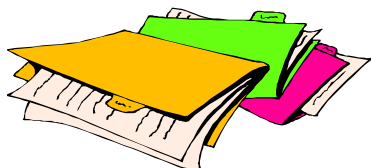


## Personal Government Records and the Law

Access to **personal records** maintained by State and county government agencies in Hawaii is governed by chapter 92F, Hawaii Revised Statutes. Here is a quick guide. In addition, the



OIP is sending agencies revised guidelines on the disclosure of **personnel records**. The guidelines are also available at [www.state.hi.us/oip](http://www.state.hi.us/oip) (click on "Guidance").

### R Right to Access Personal Records

With a few exceptions, people have the right to look at and copy personal records maintained by State and county government. Haw. Rev. Stat. §92F-23 (Supp. 2000). A personal record is:

any item, collection, or group of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. Haw. Rev. Stat. §92F-3 (1993).

Government agencies must allow access within 10 days of the receipt of a request for personal records, unless the record is exempted by law. This ten-day period may be extended for an additional 20 working days if the agency provides a written explanation of the unusual circumstances causing the delay. Haw. Rev. Stat. §92F-23 (Supp. 2000).

### R Exemptions & Limitations on Access

An agency may not have to provide access to personal records when:

- ◆ the records are maintained by an agency that prevents, controls, or reduces crime,
- ◆ the records include information that identifies a confidential witness,
- ◆ the records include testing or exam material for purposes of appointment or promotion in public employment, or administration of a licensing or academic examination,
- ◆ the records include investigative reports and materials related to an upcoming, ongoing or pending civil, criminal or administrative proceeding, or

- ◆ the records are required to be withheld by statute, judicial decision, or privilege. Haw. Rev. Stat. §92F-22 (1993).

### R Denial of Access

If an agency does not answer the request, or denies access to personal records, the requester has the following rights: (a) to appeal the denial of access to the Office of Information Practices, or (b) to appeal the denial of access to the Circuit Court.

### R Right to Correct Personal Records

If the requester finds a factual error or a misrepresentation or misleading entry in the record, the requester has the right to correct or amend the record, or the right to place a statement in that record. Haw. Rev. Stat. §92F-24 (1993).

The agency that maintains the personal record must acknowledge receipt of the request to correct or amend, and provide notice in writing within 20 business days of the receipt. The agency shall promptly make the correction or amendment or inform the individual in writing of its refusal to correct or amend, the reason for the refusal, and the agency procedures for review of the refusal. Haw. Rev. Stat. §92F-24 (1993).



### R If the Government Agency Refuses to Correct or Amend the Record


When an agency refuses to correct or amend the personal record, the requester can file a concise written statement of the reasons for disagreeing with the agency's refusal to correct or amend. Haw. Rev. Stat. §92F-24 (1993).

To review the agency's denial, the requester has to follow the procedures set out by that agency. Once those procedures have been followed, and the agency still refuses to correct or amend the personal record, the requester has a right to sue the agency. The lawsuit must be filed in Circuit Court. Haw. Rev. Stat. §92F-27 (1993).

### R Lawsuits, Fees, & Costs

The Court can order the agency to correct or amend the personal record, can require any other action, or can enjoin improper actions as the court may feel is necessary and appropriate. Haw. Rev. Stat. §92F-27(b) (1993). In addition, if the Court determines that the agency knowingly or intentionally violated the law, the agency will be liable for damages. Haw. Rev. Stat. §92F-27(c) (1993).

## Your Rights (from p. 1)

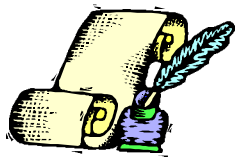
If the requester prevails, the Court can also assess the agency reasonable attorney's fees and other litigation costs; but if the Court finds that the charges brought against the agency were frivolous, the Court may assess those same fees and costs against the requester. Haw. Rev. Stat. §92F-27(d)(1993). 



## OIP Opinions

### *Sunshine Law Applied to Neighborhood Vision Teams*

In the Office of Information Practices' Opinion Letter Number 01-01, the OIP construed an ambiguity in the Sunshine Law liberally to carry out the Sunshine Law's purpose of ensuring that government processes remain open to the public. The Sunshine Law, or open meetings law, is found in part I of chapter 92, Hawaii Revised Statutes.



The OIP concluded that the neighborhood Vision Teams, created by the Mayor for the City and County of Honolulu, could be considered "boards" covered by the Sunshine Law, and as

such should provide public notice and keep minutes of their meetings. However, given the peculiar nature of membership in a Vision Team, participants are Vision Team "members" only when they are actually attending a Vision Team meeting. For this reason, when outside of the Vision Team meetings, Vision Team members are not required to restrict their interactions or otherwise act as board members.

The OIP also concluded that Neighborhood Board **members**, who are elected and are clearly subject to the Sunshine Law, are permissibly restricted in their ability to attend and participate in Vision Team meetings where official business of the Neighborhood Board is discussed. To resolve concerns about the inability of Neighborhood Board members to participate in Vision Team meetings and thus gather information about issues of concern to the Neighborhood Boards, the OIP recommended that the Neighborhood Boards jointly notice their meetings with the relevant Vision Team meetings.

The OIP opined that if a Vision Team meeting is not noticed as a Neighborhood Board meeting, and official Neighborhood Board business is discussed there, two or more members of a particular Neighborhood Board may attend the meeting only through a "permitted interaction" provided by the Sunshine Law. Specifically, the Neighborhood Board members should be assigned pursuant to section 92-2.5(b)(1) and (2), Hawaii Revised Statutes, and only less than the number of members that constitutes a quorum of the Neighborhood Board may attend.

The OIP recommended that if two or more Neighborhood Board members attend a Vision Team meeting in their individual

## OIP Notes




The Office of Information Practices congratulates Aimee Davis and Michelle Kim from the University of Hawaii Law School, first place team winners in the 2000 National Native American Law Student Association moot court competition. We also congratulate OIP Staff Attorney **Georgia Fligg** and Carla Hoke from the University of Colorado School of Law, first place brief winners. The competition was held at the University of Hawaii's William S. Richardson School of Law.

capacities (i.e., they have not been "assigned," and the meeting was not noticed as a Neighborhood Board meeting) and matters are raised that are pending or are likely to come before their board, they should, as a matter of caution, excuse themselves from the meeting, or at least refrain from commenting. [*OIP Op. Ltr. No. 01-01, April 9, 2001*]

### *Real Property Tax Information Made Confidential By Ordinance*

The Office of Information Practices' Opinion Letter Number 01-02 addressed a proposed bill for an ordinance to make certain tax assessment records of the City and County of Honolulu confidential. Ordinances that make records confidential are not recognized under the legislative policy established by the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). Thus, an ordinance to make records confidential would be effective only to the extent that it was consistent with the UIPA.

Records that fall within the categories of public records set forth in section 92F-12, Hawaii Revised Statutes, including "real property tax information," must be disclosed without exception. Records that are not within the categories subject to mandatory public disclosure are presumed to be public, but may be shown to fall within an exception to public disclosure under section 92F-13, Hawaii Revised Statutes.

Should an agency believe that a record not subject to mandatory disclosure falls within an exception to disclosure, the agency has the legal responsibility to justify non-disclosure of those records. [*OIP Op. Ltr. No. 01-02, April 12, 2001*] 

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Director: Moya T. Davenport Gray  
 Editor: Michael V. Little  
 Address: No. 1 Capitol District Building  
 250 S. Hotel St., Suite 107  
 Honolulu, Hawaii 96813

Phone: (808) 586-1400

Internet: [www.state.hi.us/oip](http://www.state.hi.us/oip)



Fax: (808) 586-1412

email: [oip@state.hi.us](mailto:oip@state.hi.us)