

# Office of Information Practices

State of Hawaii

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## Annual Report 2023



**This report to the Governor and the Legislature summarizes the activities and findings of the Office of Information Practices from July 1, 2022, to June 30, 2023, 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**

**SLH - Session Laws of Hawaii**

**RRS - Records Report System**

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

**UH - University of Hawaii**

**UIPA - Hawaii's Uniform Information Practices Act (modified) (chapter 92F, HRS)**

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

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# 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. 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 basic principles and structure have 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:

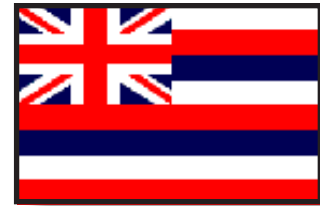
- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, 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.

Like 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 legal guidance 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) 2023, which began on July 1, 2022 and ended on June 30, 2023.



# Executive Summary

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

Additionally, following the enactment of Act 263, SLH 2013 (see HRS § 27-44) (Open Data Law), OIP was charged with assisting the State Office of Information Management and Technology (now known as the Office of Enterprise Technology Services, or ETS) to 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 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 2023, which began on July 1, 2022, and ended on June 30, 2023.

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
<b>Total Requests for OIP’s Services</b>	1,234	1,127	1,127	1,168	874	1,633	1,416
<b>Informal Requests (AODs)</b>	956	945	963	990	719	1,456	1,275
<b>Formal Requests Opened</b>	278	182	164	178	155	177	141
<b>Formal Requests Resolved</b>	241	201	213	193	129	171	142
<b>Formal Cases Pending</b>	150	131	82	67	93	99	98
<b>Live Training</b>	9	6	11	6	0	0	0
<b>Training Materials Added/Revised</b>	6	9	14	11	1	19	13
<b>Legislation Monitored</b>	108	93	185	146	161	235	186
<b>Lawsuits Monitored</b>	40	38	40	45	45	39	40
<b>Public Communications</b>	30	25	25	26	30	30	33

Figure 1

OIP's jurisdiction extends over State, county, and independent 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 since 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 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 and allowed boards to work through remote meetings held online. Further remote meeting 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 decision-making. 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. In FY 2023, OIP updated its training materials and did interim work with the SCR 192 Working Group to prepare recommendations and a report before the start of the 2023 legislative session in January 2023.

Additional details and statistics for FY 2023 are found later in this Annual Report, along with OIP's goals, objectives and action plan for FY 2024-2029. This Executive Summary provides an overview, as follows.

## Budget and Personnel

For FY 2023, OIP's total legislative appropriation was \$809,377 and it received another \$17,071 for collective bargaining increases, for a total allocation of \$826,448. Fortunately, there were no administratively imposed restrictions in FY 2023. *See Figure 3* on page 20.

As in prior years, OIP was authorized 8.5 total full time equivalent (FTE) positions and had no vacancies in FY 2023.

## Legal Guidance, Assistance, and Dispute Resolution

One of OIP's core functions is responding to 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. 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 functions and responsibilities of State and county agencies and boards under the UIPA and the Sunshine Law.

In FY 2023, OIP received 141 formal and 1,275 informal requests for assistance, for a total of 1,416 requests, which is 13% fewer than the 1,633 total requests received in FY 2022. *See Figure 1* on page 6. OIP resolved 97% (1,374) of all formal and informal requests for assistance received in FY 2023 in the same fiscal year.

Ninety percent (1,275) of the total requests for OIP's services are informal requests that are typically responded to within the same day through the AOD service. Almost 65% (822) of the AOD inquiries in FY 2023 came from State and county agencies and boards seeking guidance to ensure compliance with the UIPA and Sunshine Law, while the balance (453) came from the general public. *See Figure 6* on page 25. 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 2023, OIP opened 141 formal cases, compared to 177 formal cases opened in



FY 2022. OIP timely resolved 99 of the 141 FY 2023 new formal cases (70.2%) in the same year they were filed. When AODs are included, OIP quickly resolved 97% (1,374 of 1,416) of all FY 2023 formal and informal requests for assistance in the same year they were filed and 90% (1,275 of 1,416) usually within the same day they were filed. OIP also decreased its backlog of formal pending cases to 98 at the end of FY 2023. See **Figure 4** on page 22. Of the 98 formal case backlog at the end of FY 2023, 42 cases were filed earlier that year and 56 were filed in FY 2022 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 129 of 142 formal cases (90.8%) without an opinion in FY 2023, and it issued five formal opinions and eight informal opinions, for a total of thirteen written opinions. Summaries of the opinions begin on page 32.

## Education, Open Data, and Communications

OIP relies heavily upon its website at [oip.hawaii.gov](http://oip.hawaii.gov) to cost-effectively and efficiently 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 2023, 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 2024, OIP made additional updates to its training materials to reflect the Sunshine Law amendments that went into effect in July and October 2023.

During the interim before the 2023 session, OIP convened a Working Group pursuant to Senate Concurrent Resolution 192 to develop recommendations for the treatment of deliberative and predecisional agency records. The SCR 192

Working Group's minutes and recommendations can be found on the webpage OIP created at [oip.hawaii.gov](http://oip.hawaii.gov). Despite the recommendations reached by consensus of all but one of the Working Group's members, the Legislature did not pass the draft legislation prepared by the group during the 2023 session.

In addition to its readily accessible website training 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](http://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](http://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](http://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](http://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 2023, 29 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](http://oip.hawaii.gov). Together with OIP's Annual Report and two UIPA Log reports, OIP issued 33 public communications in FY 2023.

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 2023, 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](http://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 2023 legislative session, OIP reviewed and monitored 186 bills and resolutions affecting government information practices and testified on 31 of these measures.

OIP posted new online training materials in FY 2023 to reflect and explain the new remote meetings requirements of the Sunshine Law, which went into effect on July 1, 2023 and October 1, 2023, as Acts 19 and 125, respectively. Act 19 requires a board to report its discussion and any final action it took in an executive session when it reconvenes in public session. Act 125 encourages boards to keep recordings of remote meetings on their websites and requires them to provide a copy to the State Archives before removing a recording from their websites.

## **Rules**

Because OIP was transferred 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 and statutory amendments under consideration by the Legislature. 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 2023, OIP monitored 40 cases, including three new cases. Fourteen cases were closed, so 26 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](http://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](http://oip.hawaii.gov), which links to the State’s open data portal at [data.hawaii.gov](http://data.hawaii.gov).

2. Encourage State and county agencies to electronically post appropriate data sets onto [data.hawaii.gov](http://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 received legislative approval and funding in the State’s operating budget for fiscal biennium 2024-2025 to establish and fill two new permanent positions, effective July 1, 2023.

b. OIP received 1,416 total requests for assistance in FY 2023, 97% (1,374) of which were resolved in the same fiscal year, and 90% (1,275) were informal requests typically resolved the same day through OIP’s AOD service.

c. OIP resolved over 70% (99) of the 141 new formal cases filed in FY 2023 in the same year.

d. OIP wrote 13 formal and informal opinions.

e. OIP provided additional updates to its online training materials to reflect the new remote meeting provisions of the Sunshine Law made during the 2022 legislative session.

f. Responded to SCR 192, SLH 2022 by convening a Working Group, keeping the public informed via a new webpage on OIP’s website, and providing the Working Group’s report and legislative proposal to the 2023 Legislature regarding a new statutory exception to the UIPA that would improve government decision-making.

**2. Year 1 Action Plan**

a. Expediently receive approvals to establish, hire, and train the two new positions authorized by the Legislature in Act 164, SLH 2023.

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. 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. Train the new Staff Attorney and Legal Assistant to help OIP reduce its backlog of appeals and keep up with its increasing workload.

b. 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 and depending on whether statutory changes are made by the Legislature.

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

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

### **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 still training four new employees, OIP resolved 97% of all formal and informal requests for its services received in FY 2023 in the same year, and oftentimes the same day.

b. Of the 141 formal cases opened in FY 2023, 99 (70%) were resolved in the same year.

c. Of the 98 cases that remained pending at the end of FY 2023, 42 were opened in FY 2023 and 56 were opened in FY 2022 or earlier, including one that was still pending in litigation.

### **2. Year 1 Action Plan**

a. Establish, recruit, and train two new positions authorized by the Legislature in Act 164, SLH 2023, and retain experienced 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 2024.

c. 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.

### **3. Year 2 Action Plan**

a. Strive to resolve all formal cases filed before FY 2024, 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. Train new positions and retain experienced 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 2022 from 184 State and 84 county agencies, including the Governor’s office, Lt. Governor’s office, Judiciary, Legislature, UH, OHA, all mayors’ offices, and all county councils.
  
- b. Distributed 29 What’s New articles, 1 Star-Advertiser article, and 3 reports to keep government personnel and the general public informed of open government issues, including proposed legislation.
  
- c. Received 148,437 unique visits from Hawaii to OIP’s website and 198,831 website page views (excluding OIP’s and home page hits).

**2. Year 1 Action Plan**

- a. Establish new position, hire and train OIP’s Legal Assistant 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 analysis 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](http://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 2023, State and county agencies reported 29,763 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 2023, OIP convened and supported a Working Group pursuant to SCR 192 passed by the Legislature

in 2022, which was charged with developing 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. OIP provided the Working Group's report and proposed legislation to the Legislature before the 2023 session.

b. During the 2023 legislative session, OIP reviewed and monitored 186 bills and resolutions and testified on 31 of them.

c. In FY 2023, OIP monitored 40 cases in litigation, of which 3 were new cases. Since 14 litigation files were closed, 26 cases remained pending at the end of FY 2023.

**2. Year 1 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.

**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, open data, 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 2023

## 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 2023, OIP's total legislative appropriation was \$809,377 and it received an additional \$17,071 for collective bargaining increases, for a total of \$826,448. There were no administratively imposed restrictions in FY 2023. OIP's actual operational and personnel costs respectively totaled \$25,678 and \$788,323. See **Figure 3** on page 20.

As in prior years, OIP was authorized 8.5 total full time equivalent (FTE) positions for FY 2023. OIP is pleased to report, however, that during the 2023 session, the Legislature appropriated an additional \$185,000 in general funds and two new permanent positions for OIP. These positions and funding had originally been included in SB 3252, SD2, HD2, CD1, which was passed in 2022, but vetoed for other reasons. Fortunately, the funding and positions were included in the State's operating budget as Act 164, SLH 2023. Once the new positions are administratively established and filled, OIP will have a total of 10.5 FTE positions for the upcoming biennium.

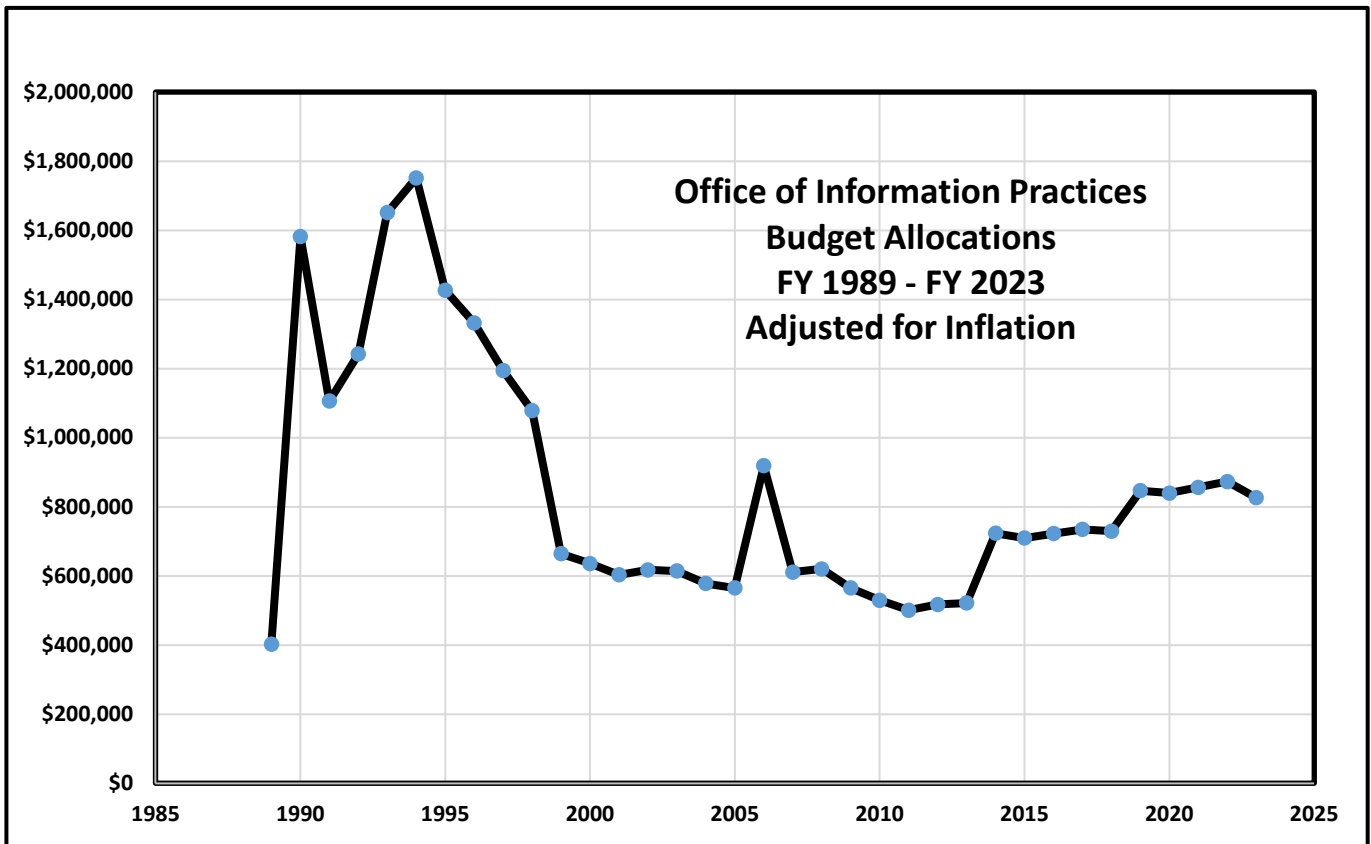


Figure 2



**Office of Information Practices  
Budget FY 1989 to FY 2023**

<b>Fiscal Year</b>	<b>Approved Positions</b>	<b>Operational Costs</b>	<b>Personnel Costs</b>	<b>Total Allocation</b>	<b>Allocations Adjusted for Inflation*</b>
FY 23	8.5	25,678	788,323	826,448	826,448
FY 22	8.5	22,127	689,632	752,721	842,539
FY 21	8.5	17,861	628,032	725,995	856,539
FY 20	8.5	22,188	683,170	704,853	839,795
FY 19	8.5	27,496	652,926	697,987	846,679
FY 18	8.5	15,793	568,222	584,019	729,328
FY 17	8.5	21,340	556,886	578,226	734,571
FY 16	8.5	31,592	532,449	564,041	722,477
FY 15	8.5	44,468	507,762	552,990	709,523
FY 14	8.5	35,400	436,505	552,990	723,659
FY 13	7.5	18,606	372,328	390,934	521,619
FY 12	7.5	30,197	352,085	382,282	517,258
FY 11	7.5	38,067	274,136	357,158	500,800
FY 10	7.5	19,208	353,742	372,950	529,402
FY 09	7.5	27,443	379,117	406,560	565,009
FY 08	7.5	45,220	377,487	422,707	620,347
FY 07	7.5	32,686	374,008	406,694	610,922
FY 06	7	52,592	342,894	395,486	618,712
FY 05	7	40,966	309,249	350,215	565,245
FY 04	7	39,039	308,664	347,703	577,975
FY 03	8	38,179	323,823	362,002	614,440
FY 02	8	38,179	320,278	358,457	617,335
FY 01	8	38,179	302,735	340,914	603,092
FY 00	8	37,991	308,736	346,727	635,820
FY 99	8	45,768	308,736	354,504	664,023
FY 98	8	119,214	446,856	566,070	1,078,146
FY 97	11	154,424	458,882	613,306	1,194,153
FY 96	12	171,524	492,882	664,406	1,331,822
FY 95	15	171,524	520,020	692,544	1,426,579
FY 94	15	249,024	578,513	827,537	1,751,874
FY 93	15	248,934	510,060	758,994	1,651,371
FY 92	10	167,964	385,338	553,302	1,241,846
FY 91	10	169,685	302,080	471,765	1,105,938
FY 90	10	417,057	226,575	643,632	1,581,611
FY 89	4	70,000	86,000	156,000	402,428

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

**Figure 3**

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# 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 2019, 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 required responses from agencies that invoked 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.



To help with the backlog resulting from the loss of experienced employees during the COVID-19 emergency and due to OIP's increasing workload, the 2023 Legislature authorized two additional permanent positions for OIP, beginning in FY 2024. OIP has been working to obtain the necessary approvals to establish and fill the new positions for another staff attorney and a legal assistant.

In the meantime, OIP trained its new employees and still managed to quickly resolve 97% of the 1,416 formal and informal cases filed in FY 2023 within the same year. Of the 1,275 informal cases that constitute 90% of all new cases, OIP typically resolved them within 24 hours. OIP also resolved 99 of the 141 new formal cases filed in FY 2023 and issued 13 opinions. While the number of formal cases pending at the end of FY 2023 stubbornly hovered at 98 cases and consisted mainly of appeals, OIP resolved all cases filed before FY 2022, with the exception of a FY 2015 case that was pending in litigation and beyond OIP's control. See **Figure 1** on page 6.

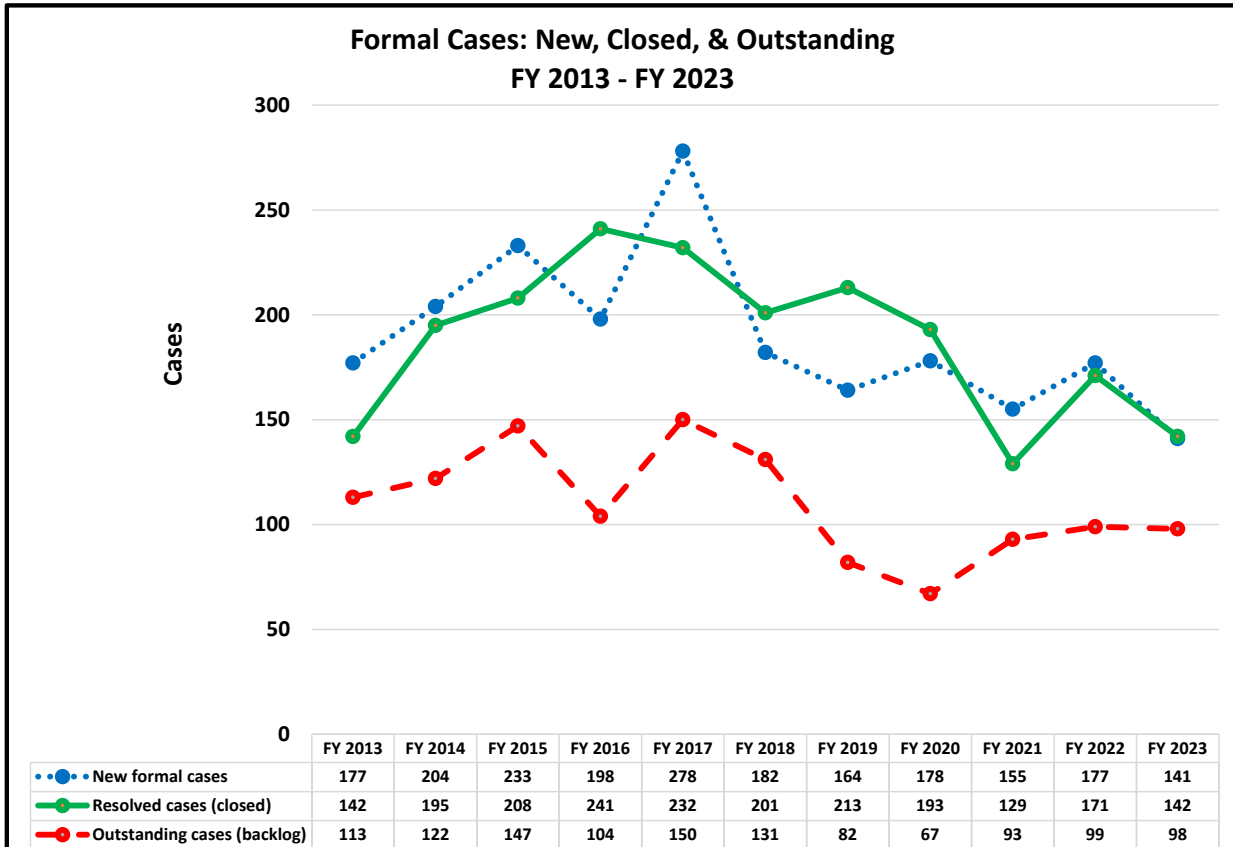


Figure 4

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.

<b>Formal Requests - FY 2023</b>	
<b>Type of Request</b>	<b>Number of Requests</b>
UIPA Requests for Assistance	63
UIPA Requests for Advisory Opinion	1
UIPA Appeals	25
Sunshine Law Appeals	11
Sunshine Law Requests for Opinion	0
Correspondence	29
UIPA Record Requests	11
Reconsideration Requests	1
<b>Total Formal Requests</b>	<b>141</b>

Figure 5

### **Formal Requests**

Of the total 1,416 formal and informal requests for OIP's services, 640 (45%) were categorized as relating to the UIPA and 560 (40%) concerned Sunshine Law issues, with the remainder being mostly miscellaneous AOD inquiries. Moreover, of the total 1,416 requests, 1,275 (90%) were filed as informal AOD requests and 141 (10%) were considered formal requests. **Figure 5** above shows the different types of formal requests received in FY 2023. 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 2023, OIP received 63 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 six months of filing. A requester that is dissatisfied with an agency's response may file a UIPA Appeal with OIP.

#### **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 2023, OIP received one request for a UIPA 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 2023, OIP received 25 appeals related to the UIPA.

#### **Sunshine Law Appeals**

In FY 2023, OIP received 11 Sunshine Law appeals. These cases typically involve a member of the public asking whether a board violated the Sunshine Law, but some also ask whether a board is subject to the Sunshine Law.

#### **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 may obviate 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 OIP had done in some fiscal years before 2011.

In FY 2023, OIP opened 29 CORR files, of which 7 related to the UIPA, 1 was a Sunshine Law issue, and the remainder were miscellaneous CORR.

### **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 2023, OIP received 11 UIPA record requests for OIP's records.

### **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 2023 was resolved in early FY 2024.

### **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](http://oip.hawaii.gov). Summaries of the formal opinions for this fiscal year are also found on pages 32-36 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 (7 UIPA and 1 Sunshine Law) are also found in this report on pages 37-41.

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. 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 2023, OIP issued a total of 13 opinions, consisting of 5 formal opinions and 8 informal opinions. Eleven opinions related to the UIPA and two concerned the Sunshine Law. OIP closed an additional 129 cases without written opinions.



## ***Informal Requests***

### **Attorney of the Day Service**

The vast majority (90% in FY 2023) 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, especially appeals.

Through AOD inquiries, 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 disclosure 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 42.

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.

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.

<b>Fiscal Year</b>	<b>Total</b>	<b>Public</b>	<b>Government Agencies</b>
FY 23	<b>1,275</b>	453	822
FY 22	<b>1,456</b>	682	774
FY 21	<b>719</b>	124	595
FY 20	<b>990</b>	175	815
FY 19	<b>963</b>	478	485
FY 18	<b>945</b>	294	651
FY 17	<b>956</b>	370	586
FY 16	<b>964</b>	289	675
FY 15	<b>1,074</b>	340	734
FY 14	<b>1,109</b>	280	829
FY 13	<b>1,050</b>	270	780
FY 12	<b>940</b>	298	642
FY 11	<b>676</b>	187	489
FY 10	<b>719</b>	207	512
FY 09	<b>798</b>	186	612
FY 08	<b>779</b>	255	524
FY 07	<b>772</b>	201	571
FY 06	<b>720</b>	222	498
FY 05	<b>711</b>	269	442
FY 04	<b>824</b>	320	504
FY 03	<b>808</b>	371	437
FY 02	<b>696</b>	306	390
FY 01	<b>830</b>	469	361

**Figure 6**

Of the 1,275 AOD inquiries in FY 2023, 822 (64%) came from government boards and agencies seeking guidance to ensure compliance with the UIPA or Sunshine Law, and 453 inquiries (36%) came from the public. See Figures 6 and 7. The public inquiries came from 339 private individuals (75%), 47 private attorneys (10%), 31 businesses (7%), 10 media representatives (2%), 18 public interest groups (4%), and 8 from others (2%). See Figures 8 and 9.

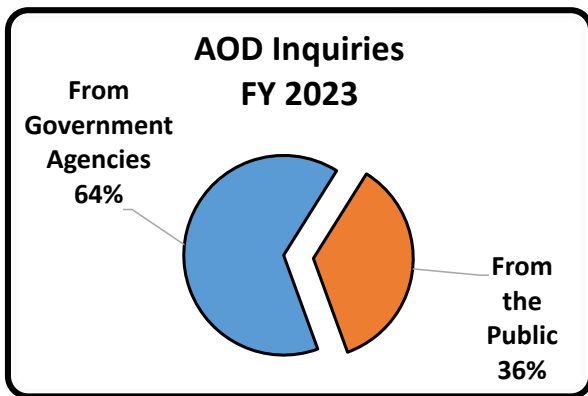


Figure 7

AOD Inquiries from the Public FY 2023	
Types of Inquirers	Number of Inquiries
Private Individual	339 (75%)
Private Attorney	47 (10%)
Business	31 (7%)
Public Interest Group	18 (4%)
News Media	10 (2%)
Others	8 (2%)
<b>TOTAL</b>	<b>453</b>

Figure 8

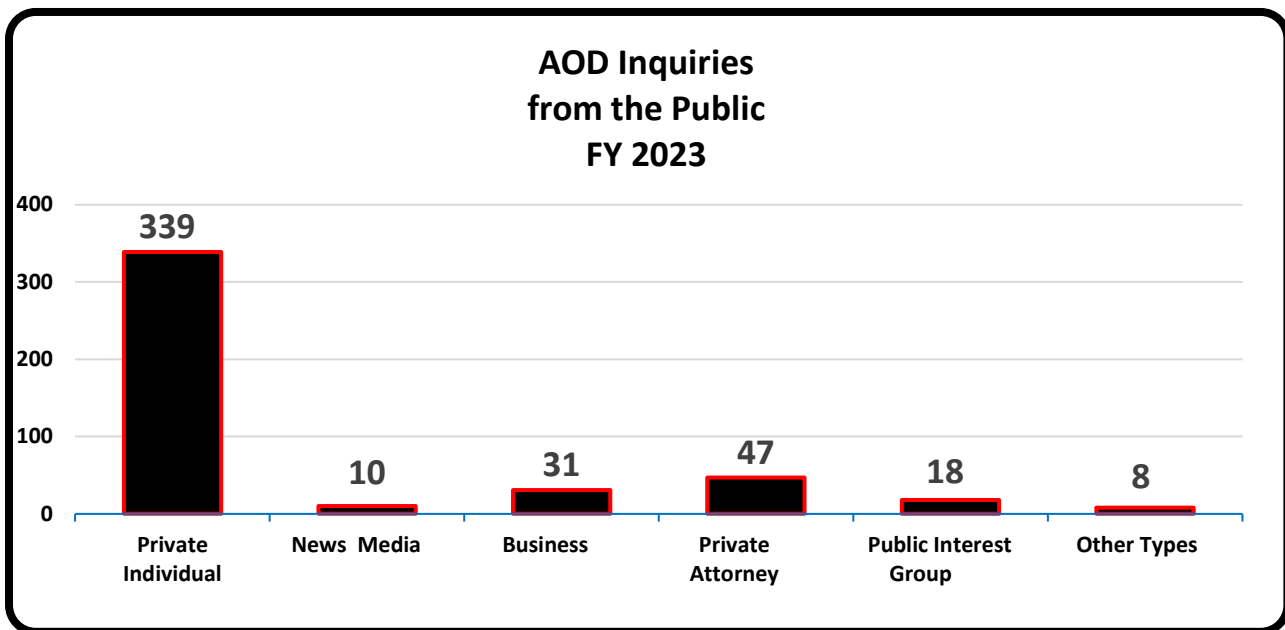


Figure 9

**UIPA Inquiries:**

**UIPA AOD Inquiries**

In FY 2023, OIP received 539 AOD requests concerning the UIPA from government agencies and the general public. A total of 314 inquiries came from the agencies seeking guidance on how to comply with the laws, and 225 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 42.

**State Agencies and Branches**

In FY 2023, OIP received a total of 146 AOD inquiries relating to the UIPA and concerning specific State agencies in the executive branch. About 52% (77) of these requests concerned five State agencies: Accounting and General Services (22), Commerce and Consumer Affairs (19), Office of Hawaiian Affairs (14), Attorney General (11), and Transportation (11). As shown below in **Figure 10**, about 74% (108) of AOD requests were made by the agencies themselves.

OIP also received 3 inquiries concerning the legislative branch and 4 inquiries regarding the judicial branch. See **Figure 10** below. These AOD requests exclude general inquiries that do not concern a specific agency.

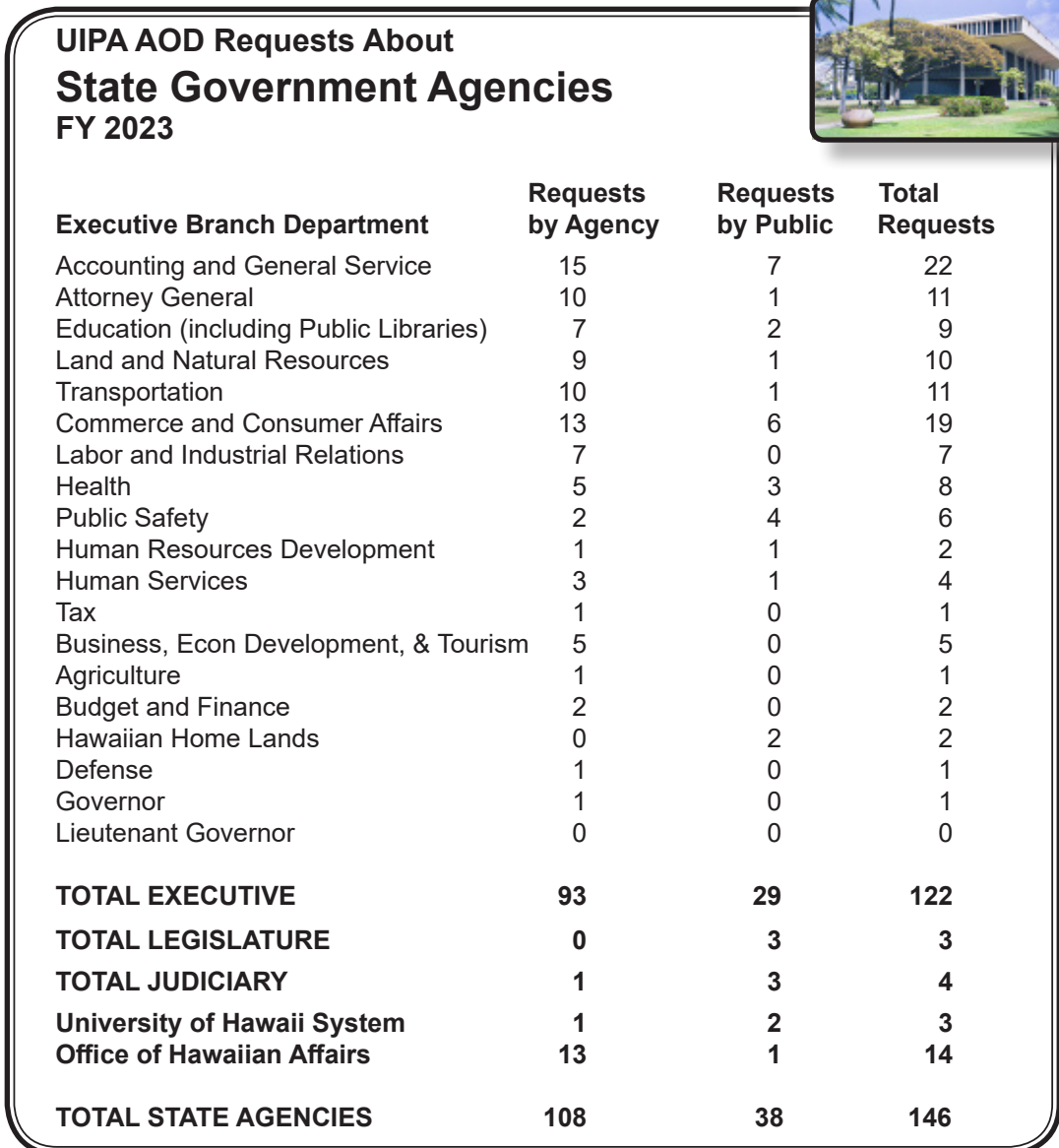


Figure 10

**County Agencies**


In FY 2023, OIP received a total of 158 AOD inquiries regarding the UIPA and concerning specific county agencies and boards. Of these, 65 inquiries (41%) came from the public in all counties.

Of the 158 AOD inquiries, 82 inquiries concerned agencies in the City and County of Honolulu, up from 40 in the previous year. *See Figure 11.* As shown below, 50 (61%) of the 82 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 (38), the Department of Budget and Fiscal Services (9), and the Honolulu City Council (7).

OIP received 76 inquiries regarding neighbor island county agencies and boards: Maui County (22), Hawaii County (28), and Kauai County (26), *See Figures 12 to 14.*



**UIPA AOD Inquiries About  
City and County of Honolulu  
Government Agencies - FY 2023**

Department	Requests by Agency	Requests by Public	Total Requests
Police	25	13	38
Budget and Fiscal Services	7	2	9
County Council	5	2	7
Liquor Commission	4	2	6
Environmental Services	2	1	3
Planning & Permitting	0	3	3
Board of Water Supply	2	0	2
Ethics Commission	1	1	2
Fire	0	1	1
Emergency Services	0	1	1
Facility Maintenance	1	0	1
Mayor	0	1	1
Prosecuting Attorney	1	0	1
Parks & Recreation	0	1	1
City Auditor	1	0	1
Unnamed Agency	1	1	2
<b>TOTAL</b>	<b>50</b>	<b>32</b>	<b>82</b>

Figure 11



**UIPA AOD Inquiries About  
Hawaii County  
Government Agencies - FY 2023**

<b>Department</b>	<b>Requests by Agency</b>	<b>Requests by Public</b>	<b>Total Requests</b>
Police	3	5	8
Corporation Counsel	4	0	4
Fire	2	2	4
Public Works	1	3	4
County Council	1	1	2
Planning	2	0	2
Research & Development	0	1	1
Parks & Recreation	1	0	1
Mass Transit	1	0	1
Real Property Tax Office	1	0	1
<b>TOTAL</b>	<b>16</b>	<b>12</b>	<b>28</b>

Figure 12



**UIPA AOD Inquiries About  
Kauai County  
Government Agencies - FY 2023**

Department	Requests by Agency	Requests by Public	Total Requests
Police	6	2	8
County Attorney	8	0	8
Finance	0	2	2
Planning	0	2	2
Public Works	1	0	1
Tax Office	1	0	1
Transportation	1	0	1
Water	1	0	1
Unnamed Agency	1	1	2
<b>TOTAL</b>	<b>19</b>	<b>7</b>	<b>26</b>

Figure 13



**UIPA AOD Inquiries About  
Maui County  
Government Agencies - FY 2023**

Department	Requests by Agency	Requests by Public	Total Requests
Police	3	8	11
County Council	1	2	3
Corporation Counsel	3	0	3
Finance	0	1	1
County Clerk	1	0	1
Mayor	0	1	1
Prosecuting Attorney	0	1	1
Planning	0	1	1
<b>TOTAL</b>	<b>8</b>	<b>14</b>	<b>22</b>

Figure 14



**Sunshine Law Inquiries:**

Since 2001, OIP has averaged more than 321 formal and informal inquiries a year concerning the Sunshine Law. In FY 2023, OIP received a total of 560 Sunshine Law formal and informal inquiries, 18% lower than in FY 2022 and 74% more than the average number of requests received each year. See **Figures 15 and 16**. OIP surmises that this fluctuation in inquiries was the result of Sunshine Law amendments in 2022 and 2023, as well as the conclusion in 2022 of emergency orders suspending Sunshine Law provisions.

Of the total Sunshine Law inquiries made in FY 2023, 549 (98%) were informal AOD requests, and 11 were formal cases. See **Figure 16**.

Of the 549 AOD requests involving the Sunshine Law, 374 were requests for general advice, and 34 were formal complaints. Also, 151 of the 549 AOD requests (27%) involved the requester’s own agency.



Fiscal Year	AOD Inquiries	Formal Requests	Total
2023	549	11	560
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

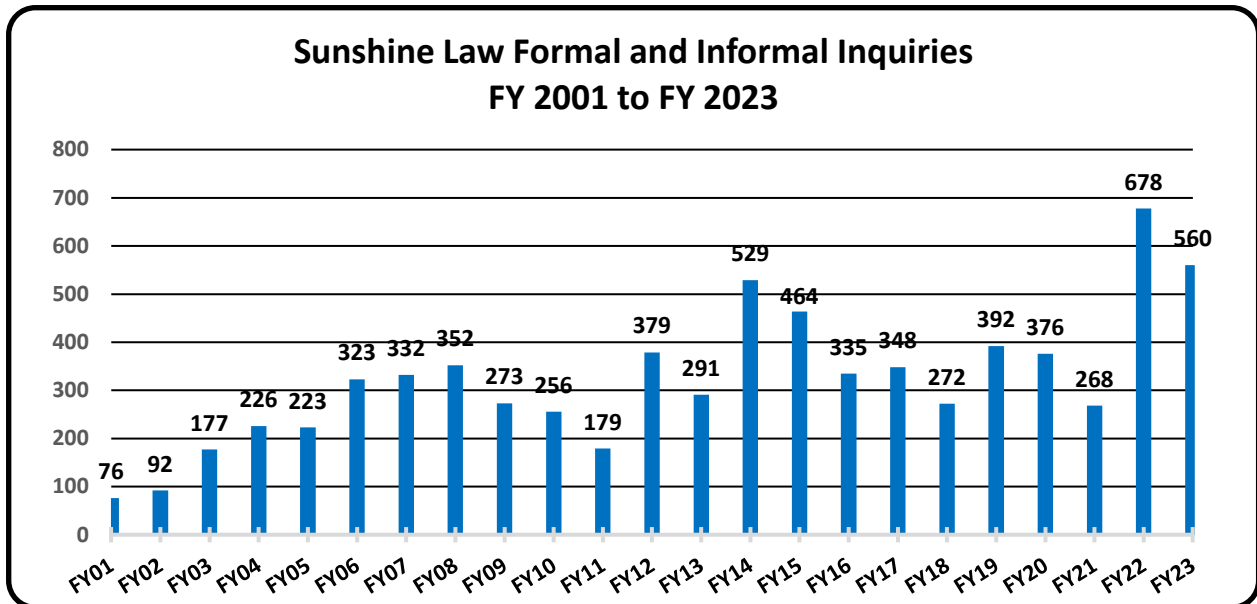


Figure 15

## Formal Opinions

In FY 2023, OIP issued a total of five formal opinions, which are summarized below. The full text versions of the five formal opinions can be found at [oip.hawaii.gov](http://oip.hawaii.gov). In the event of a conflict between the full text and the summary, the full text of an opinion controls.

Four opinions related to the UIPA, while one concerned the Sunshine Law.



### UIPA Formal Opinions:

#### **Inmate Database Information**

*OIP Op. Ltr. No. F23-02*

A requester asked the Department of Public Safety (PSD) for a dataset consisting of selected fields from PSD's Offendertrak correctional database system covering the period from 2000-2018. After initially estimating fees of over a million dollars on the basis that it would have to verify all Offendertrak data against the inmates' institutional files, which Requester had not asked for, PSD dropped its insistence on verifying all information and reduced its fee estimate to \$290 for redactions to a single field after discussion with OIP. The requester amended her request to drop the field to be redacted pending resolution of the appeal, but added inmate names to the requested fields. PSD then asserted that it must check the status of every inmate name in the Hawaii Criminal Justice Data Center's records so it could redact any whose convictions had later been expunged, at a cost of \$5 per name plus additional fees for PSD's time. Following the appeal, OIP ultimately concluded that approximate fees should be \$290 as PSD had earlier estimated, or \$0 if Requester did not seek the "Release To" field of data.

In its opinion, OIP reconsidered its previous precedents concluding that inmate names must be

disclosed without exception to the extent necessary to consider the effect of the statutes allowing expungement of a conviction, which had been adopted after OIP's most recent opinion regarding inmate names. OIP ultimately reaffirmed those precedents in concluding that PSD must disclose correctional directory information, including inmate names and locations, without application of the UIPA's exceptions. HRS § 92F-12(a)(4) (2012). Even though in some instances an inmate may have been either a pretrial detainee who was not convicted, or had a conviction subsequently expunged, the limitation on dissemination of nonconviction data in section 846-9, HRS, does not override the UIPA's disclosure mandate for correctional directory information because disclosure of correctional directory information still gives effect to the purposes of both the UIPA and chapter 846, HRS. Alternatively, if section 846-9, HRS, was irreconcilable with the disclosure mandate for correctional directory information in section 92F-12(a)(4), HRS, the UIPA provision would be favored as the more specific law regarding correctional directory information.

OIP further concluded that PSD has no duty under the UIPA to ensure the accuracy and completion of information in its Offendertrak system or its other records. Because it has no duty to do so, PSD cannot delay responding to a record request to verify the accuracy and completion of the information in the requested records, or charge a requester for its time and costs incurred in doing so. OIP also concluded that a specified set of fields for all inmates in Offendertrak for a



specified year or years is readily retrievable by PSD. HRS § 92F-11(c).

Finally, OIP concluded based on the UIPA's privacy exception that PSD could redact from the "Release To" field personal contact information of inmates and third parties, information revealing the marital and familial status of inmates and third parties, and program or facility names or other information showing the specific location where an inmate fully released from PSD custody will be living. See HRS § 92F-13(1) (2012) (setting out exception for information whose disclosure would be a clearly unwarranted invasion of personal privacy). However, PSD did not establish that the UIPA's frustration exception applies to information in the "Release To" field, so it could not withhold information on that basis. See HRS § 92F-13(3) (2012) (setting out exception for information whose disclosure would frustrate a legitimate government function). OIP also concluded that in addition to being overbroad, PSD's redactions were done incorrectly, and OIP provided additional guidance on how to properly redact electronic information.

### **Name of Student Members Serving on Admissions Committee for William S. Richardson School of Law**

*OIP Op. Ltr. No. F23-03*

An anonymous requester made three separate requests to the University of Hawaii (UH) for records showing the names of all students and faculty serving on the UH William S. Richardson School of Law Admissions Committee (Admissions Committee) for the 2019-2020 through 2022-2023 school years. UH provided the faculty names but denied access to the student names under the UIPA's sections 92F-4 and 92F 13(1) and (4), HRS, and the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.

section 1232g, and rules promulgated thereunder. Requester filed three appeals of UH's three denials, which OIP consolidated in this opinion.

OIP previously concluded in OIP Opinion Letter Number 89-9 (Opinion 89-9) that names of faculty and student members of the Admissions Committee may not be withheld under the UIPA's privacy or frustration exceptions at section 92F-13(1) and (3), HRS. OIP treated UH's responses to the appeals as a request for reconsideration of Opinion 89-9. OIP partially granted the reconsideration request based on a change in the law and compelling circumstances. Hawaii Administrative Rules (HAR) § 2-73-19.

The conclusions in Opinion 89-9 regarding the applicability of the privacy and frustration exceptions at section 92F-13(1) and (3), HRS, were not reconsidered in this opinion. However, section 92F-4, HRS, which was enacted after Opinion 89-9 was issued, allows agencies to waive compliance with the UIPA when doing so is necessary to avoid losing federal funding or other services. Based on this change in the law, OIP reconsidered its ultimate conclusion in Opinion 89-9 that student names may not be withheld. UH is an agency that receives funding under FERPA, which provides that funds shall not be made available to an educational institution that has a policy or practice of permitting the release of education records without written consent. 20 U.S.C. § 1232g(b)(1). Based on advice from the U.S. Department of Education which administers FERPA, OIP found that the names of student members are part of their education records under FERPA, and thus concluded that UH may deny access to the student names under section 92F-4, HRS, in order to prevent jeopardizing its federal funding under FERPA. This opinion did not change OIP's prior conclusions in Opinion 89-9 that names of faculty and student members of the Admissions Committee may not be withheld under the UIPA's privacy or frustration exceptions.

## Attorney-Client Privileged Communications

*OIP Op. Ltr. No. F23-04*

A record requester (Requester) made a request for copies of communications between the County of Maui Department of the Corporation Counsel (CORP CNSL-M) and its clients regarding the drafting of a bill. CORP CNSL-M partially granted and partially denied the record request, stating that the records it was withholding were protected by the attorney-client privilege and the attorney work product doctrine. Requester declined to pay the estimated fees and costs for the part of the record request that was granted and appealed the partial denial to OIP.

In its response to the appeal, CORP CNSL-M argued that because Requester declined to pay the estimated fees and costs for the portion of the record request that was granted, CORP CNSL-M was not required to respond to the record request. However, the payment of fees is not a prerequisite to filing an appeal and the right to appeal a denial of a record request is independent of a requester paying fees and costs for the part of a record request which is granted. OIP concluded that CORP CNSL-M was required to respond to Requester's appeal.

Upon *in camera* review of the records withheld by CORP CNSL-M, OIP found that most redactions made by CORP CNSL-M were either communications made for the purpose of facilitating the rendition of professional legal services between CORP CNSL-M and the employees of the departments and agencies of the County of Maui that CORP CNSL-M serves, or drafts of documents prepared by CORP CNSL-M for its clients. OIP concluded that except for a few specific exceptions, the information withheld by CORP CNSL-M was protected under the attorney-client privilege and the redactions were therefore proper.

OIP further concluded that the attorney work product doctrine was inapplicable to this case. When the attorney work product doctrine applies

to record requests, it does so through the exception for records pertaining to litigation to which the State or a county is or may be a party. Upon *in camera* review of the records, OIP found that the records in question do not appear to have been prepared in anticipation of litigation and instead appear to have been prepared in the ordinary course of business.

## Records Relating to Request for Proposals

*OIP Op. Ltr. No. F23-05*

A requester appealed the Department of Land and Natural Resources (DLNR)'s denial of his request for records relating to a request for proposals (RFP) regarding the Ala Wai Small Boat Harbor. He sought the names of selection committee members, the names of proposal submitters, a list of meetings between proposal submitters and a specified employee, and correspondence between proposal submitters and the same employee.

Preliminarily, DLNR argued that the requester's abandonment of a previous request absolved DLNR of the need to respond to the request at issue. OIP concluded that although a requester's abandonment of a request relieves an agency of further responsibility to respond to the specific request that was abandoned, it does not relieve the agency of further responsibility to respond to any future requests from the same requester, even if those requests overlap with the abandoned one. A requester is entitled to abandon one request and instead make a new request, which may be the same, may be narrower, or as in this case, may be broader.

DLNR also argued that some of the requested lists were not maintained by it as lists and would require creating a compilation or summary of information that was not readily retrievable. OIP found that a list of selection committee members and of proposal submitter names would be readily retrievable by DLNR in the form requested, and

OIP concluded that unless an exception to disclosure applied (as discussed separately) DLNR must compile and disclose the requested information. However, OIP found that the requested list of meetings with related information would not be readily retrievable by DLNR, and thus concluded that DLNR had no duty under the UIPA to create such a list in response to Requester's request.

OIP concluded that the names of the agency employees serving as selection committee members could not be withheld under the UIPA's frustration exception and must be disclosed, and because a list of selection committee members is reasonably retrievable, DLNR was required to create and disclose such a list. HRS § 92F-13(3). However, OIP also concluded that DLNR was authorized to withhold the identities of proposal submitters to avoid the frustration of a legitimate government function, so DLNR was not required to create a compilation or summary of that information. OIP further concluded that DLNR was authorized under the frustration exception to withhold information in correspondence that would identify a proposal submitter (including the name and contact information for the submitter's attorney) and other information from the proposal (including references to other companies). Finally, OIP found that the information was reasonably segregable and concluded that DLNR must provide Requester with a redacted version of the correspondence.

## **Sunshine Law** **Formal Opinion:**

### **Permitted Interactions; Interactive Conference Technology; Board Packets; and Related Sunshine Law Questions**

*OIP Op. Ltr. No. F23-01*

The appellant was a member of the State Council on Mental Health (SCMH) at the time she filed two appeals alleging multiple violations of the Sunshine Law by the SCMH. The allegations primarily involved the Sunshine Law's provisions on investigative permitted interaction groups (PIGs), meetings held by interactive conference technology (ICT), and board packets. OIP's main holdings are as follows.

**PIGs May Continue Work After Loss of a Member:** An investigative PIG formed under section 92-2.5(b)(1), HRS, may continue with its assignment if it loses a member, so the SCMH's PIG set up to plan its board retreat (Retreat PIG) was able to continue work after losing a member whose term on the SCMH ended.

**Boards May Not Add New Members or Issues to Existing PIGs:** A board may not add new members or issues to an existing PIG. An investigative PIG must report to the full board, after which it is in effect dissolved, and the board must wait until a subsequent meeting to discuss or act on the matter the PIG was handling, as required by section 92-2.5(b)(1), HRS.

**PIGs Automatically Dissolve After Reporting Once and Cannot Continue to Work:** After the Retreat PIG reported at the June 2019 meeting and was effectively dissolved, the SCMH violated the Sunshine Law by not treating the Retreat PIG as dissolved and instead allowing it to continue to work outside of the Sunshine Law's constraints.

**Boards May Not Discuss and Take Action Immediately After a PIG Reports, But Must Wait Until a Future Meeting:** The SCMH violated the Sunshine Law by taking immediate action to add members and issues to the Retreat PIG at its June 2019 meeting after the Retreat PIG reported at that same meeting. Similarly, the SCMH violated the Sunshine Law at its October 2019 meeting by adding a member to a Retreat Planning PIG that had been previously established at the September 2019 meeting.

**Discussion and Action on an Item at the Same Meeting is Usually Allowed:** Except when a board has established an investigative PIG, the Sunshine Law does not prohibit a board from both discussing and taking action on an issue during a single meeting, regardless of a board's normal practice. Therefore, the SCMH did not violate the Sunshine Law when it discussed and took action on a retreat facilitator at the same meeting.

**“Informational Meeting” Without a Quorum Is Not Allowed Under Sunshine Law:** This issue was not raised by Requester, but the SCMH held what it called an “informational meeting” on more than one occasion when it did not have quorum. If a board does not have a quorum, it cannot hold a meeting, even if the members do not vote to take any actions. There is no permitted interaction in section 92-2.5, HRS, that allows less than a quorum of members to set up an “informational meeting” in lieu of a regular board meeting when a board does not have a quorum present at a meeting. However, when the SCMH failed to achieve or lost quorum, it could have proceeded under the permitted interaction at section 92-2.5(d), HRS. When a meeting must be canceled for lack of quorum, or terminated due to a loss of ICT connections, section 92-2.5(d), HRS, allows board members to receive testimony and presentations on agenda items and to question the testifiers or presenters, but it does not allow those members to discuss items on the canceled meeting's agenda among themselves.

**Meetings by Interactive Conference Technology (ICT):** This section discusses section 92-3.5, HRS, as it read in 2019. It was substantially amended by the Legislature in 2021. The SCMH failed to follow some requirements for holding an ICT meeting under section 92-3.5, HRS, on more than one occasion. These included ICT meetings where a temporarily disabled member properly attended from home but failed to note his general location or whether anyone else was present, and another ICT meeting that continued after the audio connection at a noticed location failed. However, it was not a violation of section 92-3.5, HRS, when a meeting proceeded with a noticed location that had no SCMH member present but was open and operational for the public.

The SCMH held an ICT meeting on March 10, 2020, which OIP found did not need to be cancelled due to loss of connection to a remote meeting site because the meeting minutes show that connectivity was only lost for three minutes. However, when the appellant, who was an SCMH member, left the meeting during the recess while the ICT connection was being restored, the SCMH lost quorum, which effectively ended the meeting. The subsequent discussion of “for information” agenda items by the remaining SCMH members was in violation of the Sunshine Law for the same reasons explained above.

**No Violation of Board Packet Law When All Members Were Sent Electronic Copies, But Not Given Hard Copies at the Meeting:** The SCMH did not violate the Sunshine Law's board packet requirements at section 92-7.5, HRS, when it emailed facilitator proposals but did not circulate paper copies to the members before a meeting, when it allowed a presentation to proceed without distributing handouts in advance, or when it discussed a draft brochure that had not been provided in advance of the meeting.



## Informal Opinions

In FY 2023, OIP issued eight informal opinions. Summaries of these informal opinions are provided below and can also be found at [oip.hawaii.gov](http://oip.hawaii.gov). 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 Legislators' Home Addresses

*UIPA Memo 23-01*

Requester asked the Reapportionment Commission (Commission) for copies of documents that included or referenced the home addresses of currently elected members of the State House of Representatives or the State Senate. The Commission denied the request on the basis that the requested records did not exist. Requester appealed the denial to OIP.

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 request." *Id.* at 5 (citations omitted).

Based on the evidence provided, OIP found that the Commission conducted a reasonable search of its records for responsive records and could not locate such records. OIP therefore concluded that the Commission properly responded to Requester that it does not maintain the requested records.

#### Pending Investigation

*UIPA Memo 23-02*

The Department of Agriculture (DOA) denied access under Part III of the UIPA (Part III) to various records about certain complaints that were either filed by or against a former employee (Requester). After DOA conducted its administrative investigation into alleged violations by Requester of DOA's Workplace Violence Action Plan, it notified Requester that the investigation had been completed and summarized its findings. On Requester's behalf, the Hawaii Government Employees' Association (HGEA) filed a grievance regarding DOA's findings and then filed an Intent to Arbitrate, which was still pending when DOA responded to requester's record request.

Because Requester's grievance was awaiting arbitration and thus was unresolved at the time of Requester's request and DOA's response, OIP found that the requested records were part of an ongoing administrative proceeding at the time Requester made his request, and the information withheld would potentially have given him new information about what DOA knew or was considering in the investigation. OIP therefore concluded that the information was properly withheld at the time DOA responded based on the ongoing administrative proceeding, whether analyzed under the UIPA's frustration exception, section 92F-13(3), HRS (to the extent the records were general government records), or its ongoing administrative proceeding exemption, section 92F-22(4), HRS (to the extent the records were Requester's personal record).

## No Duty to Search for Land Court Records

*UIPA Memo 23-03*

Requester asked the Bureau of Conveyances (BOC) for copies of documents related to a property registered in the Land Court of the State of Hawaii (Land Court). BOC denied the request on the basis that the requested records were either maintained by the Land Court, or were not recorded and thus were not maintained by BOC.

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 request." *Id.* at 5 (citations omitted). However, in rare cases, an agency's staff may have actual knowledge that the type of record requested was never created or is not maintained by the agency. In such cases, an agency may be absolved from having to conduct a search reasonably likely to produce the requested records, because the agency's staff have actual knowledge that no search is likely to produce such records. See OIP Op. Ltr. No. F16-03.

OIP found that, based on the evidence provided, BOC had actual knowledge that it did not maintain any documents responsive to Requester's record request, and that such documents were either maintained by the Land Court or were not recorded at the time the request was made. Therefore, OIP concluded that BOC was absolved from having to conduct a search likely to produce responsive records.

## Reasonable Search for Solid Waste Stream Records

*UIPA Memo 23-04*

A member of the public appealed the response by the Office of the County Clerk for the County of Hawaii (Clerk's Office) to her request for records pertaining to the county's solid waste stream under Part II of the UIPA.

The Clerk's Office had responded by telling the requester to contact a different agency for assistance and providing the agency's contact information, including the street address and telephone and fax numbers. Although the requester argued that the Clerk's Office failed to tell her where to submit a written request, OIP found that the Clerk's Office had in fact given her that information. OIP concluded that the Clerk's Office followed the UIPA's procedural requirements for an agency responding to a request by asserting that it does not maintain the requested records and had included the non-mandatory step of providing the name and contact information for the agency it believed may maintain the requested records. OIP further concluded that because a supervisor at the Clerk's Office had actual knowledge that the Clerk's Office did not maintain the requested records, the Clerk's Office was not required to search its office for records relating to Hawaii County's solid waste stream.

## Requests for Solid Waste Records

*UIPA Memo 23-05*

A member of the public (Requester) made record requests to the County of Hawaii Department of Environmental Management (DEM-H) on June 2, 23, and 24, 2020. DEM-H provided several records in response to the requests, but Requester appealed based on her belief that DEM-H had denied access to additional records that it could have found with sufficient search. OIP considered the adequacy of DEM-H's response to each request

separately and ultimately concluded that DEM-H properly responded to all requests.

OIP found that DEM-H’s reading of the request made on June 2 was a reasonable one, and that the spreadsheet it provided in response was a concise presentation of the information Requester asked for: current figures for how much solid waste was generated annually and how much of it was plastic. OIP therefore concluded that DEM-H properly responded to the request made on June 2. HRS § 92F-11 (2012).

DEM-H understood the request made on June 23, 2020, to be for the breakdown of plastics by type, based on the waste characterization study done in 2008, which was the most current information on the breakdown of types of waste in the waste stream. OIP found that to be a reasonable reading of the request, and further found that DEM-H did in fact provide Requester with the waste stream records broken down by types of plastic that it maintained in the form of an online report that summarized the 2008 information in the body of the report and included the breakdown figures as an attachment. OIP therefore concluded that DEM-H properly responded to the request made on June 23. HRS § 92F-11.

The request made on June 24, 2020, was for “a copy of public records related to the data collected for the above linked report,” referring to the online report provided in response to the previous request. DEM-H responded by advising that it did not maintain the requested records. OIP found that DEM-H correctly understood the request to be for data collected in 2019 on the breakdown of plastics by type in the waste stream. OIP found that in addition to the search DEM-H asserted it made, DEM-H had actual knowledge that no waste characterization data had been collected in 2019. Because no 2019 waste characterization data existed, whether in DEM-H’s possession or the possession of a contractor, OIP found that DEM-H did not maintain the requested records. OIP therefore concluded that DEM-H responded properly by advising Requester in writing that it did not maintain the requested records. HRS § 92F-11.

## Investigation Records About Requester Were Protected as Attorney Work Product

### *UIPA Memo 23-06*

A former Office of Hawaiian Affairs (OHA) employee (Requester) sought records of a consultant’s investigation of internal complaints about him. OIP found that although Requester sought his personal records, both versions of the investigation report and related documents were prepared or obtained because of the prospect of litigation and were therefore “prepared in anticipation of litigation,” with limited exceptions. OIP also found that the documents were prepared or obtained by the consultant on behalf of OHA’s attorney. OIP concluded that these records are protected by the attorney work product doctrine and thus may be withheld from Requester under section 92F-22(5), HRS. OIP also concluded that to the extent any factual information contained in the consultant’s reports were previously disclosed to Requester, such information is not protected by the attorney work product doctrine and must be disclosed under Part III of the UIPA.

Excerpts from OHA’s Employee Handbook, information from the U.S. Equal Employment Opportunity Commission and U.S. Department of Labor websites, and coversheets that the consultant used to label and separate the attachments to the report are not personal records and were not “prepared in anticipation of litigation,” so are not protected by the attorney work product doctrine as recognized under the UIPA. Because OIP did not find that any other exceptions applied to these records, OIP concluded they must be disclosed as government records under Part II.

## Disclosure of Executive Session Minutes

*UIPA Memo 23-07*

This was an appeal from a denial by the State Public Charter School Commission (PCSC) for a copy of its minutes of an executive session, on the basis that the entire executive session was devoted to its discussion with its counsel on matters pertaining to PCSC's powers, duties, privileges, immunities, and liabilities.

Upon review of the minutes for the public portion of the meeting and *in camera* review of the minutes for the executive session, OIP found that PCSC properly convened its executive session and that the executive session consisted of a discussion between PCSC and its attorney on questions and issues pertaining to PCSC's powers, duties, privileges, immunities, and liabilities regarding a properly noticed agenda item. OIP therefore concluded that PCSC was properly in executive session for the discussions with its attorney under HRS section 92-5(a).

OIP further concluded that disclosure of the discussion between PCSC and its attorney during the executive session would frustrate the purpose of the executive session and could be withheld, but that some portions of the executive session minutes were nonsubstantive and should be disclosed.

OIP also found, *sua sponte*, that the executive session minutes did not convey a true reflection of the matters discussed and the views of the participants and thus found that the minutes were not sufficiently detailed to meet the Sunshine Law's requirements under HRS section 92-9. OIP concluded that PCSC must create a new set of minutes for the executive session that includes omitted information, to the best of PCSC's ability. Although a new request for the revised minutes could be made, OIP noted that PCSC would not automatically be required to provide a redacted copy of the rewritten minutes as the greater detail in the minutes is likely to more clearly justify PCSC's withholding them based on its attorney-client discussion.

## 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 2023, as summarized below.

### **Amending an Agenda to Discuss Issue That Was Not Currently Board Business**

*Sunshine Memo 23-01*

Due to widespread community opposition to the liquor license renewal of Maunakea Liquor (ML), the Honolulu Liquor Commission (LIQC-HON) initiated administrative action in May 2019. During the same month, Downtown-Chinatown Neighborhood Board 13 (NB 13) took action and sent a letter to LIQC-HON expressing its members' unanimous request to revoke ML's license.

At NB 13's September 2019 meeting, LIQC-HON representatives attended, so NB 13 voted to add LIQC-HON to that meeting agenda and discussed the status of the ML liquor license proceedings. Unbeknownst to NB 13, before the September meeting, LIQC-HON had already renewed ML's license and dismissed the administrative action.

The Requester questioned whether NB 13 had properly amended its September meeting agenda to add LIQC-HON and discussed the status of the ML liquor license. OIP concluded that because NB 13 had previously taken action in May and its discussion of ML's license at the September meeting did not involve a matter of current board business, no Sunshine Law violation occurred.

As OIP explained, whether an issue is board business depends not only on whether the matter is within the board's area of responsibility, but also on whether the issue is one that the board is considering at the present time or expects to be



considering soon enough that it is foreseeable. An issue that a board has considered in the past but that it does not expect to reconsider in the foreseeable future is not current board business, whether the issue has concluded altogether (such as approval for a now-completed development) and the board does not expect to ever consider it again, or the issue is one that has concluded for the present but periodically recurs (such as approval of a board's biennium budget) and the board does not expect to consider it again until a substantial amount of time has passed and the specifics of the issue are likely to have changed.

At one point in this case, ML's legal proceedings pending before LIQC-HON clearly did constitute a specific matter over which NB 13, as its community's representative, had advisory power, and which NB 13 both considered and acted on at its May meeting when it decided to submit a letter to LIQC-HON expressing its unanimous objection to the renewal of ML's license. However, it does not necessarily follow that just because ML's license renewal was NB 13's board business when NB 13 acted on it in May, it remained board business at the time of the September meeting.

OIP found that NB 13 had already taken action in May by writing to notify LIQC-HON of its opposition to ML's liquor license renewal. Although NB 13's members were understandably interested in hearing the outcome of LIQC-HON's proceedings, OIP found that ML's licensure was no longer a matter pending before NB 13 at the September meeting, nor was there any indication that ML's license was reasonably anticipated to arise before it again in the foreseeable future. Thus, OIP concluded that ML's liquor license was not board business for the purpose of the Sunshine Law, and the board's discussion of this matter did not violate the law's provisions.

Although OIP concluded that the issue of ML's license was not NB 13's board business at the time of the September meeting, OIP noted that the issue is a cyclical one that can be expected to regularly arise before NB 13 whenever ML's license comes up for renewal or is considered by LIQC-HON in connection with an administrative action. Consequently, OIP also discussed

the Sunshine Law's requirements for amending an agenda at a meeting and cautioned NB 13 to not add an item that "is of reasonably major importance" and where board action will "affect a significant number of persons" in violation of section 92-7(d), HRS. As the ML liquor license remains of considerable concern to the community and will likely come before NB 13 when the license is up for renewal in the future, OIP advised the board to properly file advance notice of the issue on an agenda, rather than attempt to amend the agenda at a meeting as it did in this case.

OIP also examined section 92-81, HRS, a statute that applies exclusively to neighborhood boards and is one of several limited exceptions to the Sunshine Law. Section 92-81, HRS, allows members of the public to give input on matters even if they are not listed on an agenda, and further allows a discussion of those matters raised at a neighborhood board meeting. OIP found, however, that section 92-81, HRS, only allows members of the public to initiate discussion of an item that is not on the agenda. Because the topic of ML's liquor license was raised by NB 13's members and not by LIQC-HON or members of the public, this exception to the Sunshine Law did not apply.



## 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 2023.

### **UIPA Guidance:**

#### **Identifying Redacted Information**

An agency received a record request for many documents and was asked to provide for any withheld information: (1) a detailed list of what was withheld, (2) a page count, (3) a description of documents withheld, and (4) the basis for withholding. The agency asked OIP whether it needed to provide a list of the information withheld per document and the basis for non-disclosure, or whether it was sufficient to provide a general list of all the information redacted from the documents and the basis for the non-disclosure.

OIP advised that when an agency is denying access to all or part of a record, the notice to requester must identify: (a) the specific record or part that will not be disclosed; and (b) the exception under section 92F-13, HRS, that allows withholding (and any other applicable laws) and a brief explanation of why the agency cited that exception. Hawaii Administrative Rules (HAR) § 2-71-14(b).

OIP also advised that the UIPA does not require creation of what in federal Freedom of Information Act requests is referred to as a “Vaughn index” (index that describes each document that has been withheld and a detailed justification for non-disclosure) or a discovery privilege log. Thus, as long as the agency is able to comply with section 2-71-14(b), HAR, it is not required to provide the requester with a list of information withheld and the basis for non-disclosure for each document, or a page count. It should be sufficient to provide a general list of all information redacted from the documents and the basis for the non-disclosure. However, if the requester appeals a denial of access, the agency will need to provide a more complete justification for the nondisclosure to meet its burden of proof. HRS § 92F-15(c).



#### **Personal Information of Third Parties**

An agency asked OIP whether there were any documents that a record requester would not have access to if the requester asked for a copy of their file. The agency specifically gave landlord personal information as an example of information it would like to withhold. OIP explained that, in general, the UIPA does not deny access to records. Rather, the UIPA requires agencies to disclose records and then sets out specific exceptions and exemptions under which an agency is allowed to withhold some records from record requesters. If an agency wishes to withhold a particular record from a requester, then the agency must cite the specific exception that would allow it to withhold the record under section 92F-13, HRS, or other laws. If the record in question is a personal record – a record “about”

the requester – then the agency must cite the specific exemption found under section 92F-22, HRS, that would allow it to withhold the record. The personal information of a third party found in what would otherwise be a requester’s personal record, such as a landlord’s personal information, would likely not be considered information “about” the requester, and thus, would not be part of the requester’s personal record. Therefore, an agency might be able to withhold or redact such information under the clearly unwarranted invasion of personal privacy exception found in section 92F-13(1), HRS, depending on the nature of the information. In most circumstances, an individual’s personal contact information, social security numbers, date of birth, or other such information may be withheld or redacted from records to avoid a clearly unwarranted invasion of personal privacy. For business contact information, however, an individual generally does not have a significant privacy interest.

## **Applicant Questionnaire**

A media outlet asked for the questionnaire an agency provided to applicants for a position it was actively recruiting for. The questions are reused every time the agency recruits for this position, most recently more than five years ago. The agency asked OIP whether it would be justified in denying access to the questionnaire so its human resources staff would not have to come up with a new set of questions every time it recruits for the position.

OIP advised that the questionnaire could likely be withheld under the UIPA’s exception for records whose disclosure would frustrate a legitimate government function, section 92F-13(3), HRS. OIP previously concluded in OIP Opinion Letter Number 94-08 that a set of interview questions used by an agency in recruiting fell within the frustration exception, and the applicant questionnaire serves a similar purpose and its disclosure would have a similar effect.

## **Rate of Denial of UIPA Requests**

An agency in the process of completing its UIPA log asked OIP whether it was required or encouraged to keep its rate of denial of UIPA requests below a set point. The agency noted that it often received requests for incident reports that were not yet completed at the time of the request and such requests were therefore denied.

OIP advised that the UIPA does not require agencies to keep their rate of denial of UIPA requests below a specified limit, and that given the nature of the records kept by different agencies and the variability in the type and number of record requests made, it is not surprising that there is also variability in what percentage of an agency’s UIPA requests are denials. OIP also suggested that in this instance it would be helpful for the agency, when denying a premature request, to remind the requester that they can follow up with a subsequent request when the still-opened investigation is completed.

## **Electronic Records on Damaged Hard Drive**

An agency found that some of the records responsive to a request it received were in electronic form and stored on an employee’s hard drive that had been damaged when the employee’s equipment was updated. The agency was attempting repair and retrieval, but asked OIP how it should respond to the request if the information could not be retrieved.

OIP advised that the UIPA does not require an agency to provide records it does not have. Thus, if the agency itself is unable to retrieve some of the responsive records for a request – whether due to corruption or loss of electronic files, damage to or loss of physical files, or some other reason – the agency can properly respond that it cannot provide those records because it no longer maintains them. In such a situation, the agency may wish to explain why the records

are no longer maintained to help prevent questions about why the agency claims not to have them. In this case, that would mean explaining that the records were stored on a hard drive that was damaged such that the agency's attempts at retrieval were unsuccessful.

## **Access to Video Footage and Photos of Red Light Violators**

A reporter requested access to videos and photos of individuals who challenged their citations for red light violations from a state agency. OIP advised the agency to evaluate whether any of the exceptions to disclosure of government record found in section 92F-13, HRS, apply.

Based upon the information provided, OIP saw no exceptions to disclosure that would allow the agency to withhold the video and photo images. First, the violations occurred on a public road where other drivers and pedestrians could witness the incident, and there could be other traffic cameras that can be viewed livestream or shown online. Section 92F-13(1), HRS, provides an exception for "[g]overnment records, which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy," but it is unlikely that there would be a significant privacy interest in video footage or a photo of a vehicle that crosses an intersection, even if the footage shows the license plate and the driver's face was visible.

Second, although the videos may pertain to the prosecution of a judicial action to which the State or county may be a party under section 92F-13(2), HRS, the videos and photos may be discoverable in the action. Additionally, according to the information provided to OIP, registered owners are given immediate access to the videos and photos and therefore, the exception under section 92F-13(2), HRS, would not likely apply.

Finally, it is unlikely that videos and photos should be kept confidential to avoid "the frustration of a legitimate government function" under

section 92F-13(3), HRS. Publicizing video footage or photos of individuals running red lights would not likely prevent or undermine the enforcement of violators. In fact, publication of the footage may serve as an additional deterrent from anyone who may be tempted to run a red light.

## **Verifying the Identity of a Personal Record Requester**

An agency responding to a personal record request asked whether the identity of the requester should be verified before information is disclosed to avoid disclosure of personal information to a third party. OIP advised that since Part III of the UIPA, which governs disclosures of personal records, provides greater access rights to individuals to whom a government record pertains, a responding agency should confirm that a personal record request contains sufficient evidence that the person making the request is who he or she purports to be.

Currently, OIP has no formal rules for personal record requests. However, in OIP Opinion Letter Number 90-29, OIP suggested that an agency may require a personal record requester to present a Hawaii driver's license or state identification, or it may require the requestor to have the written request acknowledged before a notary.

## **Agency Communications with Deputies Attorney General**

An agency responding to a government record request asked whether communications between the agency's staff and deputies of the Department of the Attorney General are exempt from disclosure under section 92F-13, HRS.

OIP advised that attorney-client privileged communications generally may be withheld from disclosure, which was discussed in OIP Opinion Letter Nos. F14-01 and 91-23. Agencies are allowed to withhold records containing attorney-client privileged communications under the UIPA

exceptions to disclosure at section 92F-13(2) (for government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable) and section 92F-13(3), HRS (for government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function).

Information that is part of a pending civil or criminal investigation may also be withheld from disclosure under the frustration exception at section 92F-13(3), HRS.

## **Estimating UIPA Fees and Costs**

An agency asked for the best method to estimate fees for a pre-payment of a complex request. OIP does not provide a “best method” because there are many different types of records and methods of storing records, so what works best in one situation might not in another. OIP provided the agency with a link to [OIP’s Informal Guide to Processing Large or Complex UIPA Record Requests](#) on OIP’s Training page at [oip.hawaii.gov](http://oip.hawaii.gov), where there is some guidance to estimate fees.

## **Sunshine Law Guidance:**

### **More than a Quorum of Board Members Attending Conference**

A board’s staff member indicated that board members were interested in attending a conference in the future, and asked whether there are any concerns about Sunshine Law violations if multiple board members attended the same conference and sometimes participated in group events together.

OIP explained that if no “board business” as defined in section 92-2, HRS, will be discussed, then any number of them may attend a conference. However, if they do expect business of their own board to be discussed at the conference, then a quorum of members may not attend unless it is a properly noticed meeting that allows the public to attend and testify and meets all other requirements of the Sunshine Law. OIP acknowledged, however, that many parts of a conference may not necessarily include a discussion of board business. Thus, if members refrain from discussing board business at the times when they are all together, such as during breaks or lunch with the keynote speaker, it may be possible for more than a quorum of members to attend a conference.

When board business is discussed at a conference, such as during break-out sessions, then less than a quorum of members may be allowed to attend those sessions under the Sunshine Law’s “permitted interactions,” three of which may potentially apply here.

First, section 92-2.5(a), HRS, allows two board members to discuss board business, without limitation, so long as they do not make or seek a commitment to vote and do not constitute a quorum of their board.

Second, two or more members of a board, but less than a quorum, are allowed under section 92-2.5(e), HRS, to attend an informational meeting or presentation on matters relating to official board business, including a convention or seminar, provided that it is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves, provided that the discussions occur during and as part of the informational meeting and that no commitment relating to a vote on the matter is made or sought. At the next board meeting, the members who attended the informational meeting are required to report their attendance and the matters presented and discussed that related to official board business at the informational meeting.

Third, two or more members of a board, but less than the number of members which would constitute a quorum, may be assigned to investigate a matter relating to the official business of their board as a “permitted interaction group” or “PIG,” as set forth in section 92-2.5(b), HRS. The PIG statute contains several procedural requirements that an investigatory PIG must follow. Importantly, this law requires that an investigatory PIG be set up at a board meeting, that it report back at a second meeting, and that the board refrain from discussing or taking action on an investigatory PIG report until a third meeting.

### **Using an Investigatory Permitted Interaction Group to Orient New Board Members**

A board’s staff member sought clarification on the Sunshine Law’s provisions on permitted interaction groups (PIG) because the board was considering the creation of a new PIG every time a new member is appointed. Staff explained that onboarding/orientation is very important in supporting each new member, in getting to know each new member’s strengths and motivation for becoming a member, and in tailoring tips to be effective based on the experiences of longer serving members. Staff explained that the board envisioned that PIG work will not take more than one meeting and will not take more than three members, but it will be different set of PIG members every time there are new board members to spread the work evenly.

OIP advised that it is possible to create an investigatory PIG for this purpose, but it will take three properly noticed meetings to (1) establish the PIG, (2) receive the PIG’s report, and (3) discuss and take board action, as described more fully in OIP’s [Quick Review: Who Board Members Can Talk To and When \(Part 3\)](#), which can be found on OIP Training page at [oip.hawaii.gov](http://oip.hawaii.gov).

OIP also noted that it might be easier and less awkward for the board to assign one person to mentor the new member, and use the two-person

permitted interaction under section 92-2.5(a), HRS, which allows two board members to discuss any board business, without limitation, so long as they do not make or seek a commitment to vote and do not constitute a quorum of the board.

### **Sunshine Law Requirements Regarding Board Packets**

A board member asked OIP what the consequences would be if a board did not distribute a board packet before a meeting, or if a board referred to a board packet distributed before a prior meeting but did not re-publish that previous board packet. The member also asked whether the content of a board packet was public if it contained information intended for use in an executive session.

OIP advised that if a board circulated materials to its members for their review prior to a meeting and those materials were not made available to the public in the manner required by the Sunshine Law, then a member of the public could potentially challenge this by appealing to OIP or to the courts. A “board packet” consists of additional materials distributed to board members prior to a meeting for use at the meeting. The Sunshine Law does not require boards to create board packets, but when a packet is created for the board, section 92-7.5, HRS, requires the board to make the packet available to the public at the time it is distributed to the board members, and no later than forty-eight hours before the meeting. If a board references a board packet for a previous meeting, then so long as the previous board packet was made available in the manner required prior to the previous meeting, the board would have met its Sunshine Law obligations with respect to that previous board packet.

Because section 92-7.5, HRS, defines “board packet” to mean “documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F,” if materials distributed to board members

would not be public under the UIPA then those materials are not considered to be part of the “board packet” and the board is not required to make those materials available to the public. For example, materials meant for board members to review for an executive session might fall under one of the UIPA’s exceptions, such as the exception for records that must be confidential to avoid the frustration of a legitimate government function, and therefore might be considered to not be part of a board packet that the board would be required to make available to the public.

### **Sunshine Law Requirements Regarding Hearing Testimony**

OIP received a complaint from a member of the public alleging that a board’s agenda for an upcoming meeting limited testimony for all agenda items to the beginning of the meeting. OIP advised the board that under the Sunshine Law, boards cannot require that all testimony be taken only at the beginning of a meeting and that the board would also be required to accept testimony on each item as it comes up. The board objected to OIP’s advice because the agenda also had an item labelled “Late Public Testimony on Board Agenda Items” to allow for public input at the very end of the meeting after the board finished discussing all agenda items. OIP pointed out, however, that testimony must be taken before the board’s discussion and deliberation.

### **Discussions to Retain Board Members**

A board has a hard time retaining board members, and one board member in particular has not attended a meeting for most of the last year. The board’s counsel asked OIP how the Chair could reach out to the missing member to find out why he stopped attending meetings, and also ask for other members’ feedback on difficulties encountered in serving as a member, in a way consistent with the Sunshine Law.

OIP advised that the Chair could discuss the issue with any one member outside a board meeting under section 92-2.5(a), HRS, which is the permitted interaction allowing two board members to discuss board business outside a meeting so long as no commitment to vote is made or sought. However, that permitted interaction is limited to two board members, so if the Chair went on to discuss the same issue with other members, even in separate conversations, that would be a serial communication resulting in more than two board members being involved in the overall discussion, and thus would violate the terms of the permitted interaction.

OIP therefore suggested that the board put the topic of “challenges experienced in serving as a member” on an upcoming meeting agenda to obtain feedback from the members generally. Meanwhile, the Chair could use the two-person permitted interaction to speak to the missing member specifically, so as to have that feedback available for the board’s discussion of the topic at its meeting.

### **Newly-Elected Council Members’ Leadership Discussions Prior to New Term**

A county attorney asked whether OIP still followed its 2002 opinion concluding that the Sunshine Law does not apply to newly elected councilmembers prior to the start of the new term for their discussion of council leadership for the new term.

OIP confirmed that OIP Opinion Letter Number 02-11 has not been overruled or narrowed and remains OIP’s standing precedent on this issue. As explained in that opinion, because the Sunshine Law does not yet apply to councilmembers elected to a term of office that has not yet started, it is not illegal for them to privately discuss leadership for the new term before it begins. However, OIP views that result as an unintended loophole in the law, rather than a legislative authorization

or a policy decision that such conversations are consistent with the Sunshine Law's intent and purpose. To remain consistent with the spirit of the Sunshine Law, OIP recommends against taking advantage of the loophole to have a majority of members-elect discuss leadership, even though such discussions are technically legal.

### **Participation in Council Meetings by County Employees and by Invited Outside Experts**

A county council has four categories of participants in its meetings: the councilmembers themselves, the general public, county employees, and people not employed by the county but invited to provide information based on their expertise and familiarity with an issue on the agenda. The council generally does not apply its testimony time limit to invited speakers, since that would go against the purpose of inviting them to share their knowledge and answer councilmembers' questions, but wanted to check with OIP whether there were Sunshine Law considerations affecting invited speakers' participation that it should be aware of. The council also wanted to know whether an invited speaker could participate remotely, and whether county employees could participate remotely, even for an in-person meeting.

OIP advised that the Sunshine Law allows boards to reasonably administer oral testimony by rule. HRS § 92-3. A board's authority to set time limits and otherwise control how testimony is administered comes mainly from that provision, and OIP generally advises that constraints on public testimony should be applied fairly across different members of the public. But that does not necessarily mean identical treatment; for instance, if a board agreed to allow one member of the public to call in to an in-person meeting to accommodate an illness, that would not necessarily mean the board now had to provide every member of the public with a call-in option for in-person meetings. Even when the testimony time limit is being strictly applied, there could be situations where the councilmembers' questions took up most of a public testifier's allotted

minutes, so it would be entirely fair to give that testifier extra time to actually deliver her intended testimony. The important thing is that for the board's administration of oral testimony to remain "reasonable," it should not appear to be full of accommodations for some members of the public and no accommodations for others, especially if the distinction is between people on different sides of an issue.

As for the county employees and the invited speakers, OIP has generally advised that a board can reasonably treat the government employees working on an issue and presenters invited to speak to that issue as a different category from the general public regarding testimony time limits, allowing a remote presentation, and other accommodations. The difference here is that these are subject matter experts who are testifying either at the council's specific request or based on the council's expectation that an agency will show up to answer the council's questions about issues involving that agency. Thus, a board can reasonably take steps to ensure they are able to present relevant information to the board and answer the board's questions, even when that means the agency staff or invited speaker is given more time or allowed to present remotely when a member of the public would not be accommodated in the same way.

### **Public Meetings Held in Buildings Where Identification is Required Upon Entry**

OIP was asked to review a State board's agenda before it was posted to the State Calendar. The agenda stated that members of the public are required to present a government issued ID in order to enter the building and attend the meeting.

OIP noted that the Sunshine Law contains no provision that would allow boards to require registration or identification prior to testifying. Rather, under section 92-3, HRS, boards must "afford all interested persons an opportunity to present oral testimony on any agenda item," and the legislature declared in section 92-1(2), HRS,



that the provisions of the Sunshine Law requiring open meetings must be liberally construed. While the Sunshine Law states that a board “may” provide for reasonable administration of oral testimony by rule, this does not negate the statutory requirement that boards must afford any interested person the opportunity to present oral testimony.

One suggested option was that the board decide to hold its meeting at a location where members of the public may be freely admitted without having to show identification. Another option was for the board to inform the building’s security guards when a public meeting will be held and instruct them to admit anyone who will attend the meeting. If anyone declines to show identification, the security guard may escort that person to the meeting room. Finally, OIP suggested that if there are any non-secured sections of the building, the board may want to hold the meeting there.

the meeting and provide notice of how to reach someone to request an accommodation.

OIP also explained that OIP does not administer the disability access requirements of the federal Americans with Disabilities Act (ADA) or similar laws, and the Sunshine Law does not set any requirements for what sort of accommodations must be provided. The State Disability Communications and Access Board (DCAB) fields questions on what is required under the ADA, and the DCAB’s website includes suggested language for requesting accommodations.



## **Board Meeting Notices Must Include Language on How to Request an Accommodation**

OIP received a complaint from a member of the public regarding a posted meeting notice, which included a telephone number for individuals to call to request an accommodation, such as a sign language interpreter. The complainant called this number twice and got a recorded greeting, but was unable to leave a message.

OIP informed the board’s staff that section 92-7(a), HRS, requires that meeting notices include “instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable[.]” While the notice in this case did include instructions, the fact that someone seeking an accommodation cannot get through to a live person and cannot leave a message could amount to insufficient notice if the phone number goes continually unanswered. OIP cautioned that should the board choose to hold the meeting, it could generate a Sunshine Law complaint to OIP or the courts, so the Board may wish to reschedule

# 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](http://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](http://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 2023, OIP sent out 29 What's New articles. To be added to OIP's What's New email list, please email a request to [oip@hawaii.gov](mailto: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](http://oip.hawaii.gov), where they are updated by OIP as necessary. In FY 2023, 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.

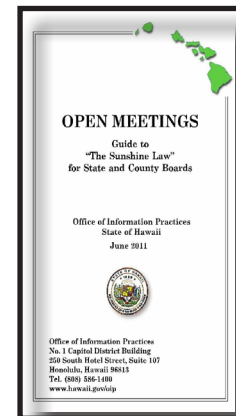
To help the agencies and the public, OIP has created model forms that may be used at various points in the UIPA or Sunshine Law processes.

In FY 2023, OIP released its **Report of the Master UIPA Record Request Year-End Log for FY 2022**, which is summarized later in the Open Data section, beginning on page 53. 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 57.

## 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



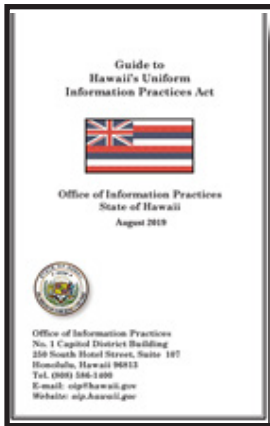
well as the general public and have freed OIP's staff to fulfill many other duties. In early FY 2023, OIP updated its Sunshine Law materials to explain revisions that recently went into effect.

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 frequently asked questions.

In addition to the UIPA Guide, a printed pamphlet entitled *Accessing Government Records Under Hawaii's Open Records Law* explains how to make a record request; the amount of time an agency has to respond to that request; what types of records or information can be withheld; fees that can be charged for search, review, and segregation; and what options are available for an appeal to OIP if an agency should deny a request.

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.

### ***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](http://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](https://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. To have a common platform that could be used by all State and county agencies, OIP created the Log as an Excel spreadsheet in FY 2013. The Log 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 objective data.

In FY 2023, OIP released two year-end reports based on information posted by 184 State and 84 county agencies on the Master UIPA Record Request Year-End Log for FY 2022 at [data.hawaii.gov](https://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.

Because the agencies do not submit their year-end results until the next fiscal year, OIP will prepare the FY 2023 Log reports in FY 2024 and will post them on the Reports page at [oip.hawaii.gov](https://oip.hawaii.gov).

### State Agencies' UIPA Record Request Log Results

The 184 State agencies that reported Log results in FY 2022 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

0.2% of the estimated 958,299 total formal and routine record requests that State agencies received in FY 2022. Excluding one agency whose results would have skewed the entire report, 183 agencies reported receiving 2,247 formal written requests requiring a response under the UIPA, of which all but 94 were completed in FY 2022. Of the 2,153 completed cases, 66% were granted in full or in part, and 8% 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 7.7 work days, on average, to complete 1,451 typical record requests, and 4.7 days to complete 578 personal record requests. In contrast, it took 25.3 days, on average, to complete a complex request (578 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 02.55, as compared to 0.68 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 more than twice as many SRS hours compared to the typical request. Complex requests also accounted for 18% (\$16,078) of the total gross fees and costs incurred by agencies (\$86,801) and 33% (\$5,193) of the total amount recovered from all requesters (\$15,647).

State agencies recovered \$15,647 in total fees and costs from 2,153 requesters, which is 18% of the \$86,801 incurred by agencies in gross fees and costs. Forty-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 50% 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 87% (1,891) of all requesters in completed cases paid nothing in fees or costs for their record requests. Of the 262 requesters that paid any fees or costs, 35% paid less than \$5.00 and 42% paid between \$5.00 and \$49.99. Of the 57

requesters who paid \$50 or more, at least 46 requesters (81%) were reported by State agencies as representing attorneys, media, or for-profit or nonprofit organizations. The most paid by a requester in FY 2022 was \$2,690. 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](http://oip.hawaii.gov).

## County Agencies' UIPA Record Request Log Results

FY 2022 was the eighth year that the counties participated in the Master Log. OIP prepared a separate report based on information posted by 84 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 0.2% of the estimated 1,104,420 total formal and routine record requests that agencies received in FY 2022. Eighty-four county agencies reported receiving 2,346 formal written requests requiring a response under the UIPA, of which 2,230 (95%) were completed in FY 2022. Of the 2,230 completed cases, 71% were granted in full or in part, and 4% were denied in full. In 25% 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 6.9 work days to complete a typical request (1,812 completed requests) and 6.5 days to complete a personal record request (179 completed requests). It took 19.5 work days, on average, to complete a complex request (239 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 1.29, as compared to 1.46 hours for a personal record request and 2.95 hours for a complex record request. Although the 239 complex record requests completed in FY 2022 constituted only

11% of all completed requests, they consumed over twice as many SRS hours compared to the typical request. Complex requests also disproportionately accounted for 27% (\$16,821) of the total gross fees and costs incurred by county agencies (\$61,737 and 32% (\$7,349) of the total amount recovered from all requesters (\$22,449).

County agencies recovered \$22,449 in total fees and costs from 333 requesters, which is 36% of the \$61,737 incurred by agencies in total gross fees and costs.

Fifty-four percent of completed requests were granted \$30 fee waivers, while another 4% were granted \$60 public interest waivers.

No fee waivers were reported in 42% 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 85% (1,897) of all requesters in completed cases paid nothing in fees or costs for their county record requests. Of the 333 requesters that paid any fees or costs, 40.8% paid less than \$5.00 and 29.4% paid between \$5.00 and \$49.99. Only 99 requesters (29.8% of all paying requesters) paid \$50 or more per request, of which at least 68 (68.6%) were reported by the counties as representing law firms, media, or commercial or non-profit entities. The most paid by a requester in FY 2022 was \$1,885.25. For a more detailed breakdown of the fees and costs paid by requesters, see **Figure 17** on page 56.

For the full reports and accompanying data, please go to the Reports page at [oip.hawaii.gov](http://oip.hawaii.gov).

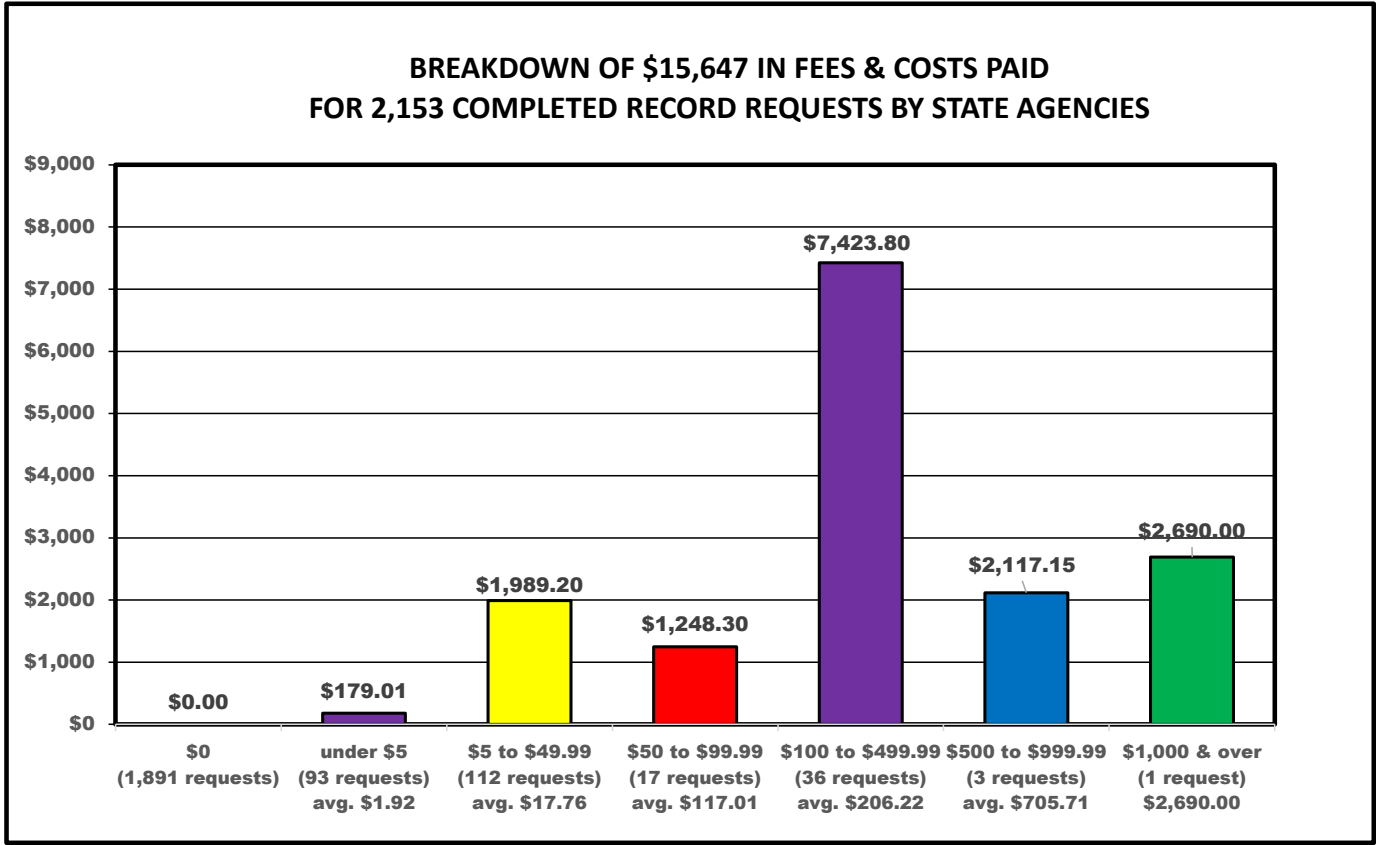


Figure 16

**STATE AGENCIES'  
UIPA RECORD REQUEST LOG  
RESULTS FOR FY 2022**

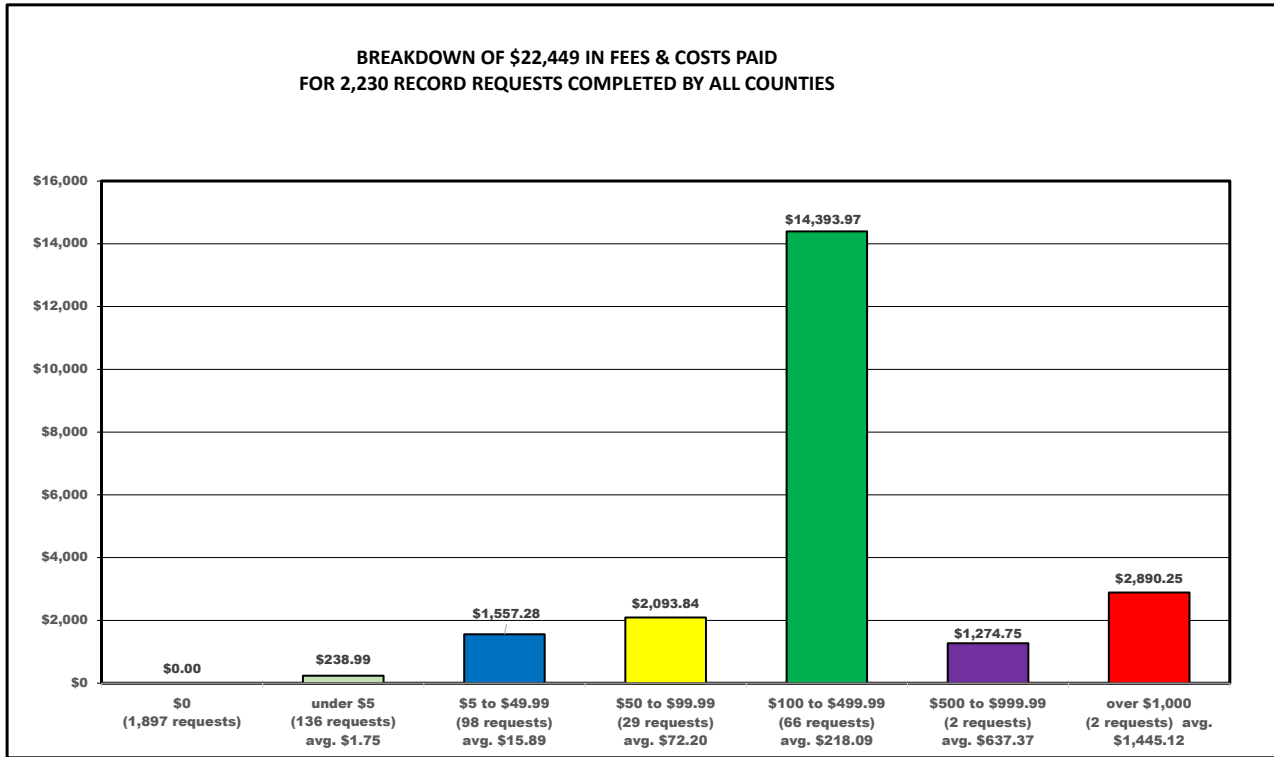


Figure 17

**COUNTY AGENCIES’  
UIPA RECORD REQUEST LOG  
RESULTS FOR FY 2022**



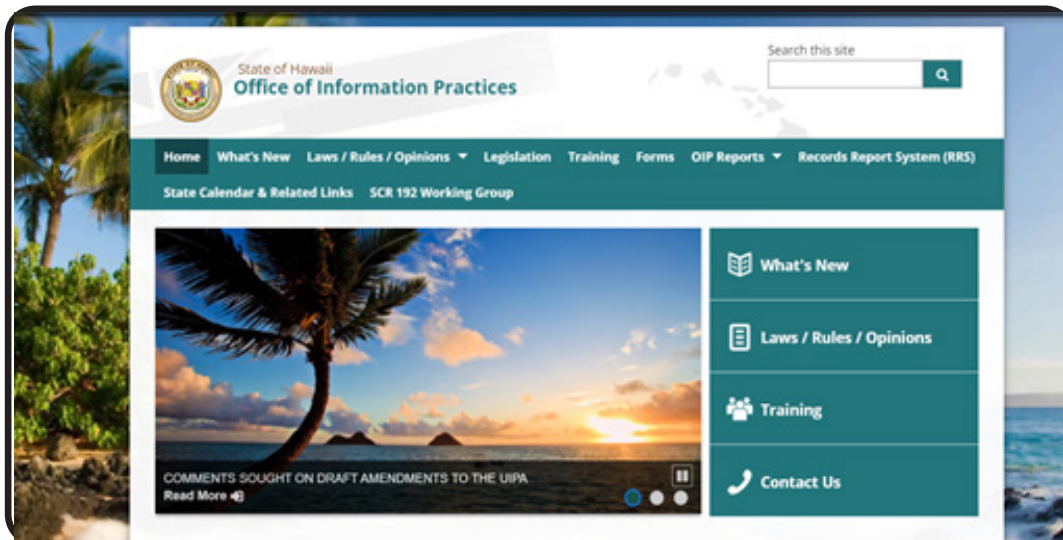


## Communications

OIP’s website at [oip.hawaii.gov](http://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 2023, OIP continued its communications to the agencies and public, mainly through 29 *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:

- UIPA and 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](http://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](mailto: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 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](https://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](https://data.hawaii.gov)** and the link is on this webpage.

***“SCR 192”***

This webpage was established in early FY 2023 to provide information about the Working Group convened by OIP pursuant to Senate Concurrent Resolution 192, which was adopted during the 2022 legislative session to develop recommendations for a new UIPA exception that would improve government decisionmaking.



# 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).

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.

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.

As of the end of FY 2023, State and county agencies posted 29,752 record titles. See **Figure 18**.



## Records Report System

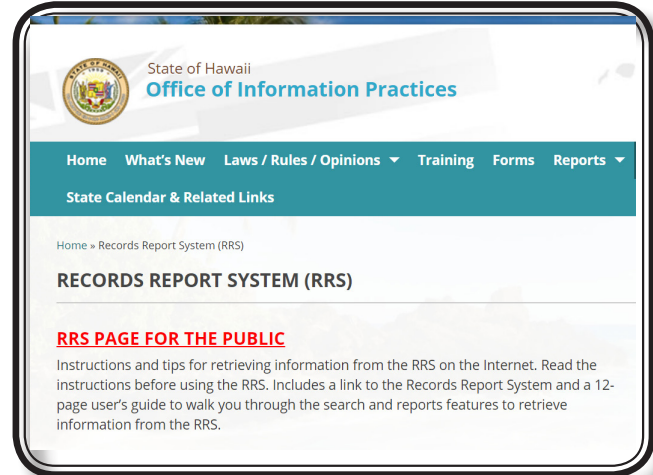
### Status of Records Reported by Agencies: 2023 Update

Jurisdiction	Number of Record Titles
State Executive Agencies	20,708
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
<b>Total Record Titles</b>	<b>29,752</b>

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](http://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 2012 launch of the State’s open data website at [data.hawaii.gov](http://data.hawaii.gov), and the new Data Task Force created in 2022, the RRS can be used to help determine which records contain confidential information and require special care so as to prevent the inadvertent posting of confidential information while making it easier to post open data.

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.

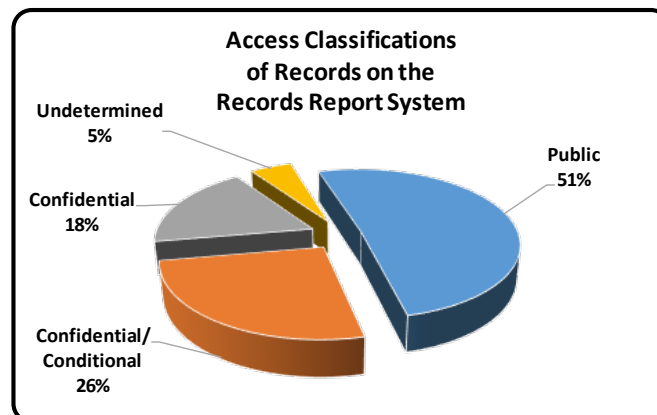


Figure 19

# 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 2023 legislative session, OIP reviewed and monitored 186 bills and resolutions affecting government information practices and testified on 31 of these measures. In addition to the operating budget bill (Act 164) that authorized two new permanent positions, OIP was most significantly impacted by the following legislation regarding the Sunshine Law:

► **Act 19**, signed on April 19, 2023, enacted S.B. 1513. Effective July 1, 2023, boards must report a summary of their discussions and final actions taken during an executive session, after they reconvene to the public portion of the meeting. OIP supported this amendment, which some boards were already engaging in, because it promotes easier public access and timely understanding of what occurred during an executive meeting closed to the public, without undermining boards' ability to use executive sessions or maintain confidentiality when authorized to do so. Rather than having to make a request for a redacted copy of the executive session minutes to learn the gist of what happened in private, the public will be informed as soon as the board reconvenes in the public portion of a Sunshine Law meeting. Note that there has been no change to the usual requirement that boards vote during the public portion of the meeting, rather than in private during the executive session.

► **Act 264**, signed on June 23, 2023, enacted H.B. 712, H.D. 1, S.D. 1 and went into effect on October 1, 2023. Boards are currently required to electronically record remote meetings "when practicable" and keep the recording available until the meeting minutes have been posted on the board's website. This bill encourages, but does not require, boards to keep electronic recordings posted online after minutes are posted, regardless of whether written meeting minutes are posted. A board can remove older recordings from its website, so long as it first provides a copy to the State Archives. The written minutes must include a link to the electronic audio or video recording, if a recording is available online.



# Litigation Report

## *Abbreviations used throughout this section:*

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 2023, 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 2023.

Summaries are provided below of the new lawsuits monitored by OIP in FY 2023 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.

## **Police Disciplinary Records**

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

Act 47 of 2020 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. The State of Hawaii Organization of Police Officers (SHOPO) sued to have Act 47 declared unconstitutional. In the suits involving Hawaii County and Kauai County, the complaint was answered and pretrial statements were filed. 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 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.

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. There were no substantive developments in the last year and the case remains pending at the ICA.

## 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 in 2021, which is part of the court file, stating that proper service had not been accomplished and noting jurisdictional flaws. In December 2022 the case was reassigned, but there have been no substantive filings in the last fiscal year. The case remains pending, but OIP will discontinue reporting on it until and unless Plaintiff successfully serves one or more Defendants.

## Pandemic Response Regarding Inmates

*Civil Beat Law Center for the Public Interest v. Department of Public Safety*  
*Civ. No. 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. PSD filed a Motion for Summary Judgment in November 2022, and CBLC filed a Cross-Motion for Summary Judgment in December 2022. In those motions and the opposition and reply memoranda filed by the parties, PSD argued that it was entitled to withhold the reports as attorney work product and under the UIPA's frustration exception, to enable a quick response to the



pandemic through free information sharing with the independent monitoring panel. However, the court upheld CBLC’s argument that no UIPA exception applied to the reports, which the court found were prepared by an independent group that was not producing them for PSD’s attorneys or in anticipation of litigation and was not acting on behalf of PSD. The court therefore granted CBLC’s Motion for Summary Judgment and denied PSD’s Motion for Summary Judgment in orders issued January 25, 2023. The parties subsequently stipulated to, and the court ordered, PSD’s payment of CBLC’s reasonable attorney’s fees and expenses. The court entered final judgment on April 21, 2023, and PSD did not appeal. Since this litigation has now terminated, OIP will not be reporting on it further.

## Inmate’s Personal and Government Records

*Lankford v. Bradley*  
Civ. No. 3CCV-22-0000204 (3rd Cir. Ct.)

Plaintiff is an inmate at Saguaro Correctional Center (SCC) in Eloy, Arizona, a private prison for male inmates that incarcerates a majority of Hawaii’s prison population pursuant to a contract with the Department of Public Safety (PSD). SCC is managed by CoreCivic.

Plaintiff’s complaint alleges that he has made repeated record requests to SCC, CoreCivic, PSD, and fifteen other individual defendants for personal and government information, including copies of Plaintiff’s COVID-19 test results, Plaintiff’s medical records, Plaintiff’s personal telephone records, SCC’s invoices with vendors that include the prices of items sold in the commissary to inmates, SCC’s contracts with vendors that sell items in the commissary, CoreCivic’s policies, procedures, and practices, and tax records for SCC, written communications between SCC and the Arizona Department of Revenue, and information regarding the Transaction Privilege Tax assessed on commissary items sold to inmates.

The complaint was filed on July 19, 2022. Plaintiff is still in the process of serving the complaint on the 18 named defendants who are located in Arizona and/or Hawaii.

## Inmate Death Records

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

On March 31, 2021, Plaintiff Honolulu Civil Beat Inc. requested that Defendant Department of Public Safety 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 30, 2022, Plaintiff filed a Motion for Summary Judgment, and a hearing was held on October 25, 2022. The court granted in part and denied in part Plaintiff’s motion. Specifically, the court’s order stated that in general, under the UIPA, “autopsy and toxicology reports prepared by coroners pursuant to HRS chapter 841 are public records that must be disclosed on request. The names of deceased individuals are a part of the process that results in the preparation of coroner reports and therefore are public as well.” The order also stated, “[s]imilarly, autopsy and toxicology reports prepared by coroners in other jurisdictions pursuant to statutory authority are likewise public records,” citing OIP Op. No. F15-01; OIP Op. No. 91-32. The order further stated that the “Privacy Rule” under HIPAA “allows covered entities to disclose protected health

information when ‘required by law’, including when required by freedom of information laws such as the UIPA.” In granting the motion, the court ordered that pursuant to the UIPA, Defendant must disclose from the requested records concerning individuals who died in Defendant’s custody in 2020 and 2021: (1) the names of individuals who died in Defendant’s custody; and (2) autopsy reports received from county coroners. In denying the motion, the court ordered that Defendant is not required to disclose information regarding an individual’s medical treatment while in Defendant’s custody.

Based on a stipulation by the parties that Plaintiff incurred reasonable attorney’s fees in the amount of \$19,320 and expenses in the amount of \$410.75, the court ordered that Plaintiff was awarded \$19,730.75 in attorney’s fees and costs against Defendant on March 20, 2023. On March 24, 2023, Final Judgment was entered in favor of Plaintiff and against Defendant and Plaintiff was awarded \$19,730.75 in attorney’s fees and costs against Defendant. All remaining claims were dismissed with prejudice, so OIP will discontinue reporting about this case.

## **Department of Public Safety Data Dictionaries**

*Civil Beat Law Center for the Public Interest, Inc. v. Department of Public Safety*  
*Civ. No. ICCV-23-0000943 (1st Cir. Ct.)*

On April 27, 2023, Plaintiff Civil Beat Law Center for the Public Interest, Inc. requested that Defendant Department of Public Safety provide it with “data dictionaries” for two of Defendant’s databases—OffenderTrak and the Intake Services Center Division’s customized, in-house developed system, stating that it sought “information sufficient to identify the types of data” stored in the databases and not the data itself. Defendant denied the request in its entirety, based on the UIPA’s “frustration of a legitimate government function” exception under section 92F-13(3), HRS, and asserted a security risk if

the data dictionaries were disclosed and that the OffenderTrak computer program is proprietary computer program bought from a private vendor and containing proprietary intellectual property. Defendant argued that Motorola Solutions owns all intellectual property rights, patents, trademarks, copyrights, and trade secret rights of the OffenderTrak software, which prohibits Defendant from disclosing the requested information without the permission of Motorola Solutions. Plaintiff filed a lawsuit in the First Circuit Court on July 20, 2023. A jury-waived trial is scheduled to start the week of June 10, 2024. The case remains pending.

## **Budgetary and Other DOE Records**

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

In March 2018, Plaintiff Hawaii Education Institute (HEI) made a record request to Defendant 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 regarding HEI’s request for general ledger system line items showing DOE’s revenues, expenditures and encumbrances. 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. There have been no substantive developments since

then. OIP will discontinue reporting on this case unless there are further developments.

### **Academic Grievance Records at University of Hawaii**

*Williamson v. University of Hawaii*  
Civ. No. ICCV-14-1-1397-06 (1st Cir. Ct.)

Plaintiff Travis Williamson 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 subsequently 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. In December 2019, the case was continued until moved on by Plaintiff's attorney. Although this case is technically still pending, there have been no further developments and OIP will discontinue reporting of it until and unless there are substantive developments.

### **Special Management Area Permit Records**

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

Plaintiff Christopher Salem 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 misrepresent[ed]" 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. 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. On April 29, 2022, the Intermediate Court of Appeals entered a Summary Disposition Order affirming the Second Circuit Court's judgment. On May 10, 2022, Plaintiff filed a Motion for Reconsideration, and on May 19, 2022, the Intermediate Court of Appeals entered an order denying the Motion for Reconsideration. The Judgment on Appeal was entered on June 3, 2023. Since this litigation has now terminated, OIP will discontinue reporting of this case.

### **Land Records**

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

On January 29, 2021, Plaintiff Christopher Salem filed a complaint in the Second Circuit Court against Defendant County of Maui alleging that the County had produced a record responsive to a record request Plaintiff made in 2017 in an unrelated case, and seeking access to a record of

the “first time” a record Plaintiff requested in his 2017 record request was produced by the County. On March 1, 2021, the County filed a Motion to Dismiss, arguing that Plaintiff’s suit was untimely, that Plaintiff had already filed suit on the same subject matter in 2017 in a case which was still pending at the time, and that Plaintiff failed to state a claim upon which relief could be granted. The County also noted that it does not maintain records of the date of when records are produced to individuals for the “first time” pursuant to the UIPA or otherwise.

On June 10, 2021, the court entered an order granting the County’s Motion to Dismiss. On June 14, 2021, Plaintiff filed a Motion for Reconsideration of the order granting the Motion to Dismiss. On July 26, 2021, the court entered an order denying Plaintiff’s Motion for Reconsideration. Since then, there have been no substantive developments. Although no final judgment has been filed, OIP will discontinue reporting on this case unless there are further developments.

## **Records Related to Pearl Harbor Fuel Leak**

*Sierra Club v. Department of Health*  
*Civ. No. ICCV-21-0001307 (1st Cir. Ct.)*

On September 9, 2021, Plaintiff Sierra Club made a record request to Defendant 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, which DOH answered.

On February 14, 2022, the First Circuit 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. The court also ordered DOH to

provide status updates on the documents provided to the Department of Defense that have not yet been provided to Plaintiff and to produce 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.

On March 20, 2023, the court ordered DOH to pay attorney’s fees and costs to Plaintiff. On July 6, 2023, the court entered final judgment in favor of Plaintiff and against DOH. This case is now concluded, so OIP will discontinue reporting on it.

## **Search, Review and Segregation Fees**

*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 Defendant Department of the Attorney General, alleging that the amount of fees for the search, review and segregation of records following a UIPA request is exorbitant.

Plaintiff alleged that 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,” and that Defendant’s claims that the documents must remain confidential to avoid the frustration of a legitimate government function and/or are protected by various privileges were baseless.

After finding that Defendant violated section 2-71-14(a)(2)(A), HAR, by failing to provide Plaintiff with a “good faith estimate of all fees that will be charged,” the court granted Plaintiff’s motion for summary judgment and the request

that all allowable fees for searching, reviewing, and segregating records under section 2-71-19, HAR, be waived. Defendant was ordered to produce the requested records within thirty days and to pay Plaintiff's incurred attorneys' fees and costs in the amount of \$70,468.07.

Judgment was entered on March 23, 2023, and amended by the court on May 10, 2023. This case is now concluded, so OIP will discontinue reporting of this case.

## Public Works Engineering Files

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

On October 25, 2019, Plaintiff Claudia Rohr 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.

## Ambulance Service Relocation on Kauai

*Drapkin vs. Department of Health*  
Civ. No. 1CCV-22-0000808 (1st Cir. Ct.)

Plaintiff Steve Drapkin alleges that Defendant Department of Health (DOH) breached an oral promise to move ambulance service for Kauai's North Shore from Kilauea to Princeville and that DOH is violating its written contract with International Life Support, Inc. dba American Medical Response because the emergency response time from Kilauea to the North Shore's Hanalei,

Wainiha, and Ha'ena areas exceeds twenty minutes, as required by the contract.

In his complaint filed July 12, 2002 and amended on July 21, 2002, Plaintiff claims that he made several record requests to DOH for information including ambulance response records, a consultant's study, consultant's input, methodology, report drafts, contracts, invoices, payments, communications to and from DOH, and recordings of meetings. Plaintiff claims the requests were denied and/or DOH was unresponsive.

Plaintiff and DOH both filed dispositive motions for summary judgment and dismissal. On December 13, 2022, the court granted DOH's motion to dismiss three of Plaintiff's claims, and on January 14, 2023, Plaintiff voluntarily dismissed the claim that DOH breached the UIPA.

On March 23, 2023, the court granted DOH's motion for summary judgment. Final judgment was entered on July 24, 2023; on the same day, Plaintiff filed a notice of appeal. Because Plaintiff voluntarily dismissed his UIPA claim, OIP will discontinue reporting on this case.

## Investigations of Building Permit Employees and Architect

*Makai Ranch, LLC vs. City and County of Honolulu, Department of Planning & Permitting*  
Civ. No. 1:23-cv-00230-JAO-WRP (U.S.D.C.)

Plaintiff Makai Ranch and others filed a complaint for declaratory relief in the U.S. District Court, alleging that Defendant Department of Planning & Permitting (DPP) violated State laws and County ordinances by refusing to issue building permits after Plaintiffs have met all the legal requirements. Plaintiffs seek a declaratory ruling that DPP may no longer withhold approval and issuance of the requested building permits and seek declaratory and injunctive relief for DPP's refusal to approve Plaintiffs' applications for Roadway and Agricultural Subdivisions. According to the allegations in the complaint, DPP has deprived Plaintiffs of their procedural and

due process rights, equal protection rights, and real property rights.

While the litigation was pending, Plaintiffs sought information relating to DPP's investigations of five DPP employees and one architect under the UIPA. DPP denied the request, citing several exceptions to disclosure. After appeal to OIP, Plaintiffs were provided some, but not all, of the requested records. In the federal litigation, Plaintiffs allege that DPP's reliance on the exceptions to disclosure is improper, and seek a declaratory judgment that DPP violated the UIPA and are entitled to an award of attorneys' fees and costs pursuant to section 92F-15(d), HRS.

A hearing on Defendants' motion to dismiss the complaint was scheduled for December 1, 2023, but no further updates were available at the time of this report.

### **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. 1CCV-15-1-1583-08 (1st Cir. Ct.)*  
*CAAP-17-0000092 (ICA)*

Defendant Hawaii State Public Charter School Commission filed a notice for its May 14, 2015, meeting that 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.

Plaintiff John Thatcher 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 (MSJ) on the basis that Defendant 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 First Circuit Court granted Defendant's MSJ and entered its final judgment on February 1, 2017. On April 21, 2017, Plaintiff filed an appeal to the ICA. The ICA issued a Summary Disposition Order on January 18, 2023, affirming the Circuit Court's order granting MSJ, the "Final Judgment," and the "Notice of Entry of Final Judgment." The Hawaii Supreme Court issued an Order Rejecting Application for Writ of Certiorari on May 19, 2023. This litigation has concluded and will not be reported on again.

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## **Insufficient Notice of Rule Changes**

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

Plaintiffs Committee for Responsible Liquor Control and Madge Schaefer filed a complaint on May 5, 2017, and an amended complaint on June 19, 2017, alleging that Defendant Maui County Liquor Control Commission 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 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.

## **Discussion of Board Business Outside of Meeting**

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

Plaintiff Charles Heaukulani filed a complaint against the Hawaii County Council (Council) and County of Hawaii. 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 complaint was dismissed on October 6, 2022, due to Plaintiff's failure to file a pretrial statement within the time required by court rules, so OIP will discontinue reporting about this case.

## **Neighborhood Commission Dismissal of Request for Sanctions Against Neighborhood Board Member**

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

Plaintiff Kenneth LeVasseur filed a complaint with Defendant City and County of Honolulu Neighborhood Commission against a fellow member of a neighborhood board alleging Sunshine Law violations. Defendant dismissed the complaint and Plaintiff appealed that decision to the circuit court. This case is in the early stages of litigation, but OIP will discontinue reporting of it unless there are further developments.

## Complaint Against BLNR Dismissed

*69 Railroad, LLC, vs. Tsuji*  
*Civ. No. 3CCV-22-0000295 (3rd Cir. Ct.)*

During a meeting of the Board of Land and Natural Resources (Board) held on February 11, 2022, the Board unanimously authorized its Chairperson to approve and execute a thirty-year lease extension and a development agreement (Agreements) to Plaintiff. Plaintiff 69 Railroad alleges that after the meeting, and in reliance of the Board's decision, it entered into construction contracts and expended sums towards improvements to the property, which Plaintiff had leased since 2003.

Plaintiff signed the Agreements that were approved and executed by the Attorney General (AG) and submitted them to the Department of Land and Natural Resources (DLNR) for final execution. Thereafter, DLNR's Land Division Administrator informed Plaintiff that the Board Chairperson had decided to postpone executing the Agreements until their terms could be amended at a future meeting of the Board, which was held on September 23, 2022.

Plaintiff's complaint alleges that Defendants DLNR, the Board, and two individuals in their official capacities, improperly relied upon an AG opinion that allowed the Board to reconsider and amend the terms and conditions of the Agreements. Plaintiff also alleges that several requests were made to Defendants for the AG opinion, but it was not provided. In Defendants answer to the complaint, they deny that a formal written opinion of the AG exists and deny that legal advice was the subject of a UIPA request.

Plaintiff seeks a declaratory ruling that the Board's Chairperson is obligated to execute the Agreements approved by the Board at the February 11, 2022 meeting. Plaintiff filed a request for a scheduling conference on January 9, 2023, and after months of no reported activity, the parties

entered into a Stipulation for Dismissal With Prejudice as to All Remaining Claims of All Remaining Parties on October 24, 2023. Therefore, OIP will cease reporting on this case.

## Reassignment of Water Commission Deputy Director

*Keahi v. Chang*  
*Civ. No. 1CCV-23-0001078 (1st Cir. Ct.)*

Plaintiff Kekai Keahi filed suit against Defendant Dawn N.S. Chang, Chairperson of the Board of Land and Natural Resources (BLNR), alleging that BLNR violated the Sunshine Law by reassigning the Water Commission Deputy Director who delayed permission to allow the use of stream water to fight the Lahaina wildfire. Complainant alleges that reassigning the Deputy Director outside of a meeting violated the Sunshine Law. On September 15, 2023, BLNR filed a Motion to Dismiss the Complaint. On September 18, 2023, Complainant filed a Motion for Summary Judgment. This case is still pending.