

## Patsy Mink: Pioneer for Open Government

With the passing of Patsy Takemoto Mink, who represented Hawaii's Second Congressional District from 1965 to 1977, and from 1990 until her death on September 28, the state has lost a true champion, and the nation has lost a valuable pioneer.

Although everyone has heard by now about Mink's life-long work for women, children, minorities, and the poor, one part of her story that deserves more attention involves her pioneering role in open government.

As with other chapters in her long life of public service, this story illustrates how Mink's stature had nothing to do with height and everything to do with integrity and tenacity in fighting for her beliefs.



### ► Freedom of Information Act

In 1966, when Patsy Mink was serving her first term in Congress, the federal Freedom of Information Act ("FOIA") was enacted, after a decade of debate,

to fill a need for a stronger access law. President Lyndon Johnson, signing the bill into law on July 4 of that year, said:

This legislation springs from one of our most essential principles: a democracy works best when people have all the information that the security of the nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.

The new law would have to be tested, however, and Patsy Mink was at the center of one of those key early tests.

### ► Setting Precedents: *EPA v. Mink*

Senator Daniel Akaka, in his speech on the Senate Floor on October 1, 2002, praised Patsy Mink and included the story of her legal battle in 1971, which Mink described as "a sort of Waterloo of the Freedom of Information Act." Senator Akaka told the story this way:

In 1971, in connection with planned underground nuclear tests at Amchitka Island in the Aleutian chain, she filed suit with 32 other Members of Congress to compel disclosure of reports under the Freedom of Information Act, FOIA. She took issue with alleged Presidential authority to exempt certain information from FOIA and withhold it from judicial or legislative review.

In *EPA v. Mink*, the federal appeals court ruled for Mink and Congress. Senator Akaka stated that "the case gained tremendous historical significance when the U.S. Supreme Court cited it as precedent for the release of the Watergate tapes."

Following the abuses of the Watergate era, Congress in 1974 amended the law to narrow the scope of FOIA's law enforcement and national security exemptions.

Patsy Mink's pioneering efforts, which helped open so many doors that had been closed before - to women, to minorities, to the poor - also helped open the doors of government for all Americans and let the sun shine in. ☮



**"... the state has lost a true champion, and the nation has lost a valuable pioneer ..."**

### Farewell at the State Capitol

The public service for Patsy Mink at the State Capitol on October 4, 2002, gave the people of Hawaii an opportunity to say thank you and farewell.

The speeches were impressive, as one leader after another recited Mink's many accomplishments and the legacy she left to the state and the nation.

The setting itself was even more moving than any of the words, however, with over a thousand people there to pay their respects. The Capitol, built to represent a volcanic island, its rotunda open to the world and easily accessible to the people, was a place of great aloha on that day.

If you found a place above, leaning on the rail on the second floor, or higher, as many did, you could look on the scene below and see it all at once, as one might look at the life of a remarkable person and see it in its entirety.

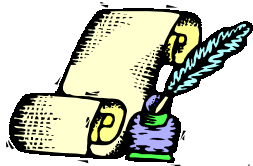
If you looked up, through the large opening above the rotunda, as some did that day, you could see the sky, the Capitol's ever changing ceiling, drawing our sights higher and challenging us to seek a better world. ☮



## Recent OIP Opinions

### *Schedule of Maximum Allowable Medical Fees*

Schedules of maximum allowable medical fees (“Fee Schedules”), that are required by statute to be submitted to the Department of Labor and Industrial Relations (“DLIR”) by health care plan contractors (“Contractors”), may be withheld from public disclosure.



**Section 386-21.5**, Hawaii Revised Statutes, requires Contractors to provide Fee Schedules to the

DLIR, and requires the DLIR to use Fee Schedules to establish prevalent charges. Despite this statutory requirement, Contractors have refused to submit Fee Schedules, or have submitted them too late to be included in survey compilations.

**Because there are** only 15 Contractors who are required by law to submit Fee Schedules, late submittals or non-submittals compromise the validity of the DLIR’s survey. The DLIR asserted that it has no power to force Contractors to comply with the mandate to submit Fee Schedules.

**When information** is required to be submitted to an agency, there is a presumption that, because the information is required to be submitted, the agency would not suffer frustration of its government function if it disclosed the records.

**In this case**, the DLIR overcame this presumption, by showing that disclosure of the Fee Schedules had already impaired the DLIR’s ability to obtain similar information, because statements and actions of Contractors showed a reluctance to submit Fee Schedules in a timely manner, and because the DLIR is unable to enforce submittals.

**This impairment** of the DLIR’s ability to obtain Fee Schedules in the future would frustrate its statutory duty of creating prevalent charges. Thus, the DLIR has discretion to withhold disclosure of Fee Schedules as disclosure would frustrate its legitimate government function.

**The DLIR’s interest** in administrative effectiveness would also be frustrated if it was unable to obtain accurate and timely Fee Schedules from Contractors. The frustration exception therefore allows the DLIR to withhold disclosure of Fee Schedules. [*OIP Op. Ltr. 02-07, August 27, 2002*]


### *Actions on Bills and Resolutions Without Notice*

A committee of the County Council for the County of Maui (“Maui County Council”), may not act on a proposed bill or resolution that is not specifically mentioned in the meeting agenda. Chapter 92, Hawaii Revised Statutes (“Sunshine Law”), requires that notices and agendas be posted six days prior to meeting dates, and that such agendas list, among other things, all items to be considered at the meeting. Haw. Rev. Stat. § 92-7(a) (Supp. 2001). Accordingly, items that are not listed on agendas should not be discussed at meetings.



**The OIP acknowledges**, however, that there may be unforeseen circumstances in which a discussion at a meeting results in the decision to draft a bill or resolution to address an agenda item. So long as there is a sufficient nexus between what was noticed and what the discussion resulted in, there would be no violation of the Sunshine Law. This must be determined on a case by case inquiry. This nexus should be reflected in the meeting minutes, and voting on such a bill or resolution should take place at a future meeting that is properly noticed.

**An existing or proposed bill** or resolution that is already drafted, and which is not specifically listed on an agenda but is discussed at a meeting, would likely violate the Sunshine Law if it could have been foreseen that discussion on the bill or resolution would occur. It is possible that discussion of an existing bill or resolution may be unforeseen prior to the meeting yet still be a natural consequence of the committee’s discussion on a listed agenda item.

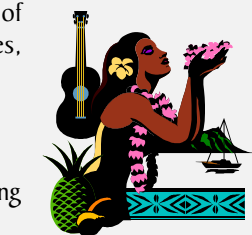
**Thus, it is possible** in some circumstances that the Sunshine Law would not be violated by an unforeseen discussion of an existing bill or resolution, so long as there was a sufficient nexus to what was listed on the agenda. Such a determination must be made on a case by case inquiry. [*OIP Op. Ltr. 02-09, September 24, 2002*] 

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