

Office of Information Practices

State of Hawaii

Annual Report 2022



This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices from July 1, 2021, to June 30, 2022, in the administration of the public records law (the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes) and the open meetings law (the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes).

Abbreviations

Abbreviations used throughout this report:

AG - Attorney General's Office

AOD - Attorney of the Day

Cir. Ct. - Circuit Court

CORR - Correspondence File

ETS - Office of Enterprise Technology Services

**FOIA - Freedom of Information Act (federal),
5 U.S.C. § 522**

FY - Fiscal Year

HAR - Hawaii Administrative Rules

HRS - Hawaii Revised Statutes

HSC - Hawaii Supreme Court

ICA - Intermediate Court of Appeals

Log - UIPA Record Request Log

OHA - Office of Hawaiian Affairs

OIP - Office of Information Practices

Open Data Law - HRS § 27-44.3

RFA - Request for Assistance

RFO - Request for Opinion

RRS - Records Report System

Sunshine Law - Hawaii's open meetings law (part I of chapter 92, HRS)

UH - University of Hawaii

UIPA - Uniform Information Practices Act (chapter 92F, HRS)

*Some abbreviations defined within a specific section are
defined in that section and are not listed here.*

Table of Contents



History	4
Executive Summary.....	6
Goals, Objectives, and Action Plan	13

HIGHLIGHTS OF F SCAL YEAR 2022

Budget and Personnel.....	19
Legal Guidance, Assistance, and Dispute Resolution	22
Overview and Statistics	22
UIPA	28
Sunshine Law	32
Formal Opinions	33
UIPA	33
Informal Opinions	36
UIPA	36
Sunshine Law	39
General Legal Guidance and Assistance.....	40
UIPA	40
Sunshine Law	44
Education, Open Data, and Communications	48
Education.....	48
Training Materials, Model Forms, and Reports	49
Open Data	51
Communications	55
Records Report System.....	58
Legislation Report.....	60
Litigation Report.....	61

History

In 1988, the Legislature enacted the Comprehensive Uniform Information Practices Act (Modified) (UIPA), codified as chapter 92F, Hawaii Revised Statutes (HRS), to clarify and consolidate the State's then existing laws relating to public records and individual privacy, and to better address the balance between the public's interest in disclosure and the individual's interest in privacy.

The UIPA was the result of the efforts of many, beginning with the individuals asked in 1987 by then Governor John Waihee to bring their various perspectives to a committee that would review existing laws addressing government records and privacy, solicit public comment, and explore alternatives to those laws. In December 1987, the committee's work culminated in the extensive *Report of the Governor's Committee on Public Records and Privacy*, which would later provide guidance to legislators in crafting the UIPA. The four-volume report has been posted on the Legislation page at oip.hawaii.gov.

In the report's introduction, the Committee provided the following summary of the underlying democratic principles that guided its mission, both in terms of the rights we hold as citizens to participate in our governance as well as the need to ensure government's responsible maintenance and use of information about us as citizens:

Public access to government records ... the confidential treatment of personal information provided to or maintained by the government ... access to information about oneself being kept by the government. These are issues which have been the subject of increasing debate over the years. And well such issues should be debated as few go more to the heart of our democracy.

We define our democracy as a government of the people. And a government of the people must be accessible to the people. In a democracy, citizens must

be able to understand what is occurring within their government in order to participate in the process of governing. Of equal importance, citizens must believe their government to be accessible if they are to continue to place their faith in that government whether or not they choose to actively participate in its processes.

And while every government collects and maintains information about its citizens, a democratic government should collect only necessary information, should not use the information as a "weapon" against those citizens, and should correct any incorrect information. These have become even more critical needs with the development of large-scale data processing systems capable of handling tremendous volumes of information about the citizens of this democracy.

In sum, the laws pertaining to government information and records are at the core of our democratic form of government. These laws are at once a reflection of, and a foundation of, our way of life. These are laws which must always be kept strong through periodic review and revision.

Although the UIPA has been amended over the years, the statute has remained relatively unchanged. Experience with the law has shown that the strong efforts of those involved in the UIPA's creation resulted in a law that anticipated and addressed most issues of concern to both the public and government.

Under the UIPA, all government records are open to public inspection and copying unless an exception authorizes an agency to withhold the records from disclosure.



The Legislature included in the UIPA the following statement of its purpose and the policy of this State:

In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

However, the Legislature also recognized that “[t]he policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawaii.”

Accordingly, the Legislature instructed that the UIPA be applied and construed to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
- (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy.

The Legislature also exercised great foresight in 1988 by creating a single agency—the State Office of Information Practices (OIP)—to administer the UIPA, with broad jurisdiction

over all State and county agencies, including the Legislature, Judiciary, University of Hawaii, Office of Hawaiian Affairs, and County Councils. As an independent, neutral agency, OIP promulgates the UIPA's administrative rules and provides uniform interpretation of the law, training, and dispute resolution.

In 1998, OIP was given the additional responsibility of administering Hawaii's Sunshine Law, part I of chapter 92, HRS, which had been previously administered by the Attorney General's office since the law's enactment in 1975.

The Sunshine Law contains the same statement of its purpose and policy as the UIPA. And similar to the UIPA, the Sunshine Law opens up the governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as transparently as possible in meetings open to the public. Unless a specific statutory exception is provided, the Sunshine Law requires discussions, deliberations, decisions, and actions of government boards to be conducted in a meeting open to the public, with advance notice and the opportunity for the public to present testimony.

OIP provides guidance, training, and assistance under both the UIPA and Sunshine Law to the public as well as all State and county boards and agencies. Among other duties, OIP also provides guidance and recommendations on legislation that affects access to government records or board meetings.

Pursuant to sections 92F-42(7) and 92-1.5, HRS, this Annual Report to the Governor and the Legislature summarizes OIP's activities and findings regarding the UIPA and Sunshine Law for fiscal year (FY) 2022, which began on July 1, 2021 and ended on June 30, 2022.



Executive Summary

OIP's mission statement is "ensuring open government while protecting individual privacy." More specifically, OIP seeks to promote government transparency while respecting people's privacy rights by fairly and reasonably administering the UIPA, which provides open access to government records, and the Sunshine Law, which provides open access to public meetings.

Additionally, under HRS § 27-44.3 (Open Data Law), OIP, together with the Data Task Force, is charged with assisting the Chief Data Officer to implement Hawaii's Open Data policy. That policy seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from State agencies; to enhance government transparency and accountability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the State.

Besides providing relevant background information, this annual report details OIP's performance for FY 2022, which began on July 1, 2021, and ended on June 30, 2022.

OIP's jurisdiction extends over State, county, and independent

OIP Service Overview FY 2016-2022							
	2016	2017	2018	2019	2020	2021	2022
Total Requests for OIP's Services	1,162	1,234	1,127	1,127	1,168	874	1,633
Informal Requests (AODs)	964	956	945	963	990	719	1,456
Formal Requests Opened	198	278	182	164	178	155	177
Formal Requests Resolved	208	241	201	213	193	129	171
Formal Cases Pending	114	150	131	82	67	93	99
Live Training	11	9	6	11	6	0	0
Training Materials Added/Revised	12	6	9	14	11	1	19
Legislation Monitored	175	108	93	185	146	161	235
Lawsuits Monitored	44	40	38	40	45	45	39
Public Communications	30	30	25	25	26	30	30

Figure 1

agencies and boards in all branches of government, and thus includes the Governor, Lt. Governor, Judiciary, Legislature, University of Hawaii (UH), Office of Hawaiian Affairs (OHA), and all county mayors and councils. OIP assists the attorneys, staff, and volunteers for all government agencies and boards, as well as the media and general public, by providing training and legal guidance regarding the UIPA and Sunshine Law and assistance in obtaining access to public records and meetings. As a neutral decision maker, OIP resolves UIPA and Sunshine Law disputes filed with it through a free and informal process that is not a contested case or judicial proceeding. OIP's decisions may be appealed to the courts and are also enforceable by the courts.

Besides resolving formal cases through opinions or correspondence, OIP provides informal, same-day advice over the telephone, via mail or email, or in person through its Attorney of the Day (AOD) service. OIP prepares extensive training materials and presents online training programs. During the legislative session, OIP typically monitors over a hundred bills and resolutions and provides objective testimony regarding the intended or possibly unintended impacts of legislative proposals on various competing interest groups and the current statutes. OIP also monitors lawsuits that involve the UIPA, Sunshine Law, or OIP. OIP proactively undertakes special projects, such as the UIPA Record Request Log or drafting legislative proposals, and it must occasionally review and revise its administrative rules. Throughout the year, OIP shares UIPA, Sunshine Law, and Open Data updates and information with interested groups and members of the public, State and county government agencies, board members and staff, and the media.

For many years, OIP has done this work, along with many other duties, with only 8.5 full-time equivalent (FTE) authorized positions, which includes five staff attorneys. *See Figure 1.* In FY 2020, while it had its full complement of experienced employees, OIP was able to substantially reduce its formal case backlog to only 67 cases, complete other statutory duties, and undertake new initiatives, such as its new

Legislation webpage providing easy access to important legislative history and to new or pending legislative proposals.

OIP's successes in FY 2020, however, were short-lived because of the loss of nearly half its staff and the State's challenges resulting from the COVID-19 pandemic. On March 16, 2020, Governor David Ige issued an emergency order that suspended the UIPA in its entirety, which thus suspended all of OIP's powers and duties. On May 5, 2020, OIP's powers and duties were restored, but the UIPA deadlines were suspended throughout the remainder of FY 2021. Additionally, the Sunshine Law was suspended to allow for remotely held meetings without the requirement for an in-person public meeting. Although OIP continued to work despite the suspension of its powers and duties during the COVID-19 pandemic, the various emergency orders limited OIP's ability to obtain timely responses in formal cases where deadlines had been suspended by emergency orders or from other agencies that were not staffed in person during the pandemic.

Additionally, in early FY 2021 and 2022, OIP uncharacteristically lost three experienced staff attorneys and its administrative assistant, constituting 47% of its staff, due to retirement and personal reasons. Because of the State's hiring freeze and challenges in authorizing and processing new hires, OIP experienced substantial delays in hiring replacements and its productivity suffered. OIP was not able to fill the final vacancy until March 2022 and has had to train three new staff attorneys and an administrative assistant.

While new formal and informal requests for OIP's assistance fell during FY 2021, they substantially increased in FY 2022, with a doubling of informal Attorney of the Day (AOD) inquiries that OIP typically resolves the same day they are received. Despite vacancies and the need to train new employees, OIP was able to resolve 97% of all formal and informal requests received in FY 2022 in the same year.

OIP did this work, along with extensive revisions to its online training materials required by the

passage of major legislative changes. Act 220, which OIP successfully shepherded through the 2021 legislative session, took effect on January 1, 2022 and expanded public participation while allowing boards to work through remote meetings held online. Further amendments to the Sunshine Law were made during the 2022 session. Additionally, Senate Concurrent Resolution 192 adopted by the Legislature in 2022 asked OIP to convene and support a Working Group to improve government deliberation and decisionmaking. Thus, OIP has been extremely busy after each session updating its online training materials to prepare boards for implementation of the new amendments to the law and is currently doing interim work with the SCR 192 Working Group to prepare recommendations and a report before the 2023 legislative session.

Additional details and statistics are found later in this Annual Report, along with OIP's goals, objectives and action plan for FY 2023-2028. This Executive Summary provides an overview, as follows.

Budget and Personnel

For FY 2022, OIP's total legislative appropriation was \$809,377 and it received no collective bargaining increases or additional funding through bills other than the budget bill. Although additional funding and positions had been authorized for OIP in a bill passed during the 2022 session, the bill was vetoed because of its other provisions so OIP did not receive any increase in funding or positions. Moreover, due to administratively imposed restrictions of \$56,656, the total allocation available for OIP's use was \$752,721. *See Figure 3 on page 21.*

As in prior years, OIP was authorized 8.5 total full time equivalent (FTE) positions, but had two vacancies in FY 22. Due to delays in receiving authorization to hire, OIP was not able to fill the last of its vacant positions until March 2022. Thus, for FY 2022, OIP had vacancy savings and

actually incurred \$689,632 for personnel costs and \$17,861 in operational costs, for a total of \$711,759.

Legal Guidance, Assistance, and Dispute Resolution

One of OIP's core functions is responding to informal requests for assistance from members of the public, government employees, and board members and staff seeking OIP's guidance regarding compliance with the UIPA, Sunshine Law, and the State's Open Data policy. Formal requests may also be made for OIP's assistance in obtaining records from government agencies under the UIPA; appeals to OIP may be filed following agencies' denial of access to records; and OIP's advisory opinions are sought regarding the rights of individuals or the duties and responsibilities of State and county agencies and boards under the UIPA and the Sunshine Law.

In FY 2022, OIP received 177 formal and 1,456 informal requests for assistance, for a total of 1,633 requests, which is 87% more than the 874 total requests received in FY 2021. *See Figure 1 on page 6.* OIP resolved 97% (1580) of all formal and informal requests for assistance received in FY 2022 in the same fiscal year.

Over 89% (1,456) of the total requests for OIP's services are informal requests that are typically responded to within the same day through the AOD service. Over 53% (774) of the AOD inquiries in FY 2022 came from State and county agencies and boards seeking guidance to ensure compliance with the UIPA and Sunshine Law, while the balance (682) came from the general public. *See Figure 6 on page 26.* Although AOD inquiries take a significant amount of the staff attorneys' time, agencies usually conform to this general advice given informally, which thus prevents or quickly resolves many disputes that would otherwise lead to more labor-intensive formal cases.

Many situations, however, are not amenable to quick resolution through informal advice and OIP must instead open formal cases, which require much more time to investigate, research, review, and resolve. In FY 2022, OIP opened 177 formal cases, compared to 155 formal cases opened in FY 2021. OIP timely resolved 124 of the 177 FY 2022 new formal cases (70%) in the same year they were filed. When AODs are included, OIP quickly resolved 97% (1,580 of 1,633) of all FY 2022 formal and informal requests for assistance in the same year they were filed and 89% (1,456 of 1,633) usually within the same day they were filed.

Although OIP was hampered by delays in receiving approvals to hire new attorneys, it filled the last of three staff attorney vacancies in March 2022 and still managed to resolve a total of 171 formal cases in FY 2022, a nearly 33% increase over the prior year (129 resolved). But with the 14% increase in the number of new formal cases, OIP's backlog slightly increased 6% from 93 to 99 pending formal cases. *See* Figure 4 on page 23. Of the 99 formal case backlog at the end of FY 22, 53 cases were filed earlier that year and 46 were filed in FY 2021 or earlier.

Most of the formal cases are resolved through correspondence or voluntary compliance with OIP's informal advice and mediation efforts. Appeals and requests for opinions, however, are much more time-consuming, even when opinions are not written. OIP resolved 160 of 171 formal cases without an opinion in FY 2022, and it issued three formal opinions and eight informal opinions, for a total of eleven written opinions. Summaries of the opinions begin on page 33.

Education, Open Data, and Communications

OIP relies heavily upon its website at oip.hawaii.gov to cost-effectively provide free and readily available training and general advice on the UIPA and Sunshine Law to agencies, boards, and members of the public. In FY 2022, OIP had a total of 97 training materials and forms on its Training page, which included 19 that it had revised or added during the year. In the first quarter of FY 2023, OIP made extensive updates to its training materials to reflect the Sunshine Law amendments that went into effect in July 2022.

OIP added in FY 2020 a "Legislation" page to its website, where it has compiled for easy public access the legislative history behind the enactment of and amendments to the UIPA, Sunshine Law, and the tax statute providing for appeals to OIP in challenges regarding the disclosure of written tax opinions. The Legislation page is updated each year to include new bills that are enacted and their legislative history.

During the 2022 session, the Legislature also adopted Senate Concurrent Resolution 192 requesting that OIP convene a Working Group during the interim to develop recommendations for the treatment of deliberative and predecisional agency records. For this project, OIP created in early FY 2023 a new SCR 192 webpage at oip.hawaii.gov to keep the public informed of the Working Group's activities.

In addition to its readily accessible website materials, OIP's educational and open data efforts include the UIPA Record Request Log (Log) that OIP developed in 2012. Today, all State, county, and independent agencies—including the Governor's Office, Lt. Governor's Office, Judiciary, Legislature, UH, OHA, and all county mayors and councils—use the Log to track record requests and ensure compliance with the UIPA.

The Log provides OIP and the public with transparency and accountability as to how many UIPA record requests are being made to government agencies, how they are being resolved, how long they take to be completed, and how much they are costing the government and requesters. Besides helping agencies to keep track of record requests and costs, the Log provides detailed instructions and training materials that educate agency personnel on how to timely and properly fulfill UIPA requests, and the Log collects important open data information showing how agencies are complying with the UIPA. The Log process also helps to educate the agencies on how they can use the State's open data portal at data.hawaii.gov to upload their own information to the internet to make it more readily accessible to the public.

Each year, OIP prepares two year-end reports summarizing the data from State and county agencies, which is consolidated on the Master Log. The Master Log is posted at data.hawaii.gov, and OIP's reports summarizing State and county agencies' year-end data are posted on its UIPA reports page at oip.hawaii.gov.

In addition to promoting open data via the Log, OIP participates on both the Open Data Council and the Access Hawaii Committee to encourage online access to government services and the creation of electronic data sets that can make government information more readily accessible to the public.

OIP continues to demonstrate its commitment to the Open Data policy by making its statutes, opinions, rules, subject matter indices, and training materials easily accessible on its website at oip.hawaii.gov for anyone to freely use. Since 2016, OIP has expanded access to its website by converting all of its previous formal opinions to, and providing new online materials in, a format accessible to people with disabilities.

OIP also communicates with the open government community primarily through What's

New articles informing readers of OIP's latest training materials, legislation, and open government issues. In FY 2022, 27 What's New articles were emailed to government agencies, media representatives, community organizations, and members of the public, and past articles are archived on the What's New page at oip.hawaii.gov. Together with OIP's Annual Report and two UIPA Log reports, OIP issued 30 public communications in FY 2022.

By using and improving its technological resources to cost-effectively communicate and expand its educational efforts, OIP has been able to more efficiently leverage the time and knowledge of its small staff and to effectively make OIP's training and advice freely and readily available 24/7 to all members of the public and the media, and not just to government employees or board members.

Records Report System

OIP's Records Report System (RRS) is a computer database that collects from all State and county agencies information describing the records that they routinely use or maintain. While the actual records remain with the agency and are not filed with OIP, all agencies must annually report to OIP the number and titles of their records and whether the records are accessible to the public or must be kept confidential in whole or in part. By the end of FY 2022, State and county agencies reported 29,780 record titles, of which 51% were described as being accessible to the public in their entirety.

The list of all agencies' record titles and their accessibility can be found on OIP's website at oip.hawaii.gov/records-report-system-rrs.

Legislation

OIP serves as a one-stop resource for government agencies and the public in matters relating to the UIPA and Sunshine Law. OIP often provides comments on these laws and makes recommendations for legislative changes to amend or clarify areas that have created confusion in application or counteract the legislative mandate of open government. During the 2022 legislative session, OIP reviewed and monitored 235 bills and resolutions affecting government information practices and testified on 62 of these measures.

OIP posted new online training materials in FY 2022 to reflect and explain the new remote meetings requirements of the Sunshine Law, which went into effect on January 1, 2022. After the 2022 session, OIP also posted new training materials, the bills, and the legislative history regarding Acts 177 and 264, which went into effect in July 2022. These acts added a new permitted interaction relating to legislative testimony and also amended the Sunshine Law's requirements for identifying minors during remote meetings, the deadline for board packet distribution, and the time when oral testimony must be heard during public meetings.

Additionally, the Legislature passed Senate Concurrent Resolution 192 (SCR 192) during the 2022 session, which requested that OIP convene a Working Group to develop a new statutory exception to the UIPA that would improve government decision-making. Based on federal law and the UIPA's legislative history, OIP had previously recognized for nearly 30 years that certain internal agency records could be withheld under the "deliberative process privilege" when disclosure would frustrate a legitimate government function under section 92F-13(3), HRS. But in a 2018 case in which OIP was not a party and had no opinion being directly appealed by the parties, the Hawaii Supreme Court in a close 3-2 decision overruled OIP's prior opinions and held that government agencies in Hawaii could no longer use the privilege to justify withholding certain internal records. Peer News LLC v. City and County of Honolulu, 143 Haw. 472, 431 P.3d

1245 (2018). The Court's majority and dissenting opinions and OIP's analysis of this case have been posted on the Opinions page at oip.hawaii.gov. More information about the interim work re-examining this issue is found on a new SCR 192 webpage at oip.hawaii.gov.

Rules

Now that OIP has completed its transfer for administrative purposes to the Department of Accounting and General Services (DAGS), OIP must renumber its administrative rules to fall within DAGS's system. For the most part, OIP will simply renumber its rules for appeals that are made to OIP, which were adopted on December 31, 2012. More substantive changes are being proposed, however, for OIP's rules to process UIPA record requests, which were adopted in 1998, and to conform to statutory changes made since then.

In anticipation of updating its 1998 rules, OIP has been collecting objective data from State and county agencies through the UIPA Record Request Log for several years. In September 2017, OIP presented draft rules and explanatory materials on its website, at statewide informational briefings, and through 'Olelo broadcasts. After receiving public comments on the drafts, OIP revised its draft rules and submitted them for legal review by the Attorney General's (AG) office. OIP has been awaiting completion of the AG's legal review of the draft rules, which has been further delayed by pandemic-related issues. OIP will continue with the formal rulemaking process once it receives the AG's and Governor's approvals.

While much of the rulemaking process is beyond OIP's control, adoption of new administrative rules will be OIP's main priority once the formal rulemaking process can proceed. After new rules are finally implemented, OIP will prepare updated training materials, including a new UIPA Record Request Log.

Litigation

OIP monitors litigation in the courts that raise issues under the UIPA or the Sunshine Law or that challenge OIP's decisions, and it has the discretion to intervene in those cases. Upon filing a UIPA civil action, a litigant is required to notify OIP in writing of the court case. Summaries of court cases are provided in the Litigation section of this report.

Although litigated cases are not counted in the total number of cases seeking OIP's services, they nevertheless take staff time to process and monitor. In FY 2022, OIP monitored 47 cases, including eight new cases. Ten cases were closed, so 37 remained pending in litigation at the end of the fiscal year. See **Figure 1** on page 6.



Goals, Objectives, and Action Plan

Pursuant to Act 100, SLH 1999, as amended by Act 154, SLH 2005, the State Office of Information Practices (OIP) presents its Goals, Objectives, and Action Plan for One, Two, and Five Years, including a report on its performance in meeting previously stated goals, objectives, and actions.

OIP's Mission Statement

"Ensuring open government while protecting individual privacy."

I. Goals

OIP's primary goal is to fairly and reasonably construe and administer the UIPA and the Sunshine Law in order to achieve the common purpose of both laws, as follows:

In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government[al] agencies—shall be conducted as openly as possible.

With the passage of the Open Data Law, OIP adopted another goal to assist the Office of Enterprise Services (ETS) to properly implement Hawaii's Open Data policy, which seeks to increase public awareness and electronic access to non-confidential and non-proprietary data and information available from State agencies; to enhance government transparency and account-

ability; to encourage public engagement; and to stimulate innovation with the development of new analyses or applications based on the public data made openly available by the State.

II. Objectives and Policies

A. Legal Guidance and Assistance. Provide training and impartial assistance to members of the public and all State and county agencies to promote compliance with the UIPA and Sunshine Law.

1. Provide accessible training guides, audio/visual presentations, and other materials online at oip.hawaii.gov and supplement OIP's online training with customized training for State and county government entities.
2. Provide prompt informal advice and assistance to members of the public and government agencies through OIP's Attorney of the Day (AOD) service.
3. Adopt and revise administrative rules, as necessary.

B. Investigations and Dispute Resolution. Assist the general public, conduct investigations, and provide a fair, neutral, and informal dispute resolution process as a free alternative to court actions filed under the UIPA and Sunshine Law, and resolve appeals under section 231-19.5(f), HRS, arising from the Department of Taxation's decisions concerning the disclosure of the text of written opinions.

1. Focus on reducing the age and number of OIP's backlog of formal cases in a manner that is fair to all requesters.

C. Open Data. Assist ETS and encourage all State and county entities to increase government transparency and accountability by posting open data online, in accordance with the UIPA, Sunshine Law, and the State's Open Data Policy.

1. Post all of OIP's opinions, training materials, reports, and *What's New* communications at oip.hawaii.gov, which links to the State's open data portal at data.hawaii.gov.

2. Encourage State and county agencies to electronically post appropriate data sets onto data.hawaii.gov and to use the UIPA Record Request Log to record and report their record requests.

D. Records Report System (RRS).

Maintain the RRS and assist agencies in filing reports for the RRS with OIP.

1. Promote the use of the RRS to identify and distinguish private or confidential records from those that are clearly public and could be posted as open data on government websites.

E. Legislation and Lawsuits.

Monitor legislative measures and lawsuits involving the UIPA and Sunshine Law and provide impartial, objective information and assistance to the Legislature regarding legislative proposals.

1. Provide testimony, legislative proposals, reports, or legal intervention, as may be necessary, to uphold the requirements and common purpose of the UIPA and Sunshine Law.

III. Action Plan with Timetable

A. Legal Guidance and Assistance

1. Past Year Accomplishments

a. OIP was able to fill the last of its three staff attorney vacancies in March 2022, after overcoming delays in obtaining authorization to hire.

b. OIP received 1,633 total requests for assistance in FY 2022, 97% (1,580) of which were resolved in the same fiscal year, and 89% (1,456) were informal requests typically resolved the same day through OIP's AOD service.

c. Despite training new attorneys and experiencing more than double the number of AOD inquiries compared to the previous year, OIP responded to 1,456 inquiries typically within the same day.

d. OIP extensively updated its online training materials to reflect the new remote meeting provisions of the Sunshine Law that went into effect on January 1, 2022, as well as provided notice and guidance regarding other statutory changes made during the 2022 legislative session. Additional updates to OIP's online training materials were posted in early FY 2023.

2. Year 1 Action Plan

a. Obtain sufficient funding and position authorizations to recruit, train and retain legal and administrative personnel to keep up with anticipated increases in OIP's workload, while reducing the formal case backlog.

b. Continue to promptly provide informal guidance through OIP's AOD service, so that approximately 80% of requests for OIP's assistance can be timely answered or resolved within one workday, which promotes compliance with the law and helps to prevent disputes from escalating to formal complaints.

c. Create a new Senate Concurrent Resolution (SCR) 192 webpage at oip.hawaii.gov to keep the government agencies and the general public informed of the efforts of the Working Group convened in July 2022 pursuant to SCR 192 to develop a new statutory exception to the UIPA that would improve government decisionmaking.

d. Continue to update OIP's online training materials to reflect statutory revisions and provide free and readily accessible guidance for government agencies as well as the general public.

3. Year 2 Action Plan

a. Conduct informational briefings and a public hearing to obtain agency and public input on OIP's new administrative rules and revisions to its existing rules, conditioned on the prior completion of the Attorney General's legal review of OIP's draft rules.

b. Assuming adoption, implement OIP's new administrative rules, including the creation of new training materials and a revised UIPA Record Request Log.

c. Update and improve OIP's online training materials, as may be necessary.

d. Obtain sufficient funding and position authorizations to recruit, train and retain legal and administrative personnel to ensure the long-term stability and productivity of OIP.

4. Year 5 Action Plan

a. Evaluate recently implemented rules and determine whether additional rules or revisions are necessary.

b. Obtain sufficient funding and position authorizations to recruit, train, and retain legal and administrative personnel to ensure the long-term stability and productivity of OIP.

B. Investigations and Dispute Resolution

1. Past Year Accomplishments

a. Despite an increase of 14% in the number of new formal cases filed in FY 2022, OIP resolved 10% more formal cases (171) than in the prior year (155).

b. Of the 177 formal cases opened in FY 2022, 124 (70%) were resolved in the same fiscal year.

c. Of the 99 cases that remained pending at the end of FY 2022, 53 (54%) were opened in FY 2022 and 46 (46%) were opened in FY 2021 or earlier, one of which is still pending in litigation.

2. Year 1 Action Plan

a. Obtain sufficient funding and position authorizations to recruit, train and retain legal and administrative personnel to keep up with anticipated increases in OIP's workload, while reducing the formal case backlog.

b. Strive to resolve 70% of all formal cases opened in FY 2023.

c. Strive to resolve all formal cases filed before FY 2022, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.

3. Year 2 Action Plan

- a. Strive to resolve all formal cases filed before FY 2023, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months.
- b. Obtain sufficient funding and position authorizations to recruit, train, and retain OIP staff so as to keep up with anticipated increases in OIP's workload while reducing the formal case backlog.

4. Year 5 Action Plan

- a. Strive to resolve all formal cases within 12 months of filing, if they are not in litigation or filed by requesters who have had two or more cases resolved by OIP in the preceding 12 months, and provided that OIP is sufficiently staffed.
- b. Obtain sufficient funding and position authorizations to recruit, train, and retain legal and administrative personnel to ensure the long-term stability and productivity of OIP.

C. Open Data

1. Past Year Accomplishments

- a. Prepared UIPA Record Request Log reports summarizing results for FY 2021 from 209 State and 80 county agencies, including the Governor's office, Lt. Governor's office, Judiciary, Legislature, UH, OHA, all mayors' offices, and all county councils.
- b. Distributed 27 What's New articles and 3 reports to keep government personnel and the general public informed of open government issues, including proposed legislation.

- c. Received 51,745 unique visits from Hawaii to OIP's website and 212,108 website page views (excluding OIP's and home page hits).

2. Year 1 Action Plan

- a. Obtain approval to hire and train another employee to assist with open data and other duties.
- b. Encourage and assist State and county agencies to electronically post open data, including the results of their Logs.
- c. Complete data and prepare reports of the Log results for FY 2022 from all State and county agencies.
- d. Utilize Log data to develop and evaluate proposed OIP rules concerning the UIPA record request process and fees.
- e. Post information on OIP's website at oip.hawaii.gov to provide transparency and obtain public input on the rule-making process.

3. Year 2 Action Plan

- a. Continue to assist State and county agencies to electronically post open data and report on their results of State and county agencies' Logs.
- b. Revise the UIPA Record Request Log and related training materials, if new administrative rules are adopted.

4. Year 5 Action Plan

- a. Continue to assist State and county agencies to electronically post open data and report on the results of State and county agencies' Logs.

D. Records Report System

1. Past Year Accomplishments

- a. For FY 2022, State and county agencies reported 29,780 record titles on the RRS.

2. Year 1 Action Plan

- a. Continue to train and advise State and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

3. Year 2 Action Plan

- a. Continue to train and advise State and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

4. Year 5 Action Plan

- a. Continue to train and advise State and county agencies on how to use the access classification capabilities of the RRS to uniformly identify and protect private or confidential records, while promoting open access to public data that may be disclosed.

E. Legislation and Lawsuits

1. Past Year Accomplishments

- a. In FY 2022, OIP reviewed and monitored 235 bills and resolutions and testified on 62 of them.

- b. In FY 2022, OIP monitored 47 cases in litigation, of which 8 were new cases. Since 10 litigation files were closed, 37 cases remained pending at the end of FY 2022.

2. Year 1 Action Plan

- a. Convene and support a Working Group pursuant to SCR 192 passed by the Legislature in 2022 to develop recommendations for a new UIPA statutory exception and other recommendations for deliberative and pre-decisional agency records to reasonably balance the public's interest in disclosure and the agency's ability to fully consider and make sound and informed decisions, and provide a report to the Legislature before the 2023 session.

- b. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, open data, or OIP.

3. Year 2 Action Plan

- a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, open data, or OIP.

4. Year 5 Action Plan

- a. Continue to monitor legislation and lawsuits and to take appropriate action on matters affecting the UIPA, Sunshine Law, or OIP.

IV. Performance Measures

A. Customer Satisfaction Measure

– Monitor evaluations submitted by participants after training or informational sessions as well as comments or complaints made to the office in general, and take appropriate action.

B. Program Standard Measure –

Measure the number of: formal cases and AOD inquiries received and resolved; opinions issued; lawsuits monitored; legislative proposals monitored; unique visits to OIP’s website; training materials added or revised; and public communications.

C. Cost Effectiveness Measure –

Considering the number and experience levels of OIP personnel in comparison to similar agencies, monitor the percentage of formal or informal requests for assistance resolved in the same year of the request and the number of formal cases pending at the end of each fiscal year.



Highlights of Fiscal Year 2021

Budget and Personnel



OIP reports its total allocation as the net amount that it was authorized to use of the legislatively appropriated amount, including any collective bargaining adjustments, minus administratively imposed budget restrictions. For FY 2022, OIP's total legislative appropriation was \$809,377 and it received no collective bargaining increases or additional funding through bills other than the budget bill. Due to administratively imposed restrictions of \$56,656, however, the total allocation available for OIP's use was \$752,721. See **Figure 3** on page 21.

OIP notes that in 2022, the Legislature appropriated an additional \$185,000 in general funds and two new positions for OIP in SB 3252, SD2, HD2, CD1. Unfortunately, the bill was vetoed due to other provisions, so OIP did not receive the additional funding and positions.

As in prior years, OIP was authorized 8.5 total full time equivalent (FTE) positions, but experienced two vacancies during the year. Due to delays in receiving authorization to hire, OIP was not able to fill the last of its vacant positions until March 2022. Largely because of vacancy savings, OIP actually incurred \$689,632 for personnel costs and \$17,861 in operational costs, for a total of \$711,759 in FY 2022.

Budgeted or lapsed amounts rather than actual costs or net amounts were sometimes inconsistently reported in prior years. Therefore, Figure 3 of OIP's budget history was revised to reflect

the total allocation as described above and the actual operational and personnel costs for FY 2011 through 2022. Using the U.S. Bureau of Labor Statistics CPI Inflation Calculator, the inflation adjusted allocations were revised in Figure 3. Minor rounding corrections were also made.

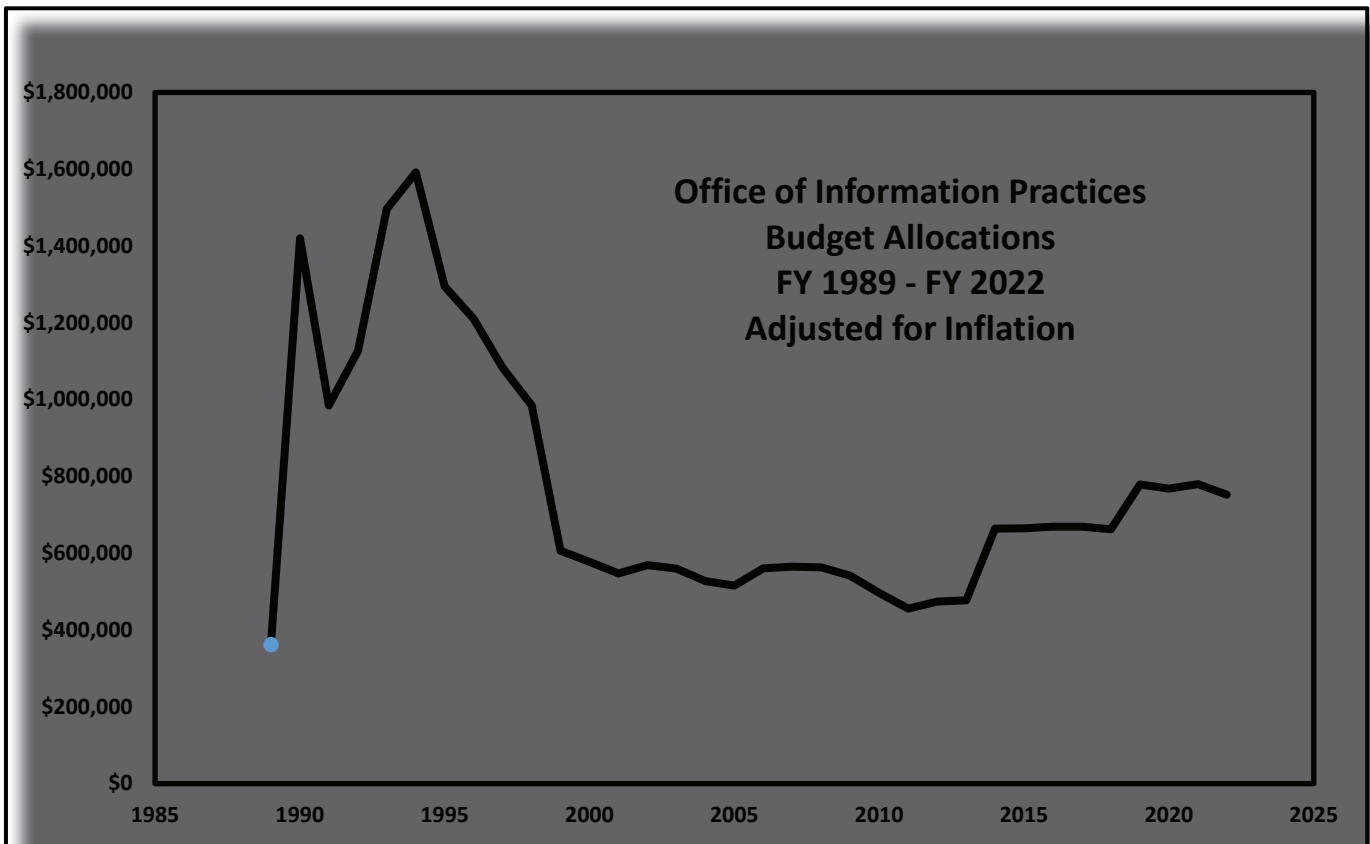


Figure 2



**Office of Information Practices
Budget FY 1989 to FY 2022**

Fiscal Year	Approved Positions	Operational Costs	Personnel Costs	Total Allocation	Allocations Adjusted for Inflation*
FY 22	8.5	22,127	689,632	752,721	752,721
FY 21	8.5	17,861	628,032	725,995	780,298
FY 20	8.5	22,188	683,170	704,853	768,179
FY 19	8.5	27,496	652,926	697,987	779,611
FY 18	8.5	15,793	568,222	584,019	662,434
FY 17	8.5	21,340	556,886	578,226	669,443
FY 16	8.5	31,592	532,449	564,041	669,346
FY 15	8.5	44,468	507,762	552,990	665,243
FY 14	8.5	35,400	436,505	552,990	664,648
FY 13	7.5	18,606	372,328	390,934	477,289
FY 12	7.5	30,197	352,085	382,282	474,170
FY 11	7.5	38,067	274,136	357,158	455,966
FY 10	7.5	19,208	353,742	372,950	496,602
FY 09	7.5	27,443	379,117	406,560	541,356
FY 08	7.5	45,220	377,487	422,707	563,024
FY 07	7.5	32,686	374,008	406,694	564,882
FY 06	7	52,592	342,894	395,486	560,716
FY 05	7	40,966	309,249	350,215	516,320
FY 04	7	39,039	308,664	347,703	527,840
FY 03	8	38,179	323,823	362,002	560,132
FY 02	8	38,179	320,278	358,457	569,054
FY 01	8	38,179	302,735	340,914	547,386
FY 00	8	37,991	308,736	346,727	577,497
FY 99	8	45,768	308,736	354,504	606,622
FY 98	8	119,214	446,856	566,070	984,835
FY 97	11	154,424	458,882	613,306	1,083,782
FY 96	12	171,524	492,882	664,406	1,209,821
FY 95	15	171,524	520,020	692,544	1,295,458
FY 94	15	249,024	578,513	827,537	1,591,384
FY 93	15	248,934	510,060	758,994	1,496,421
FY 92	10	167,964	385,338	553,302	1,126,428
FY 91	10	169,685	302,080	471,765	985,407
FY 90	10	417,057	226,575	643,632	1,420,375
FY 89	4	70,000	86,000	156,000	362,172

*Adjusted for inflation, using U.S. Bureau of Labor Statistics CPI Inflation Calculator.

Figure 3

Legal Guidance, Assistance, and Dispute Resolution

Overview and Statistics

OIP is the single statewide agency in Hawaii that provides uniform and consistent advice and training regarding the UIPA and Sunshine Law. OIP also provides neutral dispute resolution as an informal alternative to the courts. The general public and nearly all of Hawaii's State and county government agencies and boards seek OIP's services. The government inquiries come from the executive, legislative, and judicial branches of the State and counties, and include government employees as well as volunteer board members.

Beginning in FY 2020, the COVID-19 emergency caused substantial disruptions to State and county government operations, which were addressed in various emergency proclamations issued by Governor David Ige. OIP was directly affected by the Governor's first Supplementary Proclamation issued on March 16, 2020, which wholly suspended the UIPA and partially suspended the Sunshine Law "to the extent necessary to enable boards to conduct business in person or through remote technology without holding meetings open to the public." Although subsequent orders reinstated parts and eventually all of the UIPA and Sunshine Law, OIP's powers and duties were restricted and OIP was hampered in its ability to resolve cases that require responses from agencies that took advantage of the suspension of

UIPA deadlines. While OIP kept its office open and adjusted to teleworking during the pandemic, it was extremely short-staffed with the uncharacteristic loss of 47% of its employees, caused by the retirement or resignation of three experienced staff attorneys and its administrative assistant. It was not until March 2022 that OIP was able to fill the last of these vacancies.

While the number of new formal and informal cases declined in FY 2021, they increased substantially in FY 2022, with AOD inquiries more than doubling. In FY 2022, OIP received a total of 1,633 formal and informal requests for OIP's services, compared to 874 requests in FY 2021. There were 22 (14%) more formal cases filed in FY 2022 (177) than in FY 2021 (155), and 737 (103%) more informal AOD requests (1,456) than the prior year (719). Despite vacancies and having to train new staff, OIP was able to resolve 14% more formal cases (177 total) and ended FY 2022 with 99 pending formal cases, which is only six more than FY 2021. *See Figure 1* on page 6.



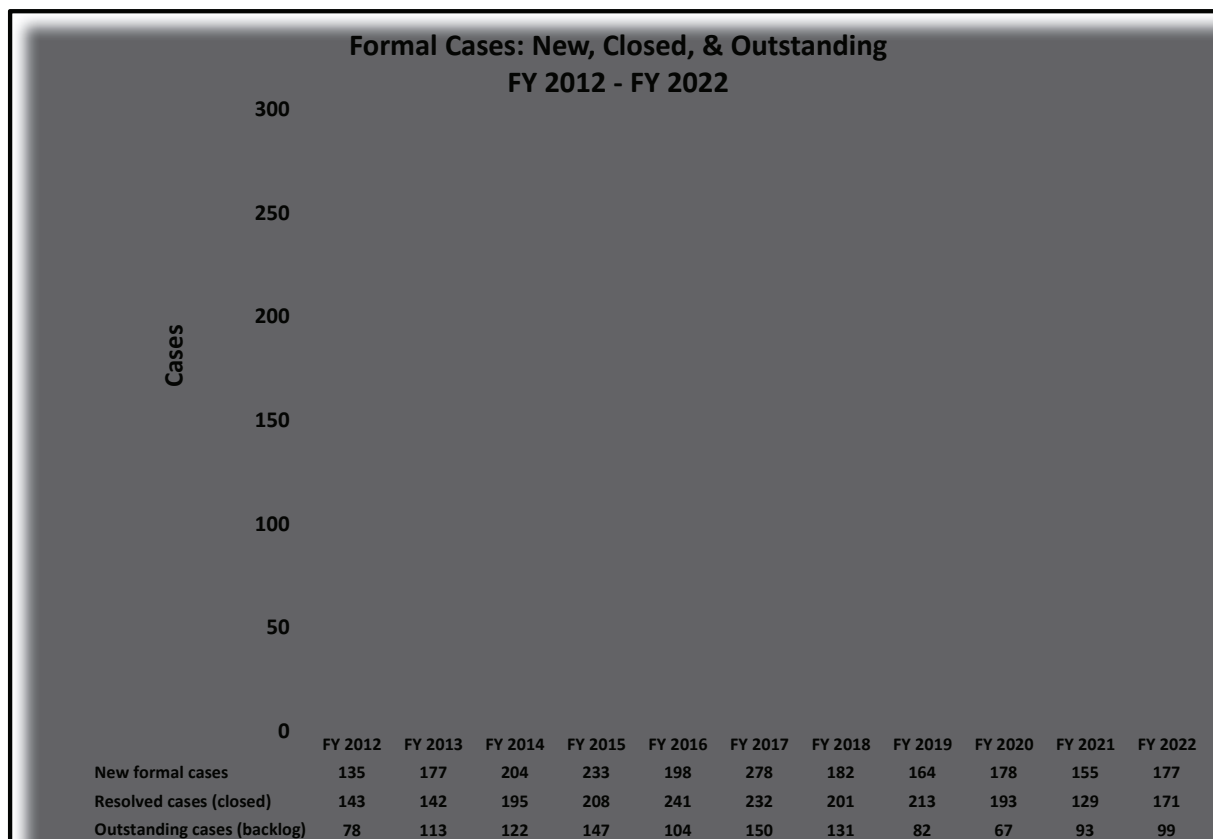


Figure 4

What follows is a description of the different types of formal and informal requests for OIP's assistance. OIP's many other duties, most of them statutorily mandated, are discussed in later sections of this report.

Formal Requests - FY 2022

Type of Request	Number of Requests
UIPA Requests for Assistance	70
UIPA Requests for Advisory Opinion	0
UIPA Appeals	39
Sunshine Law Appeals	7
Sunshine Law Requests for Opinion	0
Correspondence	37
UIPA Record Requests	23
Reconsideration Requests	1
Total Formal Requests	177

Figure 5**Formal Requests**

Of the total 1,633 formal and informal requests for OIP's services, 348 (21%) were categorized as relating to the UIPA and 678 (42%) concerned Sunshine Law issues, with the remainder being mostly miscellaneous AOD inquiries. Moreover, of the total 1,633 requests, 1,456 (89%) were filed as informal AOD requests and 177 (11%) were considered formal requests. **Figure 5** above shows the different types of formal requests received in FY 2022. Formal requests are further explained as follows.

UIPA Requests for Assistance

OIP may be asked by the public for assistance in obtaining a response from an agency to a record request. In FY 2022, OIP received 70 such written requests for assistance (RFAs) concerning the UIPA.

In these cases, OIP staff attorneys will generally contact the agency to determine the status of the request, provide the agency with guidance as to the proper response required, and in appropriate instances, attempt to facilitate disclosure of the

records. After an agency response has been received, the case is closed. Most RFAs are closed within 12 months of filing. A requester that is dissatisfied with an agency's response may file a UIPA Appeal.

Requests for Advisory Opinions

A request for an opinion (RFO) does not involve a live case or controversy and may involve only one party, and thus, will result in an informal (memorandum) opinion that has no precedential value as to legal issues regarding the UIPA or Sunshine Law. In FY 2022, OIP received no requests for a UIPA or Sunshine Law advisory opinion.

UIPA Appeals

UIPA appeals to OIP concern live cases or controversies. Appeals may result in formal or informal opinions, but are often resolved through OIP's informal mediation and the subsequent voluntary cooperation of the agencies in providing all or part of requested records. Unless expedited review is warranted, the case is being litigated, or a requester already had two or more other cases resolved by OIP within the past 12 months, appeals and requests for opinions involving the UIPA or Sunshine Law are generally resolved on a "first in, first out" basis, with priority given to the oldest cases whenever practicable.

In FY 2022, OIP received 39 appeals related to the UIPA.

Sunshine Law Appeals

In FY 2022, OIP received 7 Sunshine Law appeals.

Correspondence

OIP may respond to general inquiries, which often include simple legal questions, by correspondence (CORR). A CORR file informally provides

advice or resolves issues and obviates the need to open an Appeal or RFO. Rather than waiting for an opinion, an agency or requester may be satisfied with a shorter, more general analysis presented on OIP's letterhead, which is now considered a CORR file, and not an opinion as was done in some fiscal years before 2011.

In FY 2022, OIP opened 37 CORR files.

UIPA Record Requests

The UIPA allows people to request government or personal records that are maintained by an agency, and OIP itself does receive UIPA requests for OIP's own records. OIP's current administrative rules require that an agency respond to a record request within 10 business days. When extenuating circumstances are present, however, the response time may be 20 business days or longer, depending on whether incremental responses are warranted.

In FY 2022, OIP received 23 UIPA record requests made for records maintained by OIP.

Reconsideration of Opinions

OIP's rules allow a party to request, in writing, reconsideration of OIP's written formal or informal opinions within 10 business days of issuance. Reconsideration may be granted if there is a change in the law or facts, or for other compelling circumstances.

The one request for reconsideration received in FY 2022 remained pending.

Types of Opinions and Rulings Issued

OIP issues opinions that it designates as either formal or informal.

Formal opinions concern actual controversies and address issues that are novel or controversial, require complex legal analysis, or are otherwise of broader interest to agencies and the public.

Formal opinions are used by OIP as precedent for its later opinions and are posted, in full and as summaries, on OIP's opinions page at **oip.hawaii.gov**. Summaries of the formal opinions for this fiscal year are also found on pages 33-35 of this report. OIP's website contains searchable UIPA and Sunshine Law subject-matter indices for the formal opinions.

Informal opinions, also known as memorandum opinions, are binding upon the parties involved but are considered advisory in other contexts and are not cited by OIP as legal precedents. Informal opinions are public records, but are not published for distribution. Summaries of informal opinions are available on OIP's website and those issued in this fiscal year are also found in this report on pages 36-39.

Informal opinions do not have the same precedential value as formal opinions because they generally address issues that have already been more fully analyzed in formal opinions. Informal opinions may provide less detailed legal discussion, or their factual bases may limit their general applicability.

Both formal and informal opinions, however, are subject to judicial review on appeal. Consequently, since the 2012 statutory changes regarding appeals to OIP, the office has been careful to write opinions that "speak for themselves" in order to avoid having to intervene and defend them in court later. With well-reasoned opinions that can withstand judicial scrutiny, parties may even be discouraged from appealing and adding to the Judiciary's own substantial backlog of cases. Thus, unlike the short letters that OIP often wrote in the past, current OIP opinions require more attorney time to gather the facts and opposing parties' positions; do legal research; analyze the statutes, case law, and OIP's prior precedents; draft; and undergo multiple internal reviews before final issuance.

In FY 2022, OIP issued a total of eleven opinions, consisting of three formal UIPA opinions, seven informal UIPA opinions, and one informal Sunshine Law opinion. OIP closed 160 cases without opinions.

Informal Requests

Attorney of the Day Service

The vast majority (89% in FY 2022) of all requests for OIP's services are informally handled through the Attorney of the Day (AOD) service, which allows the public, agencies, and boards to receive general, nonbinding legal advice from an OIP staff attorney, usually the same business day. Like the "express line" at a supermarket, the AOD service allows people to quickly get answers to their relatively simple questions without having to wait for more time-consuming resolution of complex issues often found in formal cases.

Through AOD calls, OIP is often alerted to trends and problems, and OIP can provide informal advice to prevent or correct potential violations. The AOD service is also a free and quick way for members of the public to get the advice that they need on UIPA record requests or Sunshine Law questions, without having to engage their own lawyers. The AOD service helps to level the playing field for members of the public who do not have government or private attorneys to advise them on the UIPA or Sunshine Law.

Members of the public use the AOD service frequently to determine whether agencies are properly responding to UIPA record requests or if government boards are following the procedures required by the Sunshine Law. Agencies often use the AOD service for assistance in responding to record requests, such as how to properly respond to requests or redact specific information under the UIPA's exceptions. Boards also use the AOD service to assist them in navigating Sunshine Law requirements. Examples of AOD inquiries and OIP's informal responses are provided, beginning on page 40.

Through AOD inquiries, OIP may be alerted to potential violations and is able to take quick preventative or corrective action. For example, based on AOD inquiries, OIP has advised boards

to cancel improperly noticed meetings or has made suggestions to prepare a sufficiently descriptive agenda. OIP has even had boards call for advice during their meetings, with questions such as whether they can conduct an executive session closed to the public. AOD callers may also seek UIPA-related advice, such as whether they are entitled to receive copies of certain records.

Because of the AOD service, OIP has been able to quickly and informally inform people of their rights and responsibilities, avert or resolve disputes, and avoid having small issues escalate to appeals or other formal cases that necessarily take longer to resolve.

AOD Inquiries			
Fiscal Year	Total	Public	Government Agencies
FY 22	1,456	682	774
FY 21	719	124	595
FY 20	990	175	815
FY 19	963	478	485
FY 18	945	294	651
FY 17	956	370	586
FY 16	964	289	675
FY 15	1,074	340	734
FY 14	1,109	280	829
FY 13	1,050	270	780
FY 12	940	298	642
FY 11	676	187	489
FY 10	719	207	512
FY 09	798	186	612
FY 08	779	255	524
FY 07	772	201	571
FY 06	720	222	498
FY 05	711	269	442
FY 04	824	320	504
FY 03	808	371	437
FY 02	696	306	390
FY 01	830	469	361

Figure 6

In FY 2022, AOD inquiries more than doubled from the year before, as shown on Figure 6. OIP surmises that the increase was caused by the major changes to the Sunshine Law allowing for remote meetings, as well as the end of the emergency orders regarding the Sunshine Law and UIPA during the COVID-19 pandemic.

Of the 1,456 AOD inquiries in FY 2022, 774 (53%) came from government boards and agencies seeking guidance to ensure compliance with

the UIPA or Sunshine Law, and 682 inquiries (47%) came from the public. See **Figures 6 and 7**.

The public inquiries came from 423 private individuals (62%), 154 private attorneys (23%), 73 businesses (10%), 19 media representatives (3%), 10 public interest groups (1%), and 3 other persons (1%). See **Figures 8 and 9**.

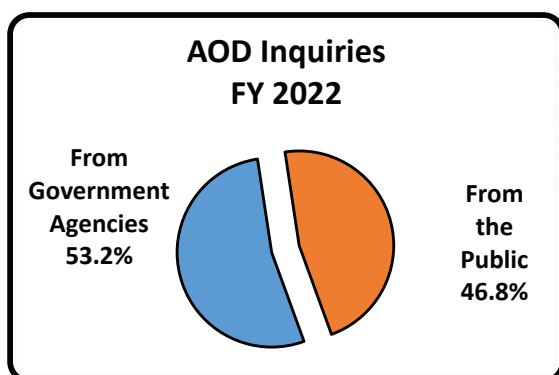


Figure 7

**AOD Inquiries from the Public
FY 2022**

Types of Inquirers	Number of Inquiries
Private Individual	423 (62%)
Private Attorney	154 (23%)
Business	73 (10%)
News Media	19 (3%)
Public Interest Group	10 (1%)
Others	3 (1%)
TOTAL	682

Figure 8

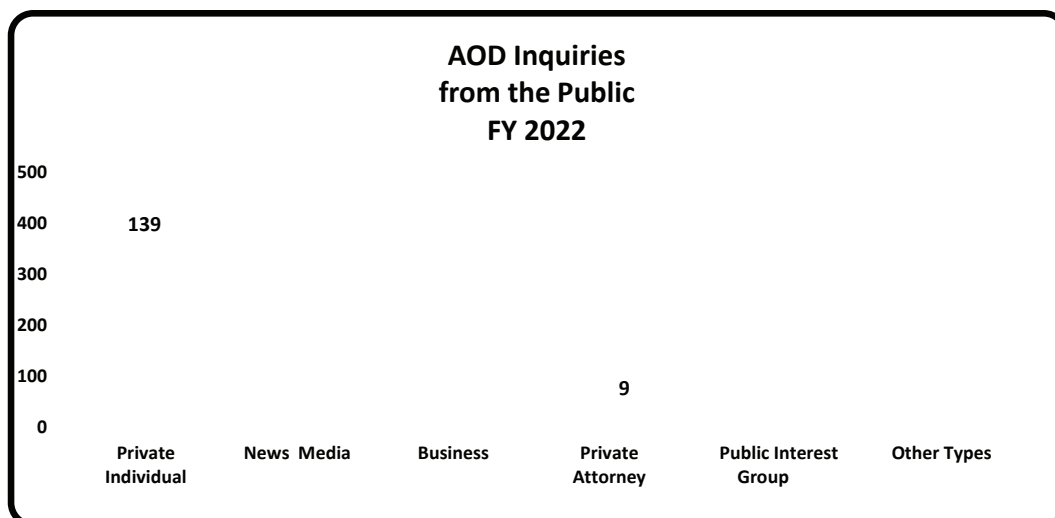


Figure 9

UIPA Inquiries:**UIPA AOD Inquiries**

In FY 2022, OIP received 618 AOD requests concerning the UIPA from government agencies and the general public. A total of 105 inquiries came from the agencies seeking guidance on how to comply with the laws, and 513 came from the public. For a summary of the numbers and types of UIPA AOD inquiries regarding specific State and county government agencies, please see **Figures 10 to 14** that follow. A sampling of the AOD advice given by OIP starts on page 40.

State Agencies and Branches

In FY 2022, OIP received a total of 96 AOD inquiries relating to the UIPA and concerning specific State agencies in the executive branch. About 56% of these requests concerned five State agencies: Accounting and General Services (12), Attorney General (11), Education (11), Land and Natural Resources (11), and Transportation (10). As shown below in **Figure 10**, about 52% (50) of AOD requests were made by the agencies themselves.

OIP also received 4 inquiries concerning the legislative branch and 5 inquiries regarding the judicial branch. See **Figure 10** below. These AOD requests exclude general inquiries that do not concern a specific agency.

UIPA AOD Requests About State Government Agencies FY 2022			
Executive Branch Department	Requests by Agency	Requests by Public	Total Requests
Accounting and General Services	7	5	12
Attorney General	6	5	11
Education (including Public Libraries)	6	5	11
Land and Natural Resources	4	7	11
Transportation	4	6	10
Commerce and Consumer Affairs	5	2	7
Labor and Industrial Relations	4	3	7
Health	1	5	6
Public Safety	1	4	5
Human Resources Development	3	1	4
Human Services	4	0	4
Tax	2	1	3
Business, Econ Development, & Tourism	2	0	2
Agriculture	1	0	1
Budget and Finance	0	1	1
Hawaiian Home Lands	0	1	1
Defense	0	0	0
Governor	0	0	0
Lieutenant Governor	0	0	0
TOTAL EXECUTIVE	50	46	96
TOTAL LEGISLATURE	0	4	4
TOTAL JUDICIARY	0	5	5
University of Hawaii System	3	0	3
Office of Hawaiian Affairs	5	2	7
TOTAL STATE AGENCIES	58	57	115

**Figure 10**

County Agencies

In FY 2022, OIP received a total of 65 AOD inquiries regarding the UIPA and concerning specific county agencies and boards. Of these, 43 inquiries (66%) came from the public in all counties.


Of the 65 AOD inquiries, 40 inquiries concerned agencies in the City and County of Honolulu, up from 23 in the previous year. *See Figure 11.* As shown below, 16 (40%) of the 40 requests to

the City were made by the agencies themselves seeking guidance to comply with the UIPA.

The largest number of requests concerned the Honolulu Police Department (19), the Honolulu County Council (5), and Budget and Fiscal Services (5).

OIP received 25 inquiries regarding neighbor island county agencies and boards: Maui County (12), Hawaii County (9), and Kauai County (4), *See Figures 12 to 14.*

UIPA AOD Inquiries About City and County of Honolulu Government Agencies - FY 2022



Department	Requests by Agency	Requests by Public	Total Requests
Police	5	14	19
County Council	3	2	5
Budget and Fiscal Services	3	2	5
Board of Water Supply	2	0	2
Planning & Permitting	0	2	2
Fire	0	1	1
Environmental Services	1	0	1
Emergency Services	0	1	1
Facility Maintenance	1	0	1
Liquor Commission	1	0	1
Mayor	0	1	1
Unnamed Agency	0	1	1
TOTAL	16	24	40

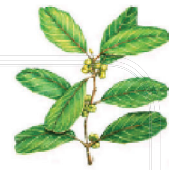
Figure 11



**UIPA AOD Inquiries About
Hawaii County
Government Agencies - FY 2022**

Department	Requests by Agency	Requests by Public	Total Requests
Police	1	3	4
County Council	1	1	2
Corporation Counsel	1	1	2
Unnamed Agency	0	1	1
TOTAL	3	6	9

Figure 12



**UIPA AOD Inquiries About
Kauai County
Government Agencies - FY 2022**

Department	Requests by Agency	Requests by Public	Total Requests
Police	0	1	1
County Attorney	1	0	1
Planning	0	1	1
Unnamed Agency	0	1	1
TOTAL	1	3	4

Figure 13

**UIPA AOD Inquiries About
Maui County
Government Agencies - FY 2022**



Department	Requests by Agency	Requests by Public	Total Requests
Police	1	3	4
County Council	0	2	2
Corporation Counsel	1	0	1
Finance	0	1	1
County Clerk	0	1	1
Mayor	0	1	1
Prosecuting Attorney	0	1	1
Unnamed Agency	0	1	1
TOTAL	2	10	12

Figure 14



Sunshine Law Inquiries:

Since 2001, OIP has averaged more than 328 formal and informal inquiries a year concerning the Sunshine Law. In FY 2022, OIP received a total of 678 Sunshine Law formal and informal inquiries, which is over 250% higher than in FY 2021 and 200% more than the average number of requests received each year. See **Figures 15 and 16**. OIP surmises that this large increase in inquiries was the result of major Sunshine Law amendments allowing remote meetings that went into effect on January 1, 2022, as well as the conclusion of emergency orders suspending Sunshine Law provisions.

Of the total Sunshine Law inquiries made in FY 2022, 671 (99%) were informal AOD requests, and 7 were formal cases. See **Figure 16**.

Of the 671 AOD requests involving the Sunshine Law, 387 were requests for general advice, and 121 were formal complaints. Also, 106 of the 671 AOD requests (16%) involved the requester's own agency.

Sunshine Law Inquiries

<i>Fiscal Year</i>	<i>AOD Inquiries</i>	<i>Formal Requests</i>	<i>Total</i>
2022	671	7	678
2021	260	8	268
2020	366	10	376
2019	381	11	392
2018	265	7	272
2017	337	11	348
2016	331	4	335
2015	433	31	464
2014	491	38	529
2013	264	27	291
2012	356	23	379
2011	166	13	179
2010	235	21	256
2009	259	14	273
2008	322	30	352
2007	281	51	332
2006	271	52	323
2005	185	38	223
2004	209	17	226
2003	149	28	177
2002	84	8	92
2001	61	15	76

Figure 16

Sunshine Law Formal and Informal Inquiries FY 2001 to FY 2022

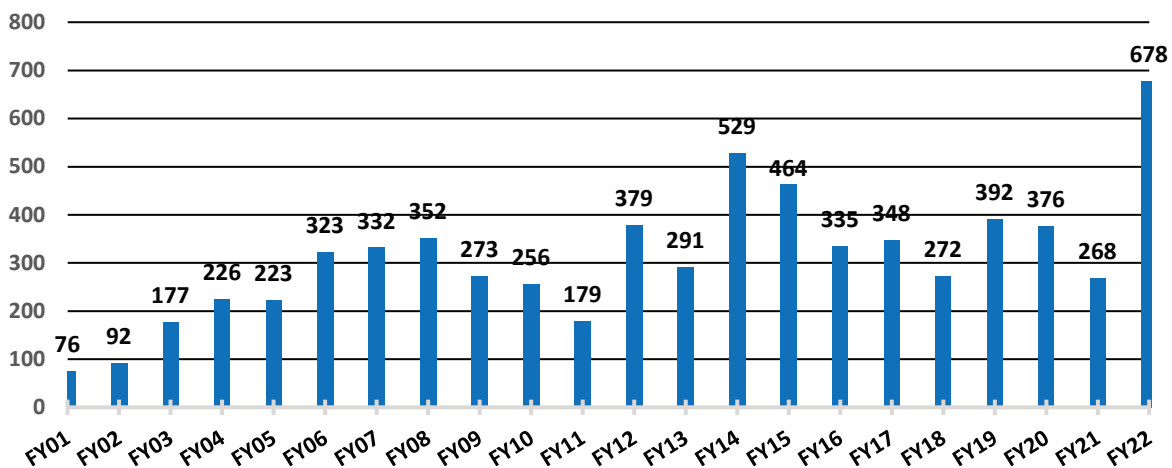


Figure 15

Formal Opinions

In FY 2022, OIP issued three formal opinions (all related to the UIPA), which are summarized below. The full text versions can be found at oip.hawaii.gov. In the event of a conflict between the full text and the summary, the full text of an opinion controls.

UIPA Formal Opinions:

Police Report, Administrative Complaint, and Body Worn Camera Recordings

OIP Op. Ltr. No. F22-01

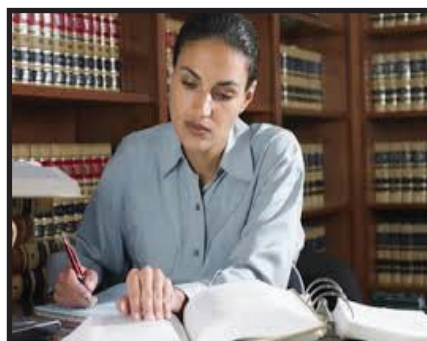
A personal record requester (Requester) made a request to the Kauai Police Department (POLICE-K) for a copy of a police report, the file for an administrative complaint he filed against five police officers, and associated body worn camera (BWC) recordings. POLICE-K denied access and Requester filed an OIP appeal, which implicated both Parts II and III of the UIPA.

With regard to the police report, at the time the record request was made, an investigation concerning the incident was still pending and POLICE-K denied access. After this appeal was filed and the Kauai Department of the Prosecuting Attorney declined prosecution, POLICE-K informed OIP that it no longer would withhold the police report in its entirety, and would disclose it after redaction of the name, address, and statement and supporting evidence of the witness. OIP found that section 92F-22(1)(A), HRS, allowed POLICE-K to withhold the witness's name, address, and statement and supporting evidence under the UIPA's Part III because the police report related to law enforcement activities. However, OIP's previously adopted analysis requires that when a record falls within an exemption to disclosure under the UIPA's Part III relating to personal records, it must further be determined whether

the record may also be withheld under the UIPA's Part II relating to government records. OIP found that the redactions were also proper under Part II because section 92F-13(1), HRS, allows POLICE-K to withhold the witness's name, address, and statement and supporting evidence to avoid a clearly unwarranted invasion of personal privacy of the witness.

The administrative investigation resulted from a complaint filed by Requester against five officers, which included statements of two witnesses. The witnesses' statements were originally part of police reports that became the subject of the administrative complaint. OIP found POLICE-K was entitled to withhold the names and addresses of witnesses in the underlying police reports under Part III of the UIPA based on section 92F-22(1)(A), HRS, and also under Part II of the UIPA based on section 92F-13(1). OIP further found that the portions of the administrative complaint that are not part of the police reports must be disclosed to Requester under the UIPA's Part III.

With regard to the BWC recordings, OIP found POLICE-K may deny Part III access under section 92F-22(1)(A), HRS, and Part II access under section 92F-13(1), HRS, to only the portions of BWC recordings of statements by witnesses that would identify those witnesses, to avoid a clearly unwarranted invasion of the witnesses' personal privacy. In this case, most of the recordings may be withheld to protect the witnesses' privacy. OIP emphasized that this conclusion should not



be interpreted to allow wholesale withholding of BWC recordings in every situation. Whether, and to what extent, BWC recordings may be withheld must be determined on a case-by-case basis. Here, there is little public interest in disclosure of witness identities. For other cases involving BWC recordings, the public interest in disclosure could be much higher.

Commission on Judicial Conduct Not Subject to UIPA

OIP Op. Ltr. No. F22-02

The Commission on Judicial Conduct (CJC) receives complaints against Hawaii justices and judges and recommends dispositions to the Hawaii Supreme Court (HSC) concerning allegations of judicial misconduct or physical or mental disability of judges. A member of the public submitted a complaint to the CJC. She thereafter made a record request to the Judiciary for a date stamped copy of that same complaint. The record request was denied by the CJC on the basis that its proceedings are confidential under RSC Rule 8.4.

Requester appealed the CJC's denial to OIP, which determined that records of the nonadministrative functions of the courts are not subject to the UIPA as they are not included in the UIPA's definition of "agency." HRS § 92F-3 (2012) (setting forth the UIPA's definitions). CJC proceedings involve discipline of justices and judges and, as such, are nonadministrative functions of the courts. OIP therefore concluded that the CJC is not required under the UIPA to disclose the requested record.

Former Employee's Privacy Interest and Agency's Failure to Provide a Good Faith Estimate of Fees

OIP Op. Ltr. No. F22-03

The Employees' Retirement System (ERS) denied a request for records relating to its former chief investment officer's departure. OIP concluded that the UIPA's privacy exception allowed ERS to withhold a portion of the records including references to the former employee's departure and the specific conditions placed on the employee in connection with his departure and discussion of a possible exit agreement. HRS § 92F-13(1). ERS, however, could not withhold information reflecting an action taken by a board at a meeting subject to the Sunshine Law, because the public interest in knowing an action taken by a Sunshine Law board outweighed the employee's privacy interest in that action. OIP also concluded that an email previously published as part of a news article could not be withheld because the public disclosure interest outweighed the employee's privacy interest in that record.

In addition to what was properly withheld under the privacy exception, OIP concluded that the UIPA's frustration exception allowed ERS to withhold a portion of an email that included attorney-client privileged advice to ERS from a deputy Attorney General. HRS § 92F-13(3). The remainder of that email and another email forwarding it did not include privileged information, so could not be withheld based on the attorney-client privilege as recognized by the UIPA.

OIP further concluded that ERS conducted a reasonable search for responsive records. While ERS's initial search was cursory and not reasonably calculated to uncover all relevant documents, ERS's follow-up search was more thorough, and together the searches comprised a reasonable search under the UIPA.

OIP concluded, however, that ERS did not provide Requester a good faith estimate of fees as required by the UIPA. An agency's written response to a record request is required to include a "good faith estimate of all fees that will be charged to the requester under section 2-71-19[.]" HAR, which authorizes fees for an agency's search, review, and segregation of records. Based on the UIPA's legislative history and the administrative rules implementing the UIPA, the clear purpose of the "good faith" estimate of fees is to provide a requester with sound information about the anticipated agency time required and fees to be paid to process the request as submitted, so the requester can make an informed choice whether to pursue, modify, or even abandon it. OIP concluded that it did not need to find a deliberate intent to inflate its estimate by an agency to conclude that the estimate was not made in good faith. Rather, a failure to make even a cursory effort to accurately estimate the volume of responsive records an agency maintains is sufficient by itself to support the conclusion that the agency failed to provide the requester a good faith estimate as required by rule, and thus violated the UIPA.



Informal Opinions

In FY 2022, OIP issued eight informal opinions. Summaries of these informal opinions are provided below. In the event of a conflict between the full text and a summary, the full text of an opinion controls.

UIPA Informal Opinions:

Reasonable Search for Records that Do Not Exist

UIPA Memo 22-01

Requester sought from a Senator a copy of a written request by the Senator to the Department of the Attorney General (AG) for legal advice regarding a bill from the 2020 regular legislative session. The Senator's office denied the request on the basis that the requested record does not exist.

Normally, when an agency's response to a record request states that no responsive records exist and that response is appealed, OIP assesses whether the agency's search for a responsive record was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one "reasonably calculated to uncover all relevant documents," and an agency must make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Id.* at 5 (citations omitted).

OIP found that, based on the evidence provided, the Senator's office conducted a reasonable search of the email accounts and files in its office for a written request to the AG for legal advice on the bill and could not locate one. OIP therefore concluded that the Senator's Office properly responded that it does not maintain the record.

Ongoing Investigation of a Workplace Nonviolence Complaint

UIPA Memo 22-02

Requester sought from the University of Hawaii (UH) a copy of a workplace nonviolence complaint (the Complaint) made against her, which the UH denied on the basis that the investigation into the Complaint was ongoing at that time.

OIP found that UH's workplace nonviolence complaints process was an administrative proceeding against Requester and the Complaint fell into the category of "investigative reports and materials." In response to a personal record request, an agency may withhold "investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding" against the individual who made the record request. HRS § 92F-22(4). OIP therefore concluded that the ongoing investigation exemption to the disclosure of personal records found in section 92F-22(4), HRS, allowed UH to deny access to the Complaint while the investigation was still ongoing.

Inmate Release Information

UIPA Memo 22-03

Requester sought a decision as to whether the Department of Public Safety (PSD) properly denied two requests for records under the UIPA. Her first request was for the "names of 2018 inmates who were held beyond their release date; their scheduled release dates; and when they were actually released." PSD's response to the appeal indicated there was "confusion" as to whether the request was intended to apply to all such inmates,

or only to the specific inmates referenced in Requester's subsequent record request. An agency that is unclear as to what records are being sought under the UIPA should seek clarification on that point from the requester. HAR 2-71-14(c)(2). If it was unclear in this instance, PSD should have asked Requester whether the first request was intended to be modified by the second request and limited to only the inmates referenced in the second request, rather than making a guess.

PSD disclosed the names and actual dates of release from PSD custody of seven 2018 inmates after this appeal opened, but not their scheduled release dates, which Requester also sought. OIP concluded that PSD must also disclose those inmates' scheduled release dates because the dates are public under the UIPA and are readily retrievable.

While investigations were still pending, Requester's second request sought records pertaining to the investigations into whether seven inmates were kept in PSD custody beyond their scheduled release dates in 2018. OIP concluded that PSD properly denied access under section 92F-13(3), HRS, to the investigation records to avoid interference with the ongoing investigations and thus frustration of its investigative function.

Requester also sought a copy of the "spreadsheet that PSD relied on in calculating the percentage and number of inmates who were held beyond their release date in 2018." PSD's response to Requester did not address the request for the spreadsheet and failed to comply with the requirements set out in section 2-71-14(c)(1), HAR. However, in response to this appeal, PSD asserted that it does not maintain such a record, explaining that Requester must have misunderstood a telephone conversation that led her to request a copy of such a spreadsheet. OIP found credible PSD's explanation that it does not maintain a spreadsheet that calculates percentage and number of inmates held beyond their release dates.

Prison's Use of Force Policy

UIPA Memo 22-04

A member of the public appealed the Hawaii Department of Public Safety's (PSD) denial of her request for access to the use of force policy for a contractor-operated prison housing Hawaii inmates. OIP concluded that although the use of force policy was not subject to mandatory disclosure in its entirety, PSD was only entitled to withhold limited portions of the policy under the UIPA's exceptions to disclosure. OIP detailed which portions of the use of force policy would significantly risk the circumvention of agency regulations concerning the security of the prisons or the control of inmates, and thus could be redacted to avoid frustration of legitimate PSD function. OIP further concluded that after redaction of those portions, the remainder of the use of force policy must be publicly disclosed.

Confidential Sources' Names in a Completed Investigation

UIPA Memo 22-05

A former employee of the City and County of Honolulu (City) appealed the redaction of witness names from a completed investigation by the City's Department of Human Resources (HR-HON). OIP concluded that whether the request was treated as one for personal records or for government records, HR-HON was not entitled to withhold the names and identifying information of individuals named in the responsive records as confidential sources because HR-HON had not met its burden to factually establish either that they spoke under an express or implied promise of confidentiality or that they would have been reluctant to speak without such a promise. However, HR-HON was entitled to redact direct business email addresses under the UIPA's frustration exception to the extent they had not been previously published.

Employee Misconduct Records During Pending Investigations

UIPA Memo 22-06

Requester was employed by the City and County of Honolulu, Department of Transportation Services (TRANS-HON) and filed a misconduct complaint against another TRANS-HON employee with the Equal Employment Opportunity Office (EOO-HON). TRANS-HON terminated the employee accused of misconduct via written letter.

Requester sought access to records from TRANS-HON and EOO-HON regarding the allegations in the EOO-HON complaint. Both agencies denied access because their investigations were ongoing. Requester filed separate appeals against the two agencies, which OIP addressed in a single opinion.

OIP analyzed the request as one for joint personal records under Part III of the UIPA, which provides that agencies may withhold reports and related materials for “upcoming, ongoing, or pending” investigations.” HRS § 92F-22(4) (2012). Because the agencies were investigating the misconduct when the request was made, OIP upheld the two agencies’ denial of records. OIP also analyzed the case under Part II and concluded that the investigative reports may be kept confidential to “avoid the frustration of a legitimate government function.” HRS § 92F-13(3) (2012).

OIP further found that TRANS-HON’s termination letter must be disclosed with redactions pursuant to section 92F-12(a)(14), HRS, as employees’ first and last dates of employment are public, absent any law to the contrary. The redactions properly include the employee’s personal address because disclosure would be “an unwarranted invasion of individual privacy” under section 92F-13(1), HRS, and two sentences in the letter referring to the ongoing investigation, pursuant to sections 92F-22(4) and 92F-13(3), HRS.

Conflicts of Interest Records

UIPA Memo 22-07

Requester sought a decision as to whether the University of Hawaii (UH) properly denied in part his request for UH conflicts of interest disclosure forms and management plans for an employee of the Cancer Center of the John A. Burns School of Medicine (the Professor).

OIP found that the Professor had a significant privacy interest in his UH conflicts of interest disclosure records. HRS § 92F-14(b)(5) and (6) (2012). However, OIP also found that the Professor’s privacy interest is diminished by several factors. HRS §§ 92F-13(1) and -14(a) (2012). When balanced against the Professor’s diminished privacy interest, OIP found a greater public interest in knowing 1) whether the Professor properly disclosed any conflicts of interests, 2) whether his public-funded research was being conducted with objectivity, based on legitimate scientific inquiry and not personal financial interest, and 3) whether the Professor and UH, which is ultimately responsible for managing the University system, properly managed any conflicts disclosed by the Professor.

OIP concluded that the conflicts of interest disclosure records may not be withheld under the UIPA’s privacy exception, except for the specific amounts or range of amounts (*e.g.*, \$0 – 4,999 per year) the Professor receives in income or compensation from any entity or individual outside of the University.

Sunshine Law

Informal Opinions:

Sunshine Law informal opinions are written to resolve investigations and requests for advisory opinions. OIP wrote one informal opinion concerning the Sunshine Law in FY 2022, as summarized below.

Timely Filing of Meeting Notice

Sunshine Memo 22-01

A member of the public complained that the Honolulu City Council (COUNCIL-HON) did not timely post notice of its meeting on February 17, 2021, to the City's electronic calendar as required by the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes (HRS). Section 92-7(b), HRS, requires that notice be posted to an electronic calendar and by other methods six calendar days before the meeting, and section 92-7(e), HRS, requires that notice be mailed or emailed six calendar days before the meeting to everyone who so requests.

However, during the COVID-19 pandemic, Governor Ige issued a series of emergency proclamations that included partial suspensions of the Sunshine Law. Two emergency proclamations covered the time period complained of, and both proclamations contained identical language that suspended the Sunshine Law "to the extent necessary to enable boards as defined in Section 92-2, to conduct meetings without any board members or members of the public physically present in the same location." These emergency proclamations stated that, with regard to the Sunshine Law's notice requirements, "[n]otice of meetings must be electronically posted and electronically provided to notification lists consistent with section 92-7; however, posting [of notice] at the site of the meeting or at a centralized location in a public building is not required." The emergency

proclamations only required COUNCIL-HON to timely post its meeting notices on an electronic calendar maintained by the City and to electronically send it to people on its email list.

Upon review of the evidence provided by COUNCIL-HON, OIP concluded that COUNCIL-HON properly posted notice for its meeting on February 17, 2021, by posting the notice on the Honolulu City Council Calendar and by sending electronic notice to people on its email list on February 11, 2021, which was six calendar days before the meeting. The notice was timely under section 92-7(b) and (e), HRS, and the partial suspension of the Sunshine Law in effect at the time. OIP further found that COUNCIL-HON went beyond the requirements of the emergency proclamations when on February 11, 2021, it also posted timely notice on COUNCIL-HON's website, filed it with the Honolulu City Clerk (City Clerk), and posted paper copies on bulletin boards in Honolulu Hale in accordance with section 92-7(b), HRS.



General Legal Guidance and Assistance

To expeditiously resolve most inquiries from agencies or the public, OIP provides informal, general legal guidance, usually on the same day, through its “Attorney of the Day” (AOD) service. AOD advice is not necessarily official policy or binding upon OIP, as the full facts may not be available, the other parties’ positions are not provided, complete legal research will not be possible, and the case has not been fully considered by OIP. The following summaries are examples of the types of AOD advice provided by OIP attorneys in FY 2022.

UIPA Guidance:

When an Agency Does Not Maintain the Government Records, It May But Is Not Required to Inform the Requester Which Agency Does

A requester sought government records from several agencies, but was unsure which agency maintained the information. The responding agencies noted on their Notice to Requester (NTR) forms that they did not maintain the records. The requester asked why none of the agencies provided the name of the agency that did maintain the records, since the NTR includes a line for a responding agency to identify the “Agency that is believed to maintain records.” The requester asked whether any of responding agencies should have provided this information on the NTR.

Section 2-71-13(f), HAR, states that “When an agency receives a request for a record that it does not maintain, and reasonably believes that another agency maintains the record, the agency receiving the request shall provide a notice in

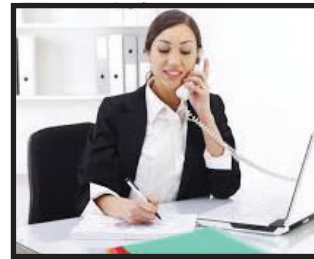
accordance with section 2-71-14(c) (1), HAR.” The notice required by section 2-71-14(c)(1), HAR, states that when an agency is unable to disclose a record, the agency’s notice shall state that the agency is unable to disclose the requested record, or part thereof, because “[t]he agency does not maintain the record, and the agency may provide the name and address of another agency that, as the agency reasonably believes, may maintain the requested record[.]”

OIP explained that although an agency is required to provide an NTR under section 2-71-13(f), the agency is not required by section 2-71-14(c)(1), HAR, to identify another agency that it believes maintains the record, as this section states that the responding agency “may” do so. The requester was informed that a responding agency’s ability to provide this information on the NTR depended upon whether the information was available to it at the time the record request was made.

How Agency Should Respond If the Requested Government Records Cannot Be Located

An agency responded to a government record request where disclosure is mandatory under section 92F-12(a), HRS, but asked how it should respond if the requested documents were misplaced or could not be located.

OIP advised that while other laws may require an agency to create or retain government records, the Hawaii Supreme Court ruled that the UIPA does not impose an affirmative obligation on government agencies to maintain records in State of Hawaii Organization of Police Officers v. Society of Professional Journalists, 83 Haw. 398, 927 P.2d 386, 401 (Hawaii 1996) (“SHOPO”).



Under the UIPA, an agency must conduct a reasonable search for the record, but the UIPA does not expressly define what constitutes a “reasonable search.” In OIP Opinion No. 97-08, OIP relied upon federal case law and defined “reasonable search” as one “reasonably calculated to uncover all relevant documents,” and stated that an agency must make “a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”

If a reasonable search has been done and no responsive record can be found, even if the record is one that the agency had or should have had, the UIPA does not require the agency to recreate the lost record. OIP Op. Ltr. 97-08 at 6. Instead, the agency must notify the requester that the agency does not maintain the record, as required by section 2-71-14(c)(1), HAR.

Names of Those in Quarantine Under Safe Travels Program

A county agency asked whether the names of people quarantined under Hawaii’s Safe Travels program (which subsequently closed on March 25, 2022) could be published by the news media, similar to how outstanding arrest warrants are published. The agency suggested there might be a difference between “isolation” (for those who are determined by DOH to be COVID-positive) and “quarantine” that is voluntary after a traveler failed to show proof of vaccination or negative covid test. The agency alleged that there is no disclosure of confidential medical information, and publication could provide a community tool for enforcement and possibly a tool for businesses, particularly restaurants, to better screen patrons.

OIP advised that two exceptions to disclosure could possibly apply here. The first is section 92F-13(3), HRS, which allows agencies to withhold records in order to avoid the frustration of a legitimate government function. The agency may have a valid frustration argument that would allow it to withhold the names of travelers in

quarantine in order to encourage or ensure compliance with the quarantine procedures.

The second and more important applicable exception is section 92F-13(1), HRS, which allows agencies to withhold records or information in order to avoid a clearly unwarranted invasion of personal privacy. When privacy interests are implicated, section 92F-14(a), HRS, requires that agencies balance the public interest in disclosure against the privacy interest in the individual. Here, there is clearly a great public interest in knowing who is quarantining. However, the privacy interests of those in quarantine must be considered. It is possible that someone’s quarantine status could disclose medical information, such as the fact that someone may not be vaccinated or may have COVID. Medical information carries a significant privacy interest under section 92F-14(b)(1), HRS, so disclosure is only warranted if, on the balance, the public interest is found to be greater.

There are also some State and federal confidentiality statutes that protect certain medical or health information, but OIP was unaware whether any would specifically apply here. In addition, disclosure of names of people in quarantine could disclose other personal information, such as the fact that they are traveling, their homes may be unattended, or their current general location, which could possibly result in someone filing an invasion of privacy or similar type of lawsuit against the agency. In summary, OIP advised the agency should balance the privacy interests of those in quarantine against the public interest in disclosure.

Fees and Costs for Identical Record Requests

An agency received a record request and while the request was pending, received a separate record request for the same records from a second requester. The agency asked OIP whether the first requester would bear the entire cost for the documents, whether the agency should charge

the total amount to both requesters due to not knowing whether either requester would accept the estimated fees and costs and proceed with the record request, and whether future record requesters who request the same records should be charged fees and costs.

OIP informed the agency that under current section 2-71-19(a), HAR, an agency may charge fees to search for, review, and segregate a record, as well as any other lawful fees, such as copying fees. This would technically require the first requester to bear the costs, and if an agency does not spend any additional time searching for, reviewing, and segregating a record because it has already done so, then the agency cannot charge fees and costs to a subsequent requester for the record. Similarly, if a record does not need to be scanned or copied because the record already exists in electronic form, then the agency cannot charge copying fees.

However, OIP informed the agency that if there is a second request that is made close in time while the first request was pending, it may be reasonable for the agency to tell each requester that the cost is being split with another requester who asked for the same records and warn the requesters that if one requester abandons the record request, then the remaining requester will be responsible for the full costs. If subsequent requesters later ask for the same records, then the agency would not be able to charge additional fees for search, review and segregation if the agency still maintained the segregated copy of the records, because the agency would have already received fees for the work performed and would already have the records in a form that would not need additional copying or scanning.

Fees for Personal Record Request

A requester asked whether a tenant evicted from public housing could be required to pay any fees to access records regarding his tenancy. OIP responded that the request appeared to qualify as a personal record request, which meant that fees should not be charged for the agency's time spent in search, review, and segregation. However, in this case it appeared the agency's estimated fees were copy charges for scanning the requested documents, plus the cost of postage and a thumb drive.

OIP advised that copy charges are set by section 92-21, HRS, which is outside the UIPA, but OIP recognizes them as a cost that agencies are generally authorized to charge. OIP further recognizes that when an agency must scan paper records to produce pdfs as requested, it can appropriately charge copy fees for doing so in the same way as for paper copies since the staff time and machine use to do so is effectively the same. OIP similarly recognizes actual costs of fulfilling a request, such as for postage or media to hold electronic files, as legally authorized charges that do not conflict with OIP's rules. However, if the requester wishes to avoid having the records sent in that way, the requester could suggest a secure online alternative such as access through a limited-purpose link via Dropbox or Google Drive or a similar file-sharing service.

Documents in Editable Format

An agency received a request for a spreadsheet in Excel format. The agency sent the spreadsheet in pdf format instead of the Excel version of the spreadsheet as requested. The agency was concerned about sending an editable document and wanted to clarify with OIP whether it was required to send the document in the Excel format as requested.

OIP advised that an agency does need to send electronic documents in the format requested as a general rule, even when they are editable. If someone edits government data or records and misrepresents the edited version as being what the agency provided – whether using editable electronic records, information from a pdf, or an altered version of a paper document – the agency might be able to take action against that misrepresentation. However, the possibility that someone could alter a copy of a document is not a reason to not provide the record or to not provide it in the format requested when the record is already maintained in that format.

Fees and Fee Waivers

OIP received a request for assistance from an agency who had received a records request for “correspondence” and “supporting documents” between a licensee and the agency for an event that occurred while COVID-19 restrictions were in effect.

The agency asked whether it is proper for the agency to include the search for, and segregation of, emails that are substantially duplicative of others in doing a time estimate to determine the fees to charge the requester. The agency explained that a part of the request involved approximately eight employees, and there were a number of redundant/duplicate emails because employees are copied on many of the emails and those emails are what employees are providing in response to the request for information and their time and effort.

The agency also asked for advice about how to determine whether to apply the general waiver (\$30) or public interest (\$60) waiver.

OIP advised that because all the emails mentioned are responsive to the request, the agency can properly charge for search time to locate and segregation time to redact each email, with the review time for the subsequent emails likely to be less since staff will have already decided based

on the first email what, if anything, needs to be redacted. HAR § 2-71-19(a)(1).

OIP explained that the agency has the option of asking the requester to clarify the request. In this case, the agency may want to ask the requester whether he wanted to receive multiple copies of the same email or would prefer to receive only one copy. That would not reduce the agency’s search time, but may save some review and segregation time.

OIP also advised that when a “public interest” fees waiver under the UIPA is sought, the requester must submit a statement of facts, including the requester’s identity, to support the request for this fees waiver. HAR § 2-71-32(a)(1). A waiver of fees is in the public interest when:

(1) The requested record pertains to the operation or activities of an agency (the agency shall not consider the record’s relative importance to the public in applying this criteria);

(2) The record is not readily available in the public domain; and

(3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the general public at large.

OIP advised that in this case, it did not appear that the requester was asking for a public interest fees waiver. However, if he did make such a request, the agency must review the requester’s statement and determine whether the requester meets the above criteria. Assuming the requester is not seeking a public interest fees waiver, the general waiver amount (\$30) would apply.

Sunshine Law Guidance:

Agenda Item for an Executive Session When Privacy Interests Exist

After receiving a complaint that one of its board members had violated a board rule, the board scheduled an executive session to investigate the allegations of wrongdoing. The board asked if its agenda should identify the member accused of the violation and whether the allegations of misconduct by the member should be included on the agenda.

OIP acknowledged that posting an agenda item for an executive session can present a challenge, as the topic to be discussed in an executive session must give sufficient notice to the public, and at the same time, there may be a need to protect information intended to be confidential. While the public does not attend executive meetings where allegations against a member will be discussed, the public has the right to submit testimony on the item to be discussed. Therefore, the agenda item must be described with sufficient detail so that the public may submit meaningful testimony.

If the board member against whom disciplinary action may be taken is identified on the agenda, the purpose of holding an executive session may be obviated. However, if a charge against an individual involves matters which affect privacy, OIP suggests taking a “middle ground” approach. When an executive meeting’s agenda item involves a complaint against a specific person, OIP suggests that a description of the allegation(s) of wrongdoing be included in the agenda; but instead of naming the individual against whom the allegations are made, the person’s position (or title) such as officer, board member, etc. can be used in the description.

This approach allows the public to be informed of the allegations that will be addressed during the executive meeting, and further provides the opportunity for meaningful testimony regarding such wrongdoing to be submitted. By not naming the individual against whom charges are brought, privacy is maintained.

Deciding how much detail is sufficient must be addressed on a case-by-case basis. Some factors to consider when deciding whether to enter an executive meeting can be found in section 92-5(a)(2), HRS, including whether the board (and its accused member) has broad authority or control of a large budget, if board members are considered high ranking government officials, or the type of rule that was allegedly violated. Because the Sunshine Law exceptions must be strictly interpreted against closed meetings, OIP recommends that a board strive to conduct as much of its business in public as possible and be prepared to defend any legal challenge to its decision to hold an executive meeting.

“Zoombombing” and Disruptive Behavior During a Meeting

A member of a state board asked for guidance on how to handle instances of trolling, profanities, threats, and hostile testimonies from some members of the public during its remote meetings. Additionally, the board asked for guidance on how to handle those members of the public who elect to present testimony about an item on the board’s agenda, but then repeatedly talk about other matters not on the board’s agenda.

OIP explained that while section 92-3, HRS, provides a board with authority to remove a person who is willfully disruptive or compromises the conduct of a meeting, the Sunshine Law gives no specific guidance on how to remove a disruptive person from a meeting. OIP recommended that before a meeting, the board decide on a

reasonable procedure that it intends to use if it encounters disruptive behavior during a meeting.

For example, at the beginning of the meeting, the chairperson could advise all the attendees the behaviors that will not be tolerated, and what will happen if anyone engages in a prohibited behavior. Section 92-3, HRS, does not allow a board to bar or prohibit a member of the public from entering a meeting either remotely or in person. Therefore, OIP recommended that even if an individual was previously disruptive, the board should allow that same individual to enter the meeting, provide fair warning, and then be prepared to eject the person either physically or via cutting off the remote access link should the disruptive behavior occur. If an individual's behavior becomes a repeated problem, and the board considers issuing a ban, OIP recommended that any ban be short-term, *e.g.* one meeting or one week, and then it should allow for the person's return. The board should document why the disruptive behavior was problematic and why a ban was necessary.

Additionally, OIP notes that boards may establish a separate link for public testimony during remote meetings so that the board's remote meeting can continue if the testimony link must be temporarily interrupted due to "zoombombing" or other disruptive behavior.

For in-person meetings where disruptive behavior may occur, the board could request that a security or police officer be present as this may be helpful to bringing a sense of safety to the board and other attendees. If any attendees repeatedly speak about matters not on the meeting's agenda, a warning should be given to stay on topic or face being cut off. However, board members should be aware that it is possible that a member of the public may have a different understanding of what is relevant to the topic, and the board must be mindful that cutting a person off from

testifying should only be done if the testimony is clearly off-topic. If the board's act of cutting off a person from testifying is appealed, OIP would have to give the broadest reasonable interpretation of the topic when evaluating whether or not the testimony was related to the topic.

Board Retreats

A county board was invited to a retreat for the purpose of "Steps Going Forward." There was no agenda, and the event was described as a "talk story session with nothing structured." The organizer told a board member no board business would be discussed, and if someone raised board business, the organizer was sure they would be reminded not to discuss board business. The member asked whether this would qualify as a meeting subject to the Sunshine Law's requirements.

The retreat host apparently believed the retreat would be a chance meeting at which no board business will be discussed. The Sunshine Law's definition of "chance meeting" was repealed later in 2022 and replaced with a new, similar definition for "informational gathering" that is not subject to the Sunshine Law's notice, testimony, minutes, or other requirements. OIP advised that if no board business is discussed that the retreat, then any number of board members may attend. OIP emphasized that the members must be careful to avoid topics that are current board business or matters likely to come before the board in the next few months. While the board may ultimately do nothing in violation of the Sunshine Law, OIP also noted the issue of public perception and the possibility that someone could file a complaint with OIP or a lawsuit, which the board would then have to defend.

Boards Cannot Make Registering or Signing Up a Requirement to Testify

A member of the public notified OIP that a board's agenda for a meeting required registering in advance in order to receive a link to present oral testimony. Additionally, the registration process required testifiers to provide personal information such as name, company name, work phone, email address, and address.

OIP advised that boards cannot make registering or signing up in advance of a meeting a prerequisite to testify as section 92-3, HRS, requires that all interested persons be afforded an opportunity to present written or oral testimony on agenda items at a public meeting. Boards may request that persons wishing to testify sign up before a meeting but should nonetheless allow persons to present testimony even if they have not signed up. Additionally, because boards "shall" allow interested persons the opportunity to submit testimony, they do not have the authority to refuse anonymous testimony and cannot require testifiers to provide personal information.

Board Member Training Requirements

A board asked whether the Neighborhood Board members are required to take OIP's Sunshine Law training and obtain certification. OIP responded that the Sunshine Law does not require Neighborhood Board members or any other board members to complete Sunshine Law training or obtain certification of doing so. However, some boards have their own requirements. OIP offers various training materials and a Sunshine Law quiz in the Sunshine Law section of OIP's training page at <https://oip.hawaii.gov/training/>. A board member needing a certification or confirmation after watching OIP's slideshow or reviewing other training materials can print out a successful quiz result to confirm that he or she has been sufficiently trained in the Sunshine Law.

Board Member Visibility During Slideshow Presentations in Remote Meetings

A board asked whether it can show PowerPoint or similar presentations that block the online visibility of the board members during a remote meeting.

OIP advised that although there have been no opinions on this question yet, the board member visibility requirement for remote meetings, like other Sunshine Law requirements having to do with making a meeting "open" to the public, will take into account the factual context and what is reasonable in that context. For the visibility requirement, OIP noted that many meeting platforms will show only a few participants on the main screen by default, but other participants can still be viewed by pulling up the participant list. OIP would be inclined to count those other participants as "visible" as long as their cameras were on so they could theoretically be seen by anyone looking for them in the list. Similarly, if a slideshow or video presentation was taking up the main screen but camera-on participants could be seen by pulling up the participant list, OIP would be inclined to consider those participants to be visible.

The more difficult question would be if a meeting platform did not allow all participants or viewers the ability to pull up a participant list and see who is visible. In such a situation, there could be a complaint that members were not visible. On the other hand, there could also be an argument that if the members' cameras were on and they knew they could suddenly be viewable by meeting participants at any time once the presenter switched away from the slideshow or video, they would effectively have a similar level of visibility to the public as in-person attendees watching a presentation in a darkened room, where they were effectively obscured for the present but would be visible again once the lights came on. Other factual issues might also be significant, such as how much of the meeting the presentation took

up and whether board members were actively discussing issues while they could not be seen.

OIP therefore recommended that if possible, a board using PowerPoint or similar presentations should use a meeting platform that can meet the visibility requirement by allowing camera-on participants to be viewed by anyone who chooses to look for them even if they are not shown on the main screen of the meeting. But there remains an open question as to how much leeway a board has in conducting a presentation that temporarily makes it impossible to view board members.

Agenda Requirements

In response to a complaint from a member of the public that the descriptions of the agenda items in the board's agenda were vague, OIP reviewed the entire agenda and found additional problems that required cancellation of the meeting.

OIP advised the board that the agenda did not include postal contact information for submission of public testimony before the meeting. Effective January 1, 2022, the Sunshine Law has required such information to be included in meeting notices. HRS § 92-7(a). To avoid confusion and complaints from the public, OIP recommended that both the electronic and postal address for submission of testimony be included on a notice.

OIP also advised that the agenda did not include instructions on how to request an auxiliary aid or service or an accommodation due to a disability as required by HRS § 92-7(a). If there is a deadline to make such a request, it must be stated in the notice and must be reasonable.

Due to the lack of the required postal contact information and instructions on how to request an auxiliary aid or service or an accommodation due to a disability, OIP recommended that the board cancel the meeting. If the board chose not to cancel the meeting, it should be aware that a member of the public could file a lawsuit with the circuit court or an appeal with OIP for failure to

provide proper notice and the board would have to defend its position that the agenda met the requirements of the Sunshine Law.

Note, however, that the Sunshine Law does not give OIP the authority to advise as to what constitutes a reasonable accommodation or about issues related to the Americans with Disabilities Act of 1990 (ADA). Questions about the ADA, what accommodations or auxiliary aids must be provided in response to a request, or suggested language to include in the agenda about how to request an auxiliary aid, service or accommodation due to a disability should be directed to the State Disability and Communications Access Board at: (808) 586-8121 (Voice or TTY) or via email to dcab@doh.hawaii.gov.



Education, Open Data, and Communications

OIP's efforts in education, open data, and communications are important duties that help agencies, boards, and the general public understand their rights and responsibilities under the UIPA and Sunshine Law and prevent violations from occurring in the first place.

To more efficiently leverage its limited personnel resources and to reach a larger and ever-changing audience, OIP has emphasized since FY 2011 its online training at oip.hawaii.gov. Through its extensive training materials and forms that are timely created and updated and are accessible by persons with disabilities, OIP is able to effectively educate government employees, board volunteers and the general public at their pace on a 24/7 basis regarding the UIPA and Sunshine Law.

OIP's education efforts include making resources readily available via its website. The UIPA and Sunshine Law statutes are timely updated and posted, along with OIP's administrative rules, opinions, reports, and analyses, and important court opinions. OIP's Legislation page, launched in FY 2021, provides easy access to the legislative history behind the enactment and amendment of the UIPA, Sunshine Law, and tax statute providing for appeals to OIP from challenges regarding the disclosure of written tax opinions. The Legislation page is regularly updated to include significant proposed and adopted legislation concerning the UIPA, Sunshine Law, and OIP.

The open data efforts also help to educate agencies and hold them accountable as they report their annual results on their UIPA Record Request Log, which provides objective data that can be used to assess how well State and county government agencies are implementing Hawaii's open records law. The Log, developed in FY 2012, is used to track and report data about requests for government records by all State Executive branch departments, the Governor's and Lt. Governor's



offices, the Judiciary, the Legislature, all four counties, including their Mayors and Councils, the University of Hawaii, the Office of Hawaiian Affairs, and other independent agencies. Besides helping agencies keep track of record requests and costs, the Log provides detailed instructions and training materials that educate agency personnel on how to timely and properly fulfill UIPA requests. The Log also collects important information showing how agencies are complying with the UIPA, which OIP posts onto the Master Log at data.hawaii.gov and summarizes in two year-end reports of State and county results. Both Log summary reports and OIP's Annual Report are posted on the Reports page of OIP's website.

Throughout the year OIP keeps government entities and the public informed of the open government news through timely What's New articles that are emailed as well as archived on OIP's website. In FY 2022, OIP sent out 27 What's New articles. To be added to OIP's What's New email list, please email a request to oip@hawaii.gov.

Education

Each year, education efforts include online training as well as customized presentations to inform the public of its rights and to assist government agencies and boards in understanding and complying with the UIPA and the Sunshine Law. While OIP's in-person events were constrained during the COVID emergency period by restrictions on in-person gatherings and the loss of three experienced attorneys, OIP conducted one customized online training presentation in FY 2022, which it converted into a training video.

OIP also updated its online training materials to reflect the Sunshine Law amendments that have allowed remote online meetings to be conducted since January 1, 2022.

OIP occasionally creates accredited continuing legal education (CLE) seminars, which are specifically geared to the government attorneys who advise the many State and county agencies, boards, and commissions on Sunshine Law or UIPA issues. For example, OIP provided a CLE seminar on the remote meetings law in the fall of 2021. By providing training for these key legal advisors, OIP can leverage its small legal staff and be assisted by many other attorneys to help government agencies voluntarily comply with the new Sunshine Law meeting provisions.

Online Training Materials, Model Forms, and Reports

OIP's online training materials, reports, and model forms help to inform the public and government agencies about the UIPA, Sunshine Law, and work of OIP. The online training has reduced the need for in-person basic training on the Sunshine Law and enabled OIP to instead develop additional or more specialized training materials for advanced question and answer sessions to address boards' specific needs. Moreover, the online training is not restricted to government personnel and is freely and readily accessible to members of the public.

All of OIP's training materials and reports are available online at oip.hawaii.gov, where they are updated by OIP as necessary. In FY 2022, OIP had a total of 97 training materials and forms on its website.

OIP's publications include the Sunshine Law and UIPA training guides and presentations described below, as well as the Guide to Appeals to the Office of Information Practices, which explains the administrative rules to file an appeal to OIP when requests for public records are denied by

agencies or when the Sunshine Law is allegedly violated by boards. OIP also prepares Quick Reviews and other materials, which provide additional guidance on specific aspects of the UIPA or Sunshine Law.

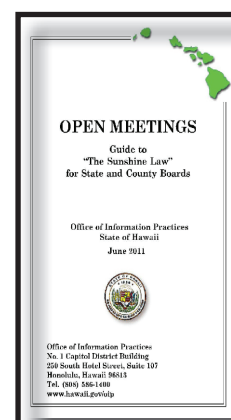
To help the agencies and the public, OIP has created model forms that may be used at various points in the UIPA or Sunshine Law processes.

In FY 2022, OIP released its **Report of the Master UIPA Record Request Year-End Log for FY 2021**, which is summarized later in the Open Data section, beginning on page 50. How to navigate OIP's website to find the various training materials, reports, and forms is described later in the Communications section beginning on page 55.

Sunshine Law Guides and Video

Open Meetings: Guide to the Sunshine Law for State and County Boards (Sunshine Law Guide) is intended primarily as basic training to assist board members in understanding and navigating the Sunshine Law. OIP has also produced a Sunshine Law Guide specifically for neighborhood boards.

The Sunshine Law Guide uses a question and answer format to provide general information about the law and covers such topics as meeting requirements, permitted interactions, notice and agenda requirements, minutes, and the role of OIP. OIP also produced a detailed Sunshine Law PowerPoint presentation with a voice-over and full written transcript, and other training materials, which OIP formerly presented in person. The online materials make the Sunshine Law basic training conveniently available 24/7 to board members and staff as well as the general public and have freed OIP's



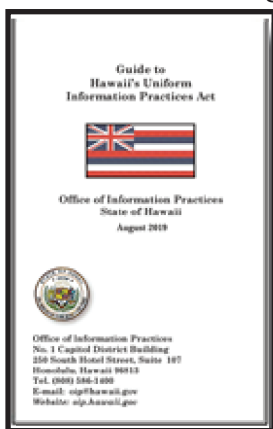
available 24/7 to board members and staff as well as the general public and have freed OIP's staff to fulfill many other duties. In early FY 2023, OIP updated its Sunshine Law materials to explain revisions made to the law during the 2022 legislative session.

OIP has also created various Quick Reviews and more specific guidance for Sunshine Law boards, which are posted on OIP's website and cover specific topics of interest, such as who board members can talk to and when; meeting notice and minutes requirements; highlights of the remote meeting provisions; and how a Sunshine Law board can address legislative issues.

UIPA Guides and Video

The *Open Records: Guide to Hawaii's Uniform Information Practices Act* (UIPA Guide) explains Hawaii's public record law and OIP's related administrative rules.

The UIPA Guide navigates agencies through the process of responding to a record request, such as determining whether a record falls under the UIPA, providing the required response to the request, analyzing whether any exception to disclosure applies, and explaining how the agency may review and segregate the record. The UIPA



Guide includes answers to a number of frequently asked questions.

As it did for the Sunshine Law, OIP has produced a detailed PowerPoint presentation with voice-over and a full written transcript of its basic training on the UIPA, which it updated in FY 2022.

Additionally, as discussed earlier in the "Training" section, OIP in FY 2013 implemented the UIPA Record Request Log, which is a useful tool to help agencies comply with the UIPA's requirements.

These guides and videos have been updated to explain changes to the laws.

Model Forms

OIP has created model forms for the convenience of agencies and the public. While use of these forms is not required, they help agencies and the public to remember the deadlines and to provide information that is required by the UIPA.

To assist members of the public in making UIPA record requests to agencies, OIP developed a **"Request to Access a Government Record"** form that provides all of the basic information an agency requires to respond to a request. To assist agencies in properly following the procedures set forth in OIP's rules for responding to record requests, OIP has forms for the **"Notice to Requester"** or, where extenuating circumstances are present, the **"Acknowledgment to Requester."**

Members of the public may use the **"Request for Assistance to the Office of Information Practices"** form when their requests for government records have been denied by an agency, or to request other assistance from OIP.

To assist agencies in complying with the Sunshine Law, OIP provides a **"Public Meeting Notice Checklist."**

OIP updated its **"Request for OIP's Concurrence for a Limited Meeting"** form for the convenience of boards seeking OIP's concurrence to hold a limited meeting that will be closed to the public because the meeting location is dangerous to health or safety, or to conduct an on-site inspection because public attendance is not practicable. Before holding a limited meeting, a board must, among other things, obtain the concurrence of OIP's director that it is necessary to hold the meeting at a location where public attendance is not practicable.

A **"Notice of Continuance of Meeting"** form can be used when a convened meeting must be continued past its originally noticed date and time. A Quick Review provides more specific guidance and practice tips for meeting continuances.

All of these forms, and more, may be obtained online at oip.hawaii.gov.

Open Data

Abbreviations used throughout this section:

Log - UIPA Record Request Log

Master Log - Master UIPA Record Request

Log, posted semiannually and annually at data.hawaii.gov

To further its educational and open data objectives, and to evaluate how the UIPA is working in Hawaii, OIP has been collecting information from State and county agencies through the UIPA Record Request Log. The Log is an Excel spreadsheet created by OIP, which helps agencies track the formal UIPA record requests that they receive as well as report to OIP when and how the requests were resolved and other information.

In FY 2022, OIP released its year-end reports based on information posted by 209 State and 80 county agencies on the Master UIPA Record Request Year-End Log for FY 2021 at data.hawaii.gov. While separate reports were created for the State versus county agencies, the collected data showed overall that the typical record request was granted in whole or in part and was completed in less than ten work days, and the typical requester paid nothing for fees and costs.

The Log reports for FY 2022 will be available in FY 2023 and posted on the Reports page at oip.hawaii.gov.

State Agencies' UIPA Record Request Log Results

The 209 State agencies that reported Log results in FY 2021 came from all State executive branch departments, the Governor's office, the Lt. Governor's office, the Legislature, the Judiciary, and independent agencies, such as the OHA, UH, and the Oahu Metropolitan Planning Organization. Overall, formal UIPA record requests constituted 0.3% of the estimated 611,844 total formal and routine record requests that State agencies received in FY 2021. Excluding one agency whose results would have skewed the entire report, 208 agencies reported receiving 1,991 formal written requests requiring a response under the UIPA, of which all but 94 were completed in FY 2021. Of the 1,897 completed cases, 79% were granted in full or in part, and 6% were denied in full. In the rest of the cases, the agency was unable to respond to the request or the requester withdrew, abandoned, or failed to pay for the request.

State agencies took 7.6 work days, on average, to complete 1,466 typical record requests, and 8.2 days to complete 317 personal record requests. In contrast, it took 22.5 days, on average, to complete a complex request (114 total), which constituted 6% of all requests.

In terms of hours worked per request, the average number of search, review and segregation (SRS) hours for a typical record request was 0.82, as compared to 0.58 hours for a personal record request and 2.84 hours for a complex record request. Although the 114 complex record requests constituted only 6% of all requests, they consumed nearly 3.5 times as many SRS hours compared to the typical request. Complex requests also accounted for 14% (\$7,981) of the total gross fees and costs incurred by agencies (\$55,835) and 27% (\$1,675) of the total amount recovered from all requesters (\$6,018).

State agencies recovered \$6,018 in total fees and costs from 1,897 requesters, which is 10% of the \$55,835 incurred by agencies in gross fees and costs. Fifty-seven percent of completed requests were granted \$30 fee waivers, while another 3% were granted \$60 public interest waivers. No fee

waivers were reported in 40% of the cases, which may occur in personal record cases (because no fees may be charged for those) or when requests are denied, abandoned, or withdrawn, or the agency is unable to respond.

Over 90% (1,708) of all requesters in completed cases paid nothing in fees or costs for their record requests. Of the 189 requesters that paid any fees or costs, 47% paid less than \$5.00 and 37% paid between \$5.00 and \$49.99. Of the 29 requesters who paid \$50 or more, at least 18 requesters (62%) were reported by State agencies as representing attorneys, media, or for-profit or nonprofit organizations. The most paid by a requester in FY 2021 was \$690. For a more detailed breakdown of the fees and costs paid by requesters. See **Figure 16** on the following page.

For the full reports and accompanying data, please go to the Reports page at oip.hawaii.gov.

County Agencies' UIPA Record Request Log Results

FY 2021 was the seventh year that the counties participated in the Master Log. OIP prepared a separate report based on information posted by 80 agencies from all four counties. Each county's data was reported separately, then averaged with all counties' data. All counties' average results are summarized as follows.

Formal UIPA record requests to the counties constituted 0.3% of the estimated 1,075,848 total formal and routine record requests that agencies received in FY 2021. Eighty county agencies reported receiving 1,957 formal written requests requiring a response under the UIPA, of which 1,910 (98%) were completed in FY 2021. Of the 1,910 completed cases, 80% were granted in full or in part, and 5% were denied in full. In 15% of the cases, the agency was unable to respond to the request or the requester withdrew, abandoned, or failed to pay for the request.

County agencies averaged 7.5 work days to complete a typical request (1,531 completed requests)

and 9.5 days to complete a personal record request (207 completed requests). It took 21.1 work days, on average, to complete a complex request (172 completed requests).

In terms of hours worked per request, the average number of search, review and segregation (SRS) hours for a typical county record request was 1.17, as compared to 1.28 hours for a personal record request and 2.65 hours for a complex record request. Although the 172 complex record requests completed in FY 2021 constituted only 9% of all completed requests, they consumed over twice as many SRS hours compared to the typical request. Complex requests also disproportionately accounted for 35% (\$12,018) of the total gross fees and costs incurred by county agencies (\$34,455) and 37% (\$5,643) of the total amount recovered from all requesters (\$15,251).

County agencies recovered \$15,251 in total fees and costs from 300 requesters, which is 44% of the \$34,455 incurred by agencies in total gross fees and costs. Forty-three percent of completed requests were granted \$30 fee waivers, while another 3% were granted \$60 public interest waivers. No fee waivers were reported in 54% of the cases, which may occur in personal record cases (because no fees may be charged for those) or when requests are denied, abandoned, or withdrawn, or the agency is unable to respond.

Over 84% (1,610) of all requesters in completed cases paid nothing in fees or costs for their county record requests. Of the 300 requesters that paid any fees or costs, 26.7% paid less than \$5.00 and 43.3% paid between \$5.00 and \$49.99. Only 90 requesters (30% of all paying requesters) paid \$50 or more per request, of whom at least 66 (73%) were reported by the counties as representing law firms, media, or commercial or non-profit entities. The most paid by a requester in FY 2021 was \$802.50. For a more detailed breakdown of the fees and costs paid by requesters, see **Figure 17** on page 54.

For the full reports and accompanying data, please go to the Reports page at oip.hawaii.gov.

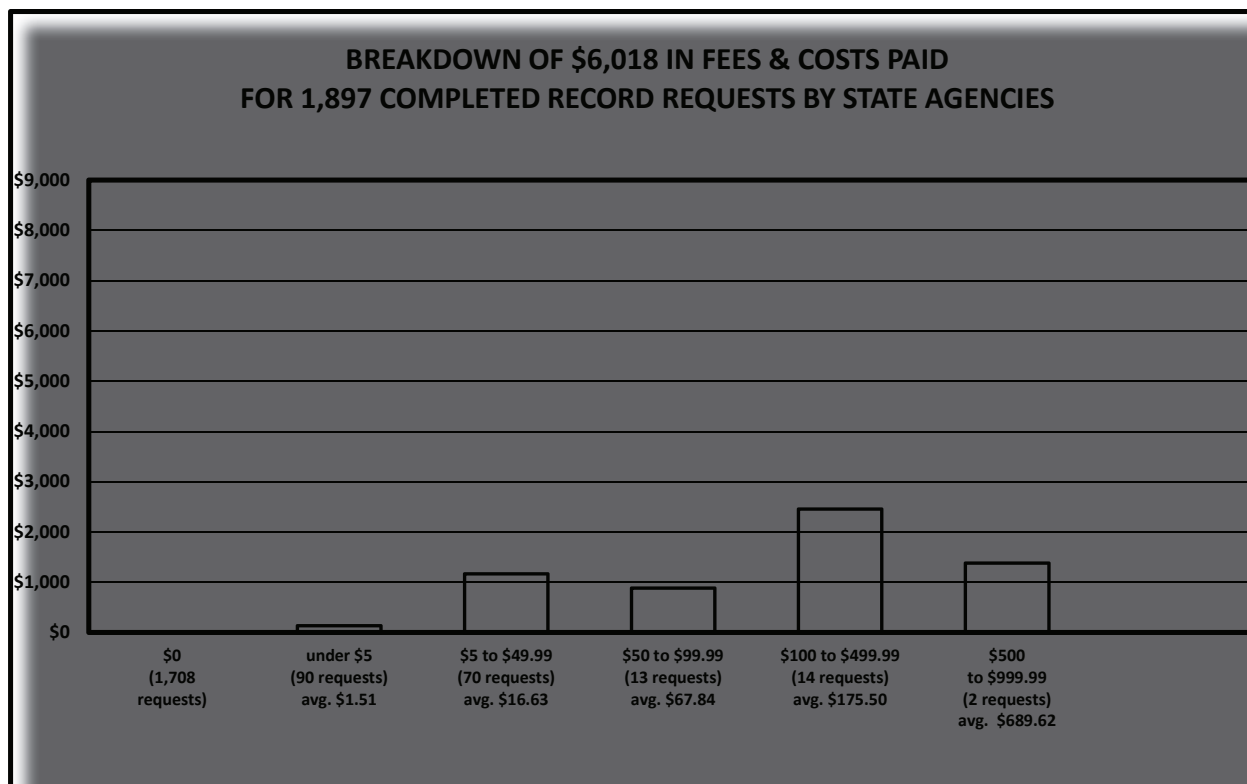


Figure 16

**STATE AGENCIES'
UIPA RECORD REQUEST LOG
RESULTS FOR FY 2021**



Figure 17

**COUNTY AGENCIES’
UIPA RECORD REQUEST LOG
RESULTS FOR FY 2021**

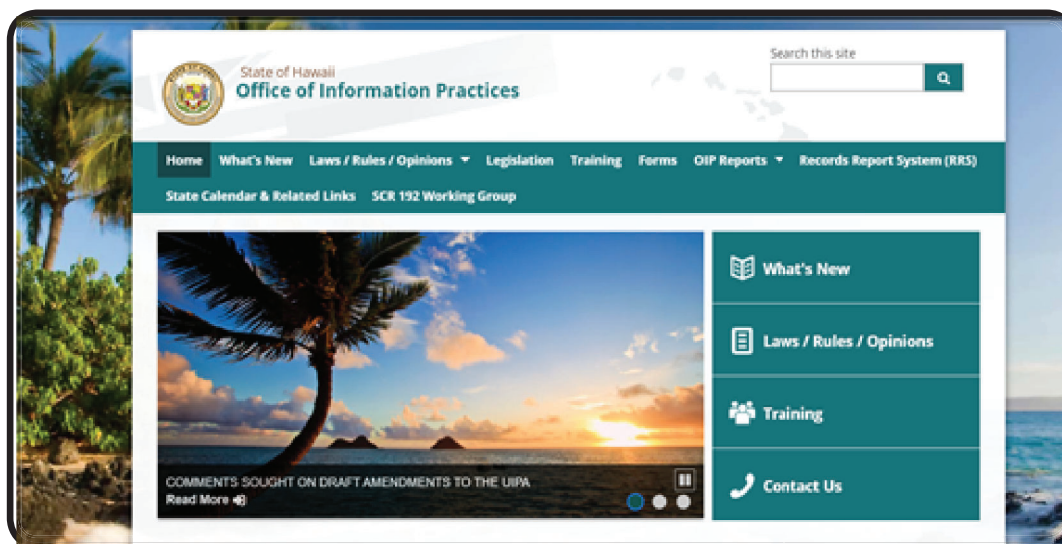


Communications

OIP's website at oip.hawaii.gov and the *What's New* articles that are emailed and posted on the website are important means of disseminating information on open government issues. In FY 2022, OIP continued its communications to the agencies and public, mainly through 27 *What's New* articles, OIP's Annual Report, and two summaries of State and County Log Reports.

Visitors to the OIP website can access, among other things, the following information and materials:

- The UIPA and the Sunshine Law statutes
- OIP's administrative rules
- OIP's annual reports
- Model forms created by OIP
- OIP's formal opinion letters
- Formal opinion letter summaries
- Formal opinion letter subject index
- Informal opinion letter summaries
- New or proposed legislation and the legislative history of the UIPA and Sunshine Law
- Training guides, presentations, and other materials for the UIPA, Sunshine Law, and Appeals to OIP
- General guidance for commonly asked questions
- Guides and links to the Records Report System
- *What's New* at OIP and in open government news
- State Calendar and Related Links
- SCR 192 webpage



Website Features

OIP's website at oip.hawaii.gov features the following sections, which may be accessed either through the menu found directly below the State's seal or through links in boxes located on the right of the home page (*What's New*, *Laws/Rules/Opinions*, *Training*, and *Contact Us*).

"What's New"

OIP's frequent *What's New* articles provide current news and important information regarding OIP and open government issues, including timely updates on relevant legislation. To be added to or removed from OIP's *What's New* email list, please email a request to oip@hawaii.gov.

"Laws/ Rules/ Opinions"

This section features these parts:

➤ *UIPA*: the complete text of the UIPA, with quick links to each section.

➤ *Sunshine Law*: the complete text of the Sunshine Law, with quick links to each section.

➤ *Rules*: the full text of OIP's administrative rules; "Agency Procedures and Fees for Processing Government Record Requests;" a quick guide to the rules and OIP's impact statement for the rules; and "Administrative Appeal Procedures," with a guide to OIP's appeals rules and impact statement. Draft and proposed rules, and informational materials, are also posted in this section.

➤ *Formal Opinions*: a chronological list of all OIP opinions with precedential value; an updated and searchable subject index; a summary of each opinion; and the full text of each formal opinion.

➤ *Informal Opinions*: summaries of OIP's informal opinion letters regarding the Sunshine Law or UIPA.

"Legislation"

This new webpage, added in FY 2020, provides easy public access to important pending, recent, or proposed legislation.

Additionally, OIP has digitized the entire four-volume "Report of the Governor's Committee on Public Records and Privacy," which was published in December 1987 and formed the basis for the adoption of the UIPA in 1988.

OIP has also compiled on this webpage the legislative history relating to the enactment and amendment of the UIPA and Sunshine Law.

"Training"

The training link on the right side of the home page will take you to all of OIP's training materials, as categorized by the UIPA, Sunshine Law, and Appeals to OIP.

"Forms"

Visitors can view and print the model forms created by OIP to facilitate access under and compliance with the UIPA and the Sunshine Law. This section also has links to OIP's training materials.

"Reports"

OIP's annual reports are available here, beginning with the annual report for FY 2000.

In addition, this section links to special reports and to the UIPA Record Request Log Reports, where you can find OIP's reports and charts summarizing the year-end data submitted by all State and county agencies.

"Records Report System (RRS)"

This section has guides to the Records Report System for the public and for agencies, as well as links to the RRS online database.

“State Calendar and Related Links”

To expand your search, links are provided to other sites concerning freedom of information and privacy protection, organized by state and country. You can also link to Hawaii’s State Calendar showing the meeting agendas for all State agencies, and to the online calendar for each county. You can visit Hawaii’s open data site at data.hawaii.gov and see similar sites of cities, states, and other countries. The UIPA Master Record Request Log results by the various departments and agencies are posted on data.hawaii.gov and the link is on this webpage.

“SCR 192”

In early FY 2023, this webpage was established to provide information about the Working Group convened by OIP pursuant to Senate Concurrent Resolution 192 passed during the 2022 legislative session.



Records Report System

The UIPA requires each State and county agency to compile a public report describing the records it routinely uses or maintains and to file these reports with OIP. HRS § 92F-18(b) (2012).

OIP developed the Records Report System (RRS), a computer database, to facilitate collection of this information from agencies and to serve as a repository for all agency public reports required by the UIPA. The actual records remain with the agency.

Public reports must be updated annually by the agencies. OIP makes these reports available for public inspection through the RRS database, which may be accessed by the public through OIP's website.

As of FY 2022 year end, State and county agencies posted 29,780 record titles. *See Figure 18.*



Records Report System

Status of Records Reported by Agencies: 2022 Update

Jurisdiction	Number of Record Titles
State Executive Agencies	20,736
Legislature	836
Judiciary	1,645
City and County of Honolulu	3,910
County of Hawaii	942
County of Kauai	1,069
County of Maui	642
Total Record Titles	29,780

Figure 18

RRS on the Internet

Since October 2004, the RRS has been accessible on the Internet through OIP's website. Agencies may access the system directly to enter and update their records data. Agencies and the public may access the system to view the data and to create various reports. A guide on how to retrieve information and how to create reports is also available on OIP's website at oip.hawaii.gov.

Key Information: What's Public

The RRS requires agencies to enter, among other things, public access classifications for their records and to designate the agency official having control over each record. When a government agency receives a request for a record, it can use the RRS to make an initial determination as to public access to the record.

State executive agencies have reported 51% of their records as accessible to the public in their entirety; 18% as unconditionally confidential, with no public access permitted; and 26% in the category "confidential/conditional access." Another 5% are reported as undetermined. See **Figure 19**. OIP is not required to, and in most cases has not, reviewed the access classifications.

Records in the category "confidential/conditional access" are (1) accessible after the segregation of confidential information, or

(2) accessible only to those persons, or under those conditions, described by specific statutes.

The RRS access classification helps to determine whether actual records held by agencies should be posted onto the internet. With the October 2012 launch of the State's open data website at data.hawaii.gov, the RRS helps to prevent the inadvertent posting of confidential information onto data.hawaii.gov as agencies can use the RRS to determine which records contain confidential information and require special care.

Note that the RRS only lists government records by their titles and describes their accessibility. The system does not contain the actual records, which remain with the agency. Accordingly, the record reports on the RRS contain no confidential information and are public in their entirety.

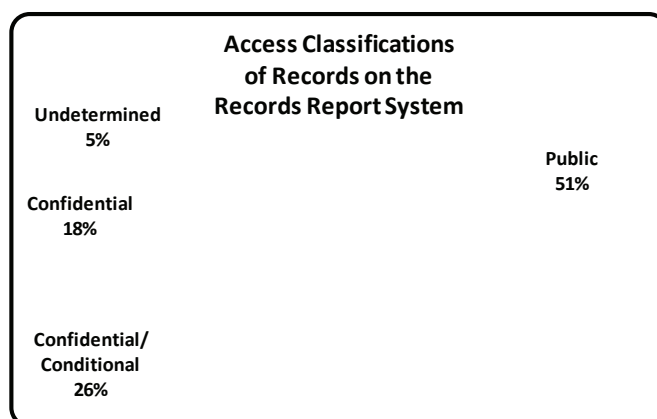
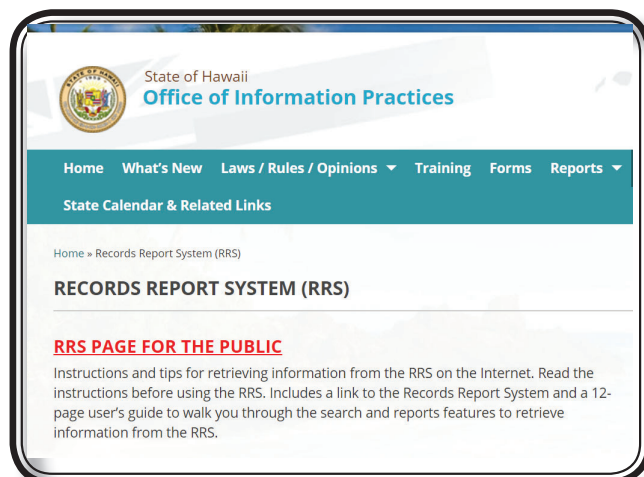


Figure 19

Legislation Report

One of OIP's functions is to make recommendations for legislative changes to the UIPA and Sunshine Law. OIP may draft proposed bills and monitor or testify on legislation to clarify areas that have created confusion in application; to



amend provisions that work counter to the legislative mandate of open government; or to provide for more efficient government as balanced against government openness and privacy concerns.

To foster uniform legislation in the area of government information practices, OIP also monitors and testifies on proposed legislation that may impact the UIPA or Sunshine Law; the government's practices in the collection, use, maintenance, and dissemination of information; and government boards' open meetings practices. Since adoption of the State's Open Data policy in 2013, OIP has also tracked open data legislation.

Although legislative work is not counted in the total number of cases seeking OIP's assistance, it nevertheless takes considerable time of OIP's staff and Director to process, monitor, respond to inquiries, prepare and present testimony during the four-month session, and to prepare bills and respond to legislative requests during the interim. During the 2022 legislative session, OIP reviewed and monitored 235 bills and resolutions affecting government information practices and testified on 62 of these measures. Two bills that passed the Legislature were ultimately vetoed by Governor Ige. Of the bills that passed, OIP was most significantly impacted by the following legislation:

► **Act 177**, signed on June 27, 2022, enacted **S.B. 3219, H.D. 1, C.D. 1**. Effective July 1, 2022, board members in a remote meeting would not have to identify minors who are present with them, unless a minor has a personal business, property, or financial interest on any issue before the board at the meeting.

► **Act 264**, signed on July 8, 2022, enacted **H.B. 2026, H.D. 2, S.D. 1** and took effect upon its signing. Boards can no longer take oral testimony only at the beginning of a board's agenda or meeting. While testimony could continue to be taken at the beginning of the meeting for the convenience of testifiers who cannot stay for the entire meeting, testimony should also be allowed before each agenda item or a group of related items is discussed or deliberated by the board. If board packets are prepared, then the public packet must be made available for public inspection in the board's office no later than 48 hours before the meeting time. The bill also creates a new permitted interaction that allows a board to submit legislative testimony based on a statement regarding a position previously adopted by the board, with several restrictions requiring the online posting of the position, testimony, and written communications, including drafts, among board members about the statement.

► **SCR 192, S.D. 1**, adopted on April 26, 2022, requests that OIP convene a working group to develop recommendations for the treatment of deliberative and predecisional agency records. In FY 2023, OIP convened the working group and developed an SCR 192 webpage at oip.hawaii.gov, where additional information can be found.



Litigation Report

Abbreviations used throughout this section:

Cir. Ct. - Circuit Court
HRS - Hawaii Revised Statutes
HSC - Hawaii Supreme Court
ICA - Intermediate Court of Appeals
HRPP - Hawaii Rules of Penal Procedure



UIPA Litigation:

OIP monitors litigation that raises issues under the UIPA or the Sunshine Law or involves challenges to OIP's rulings.

Under the UIPA, a person may bring an action for relief in the circuit court if an agency denies access to records or fails to comply with the provisions of the UIPA governing personal records. A person filing suit must notify OIP at the time of filing. OIP has standing to appear in an action in which the provisions of the UIPA have been called into question.

Under the Sunshine Law, a person may file a suit in the circuit court seeking to require compliance with the law or prevent violations. A suit seeking to void a board's "final action" must be commenced within 90 days of the action.

Although litigation cases are not counted in the total number of cases seeking OIP's assistance, they nevertheless take staff time to process and monitor. In FY 2022, OIP monitored 47 litigation cases, of which 8 were new. Ten litigation cases closed during the year, and 37 remained pending at the end of FY 2022.

Summaries are provided below of the new lawsuits monitored by OIP in FY 2022 as well as updates of selected cases that OIP continues to monitor. The UIPA cases, which are the majority, are discussed first, followed by those involving the Sunshine Law.

Ala Wai Small Boat Harbor Records

*Rask v. Department of Land and
Natural Resources*
Civ. No. 20-0-16 (1st Cir. Ct.)

Erik Rask (Plaintiff) made two record requests to the Department of Land and Natural Resources (DLNR) dated May 23, 2019, and October 26, 2019, respectively, for copies of records pertaining to DLNR's request for proposals (RFP) for development of the Ala Wai Small Boat Harbor, meeting minutes, documents relating to the selection committee relating to the RFP, and communications between DLNR and "qualified applicants." DLNR partially granted and partially denied the record requests, citing the UIPA's frustration exception as allowing it to withhold records in order to protect the integrity of the procurement process, the attorney-client privilege, and other laws.

Plaintiff thereafter filed this lawsuit seeking certain orders regarding the validity of DLNR administrative rules regarding mooring fees, liveaboard fees, harbor fees and other issues outside of the UIPA, and seeking full disclosure of responsive records under the UIPA. The court has granted and denied various motions for partial dismissal filed by the parties. On July 25, 2022, a stipulation for dismissal without prejudice of all claims arising out of the UIPA was filed, so OIP will discontinue reporting on this case unless UIPA claims are refiled.

Neighborhood Commission Dismissal of Request for Sanctions Against Neighborhood Board Member

LeVasseur v. Neighborhood Commission
Civ. No. 20-0001102 (1st Cir. Ct.)

Kenneth LeVasseur (Plaintiff) filed a complaint with the City and County of Honolulu Neighborhood Commission (Defendant) against a fellow member of a neighborhood board alleging Sunshine Law violations. The court dismissed the complaint and Plaintiff appealed that decision to the circuit court. The case is in the early stages of litigation.

Investigation Records

Evergreen Adult Day Care v. DHS
Civ. No. 20-0000721 (1st Cir. Ct.)

Evergreen Adult Day Care, Inc. (Plaintiff), made a record request to the Department of Human Services (Defendant) for records pertaining to allegations of fraud against it. The request was denied in its entirety and Plaintiff filed this lawsuit seeking records to which access was denied.

In an order filed June 9, 2021, the court granted Plaintiff's motion for summary judgment. Specifically, the court found that the Defendant did not meet its burden to justify nondisclosure, and ordered it to produce "some or all of the records . . . with appropriate redactions[.]" The court also ordered the parties to "confer in good faith regarding setting a framework and time frame for the review of Defendant's files and identification of documents that can be disclosed and appropriate redaction of the documents to be produced to Plaintiff[.]" The court also awarded attorneys fees and costs to the plaintiff.

OIP will discontinue reporting of this case, unless there are any substantive developments.

Investigation Records

Evergreen Adult Day Care v. AG
Civ. No. 20-0000723 (1st Cir. Ct.)

Evergreen Adult Day Care, Inc. (Plaintiff) made a record request to the Department of the Attorney General for records pertaining to allegations of fraud against it. The request was denied in its entirety and Plaintiff filed this lawsuit seeking records to which access was denied. On December 10, 2021, the parties filed a Stipulation for Dismissal with Prejudice, so OIP will discontinue reporting on this case.

Final Investigative Reports Related to the State Auditor's Office

*Civil Beat v. Department of the
Attorney General*
Civil No. 16-1-1743-09 KKH (1st Cir. Ct.)
*CAAP-21-0000057 (Intermediate Court
of Appeals)*
*SCAP-21-0000057 (Supreme Court) Opinion
issued on April 26, 2022*

As was reported in OIP's 2021 Annual Report, Honolulu Civil Beat, Inc. (Plaintiff), made a request to the Department of the Attorney General (Defendant or AG) for the investigative report (Report) it had prepared of the Hawaii State Auditor's office in 2016. The AG denied the request and Plaintiff filed a lawsuit for access in the circuit court, which upheld the AG's denial after finding that the Report was exempt from disclosure because it contained confidential attorney-client communications.

Plaintiff appealed the decision to the Hawaii Supreme Court (HSC), which rejected the lower court's ruling that the Report was a confidential attorney-client communication. The case was remanded to the circuit court, which again upheld the AG's denial of access to the Report under the UIPA's Privacy and Frustration Exceptions. Plaintiff appealed to the HSC once more, and in the published opinion, the HSC reversed and held

that the bulk of the AG's investigative Report should be disclosed.

The HSC found the Report to be a "personnel record" as defined by section 92F-14(b)(4), HRS, with the significant privacy interests of the Auditor's top three officials outweighed by the public's overwhelming and compelling interest in the Report's contents. Other information in the Report was considered exempt from disclosure, such as the names of lower "rank-and-file" employees, summaries of personnel records, discussions of minor office policy infractions, and remarks about employees' medical information.

The Majority opinion, authored by Justice Edkins and joined by Justice Wilson and Circuit Judge Wong in place of recused Justice Nakayama, distinguished the type of privacy interests held by the Auditor's three top officials and the privacy interests held by rank and file employees considered to be "non-subjects." Since the Report is "about" the Auditor's top three officials, they were found to have significant privacy interests under section 92F-14(b), HRS, which were outweighed by the public's interest in disclosure. But the non-subject employees were found to lack significant privacy interests, and therefore, their privacy interests need not be weighed against the public's interest in disclosure required by section 92F-14(b), HRS.

Although the Majority found that the names of the non-subject employees should be redacted, all other identifying information, such as their job titles, the positions they held during the AG's investigation, and their educational backgrounds should be disclosed because this information would provide the reviewing public with some "helpful context."

In the Minority opinion that concurred in part and dissented in part, Chief Justice Recktenwald, joined by Justice McKenna, agreed that the bulk of the Report regarding the three top officials should be disclosed, and that the names of non-subject employees, along with medical information, summaries of personnel records, and minor office policy infractions should be

withheld. The Minority disagreed that the non-subject employees lack significant privacy interests, and after weighing the non-subjects' privacy interests against the public's interest in disclosure, the Minority concluded that all identifying background information about the non-subject employees should be redacted.

OIP will discontinue reporting of this case.

Request for Records of HPD Body Camera Footage

Civil Beat Law Center for the Public Interest v. Department of the Prosecuting Attorney
Civ. No. 1CCV-21-0000699 (1st Cir. Ct.)

After being denied its request for video footage related to the death of 16-year-old Iremamber Sykap (Minor), the Civil Beat Law Center for the Public Interest (Plaintiff) filed a lawsuit in 2021 in the First Circuit Court against the Department of the Prosecuting Attorney (Defendant), seeking the release of the Honolulu Police Department body-worn camera footage related to the Minor's death. On September 30, 2021, the court granted in part and denied in part Plaintiff's cross-motion for summary judgment. Specifically, the court denied Plaintiff's request for an order "declaring that the Prosecutor's policy to indefinitely delay access to police body-worn camera footage related to use of force against citizens is a violation of UIPA" because the court found that "[t]his language is too vague, and would create problems with predictability and meaningful enforcement."

The court, however, granted Plaintiff's request for an order "compelling the Prosecutor to disclose the video footage related to Iremamber Sykap's death with blurring to protect the identity of individuals who are not government employees." As to Defendant's motion for summary judgment, the court denied the motion, finding that Defendant's "Declaration of Special Counsel

is insufficient because the assertion that ‘disclosure would impair the investigation and could potentially poison the jury pool’ is conclusory.”

Pursuant to the above orders, the court entered final judgment in favor of Plaintiff and against Defendant on March 11, 2022. The court granted in part and denied in part Plaintiff’s motion for attorneys’ fees and costs and awarded it \$25,826.75 against Defendant on April 28, 2022. OIP will discontinue reporting on this case.

Arbitration Decision Involving a Police Officer

*State of Hawaii Organization of Police Officers
v. City and County of Honolulu*
Civ. No. 18-1-0823-05 (1st Cir. Ct.)
ICA CAAP-19-0000450 (ICA)
SCAP-19-0000450 (HSC)

In February 2018, Honolulu Civil Beat, Inc. (Civil Beat) made a record request to the Honolulu Police Department (HPD) for a copy of an arbitration award, closing report (disciplinary action file) and full investigative file involving an officer who had been terminated from HPD after a video surfaced and appeared to show the officer in a physical altercation with a woman. In May 2018, the State of Hawaii Organization of Police Officers (SHOPO) filed a complaint against the City and County of Honolulu in the First Circuit Court seeking an order to prohibit the records’ disclosure and alleging that disclosure would violate the officer’s right to privacy and be in violation of the UIPA. Civil Beat moved to intervene in the case.

In April 2019, the Circuit Court ordered the disclosure of the arbitration award and closing report in redacted form, along with a portion of the investigative file containing HPD’s policies, procedures and rules applicable to the incident in question that did not require redactions. In June 2019, SHOPO moved for a stay of the Circuit Court’s judgment pending appeal, which was granted. SHOPO and Civil Beat cross-appealed.

Civil Beat did not appeal the Circuit Court’s decision not to order the release of the investigative report. The case was transferred to the HSC.

While the appeal was pending, Act 47 (2020 Haw. Sess. Laws) became law. The Act amended section 92F-14(b)(4), HRS, of the UIPA which recognizes a significant privacy interest in a personnel file, except for employment misconduct information resulting in suspension or discharge. Although the misconduct information exception formerly did not apply to “county police department officers” except for cases resulting in an officer’s discharge, Act 47 amended the law so that officers’ misconduct records are now treated the same as those of any other public employee.

In December 2020, oral argument was heard before the HSC, and on December 16, 2020, the HSC stated it was clear the “UIPA mandates the disclosure of the documents at issue” and ordered the stay of the judgment be lifted.

On September 17, 2021, the HSC issued a unanimous opinion in the case and held that “there is no private right of action under the UIPA for a party seeking to prevent the release of documents” and found that the circuit court correctly dismissed SHOPO’s UIPA claims for that reason. Agreeing with the circuit court, the HSC also held that the UIPA requires the disclosure of the redacted arbitration award and closing report. In deciding the case, the HSC revisited two previous cases in which it considered the required scope of disclosure of police misconduct records: State of Hawaii Organization of Police Officer v. Society of Professional Journalists – University of Hawaii, 83 Hawaii 378, 927 P.2d 386 (1996) (SHOPO v. SPJ) and Peer News LLC v. City & County of Honolulu, 138 Hawaii 53, 376 P.3d 1 (2016) (Peer News). The HSC stated that while SHOPO v. SPJ made clear that police officers did not enjoy a constitutional privacy interest in their misconduct records, Peer News acknowledged that the Legislature has recognized a significant privacy interest by statute, and that Act 47 subsequently rescinded that recognition.

The HSC applied Act 47 to the case, and found that to the extent the records fall within the categories enumerated by HRS section 92F-14(b) (4)(B)(i)-(v) (2012) (excepting certain kinds of misconduct information from the general privacy interest in a personnel file), the holding in SHOPO v. SPJ applies – only a scintilla of public interest will compel disclosure, a threshold easily surpassed in the case. The HSC also found that to the extent the records fall outside those categories, the balancing test prescribed by Peer News applies. It agreed with the circuit court that, applying the Peer News test, the public interest in disclosure outweighs the significant privacy interest at stake, and affirmed the circuit court’s judgment mandating the records’ release.

OIP will discontinue reporting of this case.

Police Disciplinary Records

Peer News LLC v. City and County of Honolulu and Honolulu Police Department
Civ. No. 13-1-2981-11 (1st Cir. Ct.)
ICC 17-1-001433 (HSC)

Peer News LLC, dba Civil Beat (Plaintiff) asked the Honolulu Police Department (Defendant) to provide information regarding 12 police officers who, according to Defendant’s annual disclosure of misconduct to the State Legislature, received 20-day suspensions due to employment misconduct from 2003 to 2012. Plaintiff asked for the suspended employees’ names, nature of the misconduct, summaries of allegations, and findings of facts and conclusions of law. Defendant denied Plaintiff’s record request, asserting that the UIPA’s “clearly unwarranted invasion of personal privacy” exception protected the suspended police officers’ identities. Plaintiff then filed a lawsuit in the First Circuit Court alleging that Defendant and the City and County of Honolulu (collectively Defendants) failed to disclose the requested records about the 12 suspended police officers as required by the UIPA and in accordance with a 1997 OIP opinion.

In March 2014, the court granted Plaintiff’s motion for summary judgment and ordered Defendants to disclose the requested records about the suspended police officers. An appeal was filed in this case by State of Hawaii Organization of Police Officers (SHOPO) as an intervenor.

In February 2015, the Hawaii Supreme Court granted Plaintiff’s application for transfer of the case on appeal. Defendants filed a notice stating that neither party was taking a position in the appeal. In June 2016, after considering Plaintiff’s and SHOPO’s arguments, the HSC vacated the judgment and remanded the case to the circuit court with instructions to conduct an in camera review of the police suspension records and weigh the competing public and privacy interests in the disclosure of these records on a case-by-case basis. OIP’s summary of the Supreme Court’s opinion, Peer News LLC v. City and County of Honolulu, 138 Haw. 53, 376 P.3d 1 (2016), can be found on OIP’s website at oip.hawaii.gov/wp-content/uploads/2013/09/Peer-News-summary.pdf.

In August 2020, the circuit court ordered a stay of the case pending the Governor’s signing of Act 47, which amended the UIPA to remove misconduct information regarding suspended officers from the category of employee information with a significant privacy interest. Act 47 was signed on September 15, 2020, after which Plaintiff moved for reconsideration of the court’s order granting in part Plaintiff’s original motion for summary judgment from 2013, based on the change in law Act 47 represented. The motion was joined by Defendants and opposed by SHOPO. The circuit court granted the motion and issued an amended order granting in part the motion for summary judgment, followed by a final judgment in favor of Plaintiff. (A related HSC decision interpreting Act 47, issued in a separate case, was discussed previously under Arbitration Decision Involving a Police Officer.) Plaintiff then moved for an award of attorney’s fees and costs, which was granted, and the court issued an Amended Final Judgment in favor of Plaintiff on May 6, 2022.

Since this litigation has now terminated, OIP will not be reporting on it further.

Police Disciplinary Records

SHOPO v. City and County of Honolulu, Civ. No. 1CCV-20-0001512 (1st Cir. Ct.)

State of Hawaii Organization of Police Officers (SHOPO) v. County of Maui, Civ. No. 2CCV-20-0000329 (3) (2nd Cir. Ct.)

SHOPO v. County of Hawaii, Civ. No. 2CCV-20-0000432 (3rd Cir. Ct.)

SHOPO v. County of Kauai, Civ. No. 5CCV-20-0000120 (5th Cir. Ct.)

As discussed in the previous two entries, Act 47 amended the UIPA (among other things) to treat police officer disciplinary records the same as other public employees' disciplinary records. Under Act 47, police officer suspensions, which had previously been given special protection under the UIPA, would now become public information once final. SHOPO sued all counties seeking to have Act 47 declared unconstitutional. In the suits involving Hawaii County, Maui County, and Kauai County, the complaint was answered, and pretrial statements were filed in the Hawaii County and Kauai County litigations. However, the most active litigation has been that filed against the City and County of Honolulu (City). In the Kauai and Hawaii County cases, the parties stipulated to stay proceedings pending the outcome of SHOPO's appeal in the City and County of Honolulu litigation, discussed below. In the Maui litigation all parties stipulated to the dismissal of all claims and parties without prejudice on December 9, 2021. That stipulation does not indicate whether, like the stay of proceedings in the Kauai and Hawaii County litigations, it was intended to allow for the appeal in the City litigation to run its course, but the Maui litigation is now terminated and will not be reported on again. Turning to the City litigation, in November 2020, before the City had even answered the complaint, SHOPO sought a preliminary injunction preventing the disclosure of disciplinary records, including in response to a UIPA request by someone not party to the lawsuit. The court partially denied the

injunction on December 15, 2020, and ordered SHOPO to follow the UIPA's mandates with respect to the pending request.

The City answered the complaint on December 2, 2020, with the remainder of SHOPO's motion for injunction still pending, and the State of Hawaii and Civil Beat Law Center (CBLC) sought and were granted leave to intervene in the litigation and filed their own answers in January and February 2021. Meanwhile, SHOPO again sought to prevent disclosure of the disciplinary records at issue through an "Objection" to their disclosure filed January 15, 2021, to which the defendant City and intervenor CBLC filed memoranda in opposition in February 2021. Both CBLC and the other intervenor, the State of Hawaii, also filed oppositions to SHOPO's still-pending motion for a preliminary injunction, which had been only partially denied.

After hearing further argument, the First Circuit Court ultimately issued a full denial of SHOPO's motion for a preliminary injunction on April 14, 2021. On August 27, 2021, the court ordered, and the parties stipulated, that the court's December 15 and April 14 rulings had concluded as a matter of law that Act 47 was constitutional and required the City's compliance, and that those rulings fully resolved SHOPO's claim. The court entered final judgment in favor of the defendants on September 30, 2021. (A related HSC decision interpreting Act 47, issued in a separate case, was discussed previously under Arbitration Decision Involving a Police Officer.)

SHOPO appealed that final judgment on October 27, 2021. In its opening brief, SHOPO apparently dropped its argument that Act 47's amendment to the UIPA was unconstitutional, focusing instead on its argument that another provision of Act 47 requiring annual public reporting of officer suspensions to identify officers concerned was an unconstitutional invasion of privacy. The City, CBLC, and the State all filed answering briefs, an amicus curiae brief was filed by the American Civil Liberties Union, and SHOPO filed reply briefs in response. As of this writing briefing appears complete and the case remains pending at the ICA.

Personal Records of Police Officer Applicant

Seely v. County of Hawaii Police Department
Civ. No. 17-1-0414 (3rd Cir. Ct.)

Ian Seely (Plaintiff) applied for employment as a police officer at the Hawaii Police Department (Defendant). Defendant had made, but later rescinded its conditional offer of employment to Plaintiff. Plaintiff requested Defendant to disclose his personal records from his interview by Defendant's psychiatrist. Defendant denied his personal record request because Plaintiff had signed a waiver of his right to know the results of Defendant's testing and interviews of him. Further, Defendant informed Plaintiff that its denial of his personal record request was also based upon the UIPA exception protecting testing or examination materials. In 2016, Plaintiff appealed to OIP the Defendant's denial of access to personal records, but abandoned his appeal so it was dismissed by OIP.

In 2017, Plaintiff filed in the Third Circuit Court a lawsuit against Defendant alleging disability discrimination, retaliation, and violation of the UIPA. A jury trial was set for January 30, 2023. The parties' Stipulation for Dismissal of All Claims and Parties with Prejudice was filed on June 1, 2022, so OIP will discontinue reporting on this case.

Budgetary and Other DOE Records

Hawaii Education Institute
v. Department of Education
Civ. No. 19-1-1090-07 (1st Cir. Ct.)

In March 2018, the Hawaii Education Institute (HEI) made a record request to the Department of Education (DOE) seeking access to records relating to twelve different categories of information, including budgetary data, job position data, student performance data, enrollment data, and financial data. DOE denied the request and

in July 2019, HEI filed a complaint in the First Circuit Court. In March 2020, DOE filed a Motion for Summary Judgment, which was denied. In December 2020, HEI filed a Motion for Partial Summary Judgment. In February 2021, DOE filed another Motion for Summary Judgment.

In March 2021, the court granted HEI's Motion for Partial Summary Judgment in favor of HEI and against DOE with regard to HEI's request for general ledger system line items showing DOE's revenues, expenditures and encumbrances, and the parties stipulated to a partial dismissal with prejudice of HEI's claims with respect to its other requests. In April 2021, the court denied DOE's second Motion for Summary Judgment. The case remains pending in the circuit court.

Special Management Area Permit Records

Salem v. County of Maui, et al.
Civ. No. 17-1-0208 (2nd Cir. Ct.)
CAAP-18-0000105

Christopher Salem (Plaintiff) filed a Complaint in the Second Circuit Court against the County of Maui, the County Planning Director and a deputy Corporation Counsel (collectively Defendants), seeking access to records related to a Special Management Area (SMA) Permit. Plaintiff alleged that the Defendants obstructed Plaintiff's access to the records. Furthermore, Plaintiff asserts that the Defendants "manipulated and misrepresented" the existence of public records of the date of final acceptance and closure of a certain SMA permit. Defendants filed a Motion to Dismiss or, in the Alternative, for Summary Judgment (Defendants' Motion). The court granted Defendants' Motion.

The court entered Judgment in favor of Defendants on January 24, 2018. Plaintiff filed a Notice of Appeal on February 23, 2018. The appeal remains pending.

Academic Grievance Records at University of Hawaii

Williamson v. University of Hawaii
Civ. No. 1CC14-1-1397-06 (1st Cir. Ct.)

Travis Williamson (Plaintiff) asked Defendant UH for documents pertaining to his academic grievances as a UH student. Plaintiff renewed his records requests, but Defendant did not respond to either request.

Plaintiff then asked OIP for assistance and asked that his request be treated as an appeal. Defendant informed OIP that Plaintiff had not fully complied with its procedures for filing grievances and thus it had no records relating to Plaintiff's alleged grievances other than what was previously provided to Plaintiff. OIP informed Plaintiff that it was not accepting his appeal because it did not appear to be a denial of access to records as the records did not exist.

In June 2014, Plaintiff filed a lawsuit in the First Circuit Court seeking access to the requested records and a declaration that Defendant withheld records in violation of the UIPA. In December 2014, Defendant filed its response. In October 2017, the circuit court granted Plaintiff's motion to set aside the order of dismissal that the court had issued in July 2017. The case is still pending.

Inmate Medical Records

Hamasaki v. CoreCivic
Civ. No. 1CSP-19-0000030 (1st Cir. Ct.)

An inmate (Plaintiff) requested copies of his medical records from the Department of Public Safety. He submitted a complaint against private prison operator CoreCivic and named employees (Defendants), in the form of a letter to the court clerk, and has sought to serve Defendants via mail. Plaintiff has not successfully served Defendants as of this writing, although CoreCivic is aware of his attempts and sent him a letter, which is part of the court file, stating that proper

service had not been accomplished and noting jurisdictional flaws. No new filings were made in the last fiscal year, and the case is still pending.

Inmate Death Records

Honolulu Civil Beat Inc. v. Department of Public Safety
Civ. No. 21-0001329 (1st Cir. Ct.)

On March 31, 2021, Honolulu Civil Beat Inc. (Plaintiff) requested that the Department of Public Safety (Defendant) provide it with notices of inmate deaths for calendar years 2020 and 2021, and reports regarding deaths in custody that occurred in those years. Defendant denied access to all identifying information in the requested records on April 9, 2021, based on the Health Insurance Portability and Accountability Act of 1996 (HIPAA) restrictions. On September 23, 2021, Plaintiff requested investigative reports, including autopsy and inquest reports, received from coroners in 2020 and 2021 that identified cause of death for individuals who died in Defendant's custody. Defendant denied access to Plaintiff's second request on October 5, 2021 based on HIPAA.

Plaintiff filed a lawsuit in the First Circuit Court on October 29, 2021. On August 23, 2022, Plaintiff filed a Motion for Summary Judgment (MSJ). After an October 25, 2022 hearing on the MSJ, the court granted in part and denied in part the motion, and ordered Defendant to release the names of the prisoners who died in State custody and the reports on autopsies to determine the cause of death in each case. The case remains pending.

Pandemic Response Regarding Inmates

*Civil Beat Law Center for the Public Interest
v. Department of Public Safety
1CCV-22-0000735 (1st Cir. Ct.)*

After being denied access by Defendant Department of Public Safety (PSD), Plaintiff Civil Beat Law Center in the Public Interest (CBLC) filed this lawsuit on June 24, 2022, to require PSD to disclose reports on Defendant's pandemic response created by an independent monitoring panel pursuant to Defendant's earlier settlement agreement with five inmates who had filed a class action lawsuit challenging its pandemic response. Defendant has answered the complaint but the litigation is still in its early stages, with a trial set for June 26, 2023.

Hawaii County Department of Public Works Engineering Files

*Rohr v. County of Hawaii Board of Appeals;
Civ. No. 20-0000080 (3rd Cir. Ct.)*

On October 25, 2019, Claudia Rohr (Plaintiff) filed a General Petition for Appeal of Decision by Public Works Director (Petition) with the County of Hawaii Board of Appeals (Board). After a hearing on January 10, 2020, the Board dismissed the Petition for lack of jurisdiction on January 13, 2020.

Plaintiff, pro se, filed a Notice of Appeal of the Board's decision in the Third Circuit Court on February 19, 2020. In Count 3 of her lawsuit, Plaintiff alleges that Defendant County of Hawaii Department of Public Works violated the UIPA by withholding disclosure of certain engineering files despite Plaintiff's formal request. The case remains pending.

Records Related to Pearl Harbor Fuel Leak

*Sierra Club v. Department of Health
1CCV-21-0001307 (1st Cir. Ct.)*

On September 9, 2021, the Sierra Club (Plaintiff) made a record request to the Department of Health (DOH) for documents relating to the fuel leak near Pearl Harbor that occurred in March of 2020. DOH acknowledged the request but stated that the United States Navy claimed some of the documents were protected in the interest of national security. Plaintiff filed a complaint against DOH in circuit court on October 25, 2021. On November 15, 2021, DOH filed its answer to the complaint.

On February 14, 2022, the court ordered DOH to provide Plaintiff with internal DOH emails responsive to Plaintiff's record request and to prepare a supplemental brief to explain why disclosure is not required if DOH seeks to withhold emails provided by a Navy whistleblower and to provide status updates on the documents provided to the Department of Defense that have not yet been provided to Plaintiff and the production of the internal DOH emails. On May 9, 2022, Plaintiff filed a supplemental request for an order that DOH produce the outstanding documents. On May 23, 2022, DOH filed a response to Plaintiff's supplemental request explaining that it was required to allow the Department of Defense an opportunity to review the outstanding documents for necessary redactions. The case is still pending.

Exorbitant Fees Charged for Searching, Reviewing and Segregating Government Records

Smith & Wesson Brands, Inc. v. Hawaii State Department of the Attorney General
Civ. No. ICCV-22-0353 (1st Cir. Ct.)

Gun manufacturer Smith and Wesson Brands, Inc. (Plaintiff) filed a complaint against the Department of the Attorney General (Defendant) alleging that the Defendant “has demanded exorbitant fees in the tens of thousands of dollars before producing any documents, in a transparent attempt to create a stiff financial barrier to Plaintiff’s access to documents.” Plaintiff characterized the Defendant’s claims that the documents must remain confidential to avoid the frustration of a legitimate government function as “baseless,” and alleged that Defendant “has singled out Plaintiff for unfair treatment based on political motives.”

The parties are currently engaging in pretrial discovery. A non-jury trial is scheduled to be held in the First Circuit Court on March 6, 2023.

Land Records

Salem v. County of Maui, Civ. No. 2CCV-21-000027(1) (2nd Cir. Ct.)

Christopher Salem (Plaintiff) requested records relating to a litigation and records related to a specified piece of land from the County of Maui (Defendant). Defendant asserted at various times that it did not maintain responsive records, and Plaintiff filed suit on January 29, 2021, arguing that Defendant had deliberately concealed documents it possessed. Defendant filed a Motion to Dismiss on March 1, 2021, and filed an amended version of that motion on March 25, 2021. Plaintiff opposed the motion, but it was granted by the court and Plaintiff’s complaint was dismissed on May 18, 2021. However, Plaintiff subsequently

moved for reconsideration, which Defendant opposed, and that motion remained pending as of this writing.

Property Appraisal Report

In Re Office of Information Practices Opinion Letter No. F19-04,
Civ. No. S.P. No. 19-1-0157 (1st Cir. Ct.)
ICA CAAP-20-0000470 (ICA)

In the First Circuit Court, the Department of Budget and Fiscal Services of the City and County of Honolulu (Appellant) appealed OIP’s Opinion Letter Number F19-04, which concluded that the UIPA did not allow Appellant to withhold a property appraisal report. After service of the complaint and OIP’s and the original record requester’s answers, Appellant filed an opening brief in August 2019. In November 2019, the court granted a motion by Civil Beat Law Center for the Public Interest to file an amicus curiae brief. In June 2020, the court heard oral argument on, and ultimately denied, Appellant’s appeal of OIP’s Opinion Letter Number F19-04.

In July 2020, Appellant appealed that order to the ICA, and filed its opening brief November 18, 2020. The Civil Beat Law Center sought and was granted permission to file an amicus curiae brief on February 25, 2021, and the City responded on March 23, 2021. The ICA issued an opinion affirming the Circuit Court’s judgment on October 11, 2021. The ICA concluded that although OIP had relied on inapposite authority as persuasive regarding appraisals for leases of state lands, OIP had correctly concluded that disclosure of the property appraisal report at issue would not frustrate a legitimate City function, and thus the appraisal report must be disclosed.

The Supreme Court rejected the City’s application for certiorari on January 24, 2022, so this litigation has now concluded and OIP will not report on it further.

Severance and Separation Agreements for Former City Officials and Documents Shared Between HPD, FBI, DOJ, and City

Amemiya v. City & County of Honolulu
Civ. No. 22-0000087 (1st Cir. Ct.)

Roy Amemiya, Jr. (Plaintiff) was employed as the Managing Director for the City and County of Honolulu (Defendant) from 2015 to 2020. After being notified that he was the target of an FBI and federal Grand Jury investigation based on his alleged involvement in the 2017 severance and separation agreement between Defendant and former Chief of Police Louis Kealoha, Plaintiff made record requests to the City's Honolulu Police Commission and Department of the Corporation Counsel for records pertaining to and including the 2017 severance, severance or separation agreements for two other top City officials, and documents shared between the Honolulu Police Department (HPD), the Federal Bureau of Investigations (FBI) and United States Department of Justice (DOJ).

After Defendant denied in part Plaintiff's record requests, Plaintiff filed a lawsuit against Defendant in the First Circuit Court on January 20, 2022. The parties' Stipulation for Dismissal Without Prejudice of All Claims and All Parties was filed on April 11, 2022, so OIP will discontinue reporting on this case.

Sunshine Law Litigation:

Charter School Commission's Adjudication of a Matter Not on the Agenda

*Thatcher v. Hawaii State Public Charter
School Commission*
Civ. No. 15-1-1583-08 (1st Cir. Ct.)
CAAP-17-0000092 (ICA)

The Hawaii State Public Charter School Commission (Defendant) filed a notice for its May 14, 2015, meeting. The agenda did not include an item relating to the discussion of the Department of Education's enrollment form, "SIS-10W" (Enrollment Form). However, Defendant discussed the Enrollment Form at the meeting and issued a written decision regarding its use.

Thereafter, John Thatcher (Plaintiff) filed a lawsuit in the First Circuit Court on August 12, 2015, alleging that Defendant violated the Sunshine Law when it "failed to give the public notice that any action, including but not limited to 'Decision Making' concerning the School's admissions form would be discussed and decided by the Defendant Commission." Plaintiff alleged that Defendant did not accept oral and written testimony on the Enrollment Form and discussed and decided the matter during its May 14, 2015, meeting.

In response, Defendant argued that on May 14, 2015, exercising its adjudicatory function and in a closed, lunch break during its General Business Meeting, Defendant reviewed the Enrollment Form and made its decision. Defendant also noted that prior to its May 14, 2015 meeting, Plaintiff had provided testimony during meetings on February 26 and March 12, 2015.

On October 7, 2016, Defendant filed its motion for summary judgment on the basis that it exercised its adjudicatory function and rendered a final decision without a public meeting because a meeting was not required under the Sunshine Law for Defendant's adjudicatory function, and

because the Enrollment Form was an ongoing issue which Plaintiff had provided testimony on at previous meetings.

The court granted Defendant's motion, and entered its final judgment on February 1, 2017. As was reported in prior annual reports, on April 21, 2017, Plaintiff filed an appeal to the ICA, where the case remains pending.

Insufficient Notice of Rule Changes

*Committee for Responsible Liquor Control
v. Liquor Control Commission*
Civ. No. 17-1-000185(1) (2nd Cir. Ct.)

The Committee for Responsible Liquor Control and Madge Schaefer (Plaintiffs) filed a complaint on May 5, 2017, and an amended complaint on June 19, 2017, alleging that the Maui County Liquor Control Commission (Defendant) held an improperly noticed meeting under the Sunshine Law to discuss proposed changes to its administrative rules. Plaintiffs alleged that the notice and agenda filed for the meeting did not provide sufficiently detailed notice of the proposed rule changes as required by section 92-7, HRS. Plaintiffs asked the Second Circuit Court to invalidate the amendments to the rules that were approved by Defendant, which would have eliminated the 11 p.m. to 6 a.m. blackout on retail sales of alcohol and the cap on the number of hostess bars in Maui County. Plaintiffs also alleged that Defendant violated the requirements in the Hawaii Administrative Procedures Act, chapter 91, HRS, regarding hearings for rule changes. In a Sunshine Law meeting on July 12, 2017, Defendant voted to reverse itself.

As was reported in previous annual reports, the court issued a final judgment on October 17, 2017, in favor of Defendant and dismissed the case with prejudice. Plaintiffs appealed to the ICA on November 2, 2017. The parties have filed their respective briefs and the appeal remains pending in the ICA.

Discussions of Board Business Outside of Meeting

Heaukulani v. Hawaii County Council
Civ. No. 21-0000031 (3rd Cir. Ct.)

Charles Heaukulani (Plaintiff) filed a complaint against the Hawaii County Council (Council). The Council held a meeting during which some members were present in the Kona Council chambers and others were present in the Hilo Council chambers. Plaintiff alleged that the councilmembers in Kona discussed board business during the meeting with their microphones off, which essentially amounted to a discussion of board business outside of a properly noticed meeting. The case is in the early stages of litigation and remains pending.

Polling Board Members and Public Testimony on Executive Session Item

In Re OIP Opinion Letter No. 15-02, S.P.P. No. 14-1-0543 (1st Cir. Ct.)

As first reported in OIP's FY 2015 Annual Report, the Office of Hawaiian Affairs (OHA) appealed OIP's Opinion Letter No. 15-02, which concluded that Petitioner's Board of Trustees had violated the Sunshine Law by polling board members outside a meeting to obtain their agreement to send a letter, and by denying members of the public the right to present oral testimony on an executive session item. This appeal represents the first use of section 92F-43, HRS, which was added to the UIPA in 2013 and allows agencies to appeal OIP decisions to the court based on the record that was before OIP and subject to a deferential "palpably erroneous" standard of review.

As required by section 92F-43(b), HRS, OHA served its complaint on OIP and the members of the public who requested the OIP opinion being appealed, in many cases relying on service by publication. One of the members of the public filed an answer, as did OIP, and the First Circuit Court entered default against the others. In April

2017, the court heard OHA's motion for summary judgment, which it denied in an order issued May 1, 2017. OHA's subsequent motion for reconsideration was also denied.

Although there have been no further developments, the case remains pending in the circuit court. OIP will discontinue reporting on this matter unless there are further substantive developments.

Changing the Quorum for a Meeting

Fevella v. Honolulu Authority
for Rapid Transportation
1CCV-21-0001339 (1st Cir. Ct.)

Kurt Fevella (Plaintiff) filed a complaint on October 29, 2021, against the Honolulu Authority for Rapid Transportation (HART) over HART's meeting on July 29, 2021, in which HART voted to change its quorum from eight members to six members. On March 21, 2022, HART filed a motion to dismiss the complaint. On May 6, 2022, the parties stipulated to dismissal without prejudice of all claims and parties. Since this litigation has now terminated, OIP will discontinue reporting on it.

