

Deadlines to Remember: The Clock Is Ticking!

Access to government records and meetings, including time limits, is governed by statute and by administrative rule.

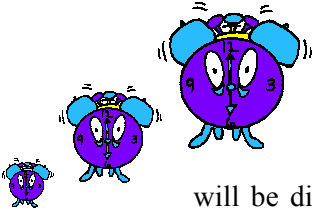


What are the time limits for an agency's response to requests for access to State and county government records?

How much advance notice of public meetings must a board or commission give? Here's a rundown on the deadlines.

► Responding to Record Requests

The deadline clock starts ticking when the agency receives a record request. If the request is sent to the wrong agency, however, the clock begins ticking when the agency sends the request to the department's director and the director receives it.



Public Records: The agency has **10 business days** to disclose public government records that

will be disclosed in their entirety and records that must be disclosed under section 92F-12, Hawaii Revised Statutes. See rule 2-71-13(a), Hawaii Administrative Rules.

Partially Public Records: For all other records, including those records that will be segregated, the agency has **10 business days** to provide notice. The agency then must disclose public parts of the record within **5 business days** of providing notice. Prepayment of at least part of the fees may be required before disclosure.

Extenuating Circumstances: When an agency's ability to respond to the request is affected by extenuating circumstances, the agency may first provide written acknowledgment of the request within **10 business days**.



Next, the agency must provide a notice within **20 business days** after receiving the request, and then disclose public parts of the record within **5 business days** of providing notice.

The procedures for responding to requests for records (other than for one's own personal records) are covered by the administrative rules "Agency Procedures and Fees for

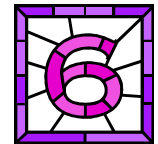
Processing Government Record Requests." These rules, which took effect on February 26, 1999, are set forth in Chapter 71 of Title 2 of the Hawaii Administrative Rules.

The rules apply to requests under *Part II* of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). The OIP is currently drafting rules for personal record requests under *Part III* of the UIPA.

► Giving Notice of Public Meetings

Boards and commissions must give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance.

The notice must be filed in the Office of the Lieutenant Governor or the county clerk's office, and in the board's office for public inspection, at least **6 calendar days** before the meeting.



The notice must also be posted at the meeting site when feasible. The meeting notice requirements are set forth in section 92-7, Hawaii Revised Statutes.


Agencies are also encouraged to post the notices online at www.ehawaii.gov/calendar/caladmin.html.

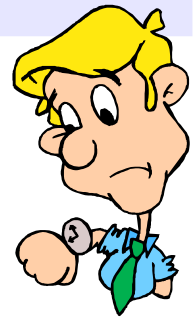
► More Information Online

The text of the administrative rules "Agency Procedures and Fees for Processing Government Record Requests," and a quick guide, are on the Internet at www.state.hi.us/oip (click on "Rules: Public Records").

At the OIP web site you will also find *Openline* articles on responding to requests (September 2001 and April 1999) and the online posting of meeting notices and agendas (December 2001).

To go directly to the public meeting calendar, use www.ehawaii.gov/calendar.

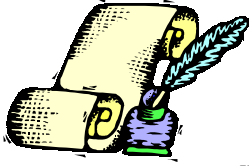
Note: The September 2001 *Openline* article on agency response time limits incorrectly stated that under extenuating circumstances the agency may provide written acknowledgment of a request within 5 days. The correct time limit is 10 business days. 



OIP Opinion

Limits on Oral Testimony at County Council Meetings

Common Cause Hawaii filed a complaint regarding oral testimony at Honolulu City Council (“Council”) meetings.



Two issues were involved: (1) whether the Council’s practice of allowing oral testimony at public meetings only if persons wishing to testify sign up by a certain time is allowed under chapter 92, Hawaii Revised Statutes (“Sunshine Law”); and (2) whether the Council’s practice of placing time limits on oral testimony is allowed under the Sunshine Law.

On the first issue, requiring persons wishing to testify to sign up by a certain time, the OIP found that oral testimony must be allowed even if a person wishing to testify did not sign up. The Sunshine Law requires that boards shall afford all interested persons an opportunity to present oral testimony on any agenda item; and that boards may provide for reasonable administration of oral testimony by rule. Haw. Rev. Stat. § 92-3 (1993).

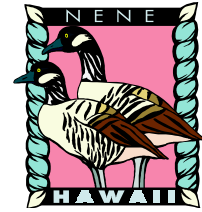
In light of the fact that the law allows “all interested persons” to present oral testimony, the OIP does not believe it is reasonable under section 92-3, Hawaii Revised Statutes, to require testifiers to sign up by a certain time. Such a requirement would preclude all latecomers from testifying orally, as well as those who are not familiar with Council rules.

This is not to say that boards cannot *request* that persons wishing to testify orally sign-up by a certain time in the interests of time management. After all those who signed up have testified, boards should inquire whether any other audience members wish to testify orally, and should not preclude such persons from testifying. If time is running short, boards have the option of continuing meetings in accordance with section 92-7(b), Hawaii Revised Statutes.

On the second issue, placing time limits on oral testimony, the Sunshine Law allows boards to provide for reasonable administration of oral testimony by rule. Haw. Rev. Stat. § 92-3 (1993). So long as the Council’s time restrictions on testimony meet the requirements of the Sunshine Law and the Freedom of Speech and Equal Protection Clauses of the United States Constitution, the Council may put reasonable time limits on oral testimony pursuant to rules adopted under section 92-3, Hawaii Revised Statutes. [OIP Op. Ltr: 02-02, May 28, 2002] 📄

Staff Update

The Office of Information Practices welcomes new student law intern **Joaquin Manibusan**. Joaquin is from Guam, but has lived on Oahu since 1996, when he transferred to the University of Hawaii.



He is a graduate of the University of Hawaii, with a major in psychology, and just finished his second year at the UH Law School. Joaquin, who interned for two summers at the Superior Court on Guam, has a special interest in public interest law and indigenous rights.

In his spare time Joaquin enjoys listening to music and participating in outdoor sports, including diving, hiking, basketball, and football. On the subject of brown tree snakes, Joaquin says that he sees only about four of the creatures a year on Guam, even though his backyard is practically all jungle. Welcome, Joaquin!

Photocopy Charges

Agencies and members of the public often call to ask about fees for photocopies of State and county government records. Under section 92-21, Hawaii Revised Statutes, as amended by Act 160 in 1999, copy costs “shall not be less than 5 cents per page.”

Agencies have sometimes inquired about the procedures they should follow if they do not wish to charge photocopy fees, or if they want to charge more than the statutory five cents per page.



The OIP does not have jurisdiction to opine on copy fee issues under section 92-21, HRS, or other laws. Agencies should contact their Deputy Corporation Counsel, Deputy Attorney General, or in-house counsel if they seek advice in this area. 📄

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