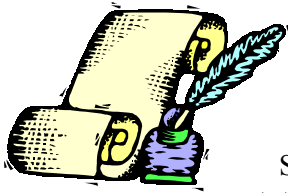


Summaries of Recent OIP Opinion Letters

Sunshine Law and County Council Members Before Taking Office

Members of county councils are not subject to the Sunshine Law prior to officially taking office when they meet to discuss selection of officers.



In accordance with section 11-155, Hawaii Revised Statutes, and the State Constitution, the counties have each set dates later than the official close of the polls on election day for commencement of council-members' terms of office.

Once a councilmember's term of office officially begins, the councilmember becomes subject to the Sunshine Law.

Section 92-2.5(c), Hawaii Revised Statutes, states that "[d]iscussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting."

Thus, less than a quorum of a board may meet privately and without limitation or subsequent reporting to discuss selection of board officers, regardless of whether or not board members have officially taken office. Whether board members have officially taken office is irrelevant, so long as the meeting is restricted to less than the number of members that would constitute a quorum.

It is not illegal for a quorum of newly elected members of a council to meet to discuss selection of officers prior to commencement of their terms of

office. A loophole in the Sunshine Law allows such an assemblage, which would be prohibited after councilmembers officially take office.



Therefore, the OIP **strongly recommends**

that a quorum of members-elect of a board not assemble prior to officially taking office to discuss selection of board officers, in keeping with the spirit of the Sunshine Law. [OIP Op. Ltr. No. 02-11, November 14, 2002]

Adjudicative Records of the Judiciary

The Administrative Driver's License Revocation Office ("ADLRO") of the Judiciary requested an opinion concerning whether the government records it maintains are subject to the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

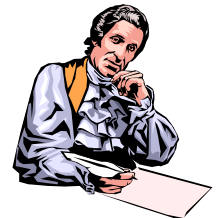
The OIP informed the ADLRO that only the ADLRO's administrative records are subject to the UIPA. The OIP

See **Opinions**, p. 2



On Being Thankful

With Thanksgiving here again, all of us at the Office of Information Practices are thankful for the unalienable rights on which our nation was founded. We pause, as Mr. Jefferson surely would in this amazing age of information, to give thanks for life, liberty, and the pursuit of happiness. And we wish you a peaceful and reflective holiday.



[reprinted from the November 1997 *Openline*]

Opinions *(from p. 1)*

reviewed the UIPA's definition of agency, which excludes the "non-administrative functions of the courts of this state." Haw. Rev. Stat. § 92F-3 (1993).



The OIP also reviewed the recommendations of the Governor's Committee on Public Records and Privacy, relied upon by the Legislature in drafting the UIPA, which recom-

mended that the UIPA apply only to the administrative records of the Judiciary.

The Legislative history of the UIPA also indicates that the UIPA is to apply only to the administrative records of the Judiciary.

As the Hawaii Supreme Court has previously determined that the tasks of the ADLRO are "clearly judicial in nature," the OIP therefore determined that the ADLRO performs an adjudicative function.

Therefore, only its non-administrative, adjudicatory records (those records associated with the review of evidence and decision-making) are not subject to the UIPA. [OIP Op. Ltr. No. 02-10, October 23, 2002]

State's FAMIS Accounting System Subject to UIPA

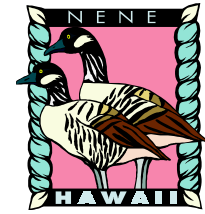
Hawaii's Fiscal Accounting and Management System ("FAMIS") is a government record as defined by section 92F-3, Hawaii Revised Statutes. As a government record, FAMIS is subject to the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

Under the UIPA, the public is entitled to access information contained in FAMIS that is not protected from disclosure by section 92F-13, Hawaii Revised Statutes.

The Department of Accounting and General Services ("DAGS") has the discretion to withhold information from the public that is contained in FAMIS that comes within one of the exceptions at section 92F-13, Hawaii Revised Statutes.

Staff Update

All the staff members of the Office of Information Practices say thank you to our outgoing student law intern, **Joaquin Manibusan**.



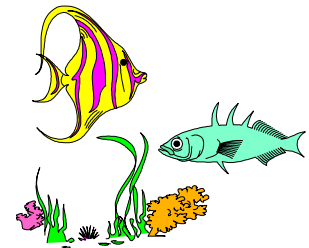
Joaquin, who is completing his third year at the University of Hawaii Law School, began his internship at the OIP at the beginning of the summer. In the past months Joaquin has provided much needed support for the legal team. We hate to see him go, but we hope to see Joaquin back in the office some day soon.

DAGS has no obligation under the UIPA to provide information contained in FAMIS that is not readily retrievable. Haw. Rev. Stat. § 92F-11(c) (1993). [OIP Op. Ltr. No. 02-12, November 22, 2002] 📧

Next month in Openline:

Look in the next *Openline* for highlights of the Office of Information Practices **Annual Report** for 2002, which is published in December.

The report features summaries of the OIP's work from July 1, 1991, to June 30, 1992, including all the latest numbers on requests for assistance, case summaries, and reports on sunshine, litigation, legislation, and investigations. 📧



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