

## 2003 Legislative Wrap-Up: Information Practices

During the 2003 Legislative Session, the Office of Information Practices ("OIP") reviewed and monitored 279 bills and resolutions for their effect on government information practices. The bills listed below passed both houses of the Legislature and were sent to the Governor for signature.

For current information about bill status, text of bills, committee reports, list of acts, and list of vetoed measures, consult the Legislature's web site at [www.Capitol.hawaii.gov](http://www.Capitol.hawaii.gov).

### ► Office of Information Practices

#### Funding of OIP

HB 200 HD1 SD1 CD1, the major budget bill, includes funding for the OIP for the upcoming fiscal year (beginning July 1, 2003) but reduces the OIP's budget by about one percent.

### ► Government Records

#### Public Contracts

SB 41 HD1 CD1 requires public disclosure of contracts and subcontracts entered into by the Hawaii Tourism Authority in accordance with the UIPA.

#### Auditor and Student Records

SB 474 SD2 HD1 designates the Auditor as the authorized representative of the Department of Education and Department of Health for the purposes of accessing student records.



#### Administrative Procedure

HB 285 HD1 SD2 requires that every administrative rule conform to its related statute, and provides for the automatic repeal of administrative rules effective 180 days after the repeal of the related statute or ordinance.

#### State Internet Portal

SB 1334 HD1 extends the repeal date of the temporary Access Hawaii Committee to June 30, 2005.

### ► Privacy

#### Social Security Numbers

SB 685 (signed into law as Act 23) prohibits voters' social security numbers from appearing in poll books.



SB 1406 (Act 15) deletes the requirement that commercial driver's licenses include the licensee's social security number on the license.

#### Peer Support Counseling Sessions

SB 1469 SD1 (Act 25) provides for the confidentiality of any communication made by a participant or counselor in a peer support counseling session, including a critical incident stress management session, conducted by a law enforcement agency or by an emergency services provider. 📄

## Opinion Letter Summaries Online

Summaries of all 252 OIP opinion letters are now available online at [www.state.hi.us/oip](http://www.state.hi.us/oip).

The summaries are indexed in chronological order, with the date and subject of each opinion letter, beginning with 89-01 (September 11, 1989) and ending with the most recent opinion letter, 03-07 (May 28, 2003).



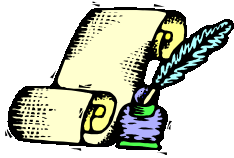
The index, which will be updated with each new opinion letter, provides a handy overview of fourteen years of opinions.

The summaries, typically one paragraph, are designed to serve only as a quick guide to locate an OIP opinion letter relating to a certain subject. They do not cover all the important legal points of an opinion. To fully understand an opinion, it is necessary to read the full text of the opinion. 📄

## Recent OIP Opinions

### ► 'Olelo Board Member's Resumé

The resumé of a member of the board of 'Olelo: The Corporation For Community Television ("Olelo") maintained by the Department of Commerce and Consumer Affairs Cable Television Division ("DCCA") may be disclosed publicly under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA") after segregation of certain information.



'Olelo is not an "agency" under the UIPA other than for the purpose of responding to record inquiries under the UIPA. Therefore, information about 'Olelo employees and officers is not subject to mandatory disclosure under section 92F-12(a)(14), Hawaii Revised Statutes. Thus, the privacy interest of the board member must be balanced against the public interest in disclosure under section 92F-14(a), Hawaii Revised Statutes.

Disclosure of certain information contained in an 'Olelo board member's resumé would shed light on the workings of government, as the DCCA's director appoints a majority of 'Olelo's board members, and the DCCA exerts both direct and indirect control of 'Olelo. Therefore, the public interest in 'Olelo's directors and the criteria used in the DCCA's appointment of 'Olelo's directors is high.

However, the public interest in disclosure is not greater than the board member's personal privacy interest in information unrelated to qualifications to sit on the board because disclosure does not shed light on the workings of government.

Thus, the DCCA may redact home contact information and other information that does not directly relate to suitability for appointment on 'Olelo's board, as disclosure would be a clearly unwarranted invasion of personal privacy. [*OIP Op. Ltr. No. 03-04, April 8, 2003*]

### ► HIPAA and Part II of the UIPA

There is no conflict between Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), and 45 C.F.R. Parts 160 and 164, the medical privacy rules ("HIPAA rules") promulgated by the federal Department of Health and Human Services as required by the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

The UIPA does not require public disclosure of information that is protected from unauthorized disclosure by the HIPAA rules. Such information will fall under one or more UIPA exceptions to public disclosure. The exception for information protected by federal laws will always apply to information that is protected under the HIPAA rules. In most instances the information will also fall within the UIPA exception for information

whose disclosure would be a clearly unwarranted invasion of personal privacy.

HIPAA does not have provisions comparable to the response deadlines and other procedural requirements for responding to UIPA requests for government records. An agency should follow the procedures set forth in the UIPA and chapters 2-71, Hawaii Administrative Rules, when responding to a request for government records that involves "protected health information" as defined in the HIPAA rules.


HIPAA does have provisions regarding a patient's access to the patient's own medical records, which are comparable to a person's right of access to personal records under Part III of the UIPA. The OIP did not discuss the interplay between the HIPAA rules and Part III of the UIPA in this opinion. [*OIP Op. Ltr. No. 03-05, April 11, 2003*]

### ► Electronic Transmission of Testimony

The OIP was asked whether a board violated the Sunshine Law by not accepting e-mail testimony. The OIP concluded that the Sunshine Law must be liberally construed to afford the public the opportunity to submit written testimony. Given the widespread use of e-mail and facsimile transmission, where possible, boards must allow testimony to be submitted by those means.

In addition, the Sunshine Law does not require that the word "testimony" be included in written submissions concerning agenda items. Where a written submission relates to a matter on a board's agenda and reasonably appears to have been intended for consideration by the board, the board should consider the submission to be written testimony and distribute copies of the testimony to each board member.

The testimony in question related to a request before the board to revise a permit to allow the transfer of a male orangutan named Rusti from the Honolulu Zoo to a temporary facility at Kualoa Ranch, Kaneohe, pending completion of a planned facility at Kualoa Ranch. [*OIP Op. Ltr. No. 03-06, May 2, 2003*]

**Note:** On May 20, the requester filed suit in Circuit Court, as authorized by section 92-11, Hawaii Revised Statutes, asking the court to void the board's decision to allow Rusti to be transferred to Kualoa Ranch. 



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