

From: [Georjean Adams](#)
To: [OIP](#)
Subject: [EXTERNAL] Comments on UIPA Draft Amendments for Oct 4, 2022
Date: Sunday, October 2, 2022 4:28:04 PM

I offer the following comments as a former rule-writer employed by the US Environmental Protection Agency and Minnesota Pollution Control Agency, corporate regulatory manager and consultant, and university rulemaking instructor, as well as currently serving as a Hawaii County commissioner, experienced in both creating and reviewing government records:

SECTION 1

As a visual brainstormer (think flip charts) and often "devil's advocate" to make sure decision makers are considering all points of view, especially at the beginning stages of preparing positions, I support the proposed amendments to exclude preliminary work products and any recordings or transcripts from public review. Even if names are redacted, the fear of "gotcha" will inhibit sharing of ideas and analysis.

- I do not believe the exclusion of personal "writings" is sufficiently broad to protect the free flow of discussion of options and potential impacts. Given the regular electronic "Zoom" meetings that are often recorded or have transcripts as well as flip charts that document (often poorly) discussions, I think the broader description of "government record" should include all media forms.
- I think that materials (eg emails) that are distributed to work groups (intra- or inter-agency) should also be excluded if they are for discussion only.
- Those government records that have been formally considered and either accepted or rejected for final (or published proposed) decision and action should be part of the public record. Certainly factual information that is relied upon in decision making should be publicly available at the time any proposed or final government action is taken. My experience comes from following the Administrative Procedures Act, 5 USC §551 et seq, for public notice and comment of proposed and final federal rules. Information used by the agency must be made publicly available and public comments addressed in the Federal Register at the time of both the proposal and final rules. Hawaii would seem to rely on the public hearing process where only the proposed or final rule text is published and a member of the public can then ask for supporting information HRS §91-3(2). I wish there would be more descriptive information published and/or referenced for public review for new Hawaii rules.

SECTION 2 - You seem to duck defining 'deliberative and pre-decisional' "government records". By definition in Section 1 they are not preliminary rough drafts or by my addition discussion drafts. Odds are good more formal options papers have been written, with factual backup or refutation, prior to those decisions and those should be publicly available. Regardless, I support redacting individual non-decision makers' names.

My suggested **edits**:

SECTION 1. Section 92F-3, Hawaii Revised Statutes, is amended by amending the definition of "government record" to read as follows:

““Government record” means information maintained by an agency in written, auditory, visual, electronic, or other physical form. “Government record” shall not include ~~writings~~ information that are is truly preliminary in nature, such as personal notes and rough

drafts of memorandum or discussion drafts for use by work groups that have not been finalized for circulation within or among the as signed agency action.”

ADD: "Deliberative and pre-decisional" government records are those used by decision makers in supporting proposed or final actions for publication, including major options that were reviewed and rejected. Such records do not include readily segregable purely factual information.

SECTION 2. Section 92F-12, Hawaii Revised statutes, is amended to read as follows:

This part shall not require disclosure of:

§ 92F-13. Government records; exceptions to general rule

This part shall not require disclosure of:

...

6) Inter-agency or intra-agency deliberative and pre-decisional government records, other than readily segregable purely factual information, up until prior to the final decision to publish or dismiss the matter; the deliberative government records relate to has been made or until deliberation of the matter has been abandoned; provided that once After disclosure is required, the name, title, or other information that would directly identify a public official or employee may be withheld if that person lacks discretionary authority, did not make the decision, and is not under investigation for or engaged in wrongdoing or criminal conduct. This exception does not apply to board packets as defined in section 92-7.5.

Respectfully,
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