

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, part of chapter 92, HRS (the “Sunshine Law”).

Aloha to OIP Director

Governor Linda Lingle has appointed OIP director Leslie Kondo to serve as an interim commissioner on the Public Utilities Commission. In announcing the appointment, Governor Lingle said, “Les has served the people of Hawaii well as director of the Office of Information Practices, which provides the important function of administering our state’s open government laws. . . . His legal background and time representing the public’s interests at OIP will make him an excellent member of the Public Utilities Commission because the position requires the ability to understand complex issues and utilize a fair and balanced approach.”

Governor Lingle appointed Les OIP’s third director in February, 2003. Les’ last day with OIP was July 2. A new director has not yet been named. Congratulations to Les and mahalo for your diligent efforts and commitment towards ensuring fair and open access to government.

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UIPA and Sunshine Law Pointers and Guidelines

UIPA - Agency Fees & Costs Allowed

When responding to UIPA requests made for general records under part II, agencies may charge fees and costs in accordance with OIP’s administrative rules. See Haw. Admin. R. §§ 2-71-31 to -33.

Fees for Search, Review & Segregation

An agency may charge fees (after waiving the required amounts below) to:

- (1) search for requested records;
- (2) review records to determine whether portions may be exempt from disclosure under the UIPA; and
- (3) segregate any exempt information from the record.

Fees may be charged at the following rates per 15 minutes (or fraction thereof):

Search:	\$2.50 per 15 min.
Review & Segregation:	\$5.00 per 15 min.

Required Waiver of Fees

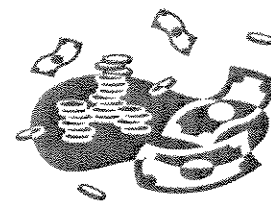
For an ordinary request, an agency must waive the first \$30 of the total fees to be charged for search, review and segregation. Haw. Admin. R. § 2-71-31(a)(3).

For a public interest request, the agency must waive the first \$60 of total fees. Haw. Admin. R. § 2-71-32. A request is in the public interest if the agency finds that:

- (1) the record pertains to the agency’s operation or activities;
- (2) the record is not readily available in the public domain; and
- (3) the requester has the primary intention and actual ability to widely disseminate information to the general public

Costs

An agency may charge the full amount of any “lawful” fees incurred in responding to a request. This may include costs for photocopying, transmitting the record by facsimile or mail, or the cost of any media used to copy a record, e.g. a CD or audio tape.



Agencies are generally authorized to charge for copies of government records at a “reasonable cost” of not less than 5 cents per page. Haw. Rev. Stat. § 92-21.

OIP has no specific authority to determine what a “reasonable cost” is, but generally advises agencies that:

- * charges may not be so high as to become a barrier to access;
- * charges must be consistently applied to different requesters (except that agencies may waive charges for other government agencies); and
- * where initial copies of a record are made in order to segregate, i.e. “black out,” information, the agency may not charge the requester for those initial copies.

Note that for “personal records” requests, an agency may charge copying and other lawful fees, but may not charge fees for search, review and segregation.

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Fees & Costs Continued...

Prepayment of Fees & Costs

Based upon a good faith estimate of the fees and costs that will be incurred in responding to a request, an agency may require prepayment of:

- (1) 50% of the estimated fees for search, review and segregation;
- (2) 100% of the estimated costs; and
- (3) 100% of any outstanding fees and costs from previous requests made by the requester.

Haw. Admin. R. § 2-71-19.

An agency providing incremental disclosure pursuant to OIP's rules may collect one prepayment or incremental prepayments. Haw. Admin. R. § 2-71-15.

Whether an agency requires prepayment or not, the agency must provide the requester with its good faith estimate of all fees and costs in order to allow the requester an opportunity to reduce the request and in turn the fees and costs, or to lawfully abandon the request.

OIP suggests that agencies generally require prepayment for larger requests prior to processing the request in order to save agency resources in the event the requester decides to reduce or abandon the request.

Recent OIP Opinions

UIPA - Energy Infrastructure Security

The Department of Business, Economic Development & Tourism ("DBEDT") asked whether it was required to disclose sensitive information reported to it by energy companies regarding the physical security of Hawaii's critical energy infrastructure.

According to DBEDT, disclosure of information about the physical security of critical energy infrastructure would compromise the security of that infrastructure and expose it to hazards such as vandalism, copper or equipment theft, or other criminal activity, which would clearly be contrary to the interest of public security.

OIP opined that where an agency seeks to withhold information in the interest of public security, the agency must

show that public disclosure of the information could reasonably be expected to cause damage to public security. Should DBEDT show that disclosure of a particular piece of information would indeed compromise the physical security of critical energy infrastructure, DBEDT can withhold that information under the UIPA's exception for information whose disclosure would frustrate a legitimate government function.

However, OIP noted that DBEDT must establish facts supporting that argument if faced with a challenge to its nondisclosure of information in response to a request. [OIP Opinion Letter No. 07-05]

Agenda Sufficiency

A requester sought an advisory opinion on whether the Maui County Salary Commission (the "Commission") provided sufficient notice under the Sunshine Law to allow its action to approve proposed salaries for certain Maui County officers set forth in the Commission's revised comprehensive salary model.

The specific question presented was whether the Commission could properly take action on an agenda item listed where the agenda did not expressly indicate that a decision would be made on that item or the nature of the decision.

OIP found that the Commission's agenda provided sufficient notice of the subject matter of the item to allow the Commission's action to approve an issue arising directly under the item listed.

An agenda must provide notice of the matters that the Commission intends to consider at its meeting by listing the matters with enough detail to reasonably allow the public to understand the subject of the matter to be considered. The agenda does not need to specifically notice that a decision may be made on an item or the exact nature of that decision as long as it reasonably arises under the subject matter listed. [OIP Opinion Letter No. 07-06]

Office of Information Practices

Address: No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813

Phone: (808) 586-1400 Fax: (808) 586-1412
Internet: www.hawaii.gov/oip E-mail: oip@hawaii.gov