

2005 Legislative Wrap-Up: Information Practices

During the 2005 Legislative Session, the Office of Information Practices ("OIP") reviewed and monitored 168 bills and resolutions affecting government information practices.

For information about all bills in the 2005 session, including the text of bills, bill history, committee reports, list of acts, and list of vetoed measures, consult the Legislature's website at www.Capitol.hawaii.gov.



OIP introduced five bills this legislative session seeking amendments to both the UIPA and the Sunshine Law.

OIP sought to clarify certain ambiguous statutory sections; to obtain greater enforcement powers and more consistent powers under both statutes; to address boards' frequently expressed need for greater flexibility to attend and discuss official board business at the public meetings of other boards or to testify at public legislative hearings; and to make actions taken in violation of the Sunshine Law voidable without a need to show that the violation was "willful."

OIP succeeded in getting proposed amendments from three of its bills incorporated into the following two acts that the Governor has signed into law.

☛ **Public Meetings (HB 551; Act 84)**

This law amends the Sunshine Law, section 92-2.5(a), HRS, to allow two members of a board to discuss between themselves matters relating to official business of the board as long as no commitment to vote is made or solicited. The amendment was intended to clarify and to resolve conflicting interpretations of the section.

Act 84 also amended section 92-11, HRS, to permit a court to void final actions taken in violation of open meeting and public notice requirements without proof of willful conduct. (HB551 CD1)

☛ **Uniform Information Practices Act (Modified) (HB 553; Act 85)**

This law amends section 92F-12, HRS, which contains a list of records that the Legislature has stated must be disclosed under the UIPA, to allow agencies to withhold certain personal information in those records listed. The amendment also makes clear that, if a record listed in section

92F-12 is made confidential by a statute outside of the UIPA, the mandatory disclosure requirement of section 92F-12 is inapplicable. Such a record or portions thereof may be withheld pursuant to the exceptions to disclosure found at section 92F-13, HRS. (HB553 CD1)

☛ **DNA Evidence (HB 1733; Act 112)**

This law requires DNA testing of all felons. It provides procedures and duties for the collection and

testing of DNA samples and for expungement of DNA profiles. It extends the statute of limitations for felony cases where DNA evidence has been recovered.

Act 112 requires retention of evidence that can be used for DNA analysis; establishes procedures for post-conviction requests for analysis of DNA evidence; and requires notice to the victim of proceedings and outcomes and to probation and parole authorities of an outcome adverse to the defendant.

OIP testified that a general confidentiality clause in the bill was overbroad and that adequate protections already exist in the UIPA and in other sections of the bill. This general confidentiality clause was deleted in the final conference draft of the bill. (HB1733 CD1)

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Model Forms on the OIP Website



The OIP website has several forms that may be used for the following procedures:

- ✓ **request access** to State and county government records
- ✓ **respond to requests** for access
- ✓ use as a **checklist** for giving proper **notice of public meetings** for boards and commissions under the Sunshine Law
- ✓ **request assistance** from OIP

To view and print these forms, go to www.hawaii.gov/oip and click on **Forms**. 

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☛ Social Security Numbers (HB 119; Act 13)

This law allows only the last four digits of a registered voter's social security number on nomination papers filed on behalf of a candidate. (HB 119 HD1)



☛ Electronic Records (HB 515; Act 177)

This law allows state and county agencies to create, accept, retain, or store electronic records, and to convert paper and microfilm records to an electronic format. (HB 515 SD1)

☛ Charter Schools (SB 1643; Act 87)

This law makes clarifying amendments to the new century charter school statutes. Part of the act invalidates OIP Opinion Letter 05-09.

In that opinion, OIP found that charter school boards fit the definition of the term "board" under the Sunshine Law and, therefore, must comply with the Sunshine Law's requirements. The conference committee amended SB 1643 to exclude charter schools from the Sunshine Law. (SB 1643 CD1)

☛ Taxpayer Information (SB 1685)

This bill would allow the State to share taxpayer information with counties. The bill was intended to strengthen county collection efforts with respect to the real property tax. The Governor has sent the Legislature a notice of intent to veto this measure. (SB 1685 CD1)

☛ Sex Offender Records (SB 708; Act 45)

This law amends the current registration and public access laws governing sex offenders and offenders against minors. OIP monitored this bill, which, among other things, establishes separate registries for sex offenders and offenders against children, clarifies that the standard of proof applicable to a covered offender petitioning the court for termination of public access to registration information is a preponderance of the evidence, and clarifies the scope and type of offender registration information and permitted disclosures of this information. (SB 708 CD1) 📄

Recent OIP Opinion



UIPA University of Hawaii Campus Security Records

The University of Hawaii asked OIP for an opinion regarding whether the University's Campus Security is

Staff Update

OIP welcomes its new legal assistant, **Noelle Borja**. Noelle is a graduate of St. Francis School in Honolulu. Noelle, who comes to OIP from the Office of the Lieutenant Governor, enjoys horticulture, literature, and quilting with her ohana. Welcome, Noelle! 📄



required under the UIPA to disclose a report of a possible sexual assault that includes the written report of a Campus Security officer, with an attached photograph of the person alleged to have committed the assault and three statements prepared by witnesses (collectively the "report"). The alleged victim of the assault requested access to the report.

OIP found generally that the report should be disclosed to the requester under part III of the UIPA because the report is the requester's personal record and none of the exemptions to disclosure provided under part III applies.

OIP further found, however, that the report is a joint personal record, i.e., it is also a personal record of the alleged assailant and of each of the witnesses, and that certain personal information in the report is only "about" these individuals and not "about" the requester.

This personal information that is not "about" the requester is not the requester's personal record and is not subject to disclosure under part III of the UIPA. Instead, disclosure of this information must be analyzed as a general record request under part II of the UIPA.

Because OIP found under part II that disclosure would result in a clearly unwarranted invasion of the personal privacy of the other parties to the report, OIP concluded that this personal information may be redacted from the copy of the report made available to the requester. [OIP Op. Ltr. No. 05-10] 📄

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