

OIP AND THE UIPA OVERVIEW

- An introduction to Hawaii's Office of Information Practices (OIP)
- An overall summary of the UIPA, Sec.92F, HRS
- More detailed and free resources online at oip.hawaii.gov
- Get What's New articles by emailing your request to OIP@hawaii.gov



Thank you for taking the time today to be introduced to the Office of Information Practices, or “OIP,” and our services, and to learn from a quick overview of the Uniform Information Practices Act, or “UIPA,” which is found at HRS Chapter 92F. I’ll also show you how you can get more detailed training and information on OIP’s website at oip.hawaii.gov. And you can keep up with the latest news through OIP’s What’s New emails – just ask to be added to our email list by emailing OIP@hawaii.gov.

OIP administers:



- Uniform Information Practices Act (“UIPA”), HRS Chapter 92F
– **open records**
- Sunshine Law, Part I of HRS
Chap. 92 – **open meetings**



OIP was created in 1988 with the passage of the UIPA to administer the State’s open records law, which was modeled after the federal Freedom of Information Act (FOIA) to provide the public with access to government records. Ten years later, in 1998, OIP was given the additional responsibility of administering the state’s Sunshine Law, which provides the public with access to public meetings. The Sunshine Law was originally passed in 1975 and had been administered by the Attorney General’s Office until OIP took over.

All State, county, and independent agencies as well as most boards are subject to one or both of the laws that OIP administers. This includes the Governor’s office, Lt. Governor’s office, Judiciary, Legislature, all departments, all county councils, UH, and OHA. Whether you’re called a department, commission, the Legislature, or the Governor’s office, you’re considered an “agency” subject to the UIPA.

Unlike the federal government where each department has its own rules implementing the federal Freedom of Information Act, OIP has only one set of rules implementing the UIPA. And OIP is the single agency that administers both the UIPA and Sunshine Law. With only 8.5 full-time positions, OIP is the one-stop shop for uniform and consistent advice and dispute resolution on UIPA and Sunshine Law issues for all State and county agencies and most boards, in all three branches of government – Executive, Legislative, and Judicial.

Penalties and Consequences:



- **Public and media complaints**
- **Adverse OIP and court decisions**
- **Fines**
- **Final action voided**
- **Lawsuits, attorney fees and costs**



Government employees need to know about these open government laws because if they violate them, members of the **public and press could complain which, besides bad press, may result in adverse OIP and court decisions.** A Sunshine Law board could be subject to **fin**es and/or have its final action **voided** by a court. A violation of either the Sunshine Law or UIPA may result in years of **costly litigation and the incurring of attorney fees and costs.**

Need Help?



Attorney of the Day:

- Call **586-1400**
- E-mail oiip@hawaii.gov
- Fax **586-1412**
- Write **250 S. Hotel Street, #107
Honolulu, Hawaii 96813**
- Website **oiip.hawaii.gov**



Rather than wait until there's trouble, OIP proactively provides **training** so that government agencies and boards will properly comply with the laws in the first place. While we have written materials and videos available on our website to provide you with more in-depth training, today's presentation will provide you with a broad, overall summary of the Uniform Information Practices Act.

My objective here today is to not repeat the detailed, basic training that OIP has online, but to highlight enough information so that you will know when you need more information and you can learn more on your own through OIP's online resources that are available 24/7.

Basic **guides** to both the Sunshine Law and the UIPA are available online. Please be aware, however, that OIP is always **updating its training materials** to explain new legislative or judicial changes and to provide additional clarity. **So keep checking OIP's website for the latest training materials and forms, and subscribe to OIP's What's New articles for the latest news.** Please **jot down any questions** you might have and feel free to call or email OIP's Attorney of Day for quick, informal answers.

Common policy of UIPA and Sunshine Law:



“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”



Let's start today's training with the common purpose of the UIPA and SL. If you understand the **common purpose** behind both laws, you will be better able to follow them. Both laws were enacted by the Legislature with the following statement of purpose:

“In a democracy, the **people** are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. **Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of government(al) agencies – shall be conducted as openly as possible.**”

UIPA: Purposes



- Promote the **public interest in disclosure**;
- Provide for **accurate, relevant, timely, & complete government records**;
- Enhance **governmental accountability** through a general **policy of access** to government records;
- **Make government accountable to individuals** in the collection, use, and dissemination of information relating to them; and
- Balance the individual privacy interest and the public access interest, **allowing access unless it would constitute a clearly unwarranted invasion of personal privacy**.



The UIPA further recognizes that “[t]he policy of conducting government business as openly as possible must be tempered by a recognition of the” people’s **state constitutional right to privacy**. In addition to respecting individual privacy, the UIPA tells us to apply and construe the law “to promote its underlying purposes and policies, which are to:

- **Promote the public interest in disclosure**;
- **Provide for accurate, relevant, timely, and complete government records**;
- **Enhance governmental accountability** through a **policy of access** to government records;
- **Make government accountable to individuals** in the collection, use, and dissemination of information relating to them; and
- **Balance the individual privacy interest and the public access interest**, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy. (HRS Sec. 92F-2)

UIPA:



UIPA is a disclosure statute requiring public access, unless access is restricted or closed by law.



Based on these common purposes, the UIPA requires all government records to be open to public inspection unless access is restricted or closed by law. (HRS sec. 92F-11(a)) Keep in mind that the UIPA is a **disclosure** statute requiring public access. It is **not a confidentiality statute** designed to keep information secret. The default under the UIPA is to **disclose** government records unless there are lawful reasons to not disclose them.

UIPA:

- A “government record’ means information **maintained by an agency** in written, auditory, visual, electronic, or other physical form.” (HRS sec. 92F-3)

- Includes **emails** and **texts**.

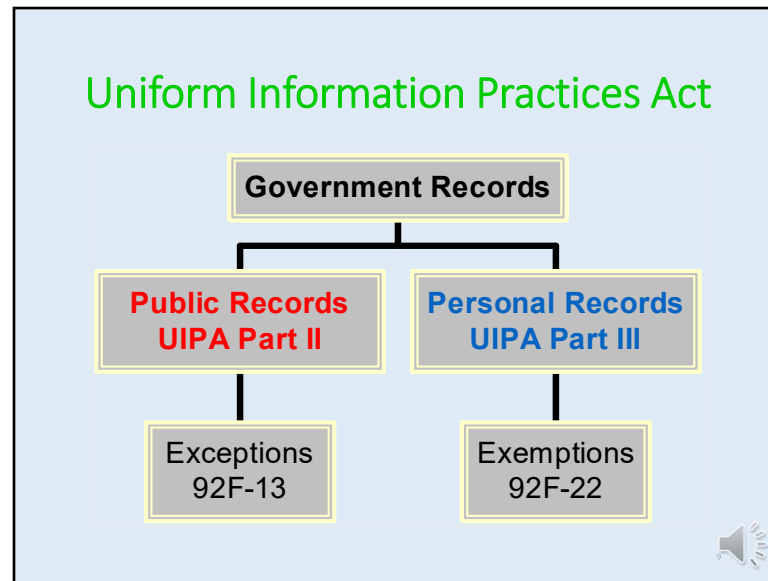


What is a “government record” to which the UIPA applies? A “government record’ means information **maintained by an agency** in written, auditory, visual, electronic, or other physical form.” (HRS sec. 92F-3) This includes emails and texts, to the extent they are “maintained.”

OIP does not tell agencies how long they have to maintain records – that is up to the agency’s records retention policy. But if a record is “maintained,” then it may be subject to disclosure under the UIPA. OIP does not require agencies to do a “dumpster dive” to find records that have already been deleted. But once the request has been made, you cannot destroy evidence and claim that you no longer maintain it.

Government records include an agency’s budget, marketing plans, contracts, and other records, to the extent they are maintained by the agency.

As for records on **personal devices**, such as personal cell phones and computers, OIP has not opined formally on this emerging area of law. Some jurisdictions would apply their laws to personal devices. In Hawaii, OIP has so far said the records on your personal devices are not “maintained” by your agency, so are not subject to the UIPA. But the same information on your personal device would be subject to the UIPA when accessed on a government device. For example, if board members send emails from their personal devices to the agency staff, which are kept in the agency’s files, then those emails are subject to disclosure under the UIPA. Or if your personal emails, texts, or social media posts are downloaded onto a government server, then they may also be considered records subject to the UIPA.



While any record maintained by an agency is a “government record,” there are two types of government records that are addressed in different parts of the UIPA: Part II deals with **public** records and the exceptions to disclosure, while Part III deals with **personal** records and the exemptions to disclosure that apply only to personal records.

“Personal Record”



- **“About” the individual requester**
- **Contains or makes reference to the person’s name, social security number or other identification**



“Personal records” are those “about” an individual requester. Part III of the UIPA gives an individual special rights to access and seek correction of government records that are “about” that specific person, rights that are not available to the general public. So, while certain records, such as the complete personnel file or a witness’s statement, would generally not be available to members of the general public, the person about whom the file relates or who made the statement would generally have access to such a record with the right to make corrections according to statutory procedures. I won’t go into the details today of Part III’s special rules for personal records, but now you know they exist.

UIPA:

Certain types of specified records must be disclosed to the public, **including**



1. **minutes** of all public meetings;
2. “information collected and maintained for the purpose of making information **available to the general public**” – e.g., agency brochures, final public reports;
3. employee names, compensation, job titles/descriptions, business address, and other **specified employment information**;
4. for contract hires and consultants: **contract** itself, amount of **compensation**, contract’s **duration**, and its **objectives**;
5. government **purchasing information**, including all **bid results**, “except to the extent prohibited by section 92F-13.”



With respect to **public** records subject to **Part II** of the UIPA, what types of records **must** an agency disclose upon request? The UIPA requires that certain types of specified records must be disclosed to the public (HRS Sec. 92F-12(a)), no matter what, **including** the following documents:

1. **minutes** of all public meetings;
2. “information collected and maintained for the purpose of making information **available to the general public**,” such as agency brochures or final public reports;
3. employee names, compensation, job titles/descriptions, business address, and other specified **employment information**;
4. with respect to contract hires and consultants employed by the agency, the **contract** itself, the amount of **compensation**, the contract’s **duration**, and its **objectives**; and
5. “government purchasing information, including all **bid results**, except to the extent prohibited by section 92F-13”

UIPA:

Other non-specified records **must also be disclosed** to the public (HRS Sec. 92F-12(b)) if they fall within these **categories**:



1. Requester has the **prior written consent** of all individuals to whom the record refers;
2. Record is **expressly authorized by federal or state law** to be disclosed to the requester;
3. **Compelling circumstances affecting an individual's health or safety**;
4. **Court order**; or
5. House or Senate **subpoena**.



Other types of records not specified in the UIPA **must** also be disclosed to the public (HRS Sec. 92F-12(b)) **if**:

1. The requester has the **prior written consent** of all individuals to whom the record refers;
2. The record is **expressly authorized by federal or state law** to be disclosed to the requester;
3. There is a showing of **compelling circumstances affecting an individual's health or safety**;
4. There is a **court order**; or
5. There is a **subpoena from the Hawaii State House or Senate**.

UIPA:

Agency may disclose to any other agency for various reasons, including if the disclosure is:



1. **Necessary for the performance of the requesting agency's duties** and functions, and is (1) **compatible with the purpose** for which the information was collected, or (2) **consistent with the conditions or reasonable expectation of use and disclosure under which it was provided** – e.g. sharing information in a mutual investigation or research project
2. **Otherwise subject to disclosure under the UIPA;**
3. Pursuant to **court order**.
4. To the **legislature**, or a county **council** or any committee or subcommittee thereof, **the offices of the legislative auditor**, the **legislative reference bureau**, or the **state ombudsman**;
5. To the state, county, or agency **personnel offices**; or
6. **To another agency for the purpose of auditing or monitoring** an agency program that receives federal, state, or county funding.



The UIPA also allows an agency to disclose government records to **any other agency** for various reasons, including if the disclosure is:

1. **Necessary for the performance of the requesting agency's duties** and functions, **and is** (1) **compatible with the purpose** for which the information was collected or (2) **consistent with the conditions or reasonable expectation of use and disclosure** under which it was provided. For example, sharing information in a mutual investigation or research project.
2. The agency can also share information that is **otherwise subject to disclosure under the UIPA**; or
3. Pursuant to a **court order**.
4. The UIPA also **specifically allows disclosure to the legislature**, or a county council or any committee or subcommittee thereof, as entities that an agency may disclose records to, as well as
5. **To the offices of the legislative auditor**, the **legislative reference bureau**, or the **state ombudsman**.
6. Disclosure is also allowed to State, county, or agency **personnel offices**; or
7. **To another agency for the purpose of auditing or monitoring** an agency program that receives federal, state, or county funding.

UIPA:



HRS Sec. 92F-13 Exceptions to Disclosure

Agency could keep records confidential if:

1. Disclosure would constitute a **clearly unwarranted invasion of personal privacy** – this is not applicable to businesses;
2. The records would **not be discoverable** in litigation in which the state or county is or may be a party;
3. The records must be confidential in order for the government to avoid the **frustration of a legitimate government function**;
4. The records are protected from disclosure by state or federal **law or court order**; or
5. The records fall into a limited exception relating to legislative records.



So now that you know what and to whom records must or may be disclosed – are there **any exceptions to disclosure** under Part II of the UIPA when an agency does not want to disclose a public record? In other words, what can an agency withhold from a requester? HRS section 92F-13 has a number of **exceptions** to the UIPA's public disclosure requirements for government records, so an agency **could keep records confidential if**:

1. Disclosure would constitute a **clearly unwarranted invasion of personal privacy** – keep in mind that this is **not applicable to businesses** and requires a **balancing test**. Some examples are medical information, financial information, information that is part of an investigation into possible criminal violations; information that if disclosed would create a substantial and demonstrable risk of physical harm. Also generally considered private would be home addresses, emails or phone numbers; age, ethnicity, or social security numbers.

2. A second exception would be for records that would **not be discoverable** in litigation in which the state or county is or may be a party. For example, records may be protected from disclosure by the attorney work product or attorney-client privilege, or doctor-patient privilege.

3. A third exception would be for records that must be confidential in order for the government to avoid the **frustration of a legitimate government function**, as may be the case with law enforcement records, examination materials, government purchasing information, proprietary information, or confidential business information.

4. There is a fourth exception protecting records from disclosure pursuant to a state or federal **law or court order**, such as those protecting HIV/AIDS status and social security numbers.

5. And finally, there is a limited exception for certain records of the Legislature.

UIPA's Procedural Requirements

The request should be made in **writing**.

OIP has a form on its website for requesters to use that helps to make clear **who** the requester is, **when** the request was made, **what** is being requested, and **where and how** the agency's response should be provided, and also lists the **requester's responsibilities**, such as possible payment of **fees and costs**.

But **requesters need not use this form** – the request may be oral or made via email or a letter or other writing.

The **agency may ask** for a formal written request and for clarification if the request is not clear.



While it may take time for you to understand what may or may not be withheld from disclosure, there are some relatively straightforward procedures that an agency must follow in responding to a record request.

First, however, a **request should be made by the requester in writing**. OIP has a form on its website called “Request to Access a Government Record,” which requesters often use to make their record requests. This form helps to make clear who the requester is, when the request was made, what is being requested, and where and how the agency's response should be provided, and it also lists the requester's responsibilities, such as the possible payment of fees and costs. But a requester **need not use this form**. The request may be oral or could be made via email, or a letter or some other writing.

The agency, however, may ask for a formal written request and for clarification if the request is not clear.

Within 10 Business Days:

Provide:

- Record,
- Notice, or
- Acknowledgement



Within 10 business days, the **agency must respond** to the requester by either providing the record, a notice to requester, or an acknowledgement. While it may actually require longer than 10 days to provide the record itself, the agency must at least respond to the requester by sending a notice or acknowledgement.

OIP has a “**Notice to Requester**” form on its website that agencies can use, which informs the requester whether the record request will be granted or denied in whole or in part, and why. The Notice to Requester also sets forth the requester’s responsibilities, the method and time of disclosure by the agency, and the estimated fees and costs as well as payment information for the requester.

If there are extenuating circumstances requiring an agency to take more than 10 business days to respond to the request, the agency may use the “**Acknowledgment to Requester**” form that is available on OIP’s website. The agency will still have to also send a Notice to Requester within a reasonable time not to exceed 20 business days from when it received the request itself.

Use the **UIPA Record Request Log** to keep in compliance and to track and report record requests.

oip.hawaii.gov/training



When the agency receives a written record request, it should also log the request in its UIPA Record Request Log, which will help it to follow the correct procedures to comply with the UIPA. The Log can be found on OIP's website at oip.hawaii.gov/training.

The UIPA Record Request Log helps an agency to

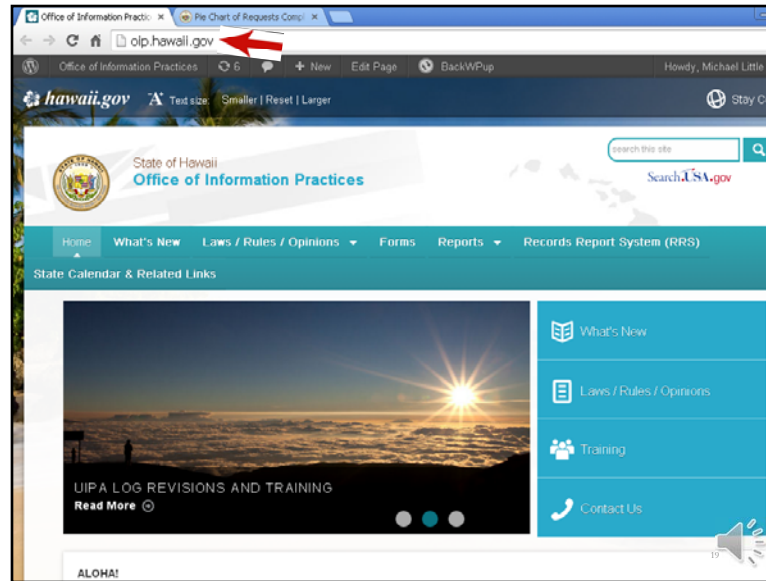
- **T**rack its written requests for records & the agency's response
- **R**eport requests & outcomes onto data.hawaii.gov
- **A**ssist & account to the public
- **C**alculate fees & costs
- **K**eep government open



The UIPA Record Request Log helps agencies to:

1. **TRACK** its written requests for records and the agency's response
2. **REPORT** requests and outcomes onto data.hawaii.gov
3. **ASSIST & ACCOUNT** to the public
4. **CALCULATE** fees and costs
5. **KEEP** government open

The Log is an excel spreadsheet, which essentially **identifies** the record request, **records** how and when requests were **resolved**, **calculates fees and costs** based on the agency's input of hours, costs, and fee waivers, and calculates statistical data for the **time taken to complete record requests**. It provides empirical data that OIP can use to see how agencies are handling record requests. OIP collects year-end summaries from all agencies and prepares reports of the State and county agencies' results each year, which are posted on the Reports page at oip.hawaii.gov.



Thank you for viewing this quick overview. More detailed training about the Log and the UIPA is available 24/7 on OIP's website at oip.hawaii.gov.

On our website, you will find the **UIPA statute**, incorporating the latest amendments, as well as the UIPA's **legislative history**. There is also a **Guide** to the UIPA; a basic **UIPA PowerPoint training video**, which is about 1.5 hours long; **Quick Reviews** providing guidance on specific topics; all of OIP's **formal opinions**, with a **searchable subject matter index**; and summaries of OIP's **informal opinions**.

Timely **updates** about open government news are **emailed** to people on our email list and posted online under our **What's New** archives.

OIP also has a Reports section on our webpage, which provides you with our **Annual Reports**, **special reports** and the **UIPA Log Reports**.

Need Help?



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Honolulu, Hawaii 96813**
- Website **oiip.hawaii.gov**



Finally, for quick, informal advice, OIP has an **Attorney of the Day** service where a real, live staff attorney will answer questions that you call or email to us, usually within 24 hours of receipt.

Thank you very much for your interest in OIP and the UIPA. Aloha!