



The Office of Information Practices (“OIP”) is charged with the administration of Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, chapter 92, HRS (the “Sunshine Law”).

## National Sunshine Week

March 12 - 18, 2006

### Public Brown Bag Workshop

As part of Sunshine Week, OIP will be offering a free workshop for the public on the UIPA and Sunshine Law. The workshop will cover the basics of both laws. The workshop will be held on Thursday, March 16 from noon to 1:30 p.m. at the State Capitol, Room 414. For more information, visit OIP’s website at [www.hawaii.gov/oip](http://www.hawaii.gov/oip) or contact OIP at 586-1400.



## 2006 Legislative Session

OIP included three bills as part of Governor Linda Lingle’s legislative package. Two of the bills are intended to give more “teeth” to the open records and open meetings laws. The third bill is intended to allow board members more freedom to participate in other board meetings, legislative hearings, and community presentations while protecting the public’s right to know. OIP’s bills are summarized below. The full text of the bills may be accessed on the Legislature’s website at [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov).



### Enforcement of UIPA Opinions

SB 2365/HB 2402 authorizes OIP to file an action in circuit court to compel an agency’s compliance with a

decision by OIP under the UIPA. Presently, a member of the public denied access to a record may appeal that denial to OIP. Although the statute states that an agency shall disclose the record when OIP determines that it is public, there is no mechanism in the law to compel compliance with that decision.

### Enforcement of Sunshine Law Rulings

SB 2366/HB 2403 makes OIP’s powers and duties in administering the Sunshine Law consistent with its powers and duties in administering the UIPA. The bill would increase OIP’s ability to gain compliance with the Sunshine Law by authorizing OIP to render decisions under the Sunshine Law, by making board compliance with OIP’s decisions mandatory, and by giving OIP the ability to enforce its decisions in court. The bill will give the public an administrative avenue of recourse for Sunshine Law violations and will allow the public to rely upon OIP to enforce compliance with the Sunshine Law instead of requiring the public to expend the time, effort and cost of bringing an action in court.

### Other Board Meetings and Presentations

SB 2367/HB2404 allows two or more board members, but less than the number of members that constitute a quorum, to discuss their individual positions relating to official board business at meetings of other boards or at a legislative hearing. The bills safeguard the public’s right to know and to participate in the board’s discussions, deliberations and decisions by requiring the members to announce their intention to attend and participate in the meeting or hearing and to report on their attendance and discussions at the next meeting of their board.

The bills also allow two or more board members, but less than the number of members that constitute a quorum, to attend and participate in discussions during and that are a part of community presentations that

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concern official board business. The bills require the members to report their attendance and discussions at the next meeting of their board.

## Recent Court Decision

### Court Affirms OIP Opinion On Serial Communications

In OIP Opinion Letter Number 05-015, OIP advised Honolulu City Council Chair Donovan M. Dela Cruz that he and other members of the City Council had violated the Sunshine Law by discussing and deciding City Council business through a series of private, one-on-one conversations. OIP determined that the Sunshine Law exception that allows two City Council members to discuss City Council business outside of a meeting cannot be used serially. In other words, once two City Council members discuss City Council business under the exception, neither may discuss the same City Council business with any other City Council member outside of a properly noticed City Council meeting.

The City Council, however, disagreed with OIP's opinion and declared its intention to continue discussing City Council business through private, serial one-on-one communications. A number of public interest and media groups filed a lawsuit, in which the State of Hawaii intervened, asking the circuit court to declare that the Sunshine Law prohibited serial one-on-one discussions about the same City Council business. By order filed on February 17, 2006, the circuit court declared, in accordance with OIP's opinion, that the Sunshine Law does not permit City Council members to engage in serial communication of City Council business. [Right to Know Committee v. City Council, Civ. No. 05-1-1760-10 EEH]

## Recent OIP Opinion

### **UIPA** UH Library's Plantation Archives

The University of Hawaii at Manoa Library asked whether records that it had received from the Hawaii Sugar Planters' Association, which

now comprise the Library's Plantation Archive, are public and whether it may implement a policy of disclosing records that are over 80 years old. The records include corporate records, correspondence, cultivation contracts, financial records, personnel and payroll records, production records and miscellaneous company records of numerous defunct Hawaii companies that were involved in the sugar industry. Certain records contain personal information, including

the social security numbers, tax records, criminal records and health record of individuals.



OIP advised generally that records containing personal information may be withheld where an individual's

personal privacy interest in the information outweighs the public's interest in disclosure. OIP noted that the age of a record is relevant in this determination. For records over 80 years old, such as those that comprise the Plantation Archives, OIP found that the records generally do not carry a significant privacy interest and, therefore, are accessible to the public.

Thus, the Library's proposed policy of disclosing records that are over 80 years old is generally consistent with the UIPA. However, income tax returns and return information are confidential under Hawaii law, which makes disclosure to persons other than those expressly identified in the law illegal. Although it is unlikely that the tax code was intended to protect income tax records that are over 80 years old and that were donated to the Library for historical purposes, the statute does not contain any exemption that would allow public disclosure of the tax records contained in the Plantation Archives. [OIP Op. Ltr. No. 05-18]

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