

OFFICE OF THE LIEUTENANT GOVERNOR

Adoption of Chapter 2-71
Hawaii Administrative Rules

November 20, 1998

SUMMARY

Chapter 2-71, Hawaii Administrative Rules, entitled "Agency Procedures and Fees for Processing Government Record Requests," is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 2

OFFICE OF THE LIEUTENANT GOVERNOR

SUBTITLE 7

OFFICE OF INFORMATION PRACTICES

CHAPTER 71

AGENCY PROCEDURES AND FEES FOR PROCESSING GOVERNMENT
RECORD REQUESTS

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SUBCHAPTER 1

GENERAL PROVISIONS

§2-71-1 Purpose, scope, and construction. The purpose of this chapter is to establish:

- (1) Procedures and time limits that agencies shall follow when processing requests to inspect or copy government records under part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes; and
- (2) The fees that agencies may charge for searching for, reviewing, and segregating government records and a waiver of these fees when the public interest would be served. The fees set forth in this chapter are not intended to obstruct public access to disclosable government records, but rather are intended to allow agencies to recover some costs in providing access to disclosable records upon request. [Eff FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-11)

§2-71-2 Definitions. Unless the context otherwise requires, in this chapter:

"Access" means inspection of disclosable government records, acquisition of copies of disclosable government records, or both, when requested by any person.

"Agency" shall be as defined in section 92F-3, HRS.

"Business day" means a government agency business day within the office hours set forth in section 80-1,

HRS, excluding Saturdays, Sundays, and state holidays observed pursuant to chapter 8, HRS.

"Disclosable record" means a government record that is required to be made available for public inspection and copying under chapter 92F, HRS, after payment of applicable fees.

"Formal request" means a request that is in written, electronic, or other physical form that a person submits to an agency for access to records and that contains the information prescribed by section 2-71-12(b).

"Government record" shall be as defined in section 92F-3, HRS.

"Individual" shall be as defined in section 92F-3, HRS.

"Informal request" means a request, in any form, that a person submits to an agency for access to records and to which the agency responds in accordance with section 2-71-11.

"Maintain" means to hold, possess, preserve, retain, store, or administratively control.

"OIP" means the office of information practices, office of the lieutenant governor, State of Hawaii.

"Person" shall be as defined in section 92F-3, HRS.

"Personal record" shall be as defined in section 92F-3, HRS.

"Prepayment" means the fees that a requester must tender to the agency before the agency begins processing a request for records in accordance with section 2-71-19(b).

"Record" means one or more government records, or any portion thereof, requested for public inspection or copying.

"Requester" means any person making a request for public inspection or copying of a government record under this chapter.

"Review" means to examine a government record, in response to a request for access to the record, in order to determine which portions, if any, of the record are exempt from disclosure by law. Review does not include the time spent by the agency, or another person, to resolve issues of general law or policy regarding the applicability of exceptions to disclosure under chapter 92F, HRS.

"Search" means to look for a government record, including page-by-page or line-by-line identification of a government record. A search may be performed

manually or by computer using existing retrieval or programming capabilities.

"Segregate" means to prepare a government record for disclosure by excising any portion of the record that will not be disclosed under chapter 92F, HRS. [Eff FEB 26 1999] (Auth: HRS §92F-42)
(Imp: HRS §92F-3)

§2-71-3 Reporting to the OIP. As required by the OIP, each agency shall file with the OIP a report setting forth the following information:

- (1) The number of requests for access to records for which fees were assessed; and
- (2) The number of requests for access to records which qualified for a waiver of fees pursuant to section 2-71-32, and the amount of fees waived for each request. [Eff FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

§§2-71-4 to 2-71-10 (Reserved).

SUBCHAPTER 2

AGENCY PROCEDURES FOR PROCESSING RECORD REQUESTS UNDER PART II OF CHAPTER 92F, HAWAII REVISED STATUTES

§2-71-11 Informal requests for access to government records; agency response. (a) Any person may, during an agency's regular business hours, submit an informal request for access to records.

(b) Upon receiving an informal request under this section, an agency shall respond to the request by doing one or more of the following:

- (1) Provide access to any disclosable record requested pursuant to part II of chapter 92F, HRS, in a reasonably timely manner; provided that if the agency will charge the requester \$15 or more in fees, pursuant to section 2-71-19, the agency shall inform the person of the amount of fees, or an estimate thereof, before processing the request.
- (2) Deny access to all or any part of the records requested that will not be disclosed under section 92F-13, HRS, or any other law;

provided that if the requester disagrees with the agency's denial, the agency shall advise the requester of the option of submitting a formal request.

- (3) Inform the requester that the agency does not maintain the record; or
- (4) Inform the requester to submit a formal request in accordance with section 2-71-12.
- (c) When a requester is not satisfied with the agency's response, or its failure to respond, to the informal request, the requester may make a formal request for access to records in accordance with section 2-71-12.

(d) A request that complies with section 2-71-12 shall be treated as a formal request under this chapter, unless otherwise agreed upon by the requester and the agency. [Eff FEB 26 1999] (Auth: HRS §92F-42) (Imp: HRS §92F-11)

§2-71-12 Formal requests for access to government records; contents. (a) Any person may, during an agency's regular business hours, submit a formal request for access to records in accordance with this section.

(b) A formal request shall be in written, electronic, or other physical form and shall contain the following information:

- (1) Information that would enable the agency to correspond with or contact the requester;
- (2) A reasonable description of the requested record to enable agency personnel to locate it with reasonable effort. The description should include, if known, the record name, subject matter, date, location, and any other additional information that reasonably describes the requested record;
- (3) If applicable, a request for a waiver of fees for searching for, reviewing, or segregating the requested record, when the requester believes that a waiver would serve the public interest in accordance with section 2-71-32; provided that the request states the requester's identity and other facts that support the request for a waiver of fees; and

- (4) A request to inspect or obtain a copy of the records described and, if applicable, the means by which the requester would like to receive the copy. [Eff **FEB 26 1999**]
(Auth: HRS §92F-42) (Imp: HRS §92F-11)

§2-71-13 Formal request received; agency response; time limits. (a) When an agency receives a request for access to a record that is:

- (1) Required to be disclosed under section 92F-12, HRS, in its entirety; or
 - (2) Available for public access in its entirety,
- The agency shall disclose the record within a reasonable time not to exceed ten business days.

(b) When an agency receives a request for access to a record that is not covered by subsection (a), including records that will be segregated, the agency shall:

- (1) Provide a notice in accordance with section 2-71-14 within ten business days; and
- (2) Disclose the requested record within five business days after providing notice or, when applicable, after receiving a prepayment under section 2-71-19; provided that the agency may disclose incrementally when authorized under section 2-71-15.

(c) When an agency receives a request for access to a record that is not covered by subsection (a), and extenuating circumstances exist in accordance with section 2-71-15, the agency may provide a written acknowledgment within ten business days of the date of the request. The written acknowledgment, if provided, shall state that the notice required under section 2-71-14 shall be sent within a reasonable time not to exceed twenty business days following the date when the agency received the request and shall:

- (1) Provide a notice in accordance with section 2-71-14 within the time stated in the written acknowledgment; and
- (2) Disclose the requested record within five business days after providing notice or, when applicable, after receiving a prepayment under section 2-71-19; except where the agency is authorized to disclose incrementally under section 2-71-15.

(d) When a unit of an agency receives a request for a record that should have been otherwise directed

to another unit of the same agency for a response, the unit receiving the request shall promptly forward the request to the head of the unit's department.

(e) When one unit of an agency forwards a request to the head of that department, the duties of this section do not commence until the head receives the request.

(f) When an agency receives a request for a record that it does not maintain and reasonably believes that another agency maintains the record, the agency receiving the request shall provide a notice in accordance with section 2-71-14(c)(1).

[Eff **FEB 26 1999**] (Auth: HRS §92F-42)
(Imp: HRS §92F-11)

§2-71-14 Agency's notice. (a) When the agency intends to disclose a record in response to a formal request, the agency's written notice to the requester shall state:

- (1) The location where the record will be made available to the requester in accordance with section 2-71-18;
 - (2) The following information about fees, if applicable:
 - (A) A good faith estimate of all fees that will be charged to the requester under section 2-71-19;
 - (B) Whether a requested waiver has been granted under section 2-71-32; and
 - (C) The amount of prepayment required, if any.
 - (3) Instructions, if any, regarding any additional arrangements that the requester must make with the agency to inspect or copy the records;
 - (4) When the agency will make the record available to the requester under section 2-71-13; and
 - (5) A description of extenuating circumstances, if any, under section 2-71-15, and, if it is the case, the agency's intent to disclose the records incrementally.
- (b) When the agency intends to deny access to all or part of the information in the requested record, the agency's notice to the requester shall state:

- (1) The specific record or parts of the record that will not be disclosed; and
 - (2) The specific legal authorities under which the request for access is denied under section 92F-13, HRS, or other laws.
- (c) When an agency is unable to disclose a record, the agency's notice shall state that the agency is unable to disclose the requested record, or part thereof, because:
- (1) The agency does not maintain the record, and the agency may provide the name and address of another agency that, as the agency reasonably believes, may maintain the requested record;
 - (2) The agency requires a further description or clarification of the requested record in order to identify and search for the record; or
 - (3) The request requires the agency to create a summary or compilation of information from records that is not readily retrievable.
[Eff: **FEB 26 1999**] (Auth: HRS §92F-42)
(Imp: HRS § 92F-11)

§2-71-15 Extenuating circumstances; incremental disclosures. (a) As used in this chapter, extenuating circumstances exist when:

- (1) The agency must consult with another person to determine whether the record is exempt from disclosure under chapter 92F, HRS;
 - (2) The request requires extensive agency efforts to search, review, or segregate the records, or otherwise prepare the records for inspection or copying;
 - (3) The agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions; or
 - (4) A natural disaster or other situation beyond the agency's control prevents the agency from sending a notice or responding to the request within ten business days.
- (b) When extenuating circumstances are present, and when the requested records are voluminous, an agency may, in good faith, elect to make the records available in increments and shall:

- (1) Send a notice in accordance with section 2-71-14; provided that the agency may instruct the requester in the notice to pay a specified portion of the estimated fees before the agency processes each increment in lieu of making one prepayment under section 2-71-19; and
 - (2) Disclose each increment within twenty business days after either:
 - (A) The prior incremental disclosure, when receiving one prepayment in accordance with section 2-71-19; or
 - (B) Receipt of each incremental prepayment required under this rule.
 - (c) If an agency processes a request in increments, the agency shall do so until:
 - (1) All requested records have been disclosed; or
 - (2) The requester abandons the request.
- [Eff: FEB 26 1999] (Auth: HRS §92F-42)
(Imp: HRS §92F-11)

§2-71-16 Requester's responsibilities; abandonment of request. (a) The requester shall:

- (1) Pay any fees assessed by the agency in accordance with sections 2-71-15 or 2-71-19, whichever is applicable;
 - (2) Make any arrangements with the agency to inspect and copy the disclosable record as instructed by the agency's notice; and
 - (3) If able, provide the agency with further clarification or description of the requested record if so requested by the agency's notice under section 2-71-14.
- (b) The requester shall be presumed to have abandoned the record request, and the agency shall have no duty to further process the request, when the requester fails to comply with subsection (a) within twenty business days after, whichever of the following is applicable:
- (1) The postmark date of the agency's notice; or
 - (2) The date that the agency made the record available under sections 2-71-13 or 2-71-15 if the requester was informed in a reasonable manner as to when and where the record would be made available. [Eff: FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-11)

§2-71-17 Segregation of information in records.

(a) When information in a requested record is not required to be disclosed under section 92F-13, HRS, or any other law, an agency shall assess whether the information is reasonably segregable from the requested record. If the record is reasonably segregable, the agency shall:

(1) Provide access to the portions of the record that are required to be disclosed under chapter 92F, HRS; and

(2) Provide a notice to the requester in accordance with section 2-71-14(b) regarding information that is not disclosed.

(b) An agency shall segregate information from a requested record in such a way so that it is reasonably apparent that information has been removed from the record. An agency shall not replace information that has been segregated with information or text that did not appear in the original record. [Eff **FEB 26 1999**]
(Auth: HRS §92F-42) (Imp: HRS §92F-11)

§2-71-18 Location of disclosure; alternatives.

(a) The location where an agency makes a record available to the requester for inspection or copying shall be where the agency maintains the record or where the agency has accommodations for inspection and copying.

(b) If access to a record is requested at a location other than as provided in subsection (a), the agency shall make a reasonable effort to accommodate the request so long as the record is not the agency's only original record and the arrangement does not unreasonably interfere with the agency's functions.

(c) When a requester requests that a copy of a record be transmitted by mail, telefax, or other means, the agency shall make a reasonable effort to transmit the copy of the record in the manner sought by the requester; provided that the requester pays all fees assessed under section 2-71-19 and the transmission does not unreasonably interfere with the agency's functions. [Eff **FEB 26 1999**] (Auth: HRS §92F-42)
(Imp: HRS §92F-11)

§2-71-19 Assessment of fees; prepayment.

(a) When a person requests access to a government

record under part II of chapter 92F, HRS, the agency may charge the requester:

- (1) Fees for searching for, reviewing, and segregating the record; provided that these fees shall be assessed in accordance with this chapter; and
 - (2) Any other lawful fees.
- (b) An agency may require a requester to prepay the following before the agency begins the search for and review of records in order to respond to a request for access:
- (1) Fifty per cent of the total estimated fees for searching for, reviewing, and segregating records when the estimated fees exceed \$30;
 - (2) One hundred per cent of other estimated lawful fees under paragraph (a) for other services to prepare and or transmit the record; and
 - (3) One hundred per cent of the outstanding fees from previous requests, including abandoned requests, in accordance with subsection (d).
- (c) The agency shall inform the requester of the requirement to prepay in its notice in accordance with section 2-71-14.
- (d) A requester is liable for and shall pay any fees outstanding for services rendered by an agency to respond to any previous or current request. Upon written request, the agency shall provide an itemized bill of all fees assessed. [Eff FEB 26 1999]
 (Auth: HRS §92F-42) (Imp: HRS §92F-42)

§2-71-20 Public access to disclosable records provided by a secondary source. (a) An agency may make arrangements to have another person serve as a secondary source of agency information; provided that the agency itself does the following:

- (1) Allows public inspection and duplication of any disclosable government record that the agency maintains pursuant to chapter 92F, HRS; and
- (2) Performs, as necessary, any review and segregation of a government record before providing the record, or a copy thereof, to the secondary source for the purpose of making the record available for public inspection and copying upon request.

(b) "Secondary source" means a person, including another agency, commercial entity, or nonprofit organization, with whom an agency makes arrangements to offer public inspection and copying of disclosable information from government records of the agency. [Eff **FEB 26 1999**] (Auth: HRS §92F-42) (Imp: HRS §92F-42)

§§2-71-21 to 2-71-30 (Reserved).

SUBCHAPTER 3

FEES FOR SEARCHING FOR, REVIEWING, AND SEGREGATING GOVERNMENT RECORDS

§2-71-31 Fees for searching for, reviewing, and segregating records; exceptions. (a) When an agency intends to charge fees pursuant to section 2-71-19(a)(1), the agency shall charge the following fees, except as otherwise provided in subsection (b):

- (1) For a search for the record, \$2.50 per fifteen minutes or fraction thereof;
- (2) For the review and segregation of the record, \$5 per fifteen minutes or fraction thereof; and
- (3) If applicable, the actual rate of charge, based upon time expenditure, that is charged to the agency by a person other than the agency for services to assist the agency in the search for the record.

The agency shall not assess the first \$30 in total amount of the fees under paragraphs (1) and (2).

(b) For those agencies which, by statute, are required to recover actual costs, in lieu of the fees set forth in subsection (a), an agency may establish fees, by rule, that do not exceed in their totality the actual costs incurred from searching for, reviewing, and segregating records. The fees may include:

- (1) The actual time expended by personnel in performing the search, review, or segregation of the record; and
- (2) Where the information requested is part of an electronic database or other electronic method of information storage, the actual cost of:

- (A) Modifications to existing programming capacity; or
- (B) Additional equipment or software used to search for, review, or segregate the information.
- (c) Before initiating the rulemaking process under chapter 91, HRS, an agency that will establish fees under subsection (b) shall submit to the OIP for review a copy of the rule, including any amendments, setting forth the fees.
- (d) No fees may be assessed by the agency under this section for the search for, review, or segregation of a record when:
- (1) It is not necessary for the agency to search for, review, or segregate a record in order to permit inspection or duplication of the requested record; and
 - (2) To the extent permitted by section 2-71-32, the agency finds that the public interest would be served by a waiver of these fees.
- (e) An agency may waive the fees for any agency or any federal or foreign government entity requesting access to a government record. [Eff FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

- §2-71-32 Waiver of fees when public interest served. (a) An agency shall waive \$60 of the fees that may be assessed under section 2-71-31 when:
- (1) The request for a waiver of fees is supported by a statement of facts, including the requester's identity, in accordance with section 2-71-12; and
 - (2) The agency finds that the waiver of fees would be in the public interest pursuant to this section.
- (b) A waiver of fees is in the public interest when:
- (1) The requested record pertains to the operation or activities of an agency; however, the agency shall not consider the record's relative importance to the public in applying this subsection;
 - (2) The record is not readily available in the public domain; and
 - (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the


general public at large. [Eff FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)

§2-71-33 Fees charged for records that will not be disclosed. The agency may assess and collect fees for the search or review of a government record in accordance with section 2-71-31 even if the requested record will not be disclosed in its entirety, or a substantial portion thereof, if the agency reasonably believed that the requested record would be disclosable before searching for or reviewing the record. If the requester fails to pay the fees, the agency may assess the outstanding fees in accordance with section 2-71-19. [Eff FEB 26 1999]
(Auth: HRS §92F-42) (Imp: HRS §92F-42)


OFFICE OF THE LIEUTENANT GOVERNOR

Chapter 2-71, Hawaii Administrative Rules, on the Summary Page dated November 20, 1998, was adopted on November 20, 1998, following public hearings held on August 31, 1998, and November 5, 1998, after public notices were given in the Honolulu Star-Bulletin on July 31, 1998, and October 6, 1998.

The adoption of chapter 2-71 shall take effect thirty days after filing with the Office of the Lieutenant Governor.

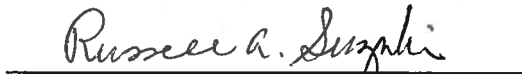

Moya T. Davenport Gray
Office of Information
Practices

APPROVED:


Benjamin J. Cayetano
Governor
State of Hawaii

Date: 1/27/99

APPROVED AS TO FORM:


Deputy Attorney General

JAN 27 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

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C

I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the above mentioned matter. The same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
 Yours truly,
 [Signature]

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