

RELATING TO GOVERNMENT RECORDS

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 truly preliminary records, such as personal notes and rough drafts of memorandum, that have not been circulated.

SECTION 2. Section 92F-13, HRS, is amended to read as follows:

**§ 92F-13 Government records; exceptions to general rule.** This part shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.
- (6) Inter-agency or intra-agency deliberative and pre-decisional government records, other than readily segregable purely factual information, concerning an agency decision about a government action up until the final decision the deliberative government records relate to has been made or until deliberation of the matter has been abandoned; provided that there shall be a rebuttable presumption that a matter has been abandoned if three years have elapsed after a request for records; provided further that once disclosure is required, the name, title, and 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

Exhibit C: SCR 192 WG proposed legislation

engaged in wrongdoing or criminal conduct related to the decision. This exception does not apply to board packets as defined in section 92-7.5.

SECTION 3. Section 92F-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. From July 1, 2023, through June 30, 2027, an agency shall report its use of HRS § 92F-13(6), including the text of the request and the agency's notice to requester. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. No later than January 1, 2028, the Office of Information Practices shall convene a working group to examine agency use of the new UIPA statutory exception, HRS § 92F-13(6). The working group shall prepare recommendations for whether to keep or repeal the exception and, if kept, for amendments, if any, warranted after reviewing use of the exception. The working group shall include seven members consisting of three individuals representing public interest groups; three individuals representing government agencies subject to the UIPA; and the Director of the Office of Information Practices or the Director's designee, who shall appoint the members and serve as the working group convener. The working group shall be exempt from part I of chapter 92. The Director of the Office of Information Practices shall report the findings and recommendations of the working group to the Legislature no later than twenty days prior to the convening of the Regular Session of 2029.

SECTION 6. This Act shall take effect July 1, 2023.