record Confidentiality*, at 6 (1979).)

In recent years, health-care organizations have joined the chorus of those who support patient access to health-care information. The American Hospital Association and most other major health associations are now on record as supporting patient access. *See* American Hospital Association, *A Patient's Bill of Rights* (1972).

There are several reasons for the emergence of a consensus supporting patient access. There is the recognition that patient health-care information is widely shared with parties outside of the health community. Accordingly, basic fairness and patients' needs to assess the impact of such sharing demands that patients be given access to their records.

Other reasons often cited in support of patient access include its positive effect on patients' trust in health-care providers; its positive effect on patients' recovery; its positive effect on both the quality of care and the quality of record-keeping; and the fact that patients, in one way or another, pay for the care and thus should be able to see records documenting the care. Kaiser, "Patients Rights of Access to Their Own Medical Records: The Need for New Law," 24 Buf. L. Rev. 317-30 (1975). For all of these reasons, this section gives patients a right, upon written request, to examine or copy their health-care information.

This section relies on the definition of the term "patient" as defined in Section 1-102 and includes health-care representatives pursuant to Section 6-101 and representatives of deceased patients pursuant to Section 6-102. Any reference to patients in this section refers to those persons authorized to act on behalf of patients under Sections 6-101 and 6-102. However, where patients

direct providers to disclose their health-care information to third parties the provisions of this section do not apply. Instead, the patient must proceed under the authorization procedures in Section 2-102.

One of the continuing controversies concerning patient access to health-care information is whether patients should be entitled to obtain a copy of their record or merely be allowed to inspect the record. Subsection (a)(1) opts to give patients the right to obtain copies of their records, if requested. If patients are to have access, there does not seem to be any policy reason why patients should not enjoy the more complete and effective right to obtain a copy of their record.

Subsection (a) also provides that when a health-care provider receives a written request from a patient to examine or copy the patient's health-care information the provider must, as promptly as possible, but in any event within 10 days after receiving the request, respond to the patient by making the record available, by denying access to the record on one of the grounds permitted by Section 3-102, or by informing the patient that the record, for one of the reasons authorized by this section, cannot be provided to the patient or provided within the 10-day time period. The effect of this section is to ensure that patients will receive a timely and complete response to their access request.

A second controversy which continues to simmer relates to whether access rights should apply exclusively to health-care information maintained by institutional health-care providers or should extend, as well, to health-care information maintained by physicians and other kinds of health-care professionals. Access statutes in just over a dozen states apply to health records maintained by providers other than institutions.

This section takes the view that a patient's interest in examining and obtaining a copy of health-care information is just as compelling when the information is maintained by a professional health-care provider as it is when the information is maintained by an institutional health-care provider. Accordingly, this section does not make a distinction between professional and institutional health-care providers. In so doing, this section is consistent with the approach taken throughout the Act.

However, Section 3-101 does contain several provisions that are designed to minimize the burden of complying with patient access requests.

In addition to the extension period permitted under subsection (a), subsection (b) includes two provisions designed to ease any burden for providers. First, the subsection provides that if the patient makes a request for the production of his records in a particular format, a health-care provider need not create a new record or reformulate an existing record in order to comply. Thus, if a patient seeks his record arranged by hospital, and instead his record is arranged chronologically, the provider is under no obligation to reformulate the record. Similarly, if the record is maintained on microfiche, the patient must accept the copy in that form. The provider's obligation is discharged if the provider provides the record in readable form.

Second, subsection (b) gives providers a right to charge patients making examination and copying requests a reasonable fee not to exceed the health-care provider's actual cost for providing the requested information. Health-care providers may be reimbursed for reproduction costs and staff time for searching for, and otherwise producing, records. However, this formulation does not include indirect costs for general overhead. To avoid potential abuse or dispute over what constitutes "actual cost," the fee must also be "reasonable." Examples of fees for locating and copying other kinds of information are not difficult to locate (e.g., government charges for copies of files pursuant to Freedom of Information Act requests, bank charges for copies of customer information, etc.) and should serve as already comparable, in addition to those charged by various medical facilities.

The provider may require that the fee be paid in advance.

Section 3-102. Denial of Examination and Copying

(a) A health-care provider may deny access to health-care information by a patient if the health-care provider reasonably concludes that:

(1) knowledge of the health-care information would be injurious to the health of the patient;

(2) knowledge of the health-care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(3) knowledge of the health-care information could reasonably be expected to cause danger to the life or safety of any individual;

(4) the health-care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(5) access to the health-care information is otherwise prohibited by law.

(b) If a health-care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health-care information for which access has been denied under subsection (a) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(c) If a health-care provider denies a patient's request for examination and copying, in whole or in part, under paragraph (1) or (3) of subsection (a), the provider shall permit examination and copying of the record by another health-care provider, selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this State to treat the patient for the same condition as the health-care provider denying the request. The health-care provider denying the request shall inform the patient of the patient's right to select another health-care provider under this subsection.

COMMENT

Undoubtedly, the sharpest continuing controversy about patient access to health-care information concerns whether a health-care provider should have a right to deny access to a patient if the provider believes that access would be injurious to the patient's health. This question is most sharply focused in instances where mental-health patients seek access to their records. In these circumstances, both the volitional quality of the patient's access request and the potential effect of the access on the patient is a matter of acute concern. Strassburger, "Problems Surrounding 'Informed Voluntary Consent' and Patient Access to Records," *Psychiatric Opinion*, 30 (Feb. 1975).

Most state patient access statutes do not apply to mental-health records. Those statutes which do apply usually limit the access right so that the provider maintaining the record can opt to give the record to a third party — often another physician of the patient's choosing. *Medical Records: Getting Yours*, at 32. In addition, most of the courts that have considered whether mental-health patients have a common-law or a statutory right of access to mental-health information have ruled in the negative. *Gotkin v. Miller*, 514 F.2d 125 (2d Cir. 1975); *Buin v. Spencer*, 393 F.2d 108 (1st Cir. 1968), *cert. denied*, 400 U.S. 866 (1970); *Turner v. Reed*, 538 P.2d 373 (Or. 1975).

There are instances when a patient's access to his own records should be limited, denied, or circumscribed. Consistent with the other provisions of this Act, these exceptions are set out in this section without distinction as to whether the records relate to mental or physical health, although they will be applicable most often as to mental-health patients.

Subsection 3-102(a) identifies three circumstances when a health-care provider may deny a patient's request to examine or copy his own health-care information. The first is where the health-care provider concludes that patient examination would be injurious to his or her health.

The second, included primarily because of real concerns of the mental-health community, is to encourage third persons, primarily family and friends, to assist the mental-health professional with information helpful in treating the patient. Health-care providers occasionally need to be able to receive information about a patient on a confidential basis, and their confidential sources should be able to provide such information without fear of being identified by the patient.

Thus, if the health-care information could reasonably be expected to enable the patient to identify a person who has provided information to the health-care provider on a confidential basis, and with an expectation that it would be retained in confidence, then, under subsection (a)(2), the patient does not have a right to examine or copy that part of the health-care information.

If the provider determines that the examination or copying could reasonably be expected to cause danger to the life or safety of any person, subsection (a)(3) provides that a patient does not have the right to examine or copy that information. Reasonable expectation of danger is sufficient; this subsection does not adopt the imminent danger standard of Section 2-104(4).

Subsection (a)(4) permits a provider to withhold health-care information compiled and used solely for litigation purposes, administrative purposes, quality assurance, or peer review. For example,

attorney-client communications and so-called "incident reports" needed for efficient operations of a medical facility are exempt from the subject access requirements. These reports are usually not retrievable by patient name. Moreover, these reports are not compiled for health-care purposes but, rather, to document unusual or significant events that affect a provider's future health-care operation or involve matters of administrative planning or legal exposure. If patients could use this Act to examine and copy such information, much of the health-care provider's quality control activities would be disrupted. Furthermore, since this information has not been compiled for health-care purposes the Act's interests would not be furthered by providing access rights.

If a health-care provider denies a request for examination and copying pursuant to subsection 3-102(a), then under subsection 3-102(b) the provider must identify the portions of the health-record information which are not covered by a provision authorizing withholding and must make that portion available for examination and copying. For example, the deletion could be of the confidential source and some or all of the information furnished by the source if it might identify him or her.

Finally, if a provider denies an access request on the grounds that access would be injurious to the patient's health or could be expected to cause danger to the life or safety of any person, then under subsection 3-102(c), the provider must permit examination and copying by another health-care provider selected by the patient provided that this health-care provider is licensed, certified, or otherwise authorized under the laws of the state to treat the patient for the same condition as the original health-care provider. Further, the original health-care provider must inform the patient, in writing, of the patient's right to select another provider to exercise his examination and copying rights. The health-care provider selected by the patient is free to make the health-record information available to the patient. This formulation is relatively common, having been adopted in a number of state statutes, and, as well, by a number of agencies operating under the federal Privacy Act.

ARTICLE IV

CORRECTION AND AMENDMENT OF RECORD

Section 4-101. Request for Correction or Amendment

(a) For purposes of accuracy or completeness, a patient may request in writing that a health-care provider correct or amend its record of the patient's health-care information to which a patient has access under Section 3–101.

(b) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health-care information, the health-care provider shall:

(1) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health-care information in question;

(2) inform the patient if the record no longer exists or cannot be found;

(3) if the health-care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(4) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(5) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health-care information.

COMMENT

This section gives a patient a right to submit, in writing, a request to correct or amend the patient's health-care information to which the patient has access under Section 3-101. The purpose of the correction or amendment request must be to improve the accuracy or completeness of the record. Furthermore, the Privacy Protection Study Commission recommended that state health-care record statutes give patients a right to correct or amend their records together with a right to examine and copy their records. *Privacy Commission Report* at 295. Indeed, one of the principal purposes of most subject access schemes is to permit a record subject to verify the accuracy and completeness of his record. Accordingly, most state statutes which give patients a right of access to their health-care records also give patients a right to correct or amend their records. The federal Privacy Act takes the same approach. The Uniform Information Practices Code permits individuals to request agencies to correct or amend incomplete or inaccurate information about them maintained in agency records.

Accurate health-care information is not only important to the delivery of health care, but for patient applications for life, disability and health insurance, employment, and a great many other issues that might be involved in civil litigation (e.g., Workmen's Compensation, child custody, personal injury).

Section 4-101(b) parallels Section 3-101(a) in setting out conditions which apply to a provider's handling of a correction or amendment request. Under subsection (b), the provider must respond to each request as promptly as possible and, in any event, within 10 days after receiving the request.

This subsection, like the parallel provision in Section 3-101, gives the provider five possible options for response. The provider can respond by: (1) making the requested correction or amendment and so informing the patient and further informing the patient of the patient's right to have the correction or amendment disseminated to previous recipients of the uncorrected or unamended health-care information; or (2) if the record no longer exists or cannot be located, so informing the patient; or (3) if the health-care provider does not maintain the record, providing the patient with the name and address of the provider or person who it is believed does maintain the record, if known; or (4) in the event of unusual circumstances, or if the record is in use, so informing the patient and specifying a time, not to exceed 21 days from receipt of the request, when the record will be corrected or amended or the request otherwise disposed of; or (5) denying the correction or amendment request and so informing the patient, in writing, including the provider's reason for refusing the request and the patient's right to add a statement of disagreement and to have that statement disseminated to previous recipients of the disputed information.

Section 4-102. Procedure for Adding Correction or Amendment or Statement of Disagreement

(a) In making a correction or amendment, the health-care provider shall:

(1) add the amending information as a part of the health record; and

(2) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(b) If the health-care provider maintaining the record of the patient's health-care information refuses to make the patient's proposed correction or amendment, the provider shall:

(1) permit the patient to file as a part of the record of the patient's health-care information a concise statement of the correction or amendment requested and the reasons therefor; and

(2) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

COMMENT

Section 4-102 sets out the procedures that apply to adding corrections or amendments or patient statements of disagreement. Subsection (a)(1) provides that if a health-care provider accepts a proposed correction or amendment, the provider must add this information to the record and mark the corrected record or amended entries and indicate the place in the record where the corrected or amended information can be found, in whatever manner is practicable. The inaccurate or incomplete information should not be expunged but merely marked as inaccurate or incomplete. Where microfiche records are used, it may not be possible to mark old entries as inaccurate or incomplete and, in this circumstance, marking the cover page or adding a supplemental record may be the most practicable procedure and will satisfy the statutory standard.

Many state statutes or industry model codes permit patients to add a rebuttal statement when providers refuse to make a requested correction. Subsection (b) provides that if a health-care provider denies a patient's correction or amendment request, the provider must permit the patient to file with his record a brief statement of the patient's reasons for believing that the record should be corrected or amended, and/or his reasons for disagreement with the provider's refusal. The rebuttal statement should be brief and to the point and, where practicable, the challenged entries should be so marked and the place in the record where the rebuttal statement can be found should be indicated. Section 4-102 is not intended to replace the judgments of health-care professionals who create the health-care information with the lay opinions of patients. However, if a patient disputes the accuracy or completeness of health-care information it is fair to permit the patient's view to be included in the record.

Section 4-103. Dissemination of Corrected or Amended Information or Statement of Disagreement

(a) A health-care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and who are identified in the health-care information as having examined or received copies of the information sought to be corrected or amended.

(b) A health-care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

COMMENT

Subsection (a) requires a health-care provider who accepts a patient's correction or amendment, as well as a provider who has been required to add a patient statement to the record, to take all reasonable steps upon request by the patient to distribute the corrected information or the patient statement to all parties designated by the patient who have previously received the information which is the subject of the correction or amendment attempt. The distribution requirement is made dependent on a patient's request because some patients may not want to encourage the dissemination of the corrected or amended information or the patient's statement, because any reference to the matter, even an alleged accurate reference, may be damaging to the patient.

Subsection (b) permits a health-care provider to charge patients the lesser of a reasonable fee or the provider's actual cost in distributing the corrected or amended information or the statement of disagreement if the correction or amendment was not caused by the provider's error. See Comment to Section 3-101 for an explanation of this formulation.

It is expected that patients will use the disclosure record, which Section 2-101(b) of the Act requires providers to maintain, to identify persons who have previously received the information in question.

ARTICLE V

NOTICE OF INFORMATION PRACTICES

Section 5-101. Content and Dissemination of Notice

(a) A health-care provider who provides health care at a health-care facility that the provider operates and who maintains a record of a patient's health-care information shall create a "notice of information practices" that contains substantially the following:

Notice

"We keep a record of the health-care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

(b) The health-care provider shall post a copy of the notice of information practices in a conspicuous place in the health-care facility and, upon request, provide patients or prospective patients with a copy of the notice.

COMMENT

This section requires health-care providers to make available to patients a description of the basic information rights accorded to patients whose health-care information is maintained by health-care providers. It also sets forth an easy-to-read model notice. Although this model notice need not be used *verbatim*, any notice must include a brief reference to the fact that the provider maintains health-care records; that patients have a right to see and copy those records; that patients have a right of correction concerning those records; that the provider will keep the patient's records confidential, subject to certain qualifications; and an identification of the person or office from whom the patient can obtain the patient's records or get additional information.

The Privacy Commission's recommendations include a similar proposal that health-care providers explain their information dissemination policies to patients and prospective patients. *Privacy Commission Report* at 313.

ARTICLE VI

PERSONS AUTHORIZED TO ACT FOR PATIENT

Section 6-101. Health-Care Representatives

(a) A person authorized to consent to health care for another may exercise the rights of that person under this [Act] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under the laws of this State, only the minor may exercise the rights of a patient under this [Act] as to information pertaining to health care to which the minor lawfully consented.

(b) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

COMMENT

Section 6-101(a) states that an individual who is authorized under state law to consent to health care for a patient has the right to exercise all of the rights of a patient under this Act but only to the extent necessary to discharge his or her responsibility to consent to health care. It contemplates two types of authority: (1) an authorization by law under which, for example, parents and guardians may consent to health care; and (2) an authorization by instrument under which, for example, persons operating under a power of attorney or "health-care representatives" in states which have adopted the Model Health Care Consent Act may consent to health care.

Once a minor has come of age, parents no longer have a right to consent to the minor's health care and at that point their rights under the Act are extinguished because the exercise of these rights is no longer necessary to discharge their responsibilities. This means that parents of an adult child would not be able, absent their child's consent, to inspect records of his or her child's health care, as to which consent was given when the child was a minor.

Subsection 6-101(a) also provides that if a minor is authorized by law to consent to his or her own health care without parental consent, then the minor may exclusively exercise all of the rights of a patient under the Act as to information about the health care to which the minor lawfully consented. Many states have adopted laws permitting minors to consent to certain kinds of health care, but not to other kinds. *See*, e.g., Iowa Code Ann. §§ 125.33, 140.9 (1982) (minor can consent to treatment for venereal disease and drug dependency); Md. Ann. Code art. 43, §§ 135, 135A (1982) (minor can consent to treatment for venereal disease, drug abuse, alcoholism, pregnancy, contraception, emotional disorders, or sexual assault); Minn. Stat. Ann. § 144.342 (1982) (minor can consent to treatment for pregnancy, venereal disease, alcohol, and other drug abuses). Thus, if a minor can consent and has consented to treatment for venereal disease, the minor enjoys all of the rights of a patient under this Act as to information pertaining to the venereal disease and its treatment. Accordingly, the minor can control access to this health-care information, including access by his parents.

Under subsection (b) a person authorized to act for a patient must make a good-faith effort to act in the best interests of the patient. This subsection attempts to insure that a person acting for a patient will act in a fiduciary manner and will not deliberately misuse or mishandle the patient's health-care information. This subsection does not attempt to define the "best interests" of a patient. However, fiduciary standards are well defined in case law, and issues relating to the handling of health-care record information pertaining to a guardian or ward has received increased attention. *See* Wals, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," 27 Stan. L. Rev. 985, 1031-33 (1975); *In re Guardianship of Pescinski*, 226 N.W.2d 180 (Wis. 1975). At a minimum, this subsection requires the person acting for the patient to make decisions about the handling of the patient's records that approximate the decisions that a reasonable person would make about the handling of his own records.

Section 6-102. Representative of Deceased Patient

A [personal representative] of a deceased patient may exercise all of the deceased patient's rights under this [Act]. If there is no [personal representative], or upon discharge of the [personal representative], a deceased patient's rights under this [Act] may be exercised by persons who are authorized by law to act for the deceased patient.

COMMENT

This section follows from the Act's definition of patient in Section 1-102(11) in that it recognizes the possibility of substantial harm or embarrassment to the family, estate, or reputation of a deceased patient by the release of health-care information. Therefore, representatives of deceased patients are granted the authority to exercise all of the deceased patient's rights under the Act. *See Boggess v. Aetna Life Insurance Co.*, 196 S.E.2d 172 (Ga. 1973); *Lorde v. Guardian Life Insurance Co.*, 300 N.Y.S. 721 (N.Y. Sup. Ct. 1937) (both decisions recognize that the physician-patient privilege does not expire upon the death of the patient).

The deceased patient's rights may be exercised by the decedent's personal representative and, in the absence of a personal representative, by those authorized to act for the decedent under state law.

ARTICLE VII

SECURITY SAFEGUARDS AND RECORD RETENTION

Section 7-101. Duty to Adopt Security Safeguards

A health-care provider shall effect reasonable safeguards for the security of all health-care information it maintains.

COMMENT

Section 7-101 requires health-care providers to implement reasonable security safeguards for all health-care information which they maintain. The Act does not define "reasonable security safeguards." What are reasonable safeguards will vary depending upon the content of the health-care information; the type and location of the health-care provider; and other factors that are specific to the particular record-keeping environment.

Accordingly, reasonable security safeguards may include personnel security standards for record room personnel (e.g., personnel background checks); administrative security standards (rules concerning who may enter a record room or a nurses station); physical security safeguards (locked doors and file cabinets, for example); and in automated records systems, technological security standards (user unique access codes, for example).

Health-care information is sensitive and often commercially valuable information which may be the target of theft or improper inspection or acquisition. There are numerous examples of the theft or improper inspection or acquisition of health-care information. Perhaps the most notorious example concerned the indictment brought by a Denver grand jury against a private investigative firm alleging, among other things, the use of investigators dressed as hospital personnel to obtain and subsequently sell health-care information. "U.S. Probes Sale of Confidential Medical Records," *Washington Star*, Dec. 9, 1976, at 1.

Section 7-102. Retention of Record

A health-care provider shall maintain a record of existing health-care information for at least one year following receipt of an authorization to disclose that health-care information under Section 2-103, and during the pendency of a request for examination and copying under Section 3-101 or a request for correction or amendment under Section 4-101.

COMMENT

This section requires a health-care provider to maintain health-care information for at least one year after a provider receives an authorization to disclose health-care information and for the period of time while a request for examination or copying or a request for correction or amendment is pending. Since the Act does not require providers otherwise to retain health-care information, this provision is necessary in order to prevent providers from avoiding the disclosure obligations or the examination and copying and correction and amendment requirements merely by destroying or transferring the health-care information in question.

ARTICLE VIII

CIVIL REMEDIES AND CRIMINAL SANCTIONS

Section 8-101. Criminal Penalty

A person who willfully discloses health-care information in violation of this [Act], and who knew or should have known that disclosure is prohibited, is guilty of a [misdemeanor], and upon conviction is punishable by a fine not exceeding [$10,000] or imprisonment for a period not exceeding [one year], or both.

(b) A person who, by means of (i) bribery (ii) theft, (iii) misrepresentation of identity, purpose of use, or entitlement to the information, [or (iv) trespass] examines or obtains, in violation of this [Act], health-care information maintained by a health-care provider, is guilty of a [misdemeanor], and upon conviction is punishable by a fine not exceeding [$10,000] or imprisonment for a period not exceeding [one year], or both.

(c) A person who, knowing that a certification under Section 2–105(c) or a disclosure authorization under Section 2–102 is false, willfully presents the certification or disclosure authorization to a health-care provider, is guilty of a [misdemeanor], and upon conviction is punishable by a fine not exceeding [$10,000] or imprisonment for a period not exceeding [one year], or both.

COMMENT

Subsection (a) makes it a misdemeanor (or equivalent in states using other terms) for a health-care provider to willfully disclose health-care information if the person knew, or should have known, that such disclosure is in violation of this Act. It is up to each state to set the terms of punishment for this crime. However, the section recommends a misdemeanor citation with a fine not to exceed $10,000 and a period of imprisonment not to exceed one year.

Subsection (b) makes it a crime to willfully misrepresent one's identity or purpose (false pretenses) or to use bribery or theft to examine health-care information in violation of this Act. Access to an automated information system by willfully using a password or code to misrepresent one's identity or purpose would be covered by this subsection. So too would other types of related crimes such as wiretapping. The section recommends a penalty structure that is identical to the penalties for willful disclosure.

Subsection (c) makes it a crime to willfully provide a disclosure or authorization under Section 2-102 a certification under Section 2-105(c) (compulsory disclosures) knowing that the certification is false or that the authorization is false. In order to come within this section an individual must know that the certification or authorization is false in a material respect and must willfully present that certification or authorization to a health-care provider.

It is important to emphasize that the Act's criminal penalties only attach to violations of this Act. Thus, redisclosure by nonhealth-care providers does not provide a basis for a criminal action unless such redisclosure is expressly prohibited in this Act. For example, if a family member obtains health-care information under Section 2-104 and subsequently rediscloses that information to a news reporter, neither the family member nor the reporter has criminal exposure under this Act.

Section 8-102. Civil Enforcement

The [Attorney General or appropriate local law enforcement official] may maintain a civil action to enforce this [Act]. The court may order any relief authorized by Section 8–103.

COMMENT

This section permits the appropriate law enforcement official to bring a civil action to enforce the terms of the Act and permits the court to provide any of the remedies available to a patient in a private right of action under Section 8-103. Actions under this section are limited to actions to enforce the Act and thus redisclosure by nonhealth-care providers does not provide a basis for civil enforcement except in very limited circumstances as provided in this Act.

Section 8-103. Civil Remedies

(a) A person aggrieved by a violation of this [Act] may maintain an action for relief as provided in this section.

(b) The court may order the health-care provider or other person to comply with this [Act] and may order any other appropriate relief.

(c) A health-care provider who relies in good faith upon a certification, pursuant to Section 2–105(c), is not liable for disclosures made in reliance on that certification.

(d) In an action by a patient alleging that health-care information was improperly withheld under Article III the burden of proof is on the health-care provider to establish that the information was properly withheld.

(e) If the court determines that there is a violation of this [Act], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation; and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of [$5,000], exclusive of any pecuniary loss.

(f) If a plaintiff prevails, the court may assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation.

(g) Any action under this [Act] is barred unless the action is commenced within [ ] year[s] after the [cause of action] [claim for relief] accrues.

COMMENT

Subsection (a) allows any person (defined in Section 1-102) who is aggrieved by a violation of this Act to file an action in a court of appropriate jurisdiction against the responsible health-care provider or other party. This is a standard formulation for standing. For example, this formulation is found in the Uniform Information Practices Code (§ 3-112). The burden of proof is always on the aggrieved party, except where specifically indicated otherwise. Although a person must be aggrieved in order to maintain a private right of action under this Act, it is worth noting that in many states a provider's violation of law, even if no harm to a patient results, is grounds for administrative sanctions by the state licensing board or other similar authority.

Subsections (b), (e), and (f) authorize three types of relief for the aggrieved party: (1) equitable relief in the form of an injunction ordering the health-care provider or other responsible party to comply with the Act (including, where appropriate, an expungement order or an order to enjoin prospective violations); (2) actual damages suffered by the aggrieved party, plus a suggested $5,000 limit on recovery for nonpecuniary loss if the violation arises out of willful or grossly negligent conduct; and (3) reasonable court costs and attorney's fees where the aggrieved party substantially prevails. Because the Act relies on self-enforcement by aggrieved persons as its principal enforcement mechanism, only a liberal provision for the award of attorney's fees will permit this self-enforcement mechanism to work effectively.

A health-care provider who discloses information in good-faith reliance on a certification is not liable for disclosures made pursuant to that certification. See Section 2-103.

Subsection (c) provides that in an action brought by a patient seeking access to his own record, the health-care provider has the burden of proof if it contends that the health-care information should not be disclosed.

Subsection (f) establishes a statute of limitations for civil actions brought pursuant to this section. States should insert the appropriate time period for their jurisdiction.

The civil remedies provided under this section — like their criminal counterparts — are only available for violations of this Act. Thus, redisclosure by family members, newspaper reporters, or others not covered by the redisclosure provisions in Section 2-104 are not violations of this Act and do not provide a basis for a civil action.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9-101. Uniformity of Application and Construction

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

Section 9-102. Short Title

This [Act] may be cited as the Uniform Health-Care Information Act.

Section 9-103. Severability

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

COMMENT

This is a standard severability provision and mirrors a provision in the Uniform Information Practices Code, § 1-103.

Section 9-104. Repeals

The following acts and parts of acts are repealed:

(1)

(2)

(3)

Section 9-105. Saving Clause

This [Act] does not affect other law restricting, to a greater extent than does this [Act], the disclosure of specific types of health-care information to any person other than the patient to whom it relates.

COMMENT

Because the overriding purpose of the Act is to protect patient privacy, if prior legislation covers a specific type of health-record information and provides greater privacy protection for that information than would be provided under the Act, this prior, specific legislation is not affected by the Act.

Section 9-106. Conflicting Laws

[(a) This [Act] does not restrict a health-care provider from complying with obligations imposed by federal health-care payment programs or federal law.]

[(b) In the event of a conflict between this [Act] on the Uniform Information Practices Act, the provisions of this [Act] apply.]

COMMENT

Subsection (a) is included to make clear to persons affected by this Act that, under the Supremacy Clause of the Constitution, no state law can take precedence over federally-imposed requirements. To the extent that federal agencies require access to health-care information under federal laws or regulations, the obligations of the health-care provider are determined by that law and not by this Act.

Subsection (b) recognizes that the Uniform Information Practices Act or similar legislation in effect in the state may affect a number of state institutions, such as hospitals, nursing homes, and prisons, which are also health-care providers. Since the provisions of this Act were drafted specifically with health-care providers in mind, they should take precedence over the earlier Act, which treats all state instrumentalities in the same manner.

APPENDIX F

FEDERAL FREEDOM ON INFORMATION AND PRIVACY ACTS

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

* (4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

*[(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.] *REPEALED

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title [5 USCS § 552b]), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

* (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological or geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

* (c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 383; June 5, 1967, P. L. 90-23 § 1, 81 Stat. 54; Nov. 21, 1974, P. L. 93-502, §§ 1–3, 88 Stat. 1561, 1563, 1564; Sept. 13, 1976, P. L. 94-409, § 5(b), 90 Stat. 1247; Oct. 13, 1978, P. L. 95-454, Title IX, § 906(a)(10), 92 Stat. 1225.)

* (As amended Nov. 8, 1984, P. L. 98-620, Title IV, Subtitle A, § 402(2), 98 Stat. 3357; Oct 27, 1986, P. L. 99-570, Title I, Subtitle N, §§ 1802, 1803, 100 Stat. 3207-48, 3207-49.)

§ 552a. Records maintained on individuals

(a) Definitions. For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title [5 USCS § 552(e)];

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or diseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title [5 USCS § 552];

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 [13 USCS §§ 1 et seq.];

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

* (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

* (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

* (11) pursuant to the order of a court of competent jurisdiction; or

* (12) to a consumer reporting agency in accordance with section 3711(f) of title 31 [31 USCS § 3711(f)].

(c) Accounting of Certain Disclosures. Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of —

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any party of the requested information;

* (4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources or records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency Rules. In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title [5 USCS § 553], which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies. Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which

the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 USCS §§ 553(b)(1)–(3), (c), and (e)], to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 USCS § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 USCS § 553(b)(1), (2), (3), (c), and (e)], to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title [5 USCS § 552(b)(1)];

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 [18 USCS § 3056];

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligiblity, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 USCS § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

* *(l)*(1) Archival Records. Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 [44 USCS § 3103] shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section [effective 270 days following Dec. 31, 1974], shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

* (m)(1) Government Contractors. When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 [31 USCS § 3711(f)] shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on New Systems. Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

* (p) Annual Report. The President shall annually submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year [note to this section];

(2) describing the exercise of individual rights of access and amendment under this section during such year;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974 [note to this section].

* (q)(1) Effect of Other Laws. No agency shall rely on any exemption contained in section 552 of this title [5 USCS § 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title [5 USCS § 552].

* (As amended Oct. 25, 1982, P. L. 97-365, § 2, 96 Stat. 1749; Dec. 21, 1982, P. L. 97-375, Title II, § 201(a), (b), 96 Stat. 1821; Jan. 12, 1983, P. L. 97-452, § 2(a)(1), 96 Stat. 2478; Oct. 15, 1984, P. L. 98-477, § 2(c), 98 Stat. 2211; Oct. 19, 1984, P. L. 98-497, Title I, § 107(g), 98 Stat. 2292.)

(Added Dec. 31, 1974, P. L. 93-579, § 3, 88 Stat. 1897; Dec. 31, 1975, P. L. 94-183, § 2(2), 89 Stat 1057.)

APPENDIX G

CALLS TO COMMENT
AND
NOTICES OF PUBLIC HEARINGS

Honolulu Star-Bulletin Wednesday, June 3, 1987

CALL TO COMMENT

PUBLIC RECORD? WHY?
PRIVACY? WHOSE PRIVACY?
YOUR RIGHTS? MY RIGHT TO KNOW?
GOVERNMENT AGENCIES RIGHTS?
OR YOUR RIGHT TO INFORMATION?

The GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY is seeking your views on these important issues and others involving records maintained by the state and county government. We would like to know if you believe all records be public? Or only some records? Or should they only be available to some people? We want to hear from you on this issue and other issues on public records and your privacy.

PLEASE WATCH FOR NOTICES of public hearings in your community and on your island. Or if you prefer, send your comments to Robert A. Alm, Chairman of the Committee, 1010 Richards Street, P.O. Box 541, Honolulu, Hawaii 96809. We encourage your input and support. Mahalo.

* * * *

COMMITTEE ON PUBLIC RECORDS AND PRIVACY

Judge FRANK PADGETT, Associate Justice; WARREN PRICE, Attorney General; IAN LIND, Former Executive Director, Common Cause/Hawaii; STIRLING MORITA, Reporter, Honolulu Star-Bulletin; JIM McCOY, Assignment Editor, KHON-TV; DUANE BRENNEMAN, Vice-President and General Manager, Nissan Motor Corp. Hawaii; ANDREW CHANG, Manager Government Relations, Hawaiian Electric Company; DAVID DEZZANI, Attorney, Goodsill, Anderson, Quinn and Stifel and ROBERT A. ALM, Director, Department of Commerce and Consumer Affairs.

* * * *

CALL TO COMMENT

What is a PUBLIC RECORD?

BIRTH, and DEATH certificates, MARRIAGE licenses, DIVORCE decrees, CHILD support nonpayment claims, PATERNITY claims; BLOOD test, AIDS test, PESTICIDE contamination test results, ANIMAL disease information; MALPRACTICE claims against doctors; DRUG dispensing records, POLICE reports, GRAND JURY records; MUG shots, reports on INVESTIGATIONS closed with no changes; STATE MENTAL HEALTH examinations, INCOME TAX records, EXCISE TAX records, TRAFFIC ticket reports, DRIVERS license information; REAL ESTATE license information, PERSONNEL records of state and county employees and many more.

This is only a partial list of the records documents and information kept by government. Some of this is public record, some is not.

* * * * *

The question is WHAT GOVERNMENT RECORDS SHOULD BE AVAILABLE TO THE PUBLIC ON REQUEST? And WHICH SHOULD NOT BE AVAILABLE.

This is the SECOND CALL TO COMMENT from the public on the subject of public records and privacy. WHAT RECORDS SHOULD BE DISCLOSED? WHAT INTERESTS WILL BE SERVED BY DISCLOSURE OR BY NON-DISCLOSURE?

* * * * *

IF YOU HAVE ANY COMMENTS concerning these issues, please consider submitting your thoughts in writing to: GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY, Attention: Robert A. Alm, Chairman, P.O. Box 541, Honolulu, Hawaii 96809.

Distribution list for 87-6 and 87-7 news release 6/16 and 6/17/87

Print media

Sb-city desk; Adv-city desk; Pacific Business News; Garden Island, Kauai; Maui News, Maui; Hi Tribune Herald, Hilo; West Hi Today, Kona; All N.I. Bureau's from both the SB and Adv.; Adv. Tom Kaser, consumer writer; Don Chapman, Adv. Col; Downtown Planet, Gary Kubota, consumer writer; Hi Filipino News, Filipino language paper; Hi Hochi, Japanese language paper; Sb, HI Inc. section; SunPress Newspapers; Adv. Town Crier section; Dave Donnelly, Sb col.; Sb Public Hearings section; Bulletin Board; AP (Associated Press); UPI (United Press Inter.) and Lt. Gov. Office, (8) copies

Television

KGMBTV, KHONTV, K-SHOTV, and KITV4

Radio

KIPO, Kauai
KHEI, Maui
KHLO, Hawaii
KISA
KDEO, Country Western
KPOI
KGU, Talk radio
KHPR-FM
KAOI, Maui
KOHO, Hnl, Japanese
KIKI
KTUH
KHVH, All News Radio
KCCN, Hi music station

WDS/June 17, 1987

# # # #

NEWS RELEASE

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Kamamalu Building, 1010 Richards Street, P. O. Box 541
Honolulu, Hawaii 96809

JOHN WAIHEE, Governor | ROBERT A. ALM, Director | SUSAN DOYLE, Deputy Director

CONTACT: William D. Souza TELEPHONE: 548-2560

87-6
June 16, 1987

FOR IMMEDIATE RELEASE:

COMMITTEE ON PUBLIC RECORDS AND PRIVACY TO HOLD HEARINGS THROUGHOUT THE STATE

Are you interested in discussing whether the records kept by the state and county governments should be made more public? Are you seeking such records of another person? The GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY want to hear from you on this issue and other issues on public records and privacy as it conducts hearings throughout the state.

THE PURPOSE OF THESE hearings is to listen to the public's opinion on what should be a public record and what should not be a public record. Other questioned to be discussed by the commmittee are: What records should be disclosed? What interests will be served by disclosure or nondisclosure? The committee is seeking facts supporting the public's opinion on these issues and others involving records maintained by the state and county government.

The dates and times of the hearings on each island are:

MAUI: Monday, June 22, 1 p.m., State Building Wailuku; MOLOKAI: Tuesday, June 23, 9 a.m., Mitchell Pauoli Center, Kaunakakai; LANAI: Wednesday, June 24, 10 a.m., Community Library, Lanai City; KAUAI: Thursday, June 25, 9 a.m., State Building, second floor Conference Room, Lihue; HILO, HAWAII: Friday, June 26, 9 a.m., State Building, Conference Room C; KONA, HAWAII: Friday, June 26, 2 p.m., State Building, Captain Cook and OAHU: Thursday, July 2, 3 p.m. and 7 p.m., State Capitol Auditorium.

The members of the Governor's Committee on Public Records and Privacy are:

Justice FRANK PADGETT, Supreme Court; WARREN PRICE, Attorney General; IAN LIND, Former Executive Director, Common Cause/Hawaii; STIRLING MORITA, Reporter, Honolulu Star-Bulletin; JIM MCCOY, Assignment Editor, KHON-TV; DUANE BRENNEMAN, Vice-President and General Manager, Nissan Motor Corp. Hawaii; ANDREW CHANG, Manager Government Relations, Hawaiian Electric Company; DAVID DEZZANI, Attorney, Goodsill, Anderson, Quinn and Stifel; and ROBERT A. ALM, Director, Department of Commerce and Consumer Affairs.

IF YOU HAVE ANY comment and/or concern, please attend any of the public hearings to give your oral comment. Please also bring any written comment to these hearings. Or you may send your comments to: The Governor's Committee On Public Records and Privacy, Attention: Robert A. Alm, Chairman, P.O. Box 541, Honolulu, Hawaii 96809. For more information call 548-7505.

-30-

NEWS RELEASE

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Kamamalu Building, 1010 Richards Street, P. O. Box 541
Honolulu, Hawaii 96809

JOHN WAIHEE, Governor | ROBERT A. ALM, Director | SUSAN DOYLE, Deputy Director

CONTACT: William D. Souza TELEPHONE: 548-2560

FOR IMMEDIATE RELEASE:

87-6
June 17, 1987

COMMITTEE ON PUBLIC RECORDS AND PRIVACY
TO HOLD HEARINGS THROUGHOUT THE STATE

Are you interested in discussing whether the records kept by the state and county governments should be made more public? Are you seeking such records of another person? The GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY want to hear from you on this issue and other issues on public records and privacy as it conducts hearings throughout the state.

THE PURPOSE OF THESE hearings is to listen to the public's opinion on what should be a public record and what should not be a public record. Other questions to be discussed by the commmittee are: What records should be disclosed? What interests will be served by disclosure or nondisclosure? The committee is seeking facts supporting the public's opinion on these issues and others involving records maintained by the state and county government.

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NEWS RELEASE

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Kamamalu Building, 1010 Richards Street, P. O. Box 541
Honolulu, Hawaii 96809

JOHN WAIHEE, *Governor* | ROBERT A. ALM, *Director* | SUSAN DOYLE, *Deputy Director*

CONTACT: William D. Souza **TELEPHONE:** 548-2560

87-7
June 17, 1987

FOR IMMEDIATE RELEASE:

PUBLIC HEARING: PUBLIC RECORDS AND PRIVACY HEARINGS
(30 Seconds)
FOR RELEASE THROUGH June 22, 1987

DO YOU BELIEVE records kept by the state and county governments should be made more public? If you have an opinion, then attend one of the eight (8) public hearings on PUBLIC RECORDS AND PRIVACY conducted by the Governor's Committee on Public Records and Privacy set for MAUI, Monday, June 22, 1 p.m., State Building, Wailuku; MOLOKAI, Tuesday, June 23, 9 a.m., Mitchell Pauoli Center, Kaunakakai; LANAI, Wednesday, June 24, 10 a.m., Community Library; KAUAI, Thursday, June 25, 9 a.m., State Bldg., Lihue; HILO, HAWAII, Friday, June 26, 9 a.m., State Bldg.; KONA, HAWAII, Friday, June 26, 2 p.m., State Bldg., Captain Cook and HONOLULU, Thursday, July 2, 3 p.m. and 7 p.m., State Capitol Auditorium. For more information call 548-7505.

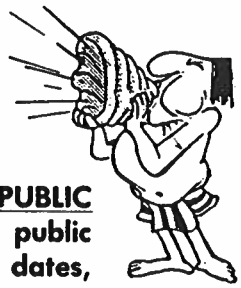
-30-

Honolulu Star-Bulletin

Wednesday, June 17, 1987

CALL TO COMMENT

PUBLIC RECORDS AND PRIVACY "PUBLIC HEARINGS"



The GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY announces the public hearings on each island at the following dates, time and locations:

MAUI
Monday, June 22, 1987
1 p.m.
State Office Building
Conference Room B

LANAI
Wednesday, June 24, 1987
10 a.m.
Lanai Community Library

HILO, HAWAII
Friday, June 26, 1987
9 a.m.
State Building, Conference
Room C

MOLOKAI
Tuesday, June 23, 1987
9 a.m.
Mitchell Pauoli Center

KAUAI
Thursday, June 25, 1987
9 a.m.
State Building, Conference
Room A, second floor

KONA, HAWAII
Friday, June 26, 1987
2 p.m.
State Complex Building,
Captain Cook

HONOLULU, OAHU
Thursday, July 2, 1987
3 p.m. and 7 p.m.
State Capitol Auditorium

* * * * *

This is the **THIRD** call to comment from the public on the subject of public records and privacy. **WHAT RECORDS SHOULD BE DISCLOSED? WHAT INTERESTS WILL BE SERVED BY DISCLOSURE OR BY NONDISCLOSURE?**

If you have any comment and/or concern, please attend any of the public hearings listed above and give your oral comment. Please also bring any written comment to these hearings. Or you may send your comments to: **GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY, Attention: Robert A. Alm, Chairman, P.O. Box 541, Honolulu, Hawaii 96809**

The COMMITTEE would like to thank you for your support and we encourage everyone to attend these important hearings OR send in your written comments and/or concerns.

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY

Justice FRANK PADGETT, Supreme Court; WARREN PRICE, Attorney General; IAN LIND, Former Executive Director, Common Cause/Hawaii; STIRLING MORITA, Reporter, Honolulu Star-Bulletin; JIM McCOY, Assignment Editor, KHON-TV; DUANE BRENNEMAN, Vice-President and General Manager, Nissan Motor Corp. Hawaii; ANDREW CHANG, Manager, Government Relations, Hawaiian Electric Company; DAVID DEZZANI, Attorney, Goodsill, Anderson, Quinn and Stifel; and ROBERT A. ALM, Director, Department of Commerce and Consumer Affairs.

Public hearings set on what should be in public records

The Governor's Committee on Public Records and Privacy will hold hearings on each island to listen to citizen opinions on what belongs on the public record and what doesn't.

The Neighbor Island hearings will be held at 1 p.m. Monday at the State Building in Wailuku; 9 a.m. Tuesday at Mitchell Pauoli Center in Kaunakakai; 10 a.m. Wednesday at the Community Library in Lanai City; 9 a.m. Thursday at the State Building, second-floor conference room, in Lihue; 9 a.m. Friday, June 26, at the State Building, conference room C, in Hilo; and 2 p.m. June 26 at the State Building in Kona.

Oahu hearings will begin at 3 and 7 p.m. July 2 in the state Capitol auditorium.

Interested persons may submit oral or written commentary at the hearings, or send written material to The Governor's Committee on Public Records and Privacy, Robert A. Alm, Chairman; P.O. Box 541; Honolulu 96809.

For more information call 548-7505.

NewsWatch Hawaii

Records vs. privacy

Say you've got a beef with state or county governments keeping records closed to the public.

Well, the Governor's Committee on Public Records and Privacy wants to hear from you.

The committee is holding public hearings to find out what records people think should be made available to the public and what should not.

Here is the schedule of hearings:

- Mitchell Pauole Center in Kaunakakai, Molokai, 9 a.m. tomorrow.
- Community Library in Lanai City, 10 a.m. Wednesday.
- Second-floor conference room in the State Building in Lihue, Kauai, 9 a.m. Thursday.
- Conference Room C in the State Building in Hilo, 9 a.m. Friday.
- State Building in Captain Cook, Hawaii, 2 p.m. Friday.
- State Capitol auditorium in Honolulu, 3 and 7 p.m. July 2.

Monday, June 22, 1987
Honolulu Star-Bulletin

Public Hearings

Tonight

HONOLULU LIQUOR COMMISSION meeting, 4 p.m., Honolulu Municipal Building, sixth floor.

Tomorrow

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY hearing, 9 a.m., Molokai, Mitchell Pauole Center, Mitchell Pauole Hall.

NEIGHBORHOOD BOARD MEETINGS — Ala Moana-Kakaako Board No. 11, 7 p.m., Sheridan Recreation Center; North Shore Board No. 27, 7:30 p.m., Haleiwa Alii Beach Park.

Wednesday

STATE PUBLIC UTILITIES COMMISSION hearings, 9:15 a.m., Maui State Office Building conference room, motor carrier permit applications from Michael James Chiero Jr., Wailea Limousine Service, Kahului Trucking & Storage and Rose Yoshizawa.

7 p.m., Lahaina Civic Center social Hall, hearing on Kaanapali Water Corp. application for rate increase and revised rate schedule.

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY hearing, 10 a.m., Lanai Community School Library.

CITY PLANNING COMMISSION, 1:30 p.m., City Hall annex, civil service conference room, request from Mililani Town Inc. to amend the Central Oahu Development Plan Public Facilities Map by adding designations for a sewage pump station.

CITY COUNCIL hearings, 2 p.m., Honolulu Hale. Agenda includes proposals to contine to allow festival banner displays from public lamp-posts, make it unlawful for people to be in city parks after posted closing hours, transfer authority to hear and act on zoning variance requests from the Zoning Board of Appeals to the Director of Land Utilization, and establish parking fees at Hanauma Bay.

Agenda also includes zone changes to allow development of a single family subdivision of 340-350 lots at Mililani Town between Kipapa Gulch and Kamehameha Highway, a 27-lot industrial subdivision between Barbers Point Deep Draft Harbor channel entrance and Standard Oil Refinery at Campbell Industrial Park, and a retirement community with a 120-bed care facility, 252 rental apartments and recreational and therapeutic facilities in Kaalakei Valley, Hawaii Kai.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY public hearing on proposed public park/parking facility in Kakaako, 7 p.m., State Capitol auditorium, 548-7180.

NEIGHBORHOOD BOARD MEETINGS — Palolo Board No. 6, 7 p.m., Palolo Elementary School cafetorium; Mililani-Waipio-Melemanu Board No. 25, 7:30 p.m., Mililani Recreation Center III.

Thursday

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY hearing, 9 a.m., Kauai State Building, conference rooms A, B and C.

CITY BOARD OF WATER SUPPLY meeting, 2 p.m., 630 S. Beretania St., board room.

NEIGHBORHOOD BOARD MEETINGS — 7 p.m., Pearl City Board No. 21, Pearl City Library; Kaneohe Board No. 30, Kaneohe Library. At 7:30 p.m., Kaimuki Board No. 4, Kaimuki Library; Kailua Board No. 31, Kailua Recreation Center.

Friday

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY hearings — 9 a.m., Hilo State Building, conference room C, and 2 p.m., Captain Cook, State Complex Building.

Saturday

OFFICE OF HAWAIIAN AFFAIRS, board of trustees meeting, 9:30 a.m., Maui Communiyy College student lounge.

Downtown Hawaii
THE NEWS THAT FITS ALL
Volume 9, Number 8 The Only Publication Exclusively Serving Downtown June 22, 1987

Committee on Public Records and Privacy to Hold Hearing

Are you interested in discussing whether the records kept by the state and county governments should be made more public? Are you seeking such records of another person? The Governor's Committee on Public Records and Privacy want to hear from you on this issue and other issues on public records and privacy as it conducts hearings throughout the state.

The purpose of these hearings is to listen to the public's opinion on what should be a public record and what should not be a public record. Other questions to be discussed by the committee are: What records should be disclosed? What interests will be served by disclosure or nondisclosure? The committee is seeking facts supporting the public's opinion on these issues and others involving records maintained by the state and county government.

Members of the Governor's Committee include: Frank Padgett, Warren Price, Ian Lind, Stirling Morita, Jim McCoy, Duane Brenneman, Andrew Chang, David Dezzani and Robert A. Alm.

Hearings are being held on all islands with the Oahu hearings scheduled for Thursday, July 2, at 3 and 7 pm in the State Capitol Auditorium.

If you have any comment and/or concern, please attend one of the public hearings to give your oral comment. Please also bring any written comment to these hearings. Or you may send your comments to: The Governor's Committee on Public Records and Privacy, Attention: Robert A. Alm, chairman, P.O. Box 541, Honolulu, Hawaii 96809. For more information, call 548-7505.

Public Hearings

Tonight

CITY LIQUOR COMMISSION meeting, 4 p.m., Honolulu Municipal Building, sixth floor.

HAWAII KAI NEIGHBORHOOD BOARD NO. 1 meeting, 7:30 p.m., Hawaii Kai Library.

Tomorrow

STATE BOARD OF EDUCATION facilties committee meeting, 3 p.m., Queen Liliuokalani Building, room 404, 1390 Miller St.

STATE DEPARTMENT OF HAWAIIAN HOME LANDS, meeting with the Anahola community, 7 p.m., Anahola Hawaiian Homes Clubhouse, Kauai.

Wednesday

CITY PLANNING COMMISSION hearing, 1:30 p.m., City Hall annex, civil service conference room. Agenda includes amending the central Oahu development plan public facilities map to add a designation for a water main from Wahiawa Well II to Kilani Avenue, amending the development plan public facilities map for the primary urban center to include designations for a water reservoir and water main on portions of Kalihi Street and for a park adjacent to Newtown Neighborhood Park in Aiea.

MANOA NEIGHBORHOOD BOARD NO. 7 meeting, 7:30 p.m., Noelani School cafetorium.

Thursday

STATE OFFICE OF HAWAIIAN AFFAIRS, 1:30 p.m., 1600 Kapiolani Blvd., suite 1500, operations and development committee meeting.

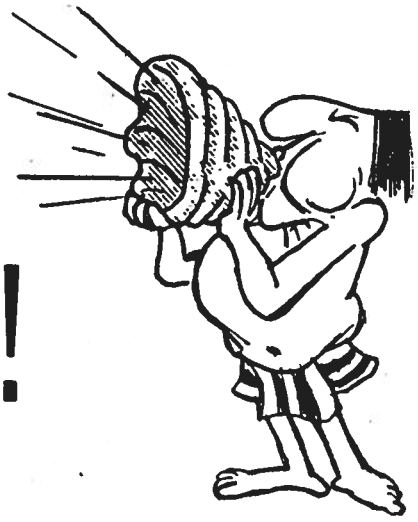
GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY hearing, 3 to 5 p.m. and 7 to 9 p.m., State Capitol auditorium.

STATE BOARD OF EDUCATION curriculum committee meeting, 4 p.m., Queen Liliuokalani Buildng, room 404, 1390 Miller St.

NEIGHBORHOOD BOARD MEETINGS, 7 p.m., McCully-Moiliili Board No. 8, McCully-Moiliili Library, Downtown Board No. 13, City Hall annex, civil service conference room, 7:30 p.m., Kuliouou-Kalani Iki Board No. 2, Aina Haina Playground pavilion, Diamond Head-Kapahulu-St. Louis Heights Board No. 5, Waikiki-Kapahulu Library.

Sunday
Star-Bulletin
& Advertiser

August 2, 1987



LAST CALL!

THE GOVERNOR'S COMMITTEE ON PERSONAL RECORDS AND PRIVACY is now entering the final stages of information-gathering. If you had something you wanted to say but haven't done so yet, please do so NOW!

WE WOULD APPRECIATE your comments by AUGUST 15, 1987 in order to be considered by the committee in its report.

THE COMMITTEE thanks you for all the response received and we welcome any further comments.

PLEASE SEND ANY comment and/or concern to: GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY, Attention: Robert A. Alm, Chairman, P.O. Box 541, Honolulu, HI 96809.

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY

Justice FRANK PADGETT, Hawaii Supreme Court; WARREN PRICE, Hawaii State Attorney General; IAN LIND, Former Executive Director, Common Cause/Hawaii; STIRLING MORITA, Reporter, Honolulu Star-Bulletin; JIM McCOY, Assignment Editor, KHON-TV; DUANE BRENNEMAN, Vice-President and General Manager, Nissan Motor Corp. Hawaii; ANDREW CHANG, Manager, Government, Relations, Hawaiian Electric Company; DAVID DEZZANI, Attorney, Goodsill, Anderson, Quinn and Stifel; and ROBERT A. ALM, Director, Department of Commerce and Consumer Affairs.

APPENDIX H

MINUTES OF PUBLIC HEARINGS
(ALL ISLANDS)

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY

Minutes of Public Hearing on Maui
Monday, June 22, 1987

Place: Conference Room B, Second Floor
State Building, Wailuku (Maui), Hawaii

Present: Justice Frank Padgett,
David Dezzani, Esq. and staff

Call to Order: Justice Padgett called the hearing to order at 1:05 p.m. Justice Padgett explained the purpose of the hearing (see attached script). He further noted that the Committee is not to make value judgments on any of the public's concerns about public records and privacy. The Committee wants to know, however, what are those concerns.

Testimony: Five (5) persons appeared and testified at the hearing. One (1) witness, the first to speak, GARY KUBOTA, also provided written testimony and exhibits. See Testimony at 234.

First Witness: GARY KUBOTA, Maui Association of Editors and Reporters

On the whole, Mr. Kubota represented that his association members working for the local media found the governments very cooperative.

Mr. Kubota complained, however, that public versus private information conflicts arose. Specifically, he suggested that Government should reveal the following:

(1) the reasons for county decisions to settle lawsuits out of court;

(2) greater details behind ethical violations by governmental administrators;

(3) criminal records of convicted felons, including presentence and parole reports for both adult and juvenile offenders;

(4) information (apparently censored) within the State Department of Education that concerns a report on drug abuse in Maui schools completed by state and county officials and a non-profit organization.

1

The Committee members asked Mr. Kubota for

(1) any specific recommendations of how to get around the concerns of the probation department that the possibility of disclosure will "dry up" their sources for information, and

(2) what mechanisms are possible to deal with protecting sources while permitting greater release of information.

Mr. Kubota said that his association had not discussed particular recommendations, only problems.

Second Witness: MOMI TOKUNAGA

Ms. Tokunaga complained primarily about the Judiciary, its efficiency and lawyers' fees.

Third Witness: MATTHEW CRAWFORD

Mr. Crawford complained about the time and date of the hearing. He felt that the average working man could not attend during the weekday. Further, the Committee should "inconvenience themselves" for the public and hold the hearing on Saturdays or in the evenings.

As concerns records, Mr. Crawford complained about traffic ticket reports and the unfair law that benefits insurance companies and not the public. He complained that these reports merely justify increasing insurance rates without examining the individual circumstances. Thus, these reports should not be accessible to insurance companies.

Fourth Witness: KELLY AVER

Ms. Aver favored greater release of information on how public money is spent to monitor abuse. She also favored transcripts for public meetings to provide a more accurate record of the meeting, thereby making a more effective Sunshine Law.

Fifth Witness: JAMES SMITH

Mr. Smith related his belief in the existing system of laws concerning availability of public records through his experience with the Maui Planning Commission. His experience supports his belief that the existing system works and we should not tamper with it.

The Maui Planning Commission considered a request to place a snack bar at the corner of Hana Highway and Ulumau Road. As a resident in the area, he became "involved in trying to understand what was happening and using as much of the available information as possible."

"The network of laws that create the impression that I had the right to know and understand what's going on in my government and to speak for or against actions contemplated by it, creates and sustains my trust in the process and in a democracy. I don't know if this impression is real or illlusionary but I think it is shared by all of us. I suspect it's fragile and I'm afraid if someone tampers with these laws that I'll really lose my trust in the process.

"The public interest is also served by decisions that protect the system. What interferes with their decision-making is the information provided them. What's difficult is to present to them a complete issue.

"What the laws give me is the ability to go to a traffic division and ask to see the records of traffic accidents at this corner without fear that I'm going to be turned away because it's not my damned business. So that's what these laws do now and they work and they are effective and they help me resolve what I thought could not be resolved. The trust is based upon information and my ability to understand that information and that is only arrived at through accessibility.

"Let me show you how that works. There was a request for a food concession stand at the corner where I live. Now the state law says you can have vegetables growing on your own land so I went down to the Planning Commission to include my rights. I said that they wanted to sell items that were tourist oriented. I would not have known if I had not been able to go and look at records and see what that request was. I found out from public information. I went to the Maui County police department and asked them, did they have traffic records? They referred me to the state and no one impeded me whatsoever. It was just my time, and that was, I think, important only because the commissioners responded to my concern for safety to turning off the Hana Highway and they wouldn't have if I hadn't been able to substantiate at least verbally a reference to the state parks that accidents had actually occurred at the corner. There's another thing. A relative of one of the petitioners applying for the snack bar permit is also a member of the commission. Members of the commission spoke to him by his first name at the first public hearing and it was not disclosed at that time that a member had a relative, so I think it was a positive act of the planning commission that resulted from the information presented by the testimony, and the access to that information was afforded by the laws that exist today.

"There's another thing. There was a move to defer this. It was passed and moved to defer. Minutes are kept of these public hearings, not the public hearings, but just the Planning Commission meetings and subsequently one of the commissioners who voted against this deferral moved to rehear the deferral. Now, Roberts Rules of Order prevents that. You have to move when you hear it. The only way it was discovered that that occurred was through examination of the minutes taken of the public, not of the public, but of the Planning Commission meeting, and that would have occurred if they hadn't written down the meetings and I wasn't able to get in on the meeting, and that I think is significant. Don't tamper with something that works. If it works, there's no need to fix it. And I think the laws as they exist today work.

"They've worked in my behalf. That's why I'm here to tell you that. I feel every issue would turn on the merits if enough information were presented to the council or commission. To get that information, it takes a lot of work. I think the system itself protects privacy simply by the diversified locations of information and the complexity of finding information once you get your sights set in that direction. So, in itself, it contains a natural protecting device, and there's no need to change anything, in my opinion, any of the existing laws. And that's to my interest.

"Right now, I feel that all I have is input through public hearings because I'm in a lower income group. I'm prevented from taking this to the court. If I objected to the decision of the Planning Commission and felt it was terribly wrong, I'm not in a position to put $10,000 in a lawyer's hands to take that to court. But I am in a position to run my butt off through traffic to get this information and trust the performance of these public servants and I think trust is justified, at least in my experience, in this particular issue. If it comes down to question of efficiency and effectiveness, and that's where I think all this movement is towards changing laws, I think, effectiveness should be the criteria and that's why I'm speaking in favor of it. Efficiency, I think, applies to economic issues, economic circumstances, and all that effectiveness to my mind applies to social problems in government and if you want effective government you have apples, and if you want efficient business you have oranges, but don't mix the two. I hope you won't mix the two. One way the system will work is with trust and if you destroy that trust, you destroy the system. Thank you."

When aksed whether the Planning Commission kept transcripts or the minutes, he replied:

"Yes. That's not only with this problem, either. I'm currently involved with another government action in my area and minutes had been taken of the county council public works department. It's absolutely necessary for me to say this, because the council doesn't have a staff big enough to verify everything a person says, but if I'm interested in a problem, I'm going to pick up that transcript and I'm going to read what that man says, and I'm going to say is this verifiable and if it's not verifiable, at the public hearing, I'm going to say that this man asserted that and it's not verifiable. You've got to work on understanding information and the correctness of the information. They can get that through public documents and through the system as it exists, so please don't tamper with it."

What happened to your protest against the food stand?

"Let me tell you what happened. What happened was I wasn't the only one to discuss this matter or to appear at the public hearing. As a result of some of the information and points I made, the planning director also became involved in this process to see whether or not there was a sufficient need for this food stand, whether or not it was in the area, or whether it was a snack bar, which was the best way to go. So what happened was we decided that there would not be a tourist aspect to this shop. The need for selling vegetables like Maui grown and owned types was important enough to allow the establishment of this store which was a compromise of my position to put nothing there. They provided for the growing of a hedge along Hana Highway to prevent entrance in to the snack bar which again was the safety concern that I rose and seemed to be addressed by them. If the issue had not been developed by information I and others obtained, they probably would have gotten it, as there was no information to respond otherwise. They had their building, also, a set of interim guidelines was developed with regard to who would decide what is a requirement for a special use permit and what is the requirement for a boundary amendment.

"All of these things were as a result not of my action but of the availability of information and the assessment of the information and the successful conclusion. I don't have a tourist trap. I don't have a Tijuana. I have Hana Highway. I got something that invests the means as an individual but doesn't compromise the planned use in the area, and it is only through information that is readily accessible."

Adjournment: Justice Padgett adjourned the hearing at 2:15 p.m.

HEARING SCRIPT

CHAIRPERSON: THE HEARING OF THE COMMITTEE ON PUBLIC RECORDS AND PRIVACY SHALL NOW COME TO ORDER.

GOOD MORNING. MY NAME IS _____ AND I WILL BE THE CHAIRPERSON FOR THIS (MORNING/AFTERNOON'S) HEARING.

(INTRODUCE OTHER MEMBERS)

BEFORE WE BEGIN, ANY PERSON INTENDING (WISHING) TO TESTIFY HERE TODAY SHOULD SIGN ON WITH THE STAFF. THE TESTIFIERS WILL BE CALLED IN THE ORDER OF THEIR LISTING.

ANY PERSON WITH WRITTEN TESTIMONY SHOULD LIKEWISE HAND THAT TO THE STAFF. A WRITTEN TESTIMONY, HOWEVER, IS NOT NECESSARY TO TESTIFY. A TAPE RECORDER WILL BE USED DURING THE HEARING TO PRESERVE ORAL COMMENTS.

FOR THOSE OF YOU WHO MAY HAVE NOT SEEN ALL THE CALLS TO COMMENT IN THE PAPER, THIS HEARING INTENDS TO LISTEN TO THE PUBLIC ABOUT THE RELEASE OR CONFIDENTIALITY OF PUBLIC RECORDS.

WHAT ARE YOUR PARTICULAR PROBLEMS WITH THE RELEASE OR PRIVACY OF A PARTICULAR RECORD HELD OR GIVEN TO ANY STATE OR COUNTY DEPARTMENT, AGENCY, OR BOARD. THIS IS ANALAGOUS TO A "TOWN MEETING." WE ARE NOT HERE TO TELL YOU WHAT THE LAW IS OR WHAT YOUR RIGHTS ARE. JUST TO HEAR YOUR PROBLEMS AND CONCERNS.

THE RESULTS OF THESE HEARINGS WILL GO INTO A REPORT ON THE CURRENT STATUS OF THE PUBLIC RECORDS LAWS. THEN WHEN THE LEGISLATURE MEETS IN 1988, THEY WILL HOPEFULLY HAVE A BASIS TO DECIDE HOW TO ADDRESS THE CONTINUING PROBLEMS OF ACCESS OR CONFIDENTIALITY OF YOUR RECORDS.

IF WE MAY BEGIN, THE CHAIR CALLS (TESTIFIER)

Governor's Committee on Public Records and Privacy

Minutes of Public Hearing on Molokai

Tuesday, June 23, 1987

Place:	Conference Room Mitchell Pauoli Center Kaunakakai (Molokai), Hawaii
Present:	Ian Lind and staff MC
Call to Order:	Mr. Lind called the hearing to order at 9:00 a.m. No one appeared at the hearing except one (1) interested citizen (Ms. Clara Sabas) for the next hour.
Testimony:	None.
Adjournment:	Mr. Lind adjourned the hearing at 10:30 a.m., and the party then walked to the Adult Probation Office down the street.
Post-Hearing Informal Discussion:	Following the hearings, Mr. Lind and staff met with interested parties who raised the following issues as summarized by Mr. Lind's letter to Robert Alm dated July 14, 1987, which is attached hereto as Exhibit "A" and by reference made a part hereof.

1451-1 Hunakai Street
Honolulu, HI 96816
July 14, 1987

Robert Alm
Chair
Governor's Ad Hoc Committee
on Public Records and Privacy
P.O. Box 541
Honolulu, HI 96809

Dear Mr. Alm:

I would like to review the issues which were raised during my trips to Molokai and Lanai late last month for public hearings. I was the only member of the Committee to travel to these two islands and was accompanied by Matt Chung, Committee attorney, and Bill Souza, DCCA consultant.

Due to the lack of response to the hearing notices, I did not convene formal hearings. We did, however, speak informally with a few interested people on Molokai. Mr. Souza did obtain the names and addresses of those we spoke with. On Lanai, however, our contacts were limited to the staff of the community Library.

In lieu of more formal minutes, I would simply like to present the following list of issues which were raised by those I met with. These observations are not presented in order of priority or importance.

1) Publication of official notices of hearings in the Honolulu newspapers is not sufficient to provide proper notice to residents of Molokai and Lanai. On these islands, it is necessary to be sensitive to very local communications channels. On Molokai, it was suggested that notices be placed in the local "shopper" newspaper or posted at the Post Office. On Lanai, the Post Office and the launderette, in addition to the Library, were suggested as places where notices would be seen.

EXHIBIT "A"

11

2) There was some suggestion that Molokai and Lanai residents might not receive adequate notice of meetings of state and county agencies even when they request direct notification. Even small delays in mailing of agendas might result in less than timely notification.

3) Few government documents are available locally to Molokai and Lanai residents, and they usually must incur the costs of long-distance telephone calls to state and county agencies, or even travel at their own expense to Honolulu, in order to obtain public public records.

4) Few agencies have special procedures for processing requests from Molokai and Lanai. For example, I was informed that it is a typical experience to call long distance for information and then to be put on "hold" by the agency. This results in unnecessarily high telephone charges for even relatively simple requests.

5) It was alleged that certain agencies used the lack of local access or regular procedures as a means of blocking or delaying access to public records. For example, the agency might require a long approval process before agreeing to make a certain type of record available on Molokai and Lanai. However, subsequent requests for local access to similar or identical types of records would apparently not benefit from this experience and instead would also require new approvals from Honolulu.

6) There was some concern expressed by state employees concerning the safeguarding of confidential information when the physical setting of the agency precludes restrictions on public access. Some state and county offices are located in small single rooms. Meetings with clients as well as record storage and administrative activities take place in a very restricted area. Such small offices may not be provided the resources necessary to protect confidential information.

7) The director of a private nonprofit service agency complained that the state and county do not collect or report island-specific data even when such data is used by the Legislature or County Councils as the basis for allocating public funds.

8) Access to legislative information on a timely basis was another concern of residents of these two islands. They do no currently have any regular mechanism for getting information to or from the

legislature during the session. One suggestion was to provide toll-free telephone numbers for calling to legislative offices. A second suggestion was to equip each public library with remote access to the Legislative Reference Bureau's computerized bill tracking system.

These were the primary types of concerns raised in the discussions that I had. I would appreciate it if you could make this letter part of the record of our hearings.

Sincerely,

Ian Y. Lind

Ian Y. Lind

Governor's Committee on Public Records and Privacy

Minutes of Public Hearing on Lanai

Wednesday, June 24, 1987

Place:	Lanai Community Library Lanai City
Present:	Ian Lind and staff
Call to Order:	Mr. Lind called the hearing to order at 10:15 a.m. No one appeared at the hearing.
Testimony:	None.
Adjournment:	Mr. Lind adjourned the hearing at 11:30 a.m. The library staff did indicate the best way to inform Lanai residents of such future meetings would be to post a notice at the Library and the launderette.
Post-Hearing Informal Discussion:	Following the hearings, Mr. Lind and staff met with interested parties who raised the following issues as summarized by Mr. Lind's letter to Robert Alm dated July 14, 1987, which is attached as Exhibit "A" to the Minutes of Public Hearing on Molokai, Tuesday, June 23, 1987, and by reference made a part hereof.

Governor's Committee on Public Records and Privacy

Minutes of Public Hearing on Kauai
Thursday, June 25, 1987

Place: Conference Room, Third Floor
State Building
Lihue (Kauai), Hawaii

Present: Robert A. Alm
Ian Lind, and staff

Call to Order: Mr. Alm called the hearing to order at 9:00 a.m. He explained the purpose of the hearing. See script.

Testimony: Eight (8) persons appeared to testify. No one brought any written testimony.

First Witness: TOM WARLING
Wong Care Home

He works for a 32-bed residential care home for mentally ill adult males. He requires access to statistics to develop new programs and justify the requests for monies to finance the programs.

He seeks statistics on substance (drug, alcohol, etc.) abuse and mental illness out of the state department.

Also, he finds that in some cases when patients enter the hospital, despite obvious signs of mental illness, substance or alcohol abuse, this is not reported.

Private psychiatrists treat many substance abuse cases, but they are not required to report these cases to the state or insurance carrier. If they did, they may not get reimbursed for such treatment. The way the health insurance is set up, they report the problem as counseling. Thus state statistics do not include private physician treatments.

Mr. Warling does not want names. He wants numbers of how many people are being treated for what conditions over a certain period. He believes the state should gather this information. He approached the Department of Health for statistical information and receives verbal statements of between 200 and 600 people being treated, but he is never given information on what category.

When asked whether he believed that his experience results from the state not collecting the information, the state having only impressions, or they do not look it up for him, Mr. Warling indicated that he does not think these are the only reasons. He also gets a statement "that that's confidential."

Second Witness: MAUREEN JIMINEZ

She indicated that she is not prepared to testify and may submit written comments. She works for an insurance company, and is concerned with access to driver's licenses, traffic violations, things of that nature.

Third Witness: JAMES WALLACE

He expressed concern about the availability of all financial records that pertain to real property, taxes on property, state and county contract purchases, other purchases and contract hires. All these should be available to the public for review.

He also objects to police commissioners' access to police records as this is not their job. They serve as administrative appointees to oversee the administration of the department and not the overall (prevention of crime by) the police department. It is not the commissioners' business to be briefed on the system of operations, raids in the field, things like that. Theirs is administrative and not police work.

As concerns contract information, he has not checked to see if the information is available. He wants to avoid access problems later. Though retired, he worked as a contract investigator for the Air Force.

He is also interested in real property tax information; not what a guy paid for his property, but how much taxes he pays. He expects people living next door with similar houses to pay the same taxes.

When asked if he had information about police commissioners reviewing people's police records, he said no. But he's sure that if they wanted to, they could find out. He further believes police commissions should not have access to the inner workings of police department investigations.

Fourth Witness: BEN ARANIO

Mr. Aranio is the chief executive officer for Halemau Nursing Home. It is the first free standing facility for native Hawaiians that received certification on April 24, 1987.

In trying to establish a certificate of need they had difficulty obtaining health care system information, such as from hospitals. He experienced difficulty in trying to obtain rate information from Mahelona and Veterans Hospital.

Without rate information, they cannot establish present needs for a different service. No one wants to hand out rate information. When the State administers rates, it doesn't go public. But all nursing homes must have these rates and it is given to a public agency. With the information, he can create a certificate of need and justify their proposal to deal with health care costs in the state.

When questioned about what he received when he requested rate information, Mr. Aranio indicated he got the "run around." He acknowledged that he probably did not look at the right places. He recognized that obtaining the information may be a "touchy thing," but with the information, he can establish a certificate of need and possibly save the state "x-amount of dollars a day."

When questioned about how a person shopping for a facility obtains rate information, he indicated he was not sure. He said, however, that he would give a rate sheet as he believes it's public information as established by statutes.

Mr. Aranio, as a Board member of Hawaii Long Term Care Services Association, has yet to hear anyone say how much they have to pay. If a person qualifies for DSSH (welfare) benefits or social security, the state will pay only the "cost share" of a full private patient rate. Each home negotiates and agrees to the amount of cost share with DSSH.

Fifth Witness: JONATHAN KEKAHU

He is interested in financial records related to mortgage funds available through Hawaiian Homes Department. He apparently filed an application but learned about three days later that the funds were exhausted. Because the Department is using state money, the records ought to be public also. Then they will know "who in the world is using all this money," and why is it exhausted.

He apparently asked for the information but he was told that he cannot get it as it is a private matter. A list of persons who received loans from different programs administered by Hawaiian Homes is private.

Sixth Witness: HENRY SMITH

Mr. Smith lives at Anahola on Hawaiian Homes Land. His chief concern is the lack of public records documenting the transfers or exchanges of Hawaiian Homes Land for other state land or for fee simple ownership. He believes records are missing, possibly destroyed.

He is concerned that the Hawaiian Homes Act of 1920 designates land to the department. But in 1987, the land is in another's hands, and Mr. Smith is unable to trace the transfers of land out of the department.

In some cases, the state is leasing Hawaiian Homes Land, but the leases are not available for review.

And when records may be available one time, the next time they are not available. Other records are unavailable because of their poor physical condition.

He also complained that many records dealing with Kauai property are in Honolulu, whether Hawaiian Homes documents, real property documents, tax records or Department of Land and Natural Resources.

Seventh Witness: WILLIAM SOLLNER

Mr. Sollner attended the hearing to do a story for the Garden Isle newspaper. He testified, however, as a private citizen living on Kauai.

He became involved with reviewing available real property tax assessment records. He lives in Wailua and is a member of the Homeowners Association. They reviewed tax assessment records because of claims of arbitrary and biased assessments. The records showed greatly varying assessments between very similar lots. Many homeowners thereafter successfully appealed the assessment. He offered the story in support of continued public access to such records.

In addition to the access issue, he contends that the manner of presenting information (to the public) slows or hinders access. Without sufficient time to search the records many problems continue unresolved. No one appears to organize information to ease access and understanding for the user. The lack of a computer terminal on Kauai to many state records in Honolulu also makes getting the information difficult.

Eighth Witness: ELENA JECK WEST

She complained about not knowing how to correct court records for lawsuits and criminal actions against her for kidnapping her child when she

possessed a Kauai court order giving her custody. Her husband, apparently upset at her, reported the alleged kidnapping to Kauai police. Thereafter, a Kauai court issued an order for her arrest. The Federal Bureau of Investigation then served the warrant in San Diego where she attended school. On her return to Kauai, she proceeded to fight the court and criminal actions. Her custody order eventually lead to the dismissal of both the civil and criminal cases, the records of which she now seeks to correct.

Adjournment: Mr. Alm adjourned the hearing at 11:00 a.m.

(SM)

Governor's Committee on Public Records and Privacy

Minutes of Public Hearings on Big Island

Friday, June 26, 1987

I. Morning Hearing

Place: Conference Room C, First Floor
State Office Building, Hilo, Hawaii

Present: Mr. Stirling Morita (SM)
Mr. Dwane Brenneman
Mr. Ian Lind
and Staff

Call to Order: Mr. Morita called the hearing to order at 10:00 a.m.

Testimony: One (1) person appeared and testified at the hearing. No one submitted written testimony at the hearing.

First Witness: JOHN WAGNER
Deputy Corporation Counsel
County of Hawaii

Mr. Wagner raised three (3) points:

(1) The effect of the public records laws on information in the corporation counsel office prior to the start of legal action.

(2) Significant problems with the vague definition of personal records contained in Chapter 92E.

(3) The cost of having to review whether a record is available to the public (Administrative Compliance).

With regard to (1) above, the County is:

(1) "concerned" about any changes to Chapter 92 and 92E, HRS and the

effect on Section 92-51, which authorizes government attorneys to withhold disclosure of materials in their offices for the preparation of a legal action. He recommends that the same provision be retained so that the public wouldn't be entitled to see the file until the action has commenced.

Upon questioning, Mr. Wagner said public records used by government attorneys shouldn't be kept just in the office as a way to get around disclosure. It would have to be an exceptional case where the file might be in there for a long period of time. He suggested that the statute of limitations might be a guide to prevent storage of such records with attorneys.

(2) The corporation counsel's office has encountered the problem of what "a personal record is." Mr. Wagner thinks the law should be amended so that personal records are those where a person has "a reasonable expectation of privacy."

Under questioning, he said he saw no problems with limiting such records to those that contain highly intimate details.

(3) Because of the broad definition of a personal record, the county attorneys must spend a lot of time reviewing requests for records. It "places an administrative burden on the counties."

If a new statute is passed, they believe it should include a provision where the person requesting the documents pays a fee.

He also said the law needs clarification. If a record contains personal information, can it be released with the personal information "sanitized or blacked out" or is the whole document withheld?

Although the corporation counsel's office previously reviewed public document requests, the number of queries has increased because of the privacy law. Mr. Wagner estimated that his office, on the average, would handle one or two requests a month.

Under questioning, he said the type of reports they've been getting questions about are:

(a) Ambulance reports, what the response times are.

(b) Police reports.

He also said he believes that Hawaii County releases the names of registered owners of motor vehicles to the public.

He said that the law poses problems. Would notices or other documents containing the names of property owners be personal records?

He also noted a conflict between the constitutional privacy provision and the statute. The constitutional provision says a person's right to privacy shouldn't be infringed on unless there is a compelling state interest. But Mr. Wagner noted that Section 92E-13 allows the release of a personal record to a third party without showing a compelling state interest.

II. Afternoon Hearing

Place: Conference Room
State Complex Building, Captain Cook, Hawaii

Present: Mr. Stirling Morita
Mr. Dwane Brenneman
Mr. Ian Lind IKC
and Staff

Call to Order: Mr. Lind called the hearing to order at 3:00 p.m.

Testimony: Three (3) persons appeared and testified. No one submitted written testimony.

First Witness: DEANNA HAMMERSLEY
Representative, Kona, Hilo and Kauai Board of Realtors

She favors the present access to real estate information such as sale information, mortgage amounts, real estate documents, tax assessed valuations, and zoning. The information helps the parties to better evaluate the purchase or sale especially in the face of appraisals that do not consider mortgage balances.

She also desires continued access to real property exemptions which can impact the amount of tax paid and the determination of tax value. The County is considering closing this information.

As a broker, she also finds need for disclosure of real estate commission action on broker and agent licenses. She is unable to obtain up-to-date information. It would aid the board and the public to know where brokers or agents are employed,

or whose licenses are suspended or revoked. In some cases, the regulatory agency is backlogged with inputting current data, and may give inaccurate information. Without release of the information, the agent or broker continues to practice with increasing possibilities for problems. She related one incident where an agent forfeited his license and failed to notify his principal broker. The broker now faces a hearing on paying commissions to an unlicensed individual. While that broker failed to ask the right questions, the real estate commission did nothing to inform him of the forfeiture for his agent's license.

Second Witness: JOHN BURGESS

As an attorney he complained that all or many of the counties' public records, such as court case files, are in Hilo. So they have a intra-county access problem as well as the inter-island access problem with records in Honolulu. Access to Honolulu records begins with long distance phone calls.

GOVERNOR'S COMMITTEE ON PUBLIC RECORDS AND PRIVACY

Minutes of Public Hearing on Oahu

Thursday, July 2, 1987

I. Afternoon Hearing

Place: State Capitol Auditorium

Present: Robert A. Alm, Dwane Brenneman, Stirling Morita, Warren Price, III, Ian Lind, David Dezzani

Call to Order: Mr. Alm called the hearing to order at 3:00 p.m.

Testimony: Twenty-five (25) persons testified. Many submitted written testimony which are referred to herein as "Testimony at _____" (See, accompanying volumes).

First Witness: ETSUO SHIGEZAWA
Representing Hawaii Construction Industry Association (HCIA), Chairman, HCIA Government Relations Committee.

Mr. Shigezawa offered his testimony on behalf of HCIA. HCIA contends that certified payroll and payroll records for public works contracts should be a public record and available for inspection by the public. As outlined by HRS § 104-3, payroll records include employee names, classification, rates of pay, daily and weekly number of hours worked, deductions made and actual wages paid. See, Testimony at 305.

Public scrutiny of these records will assure compliance with the law by the low bidders, and assist in finding violators. Such scrutiny will foster fair competition, protect workers and their wages, and ensure proper tax payment. Id.

Chapter 104 mandates the price of labor for the public works project. Every bidder must have the same price per hour. Differences between bidders should therefore be limited. The only way to find out what the low bidder pays his workers and complies with the law is through the certified payroll record.

Second Witness:

HAROLD M. LAURITZEN
Appearing on behalf of Shizuo Onishi, president of Aiea General Hospital Association ("AGHA").

AGHA would like to transfer medical records to the State Department of Health. HRS § 622-58 requires that health care providers maintain records for up to 25 years (the period of minority plus 7 years). Even though AGHA no longer provides health care they must maintain the records as the custodian. The records originally belonged to Pearlridge/Leeward Hospital. See, Testimony at 146 .

As AGHA now maintains a scholarship trust fund, they would like to use the moneys presently spent on record storage for the scholarship.

Third Witness:

MARIA HUSTACE

She wants full access to all public records. Privacy should protect only the most intimate records, such as names of rape victims, child abuse victims and the like. See, Testimony at 351 .

As a resident of Molokai, she also wants "easy access." Everything, including immediate exposure, is more difficult. Access to records generally means a trip to Oahu, long distance phone calls, being put on "hold," etc.

Fourth Witness: DOROTHY MURDOCK
League of Women Voters

She gave one observation: Prior to passage of the Privacy Act (HRS Chapter 92E), we assumed that anything not specifically closed was open (based on 92-51 et seq.). After passage of the Act, somehow we got shifted around and now the law is exactly the opposite, that is, everything not specifically open is closed. She would like the current situation reversed. See, Testimony at 233.

Fifth Witness: JIM DENZER
Executive Director
Hawaii Child Care Centers

Hawaii Child Care Centers ("HCCC"), who represent six child care centers on Oahu serving 600 children, object to having certain accusations of child abuse made a public record. Making public any accusations which have been proven spurious (whether by the Department of Social Services and Housing or the police) is unreasonable and useless. Publishing the accusation does not deter the actual abuser. On the other hand, the accusation damages the child care center and the individual accused even with a subsequent dismissal of the spurious accusation. HCCC, however, does not object to publishing substantiated accusations. See, Testimony at 201 .

Sixth Witness: JANET LEE

She speaks as a citizen active in child care as an aide, teacher, director and administrator. She also objects to having public unsubstantiated allegations of child abuse against child care centers.

Secondly, she desires disclosure of records on which the licensing and registration division of the Department of Social Services and Housing bases its directive to licensed child care employers to terminate an employee. Supposedly, the notice by DSSH relies on information obtained through the FBI and Hawaii Criminal Justice Data Center. If appealed, the employee is still denied access. See, Testimony at 373 .

Seventh Witness: JIM SETLIFF

As a private citizen, he is concerned about misusing "privacy" to hide public records. In one instance, he sought copies of plans for neighboring construction work that began without a permit. By the time the plans would be available, however, construction was complete. A second time, he filed a police report for damage to a wall, but he could not obtain a copy of the report.

He also favors public disclosure of salaries of university employees, including other sources of income, such as consultation fees.

He also favors disclosure of regulatory information such as public tests for chemicals such as heptachlor.

Eighth Witness: FRANCIS J. DANN, M.D.
Representative of Hawaii Federation of Physicians and Dentists

He believes that all medical records must be confidential unless the patient gives the consent to disclosure.

Concerning medical malpractice hearings and records, he supports confidentiality of everything but the final disposition of the claim brought before the panel. See, Testimony at 216 .

Ninth Witness: PATRICIA STANBACK

She filed a medical malpractice action pro se on behalf of her minor son in First Circuit Court. She claims that the Court refused to allow her, a parent of the minor, to see two in camera Reports. The Court, by its order, directed the reports to the minor on his reaching the age of majority. Ms. Stanback claims that the court should not be allowed to prevent her from viewing a copy of those reports. See, Testimony at 415 .

Tenth Witness: MICHAEL LILLY

Mr. Lilly speaks as an attorney in private practice, and as a former attorney general for the State of Hawaii. He previously submitted a Appellate brief that discusses public records and privacy in the context of a specific record that he sought. See, Testimony at 155 .

He finds that "it's almost an inherent human characteristic to be private. Individuals don't like records open any more than the press would like to have their press rooms or editorial rooms open. The difference between the press and the government is that the government is of people and it's an obligation for government to be open.

"Hawaii, I don't think, needs any rules or laws. I don't think that our privacy act is so restrictive that it can't be interpreted on balance to provide the type of privacy that individuals are entitled to or the type of open government that people desire. The privacy act was implemented because of the change in the constitution and the legislative history to the constitutional provision which says that privacy is used in a sense concerns possible abuses and use of highly personal and intimate information in the hands of the government for private parties, but it is not intended to deter the government from legitimate compilation and dissemination of data.

"Problems come only in the interpretation of the Privacy Act. If you want to take a restrictive interpretation then the government records will become closed and in essence reports in the legislature to have to act and try to deal with that balance, or your can take a more balanced interpretation and you can make the business of government that is legitimately open, (remain) open and keep any personal information closed...."

Mr. Lilly also related a personal experience in trying to obtain a public record that contained one person's name. The First Circuit judge found the document as a "personal record," and denied access to the document. See, Testimony at 155 .

Mr. Lilly suggests that the judge could have removed the person's name from the document, then released the document. This was a very restrictive interpretation of the privacy act, rather than a balancing of the interests that might have restricted strictly private information, but released everything else as everything else is public. "It is the public's right, not the government's right, to keep it closed. It's the public's right of access."

Eleventh Witness: JIM BAZEMORE
Representative of the Hawaii Building and Construction Trades Council, AFL-CIO

The Building Trades Council represents 18 construction unions and over 25,000 employees. His group seeks public release of documents relating to public works projects. These include payroll documents, other documents supporting performance of the contract, and the final disposition of complaints against alleged contractors violating the law.

Many contractors do not comply with the law and the contract requirements. A lack of enforcement by the state, and combined with unavailable documents supporting the contract, creates the current environment that punishes those who abide by the laws.

"Any time taxpayers' money is being spent, the public has a right to review any records that show how this money was spent and how the work was performed." See, Testimony at 199 .

When his organization previously obtained the certified payroll records, they found many violations. At some point, the attitude changed based on the privacy act. Records now obtained do not have employee names or social security numbers, and only show wages.

When questioned about the existence of job classification data, Mr. Bazemore said that while this exists, its availability would not help his concerns. In one case, his group obtained payroll records stating employee wages. On contact with the individual employee, however, they discovered that the employees received $5.00 rather than the reported $25.00 per hour and $35.00 per hour for overtime. Some of the employees were never on the project as well. The employees do not report the violations as they don't know the difference unless someone asks them about their wages.

He also related an incident related to the remodeling of the Aloha Stadium. A contractor from California won low bid for the first phase of the Stadium repair with a low of some $900,000 below the next local bidder. "Now how can a contractor move his employees and equipment and everything from

Texas and beat a contractor who's set up here locally in business, and perform that work under the same wage rates required by law and he certainly can't be that much different on materials. So we say there's something wrong."

Following contact with some employees, he found that the employer did not have safety equipment. They worked on a forty (40) foot beam with no safety line. When spraying toxic materials and sandblasting existing steel, the contractor supplied too few respirators to go around, and he suggested that the employees wrap their T-shirt over their faces.

Comparable records for federal jobs exist, and the law makes certified payroll records available and accessible to Mr. Bazemore. Apparently, (HRS) Chapter 104 takes its language from the California law, but leaves out language that makes the records open for public review and public reprint.

DAGS is now referring requests for payroll records to the Attorney General's office. They have ruled that the privacy act prevents the release of names and social security numbers on these records, making them useless.

Twelfth Witness: MAHEALANI ING
Executive Director, Native Hawaiian Legal Corporation (NHLC)

NHLC is a non-profit public interest law firm serving Hawaiians since 1974. When dealing

with Hawaii's public records laws, they have experienced the following problems: 1) disagreement over what items constitute "public records;" and 2) disagreement over when public records may be withheld from public inspection and copying by the offices of the Attorney General and county corporation counsels.

For example, NHLC attempted to obtain copies of an application for a conservation district use permit, Department of Land and Natural Resources staff memoranda, related correspondence and the permit. DLNR refused to release the documents without clearance from the Attorney General's Office. NHLC eventually obtained the documents, but asserts that the delay of three or more days is a disservice and unwarranted. NHLC considers all the requested records as "public records."

NHLC is also litigating a case with the County of Hawaii. The Corporation Counsel's office, by letter, refused to release certified copies of building, grading, grubbing and special management area permits without a formal request for discovery. The office holds the position that they can close any public records related to ongoing litigation. See, Testimony at 138 .

NHLC, however, takes the view that the records may be withheld only when in their possession for the preparation of a legal action prior to the commencement of the action. After the legal action begins, the

public record then becomes accessible without the need for any formal discovery. See, Testimony at 281 .

Thirteenth Witness:

AH JOOK KU
Executive Director, Honolulu Community Media Council

Concealment of public records has a long history in Hawaii. In 1972, the University of Hawaii Board of Regents held closed door meetings without public notice of agenda items submitted by the University administrations for action. In 1978, the Honolulu Police Commission discontinued its policy of public disclosure of names of police officers subject to commission investigation. More recently, the State Department of Health, after disputing a story in the Sun Press concerning pollutants in Mililani area water, refused to release records that would allegedly resolve the dispute. And today, the Attorney General's Office maintains that HRS Chapter 92E prevents disclosure of salaries and periods of appointment of university personnel. See, Testimony at 221 .

Can the media Council expect major changes in the implementation of the sunshine law that resolves these concerns, or should we expect more of the same?

In response to a question regarding whether the Sunshine Law Coalition of Hawaii must "be ever vigilant lest our government continue its business - the people's business - in secrecy," the chairman responded "yes."

Fourteenth Witness: GERRY KEIR
Managing Editor, Honolulu Advertiser

He finds that the public records section of the Hawaii's statutes (HRS Sections 92-50, -51 &-52) make a "great sounding statement" about what public records are, but then "excludes all 'records which invade the privacy of an individual,'" including an "overbroad definition of personal records," and other exceptions. The law thus restricts access to public records which in any way "contain personal information about an individual regardless of whether that individual is a public official, regardless of whether tax dollars are being used to pay the salary of that individual, with no attempt to balance the public's right to know versus an individual's right to privacy." See, Testimony at 217 .

"Chapter 92E was written so as to encourage public employees to DENY access for fear of being fired. The biggest problem, especially with state officials, seems to be getting permission from someone with the proper authority to release information. The counter clerks ... tend to err on the side of not releasing information ..."

"As a result, when the legitimate concern for privacy ... competes with the equally legitimate goal of openness in government, privacy has the inside track."

Mr. Keir believes that the broad language of the privacy law dooms many appeals to the courts, and the cost of pursuing an appeal constitutes a "chilling effect on any individual or news medium seeking to challenge a decision made under this chapter (92E)." Id.

He thus recommends changes to make more information about public employees public and to segregate the public record information. Rather than restrict an entire document because of personal information on part of the document, excise the private portions such as his name, and release the rest. "There should be a balancing test to determine whether public interest in disclosure outweighs the privacy interest of the individual involved." Id

The resulting Hawaii law would then conform closer to the federal Freedom of Information Act, a more workable alternative to the current law. He cites numerous examples of useful information revealed by the federal act. Id., at 4.

As a final suggestion, Mr. Keir recommends that the law include electronic or computerized records as an accessible form of public record.

When asked for examples of records he could not obtain, he noted that because his office can anticipate a negative response, this

"chilling effect" of the law stops the request before it is made. The "structure of the privacy law..." and its "title" "... puts many civil servants in the frame of mind that they are worried over releasing something improperly instead of looking at the records as being open, unless." And in that "frame of mind, it's closed." During the 1978 Con Con (Constitutional Convention), "there were concerns about government invading people's privacy. Instead, what we have is a law in which government can invade people's privacy all they want... there's just no way to tell how they're doing it because all the records and the way they're compiling (them) are kept secret and nobody else can take a look at them ..."

When asked about how he would legislate or perform his balancing test, he responded: "I don't think there's any way to ever refer to every document and every filing cabinet within the state government. I think that would be a hopeless task. I think what I would like to see is a statutory recognition that there are rights, sometimes conflicting rights, to be taken into account on this and that the civil servants who are implementing the law have to look at those two rights and take them into consideration. What we have now is a situation where a civil servant--the way the law is written--perfectly legitimately can deny you almost any piece of paper with somebody's name on it because of the way the privacy law is written. I think

if that assumption were removed and that there was an indication of legislative intent that some balancing test be implemented, (this situation would change). You can never write it so completely tightly that the guys in charge of the file cabinet can go in to Chapter 92E subchapter 2 and find the answer to his or her question. There's going to have to be some discretion applied by government employees. But the important part would be not to automatically assume that any record with somebody's name on it is private and therefore confidential."

When informed about the State's interest in protecting itself from lawsuits for invasion of privacy as a basis for withholding release of documents, and who should decide the release issue from within the government, Mr. Keir responded that the Federal system has an appeals process within an agency that eventually gets to the Justice Department, but this should not have to happen with the state Attorney General's Office. With a fairly specific indication of legislative intent, the department people should be capable of making the decision themselves.

He thinks that there is too little information available on a lot of regulatory processes in the Department of Commerce and Consumer Affairs. If the State regulates masseuses or doctors, for example, to protect the consumer, then the consumer should be able to find out about the (applications)

process before licensing bodies, and the results of it. Thus for a regulated business, the State should err on the side of publicity. He recognizes problems with this, as in the case of Child Care Centers, See, Testimony at 201 . But how do you evaluate the performance of investigators if the records of "dumped" cases are thrown away or made "private?"

Fifteenth Witness: BEVERLY KEEVER
Member, Sunshine Law Coalition and journalism teacher

The problem with the public records and privacy law is the very narrow interpretation taken by the government. Chapter 92E directs each department to develop rules and regulations for implementing its provisions. To date, she is not aware of the creation of any such rules. Instead of the rules, an attorney general's memorandum very narrowly defines "personal information." Thus for university personnel, only their names and positions are disclosed. She suggests that Hawaii follow New York state and disclose name, compensation, job title, training, background, previous work experience and so on.

She therefore recommends a public review of these internal memorandums, with the review incorporated into recommendations to rectify the concern that administrative decisions on release of information rely on internal memorandums.

Her second proposal is to change the presumption behind the public records law. She recommends that all government records be open with certain exceptions, the key one being a legitimate invasion of an individual's privacy with no public interest. This is where the balancing test comes in. And rather than using the courts, she suggests an independent commission as used in California. (The presumption) also shifts the burden of proof away from the individual to prove his right to the record and on to the government to justify keeping the record closed.

She finds that Chapter 92E is also deficient in protecting citizens from secret government record keeping. The law should require accurate, relevant, timely and complete government records, as well as indicate what records the government does keep. The law should also presume that individuals requesting to see their records will see all of their records. For example, in some states, a medical patient may not see all of his medical records that he requests. This may lead to inaccurate information, as well as the concealing of completely wrong information that the patient can only correct if he knows about it. See, Testimony at 355; Vol. II at 338 .

Concerning technology, she suggests that any recommendation consider the "computer

matching" occurring at the federal agencies that apparently circumvents the statute limiting agency to agency access to information. Id., at 359 . She also suggests an electronic bulletin board or computer hook-up for the neighbor islands with state agencies and legislators, if possible.

Sixteenth Witness: TERRY BOLAND
Representative of Common Cause/Hawaii

Common Cause believes that Hawaii's public records law should presume that all government records are open, with certain clear exceptions. One exception is personal records in which there is no public interest. In most cases, however, there is a need to balance the public's right of access to information (held by government), with the need to protect the individual from (unwarranted) government intrusion into his personal life. When the public interest in disclosure outweighs an individual's privacy interest, the government must release the information. See, Testimony at 152; Vol. II at 336.

Furthermore, the government should collect only that information necessary to the statutorily required operation of an agency. Common Cause recognizes an individual security from government collection and release of secret, wrong, irrelevant or unverified personal data. Id.

The public also has a legitimate interest in the performance of its public officials and employees, their qualifications, financial interests and behavior.

Seventeenth Witness: JAHAN BYRNE

As a Senate legislative aide and investigative researcher for an information service company, he has first-hand experience with denied access to government records. Most critical is his experience with the police departments of the various counties. For example, the Honolulu Police Department does not have any rules adopted under Chapter 91 (Haw. Rev. Stat., Administrative Procedures Act). HPD apparently claims that its policies and procedures are internal in nature, and therefore exempt from public review. See, Testimony at 332 .

Citizens and the press require maximum access to government, its operators and its records. A simple reason for more openness is the First Amendment which, in its guarantee of free speech and free press, includes protecting a right to know. Because government does business for its people with their money, the people deserve to know how their government conducts business and spends their money. Without access comes distrust. Granted, more openness means more cost, manpower and frustration for them, but it also means increased accountability, responsiveness (and trust) for the public. Id.

Eighteenth Witness: WALTER ODA
Representative of the Fair Trades Practices Committee of the Painting Industry of Hawaii

Mr. Oda serves on the joint labor-management committee whose objective is fair competition among painting and decorating contractors in the building and construction industry in Hawaii. His committee previously worked with then Lieutenant Governor John Waihee in developing and adopting a monitoring procedure to insure that federal Department of Defense contractors performing federal construction contracts comply with applicable (state) statutory requirements. See, Testimony at 226; Vol. II at 303.

The monitoring procedure preserves the competitive bidding position of the local contractors by insuring that every contractor performing work in Hawaii first obtains a general excise tax license, pays applicable taxes, contributes to the unemployment compensation fund, worker's compensation insurance fund, pre-paid medical care and disability insurance coverages.

At the time of the announcement of the State-USCINCPAC agreement, the State levied more than $1 million dollars in delinquent tax assessments. An additional $1 million annually is anticipated. The procedure insures compliance with the general excise tax and unemployment compensation contributions, but without additional information, the procedure is not stabilizing the competition (between in-state and-out-of state contractors).

For example, while all employers must pay the above noted taxes and contributions, contractors many times are not aware of these cost factors and thus do not factor them into their bid. Thus their bid may reflect a lower cost. To increase awareness, the industry wanted information about the state's implementation procedure and additional revenue statistics gained as a result of the monitoring procedure. Previously, Mr. Oda's committee obtained certain payroll reports that enabled the citing of abuses to the appropriate agency. Thus his committee served as monitors for the State while insuring fair competition to all bidders and preserving the integrity of the contracting process.

This information is now denied because of the privacy law. Despite proposed amendments presented to the Legislature, the bills died. Thus only access to public records can ensure that public works contractors comply with all statutory requirements. At the same time, the government claims that it lacks sufficient personnel to adequately monitor the public works contractors. His committee has now offered the services of volunteer jobsite monitors to ensure compliance with statutory and specification requirements. This proposal awaits the approval of the Department of Accounting and General Services and the Attorney General's office.

This problem apparently affects all trades in the construction industry. A study found that out-of-state contractors got practically all of the federal public works contracts. They underbid local contractors by as much as 30-50 per cent. The majority of the out-of-state contractors failed to obtain a general excise license and did not pay the excise tax, use tax, and net profit tax. They did not register with the Department of Labor, and thus avoided unemployment compensation contributions, worker's compensation, prepaid medical, giving them a 30% cost advantage. The industry then lobbied with the congressional delegates, only to learn that the federal government considered the problem subject to state statute, and therefore beyond their concern. Id.

Nineteenth Witness: NEIL ABERCROMBIE
(former State Legislator and Congressman)

He believes that the difference between public and private records is not that difficult. First, you determine if the record is public or private, and if the record is private, then you determine whether a compelling state need exists to maintain the privacy aspect. Whether the record advances a rule or law determines the need. Personal information, however, is not necessarily private. For example, previous testimony indicated that the construction industry wants payroll records. These

records contain personal information, such as employee names, addresses, and so on. If, however, public tax dollars generate the payroll record (as in the case of public works projects), then the "personal" information is not private.

Other examples are voter registration rolls. A home address is personal, but once the homeowner registers to vote, his address is public information. Also discussions on personnel hiring are private, but after hiring, the individual's name, his qualifications, his compensation, and so on should be public because he will receive public tax dollars as compensation.

On the other hand, such things as candidates for judges, unsubstantiated allegations, and criminal probation records should stay private. Child abuse cases, however, present a difficult question as to what should stay private versus public.

Under questioning about his distinction between personal and private, Mr. Abercrombie believes that the guarantees of the (privacy) law that allow an individual to correct personal records applies to "personal" records, but the confidentiality requirements of the law only applies to personal information that is legitimately "private." He further emphasized that in his view, the personal versus private distinction changes when public funds are involved. Public monies indicate a public purpose. The public has a right to know how the state spends its money.

Twentieth Witness: G. A. "RED" MORRIS
Legislative Consultant for R. L. Polk & Co., Inc.

Mr. Morris wants access to motor vehicle registration information so that his clients can provide recall notices to car owners. Either the federal government or the manufacturer mandates the recall because of a safety problem with the cars. His company has lobbied for amendments to Section 286-172 (Traffic Records), HRS, with success for the past eight years, only to have the state continually refuse to produce the requested information. He complied fully with the current statute, including posting a bond to ensure against improper disclosure, but he has yet to obtain the information. Furthermore, he found that in other states, most notably Illinois, the same information is found to be "innocuous" and "neither vital nor intimate so as to cause offense to a reasonable person." See, Testimony at 239 . This is in contrast to the present public access to real estate ownership information, for which one can find almost everything one wants to know through the Bureau of Conveyances or the County Tax Assessor's Office. Odd that real estate is a public record but the car one owns is private.

His clients need the names and addresses of owners to compile statistics about who are fleet owners, leasing companies, individuals,

etc. Current names then keep ownership records current. Individual identities, however, are not disclosed.

Under questioning, he said that no other state prohibits his client from using the requested data. Some states restrict the use of the data for mailing lists, but no state prohibits (access).

Recess: Mr. Alm recessed the hearing until 7:00 p.m.

Call back to Order: Mr. Alm reconvened the hearing at 7:10 p.m

Twentieth Witness: REPRESENTATIVE ROD TAM
State of Hawaii House of Representatives

In 1975, the Hawaii Legislature clarified the intent of "sunshine" in Hawaii by declaring "that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible." See, Testimony at 7 .

This implies that "sunshine" is a two way street in a democratic government with hands on communication with all interested persons and groups in the governmental decision-making process." But "the executive branch has used the tension between privacy and sunshine to suppress public information such as the salaries of government employees." The public has a right to know the salary of a government employee. Employee personnel

records, however, may contain private information, such as how he invests in private deferred compensation plans, or the church he attends.

The present statute fails to specify what personnel information of public employees should be public versus private.

Representative Tam also objects to the collection of irrelevant or useless information. Once the information, such as accusations against child care workers, cannot be confirmed, the information should be discarded.

Attitude of public workers affects the delivery of public information. The Governor might issue an administrative directive that not only sets out what is private information, but also counsels the employees on respectful and timely delivery of requested information. The employees could also delete private matter from the otherwise public information. Too many public employees act as though information is the property of the employee and that they can withhold it from the public.

Twenty-first Witness: MARTHA BLACK
State Legislative chair of the American Association of University Women

She favors access to all records of State and local governments, except for clear and specific exceptions easily understood by the public. Also needed are mechanisms for

appeal and dispute resolution without going to court and obtaining correct information from the Attorney General's office, or other authority. The legislature should also regulate the collection, maintenance, use and dissemination of personal information by the state and counties. This regulation, however, must not come at the expense of access to information on the background and actions of public officials and employees who must bear public scrutiny in the public arena. See, Testimony at 147; Vol. II at 334.

Ms. Black thus recommends changes to the law that maintain a reasonable balance between personal privacy and the public's right to know.

Twenty-second Witness: EARL NELLER
(formerly an archaeologist with the State Department of Land and Natural Resources)

After working 10 years as a State archaeologist, he believes that the public has the right to know what the state's experts believe and to know what they are working on. The state constrains its professionals such that they do not speak to the press without permission from their administrator. While public reprimands are rare for taking their work to the public, the administrators intimidate the professionals from the date of their hiring, and thereafter monitor their work. See, Testimony at 376 .

Twenty-third Witness: JOHN E. SIMONDS
Senior Editor, Honolulu Star-Bulletin

The Star-Bulletin favors opening the greatest number of government records for public view, in ways that are convenient to the public, easy to find and easy to read. People should have access to birth, marriage and death certificates, real property ownership, tax records, building permits, accident reports, motor vehicle registration and driver's license records, professional and vocational licensing data, divorce decrees, will and probate, liquor licenses, state loan information, names and occupations of borrowers, environmental agency findings, and public employee salaries.

Sometimes record searching is clumsy, or false barriers exist to discourage access. Perhaps the Ombudsman or the City Office of Information and Complaints should review that accessibility or convenience factors of public records.

Records that should be withheld from public view are public health records, raw data on individuals, juvenile crimes, income tax records, family court records, and mental health treatment records. Perhaps "windows" to this information are possible where either public safety or (other overriding) public interest is involved. For example, the public ought to know if a person is released from confinement who may be under mental illness treatment related to a serious

criminal offense. Some of the factors favoring access are public safety and the accountability of public officials. Otherwise private information becomes of public interest when the individual goes public with his career.

While the need exists to protect individual reputations, too much privacy leads to ignorance. "We sense a danger at times of a community that prefers the comfort of closely held information shared by a few insiders to the general openness of records, meetings, decisions, and documents." See, Testimony at 224.

Under questioning, Mr. Simonds thought that the government needs a training program geared to the practice of serving the public to make records available to them rather than looking for reasons to avoid serving the people.

Twenty-fourth Witness: DESMOND BYRNE

The present law, though inadequate, would work much better with a better attitude to openness in government. This must come from the highest down. "Unless the attitude changes, it really doesn't matter what kind of laws you have on the books. It will start to get obstructive. And I see Hawaii, basically in government, as very secretive and not very open, as though it belongs to the civil service and government, and it does not belong to the people." See, Testimony at 317.

The government is not service oriented. Letters to the government are rarely answered. No guidelines or rules exist concerning responding to letters from the public within so many days, and indicating when the writer will receive an answer.

Next, the departments are not conversant with public records, as though there are no guidelines translating the (public record and privacy) law into practice for departments. For example, Mr. Byrne testified that he requested a negotiated release agreement from the Department of Transportation, who asked that he not reproduce it for distribution. Why then release the document? Each department or agency should have a guide to public records. What is clearly available, what is not, what is partially available with constraints. Without a guide, the public employees receive a request, nobody clearly knows what to do so the request gets shuffled around.

Government has also never really thought out what the public needs to know to be constructive in their criticism and recommendations. There is no equivalent of the federal Superintendent of Documents in Hawaii. This would bring documents into the public arena, make them available for sale, or else available from departments. Most departments do not have a list of available documents. Hawaii doesn't even have a rule (or regulation) book.

Copying charges, while a small item, need to be consistent and reasonable statewide. The sometimes exorbitant charges create another barrier to access.

Consultant's reports are often in draft for too long. Salaries should be disclosed and public. More information about financial institutions regulated by the State should be available. The lack of full public disclosure may have contributed to past financial failures. One document that would help aid information collecting is the annual report. At one time, Mr. Byrne chased the departments to produce annual reports and in a timely fashion. The law then changed to allow consolidated annual reports, but even this is not done. The report would disclose information about the department, board or agency, such as what it is doing, its achievements, statistics, etc. As concerns professions, he cannot find out who is in, who is out, total number, and other related information. "There is no compulsory list-making in departments of the documents that are public, that are produced, even the Department of Education tells me they don't have a list of their publications. They publish an incredible amount, but they don't have a list of them. So..., now think about it. It's not only the documents themselves. You've got to have indexes, you've got to have lists of things that are available. Otherwise, it's the access that becomes very difficult or impossible. If you don't know it's there, well, you don't know what to ask for."

Twenty-fifth Witness: SENATOR ANTHONY K.U. CHANG
State Senator

He expressed the concern of his constituent who seeks the elimination of the barriers to adopted persons learning the identity of their natural parents for medical history purposes only. Because of the genetic links to mental, physical and emotional conditions, it is often important to obtain this information before the condition occurs. Perhaps the natural parents should relinquish this area of personal privacy for the good of the child.

Adjournment: Mr. Alm adjourned the hearing at 8:30 p.m.

APPENDIX I

COMMITTEE MEETINGS (AGENDA, MINUTES, STATEMENT OF MISSION AND WORKPLAN)

GOVERNOR'S AD-HOC COMMITTEE ON PUBLIC RECORDS

Agenda

Date: March 27, 1987

Time: 12 Noon

Place: Lt. Governor's Conference Room
Fifth Floor
State Capitol

1. Call to Order

2. Remarks by Governor Waihee

3. Statement of mission

4. Schedule for work and workplan

5. Administrative support arrangements

6. Announcements

7. Adjournment

NOTE: Questions regarding this agenda should be directed to Robert Alm, Chairman, at 548-7505.

GOVERNOR'S AD HOC COMMITTEE ON PUBLIC RECORDS

MINUTES OF MEETING

Date: Friday, March 27, 1987

Time: 12 noon

Place: Lt. Governor's Conference Room
Fifth Floor, State Capitol

Present:
Justice Frank Padgett, Hawaii Supreme Court
Warren Price, Attorney General
Ian Lind, Common Cause/Hawaii
Stirling Morita, Honolulu Star-Bulletin
Jim McCoy, KHON
Dwane Brenneman, Nissan Motor Corp. in Hawaii, Ltd.
Andrew Chang, Hawaiian Electric Company
David Dezzani, Esq., Goodsill, Anderson, Quinn and Stifel
Robert A. Alm, Department of Commerce and Consumer Affairs

Chuck Freedman, Office of the Governor
Rhonda Richards, Common Cause/Hawaii
Mark Matsunaga, Honolulu Advertiser
Bill Kresnak, Honolulu Advertiser
Jerry Burris, Honolulu Advertiser
Catherine Enomoto, Honolulu Star-Bulletin
Bev Keever, UH Journalism Department
Karen Hirota, Department of Commerce and Consumer Affairs

Call to Order: Chairman Robert A. Alm called the meeting to order at 12:05 p.m.

Statement of Mission: The Chairman reviewed what he believes is the Committee's mission. He advised that through his experiences with the law, he found that there are many strengths and weaknesses to the law but also felt that the time had come for the law to be given a "good physical." The Committee should therefore agree on some mechanisms to go through the law by using the variety of perspectives that the members represent to report on the existing law.

Schedule for Work and Workplan:

The Chairman distributed the draft of the proposed schedule for work and workplan.

He suggested that that upon receipt of the materials, the Committee should compile and analyze them. The rest of the summer could be spent on reviewing Chapters 92 and 92E, Hawaii Revised Statutes.

Administrative Support Arrangements:

Mr. Alm advised that the Department of Commerce and Consumer Affairs would provide the administrative staffing to do the work, newspaper advertisements, and so forth.

Discussion of Workplan:

Stirling Morita suggested compiling a list of pros and cons that the Committee could address.

Attorney General Warren Price asked whether the intention was to break the information up or somehow organize the materials once we get it.

Chairman Alm responded by saying that what we do in the summer depends on what we receive. We should wait to see what the volume is and what comes in before we organize the material.

Sterling Morita inquired if the letters to interested parties would include the government agencies.

Chairman Alm responded by stating that when it is given to the Cabinet and County governments, we should ask them to post them or may be we could ask the unions to put it in the newsletters. Licensing boards could also be contacted.

Chuck Freedman added that Neighbor Islands should not be forgotten.

The Chairman told the Committee that this group was chosen because of expertise and the range of interests touched by its members.

He also said that if the plan seemed acceptable, he would not call a formal meeting until May.

Chairman Alm advised that two to three members of the Committee should travel to the Neighbor Islands. He will call everyone individually to see what everyone's schedule in the second half of May is like.

Question was raised as to how the Committee would handle material that is brought to the meeting by someone (e.g. the Heftel document). It was decided that all material received would be public.

Associate Justice Padgett felt that we would need more than one committee member attending the Kauai and Maui hearings.

Attorney General Price said that there are several bills in session now that deal with public records. They get a lot of questions on what is and what is not public record. He wants to look at it on a statewide basis.

Attorney General Price advised that we should avoid the advisory opinions and same for the media not speaking for the industry that they represent. It should be kept broad.

Chairman Alm advised that there is a roster in the folder of all the Committee members and that the Committee should first begin to gather the materials.

He inquired whether the Committee thought the workplan looked acceptable. The Committee okayed the plan.

Adjournment: There being no further business, the meeting was adjourned at 1:00 p.m.

Taken and recorded by:

Karen K. Hirota

Karen K. Hirota
Secretary

PUBLIC RECORDS LAW REVIEW COMMITTEE
STATEMENT OF MISSION

The purpose of this Committee is to review the current functioning of the public records and privacy laws in the State, to report on the strengths and weaknesses of those laws, and to explore possible alternatives to the current statutory provisions.

To accomplish this, the Committee will need to undertake the following tasks:

1. The careful line-by-line review of the current laws and the Legislative history of those laws;

2. The review of judicial decisions, attorney general opinions, and other specific cases involving implementation of the current laws;

3. The holding of public hearings or other appropriate forums to accept the widest possible comment on the laws;

4. The review of possible alternatives to the current laws such as the "Fair Information Practices Act" bill which Senator Donna Ikeda has submitted to recent sessions;

5. The drafting of a report to the Governor on the findings of the Committee.

It is not intended that this Committee arrive at a final conclusion or that there be majority and minority reports. Instead, the report should be a vehicle for the fullest possible comment on the current law and its alternatives.

The membership of the Committee will hopefully include representatives of the media, of persons who must file information with the State, of public interest groups, of the legal community, and of the administration. It is essential that the members of the Committee be individuals with direct concern and knowledge in this area. Direct experience with the functioning of the current laws is of course preferable. The goal of any revision of these laws should be public record/privacy law(s) that are easy to understand and easy to work with for those who do so on a regular basis.

WORKPLAN

April: Call for comments

- Letters to interested parties
- Newspaper advertisements

Collection of materials through committee members

May: Public Hearings

- Honolulu
- Neighbor Islands

Compilation of Materials

June: Analysis of Materials

Briefings

July-August: Review and analysis of Chapters 92 & 92E, HRS

September: Preparation of report

October: Delivery of report to Governor and the public

3/27/87

GOVERNOR'S AD HOC COMMITTEE ON PUBLIC RECORDS

Agenda

Date: Thursday, August 6, 1987

Time: 12:00 Noon

Place: Exam-Conference Room
Second Floor
DCCA Offices, Kamamalu Building

1. Call to Order

2. Remarks by Robert Alm (Thanks for attendance - involvement.)

3. Tentative Outline of Report.

4. Minutes of Hearings.

5. Testimony File.

6. Resource File.

7. Proposed Issues Statement

   a. Expansion Review by Members.

8. Announcements.

9. Adjournment

NOTE: Questions regarding this agenda should be directed to Robert Alm, Chairman, at 548-7505.

GOVERNOR'S AD HOC COMMITTEE ON PUBLIC RECORDS

MINUTES OF MEETING

Date:	Thursday, August 6, 1987
Time:	12 noon
Place:	Exam/Conference Room Second Floor, Kamamalu Building
Present:	Justice Frank Padgett, Hawaii Supreme Court Warren Price, Attorney General Ian Lind, UH, Institute for Peace Stirling Morita, Honolulu Star-Bulletin Jim McCoy, KHON Andrew Chang, Hawaiian Electric Company Matthew K. Chung, Department of Commerce and Consumer Affairs Robert A. Alm, Department of Commerce and Consumer Affairs Tony Rogers, Representative Rod Tam's Ofc. Bill Kresnak, Honolulu Advertiser Andy Yamaguchi, Honolulu Advertiser Lisa Fukuda, University of Hawaii Karen Hirota, Department of Commerce and Consumer Affairs
Excused:	Dwane Brenneman, Nissan Motor Corp. in Hawaii, Ltd. David Dezzani, Esq., Goodsill, Anderson, Quinn and Stifel
Call to Order:	Chairman Robert A. Alm called the meeting to order at 12:12 p.m.
Remarks:	The Chairman thanked the Committee for attending the various public hearings.
Tentative Outline of Report:	Mr. Alm stated that based on all the material received, there were only three suggestions for the framework of a public records and privacy law: (1) Leave the law alone; (2) Go with the Uniform Laws; and (3) Go with the Federal Act (FOIA). The suggested outline would set forth the various proposed structure for the public records and privacy laws. Mr. Alm also suggested that Allison Lynde may be asked to develop a chapter on privacy laws.

Minutes of Hearings, Testimony, and Resource Files:

Copies of the Proposed Table of Contents were distributed. If the Committee approves the proposal, then the Committee should spend most of the time on the suggestions that have arisen.

The Chairman explained that each Committee member will be given a set of all the material we have received thus far.

The Honolulu minutes is the only set that is still in draft form and the Committee members need to get back to us on them within a week.

Proposed Issues Statement:

Expansion Review by Members

Copies of the list of Issues Raised were also distributed. Mr. Alm stated that the list of issues represented what was raised thus far as taken from the testimonies and letters received by the Committee.

He added that the Committee should have the major part of the discussion be about these issues. Breaking the issue down into factors then maybe developing a section on each issue.

Attorney General Warren Price inquired whether it would be a matter of pros and cons. Mr. Alm agreed that that was needed to be done.

The Chairman distributed copies of the breakdown of a specific by factors needing to be considered.

He stated that we should give the Legislature the three frameworks and a list of items for decision based on all the input received.

Mr. Alm stated that the Committee should follow these steps:

(1) Look at the list of issues and add to it as appropriate.

(2) For all of the issues that the Committee members feel they have something to contribute, start to outline it in the breakdown of issue by factors.

Attorney General Price suggested that maybe the media would be the best people to go over the issues to determine what might be missing.

The Chairman informed that everyone will be receiving a list of every newspaper article on public records published so far.

He informed the Committee that he is still receiving more letters and that a "Last Call to Comment" (with August 15, 1987 as the deadline) was published in the newspaper this past weekend.

Ian Lind stated that this maybe a useful exercise for the Committee but may not be useful for the Legislature. In addition to something like this, he felt the Committee should identify which are private and public areas, procedural issues, access issues, mechanics of legal issues, non-judicial appeals, administrative appeals, etc.

After some discussion, the Chairman reiterated that there would be no attempt to write a public records and privacy law but that all of the issues raised by Mr. Lind should be covered in the report.

Mr. Lind stated that the Legislature will probably ask if it is a good idea to rewrite the law. He would like the Legislature to write the new chapter based on what was discussed here.

The Chairman therefore suggested a get-together in early September to discuss chapters 2, 3, and 4. He said that the Legislature has two choices in which to decide:

(1) What is the best vehicle? (Probably is not the current law.)

(2) The list of issues raised (compiled by this Committee).

Mr. Alm informed that there are several people that expressed interest in the subject, Bev Keever and Jeff Portnoy for example, and copies will be sent to them for comment. If the Committee knows of anyone else interested, a copy of the list of issues should be given to them as well.

Stirling Morita asked the Chairman what the target date would be. Mr. Alm responded that ideally it would be early September.

Mr. Morita also inquired as to how the issues should be turned in. The Chairman asked that the Committee members turn the issues as they are done. At that point, the issues will be grouped and we will look at how the various statutory structures handle each issue.

Ian Lind asked if there were some areas where they are generally agreed case laws and if there are two sides to each issue.

The Chairman stated that most of them really do have two sides, and the Committee should look into each issue with the feeling that there are two sides.

Warren Price stated that the statute has not been written clearly enough to cover specific cases which arise. It is a policy decision as to what is and what is not public and privacy law and it is the ambiguous ones that are difficult. The law should be written clearly and whenever possible state which records are public and which are private.

The Chairman informed the Committee that the list of issues was generated from all the letters and testimonies received from the public and therefore represents what the public regards as important issues.

The Chairman informed the Committee members that they should make sure we have all they key issues and then work on fully discussing each issue. The Committee members should already have copies of Chapter 92, Part V, and Chapter 92E. They will be given copies of the Federal law.

In the meantime, the Chairman, Matthew Chung and Ian Lind should work together to prepare some initial notes for discussion on Chapters 2, 3 and 4.

The Chairman informed the Committee that special note should be made of the City and County of Honolulu's testimony. That testimony by far is the most complete and detailed that has been received, and regardless of whether Committee members agree or disagree with the comments and recommendations made, there can be no question that the response reflects substantial thought and effort. Ian Lind suggested that the Committee send the City a special note of thanks for their submittal.

Announcements: The Chairman reminded the Committee members to take a set of the materials before they leave.

Adjournment: There being no further business, the meeting was adjourned at 1:03 p.m.

Taken and recorded by:

Karen K. Hirota
Secretary

APPROVED BY:

ROBERT A. ALM
Chairman

GOVERNOR'S AD HOC COMMITTEE ON PUBLIC RECORDS

Agenda

Date: Tuesday, September 29, 1987

Time: 12:00 Noon

Place: Board Room
Second Floor
DCCA Offices, Kamamalu Building

1. Call to Order.

2. Discussion of Chapters 1 - 5 Drafts.

3. Discussion of Chapter 6 Submissions.

4. Future Schedule for Committee.

5. Announcements.

GOVERNOR'S AD HOC COMMITTEE ON PUBLIC RECORDS

MINUTES OF MEETING

Date: Tuesday, September 29, 1987

Time: 12 noon

Place: Board Room
Second Floor, Kamamalu Building

Present:
Justice Frank Padgett, Hawaii Supreme Court
Robert Marks, Deputy Attorney General
Ian Lind, UH, Institute for Peace
Dwane Brenneman, Nissan Motor Corp. in Hawaii, Ltd.
David Dezzani, Esq., Goodsill, Anderson, Quinn and Stifel
Stirling Morita, Honolulu Star-Bulletin
Matthew K. Chung, Department of Commerce and Consumer Affairs
Robert A. Alm, Department of Commerce and Consumer Affairs

Jeffrey S. Portnoy, Esq., Cades Schutte Fleming and Wright
Ah Jook Ku, Honolulu Community Media Council
Lola Mench, Common Cause
Karen Hirota, Department of Commerce and Consumer Affairs

Excused: Andrew Chang, Hawaiian Electric Company
Jim McCoy, KHON

Call to Order: Chairman Robert A. Alm called the meeting to order at 12:09 p.m.

Discussion of Chapters 1-5 Drafts: The Chairman advised the Committee that he and Matthew Chung, Esq., had stumbled onto something along the way which delayed the preparation of drafts for all of the chapters.

Matthew Chung worked on the proposed Chapter 2 draft which involved reviewing all of the statutes. He stated that there are 2,200 statutes which make some reference to records and 700 make reference to public or confidential. A list of the 700 in an appendix will therefore be compiled but will be a time-consuming task.

Stirling Morita suggested that it be noted when the sections were enacted.

Matthew Chung stated that according to the HRS index, 48 statutes are listed as confidential records, 20 statutes are listed for public inspection. The list of confidentiality statutes alone, under our review, is approximately 140 statutes.

Stirling Morita noted that there are also differences between proceedings and records.

Chairman Alm stated that he drafted Chapter 1, which was mailed to the Committee members earlier, and asked them to review it and give him their comments.

Matthew Chung drafted Chapter 2 which is a description of Chapters 92 and 92E, HRS, and Chapter 3 which deals with FOIA.

The draft of Chapter 4 will be given to the Committee shortly. Allison Lynde is working on the draft of Chapter 5. The remaining two chapters should be given to the Committee within the next two weeks.

The Committee was asked to review the drafts and to feel free to give the Chairman comments and recommendations.

Chairman Alm informed that Chapter 6 submissions have been coming in slowly. If any of the Committee members has anything to submit, he informed them to submit it to our office.

Presently, Matthew Chung is also working on the Appendices (which will include the news articles, etc.).

Stirling Morita suggested that all the material on statutory references to records be organized in some kind of structural format; for example, segregate other than by section numbers, by subject matter or alphabetical.

Matthew Chung stated that it is organized according to the disclosure language (e.g. public inspection, public information, confidential, public records, described as public records, or just simply described).

The Chairman expressed his concern with two things:

(1) The approach Chapter 1 represents and if it is acceptable with the Committee.

(2) Chapters 1 through 5 should be done within two weeks and he would need the Committee's comments back by late mid-October. References and appendices should be done by then.

The Chairman stated that Chapter 2 will be the most extensive because it is the present law.

Chairman Alm advised that as soon as all the comments are submitted, the report can be finalized and transmitted to the Governor.

Stirling Morita inquired as to whether John Chanin (who sent in the Model Act) could come before the Committee to discuss the Act. The Chairman asked the Committee if that is what they would want.

Ian Lind commented that John Chanin could spell out the reasoning they went through to get to the Model Act and thought maybe he could go through and discuss sections with us.

The Chairman agreed to look into getting Mr. Chanin's input to the Committee.

The Chairman advised the Committee that the Legislature is counting on this document so concluding the work was imperative. In regards to the printing, because of the size of the task (approximately three volumes consisting of 1,800 pages including the appendices), we will need to get this done and to the printers as soon as possible.

Justice Padgett commented that in reference to Page 8 in Chapter 2, the question of what is a personal record is before the Court. He is not sure that making reference to a person's name makes it a personal document. The position taken would determine whether it comes under Chapters 92 or 92E.

The Chairman stated that we will have to reference whether it is an Attorney General's Opinion, rule by the department, and so forth.

Justice Padgett commented that it is up for consideration and that by the time we publish this report, it may not be the law at that time. Bob Marks suggested foot-noting the case.

Matthew Chung stated that the definition of Chapter 92E is presently on appeal before the Supreme Court and that we may not be able to get an exact status of what passed.

Chairman Alm advised that he does not want to give the Legislature the feeling that this is something that they do not need to act on this coming year.

Adjournment: There being no further business, the meeting was adjourned at 12:40 p.m.

Taken and recorded by:

Karen K. Hirota
Secretary

APPROVED BY:

ROBERT A. ALM
Chairman