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GOVERNOR

August 25, 2017

EXECUTIVE MEMORANDUM

MEMO NO. 17-03

TO: All Department Heads

SUBJECT: Implementation of the Uniform Information Practices Act (Modified)

Effective citizen participation in state government requires timely access to information and appropriate opportunities for the public to provide its government with feedback and ideas. As part of this effort, I have already asked executive branch departments and agencies (“executive agencies”) to be accessible, hold community meetings throughout Hawai‘i, and work toward increasing community involvement in government affairs, including considering input from the public in decision-making.

The following directives are intended to strengthen efforts to increase access to public information, ensure that government business is conducted as openly as possible, and enhance government accountability. Efforts to increase transparency are aligned with the Legislature’s adoption of the Uniform Information Practices Act – Modified (“UIPA”) (chapter 92F, Hawai‘i Revised Statutes) in order to conduct government business as openly as possible while protecting the right of privacy embodied in our State constitution. The UIPA should be applied to promote its underlying purposes and policies, which are:

- (1) To promote the public interest in disclosure;
- (2) To provide for accurate, relevant, timely, and complete records;
- (3) To enhance government accountability;
- (4) To make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
- (5) To balance the individual privacy interest and the public interest, allowing access unless disclosure would constitute a clearly unwarranted invasion of personal privacy.

More specifically, an agency responding to a UIPA request must know and balance all the considerations that should go into implementing chapter 92F, Hawai'i Revised Statutes (HRS), which include:

- Affirmative agency disclosure responsibilities (HRS section 92F-11);
- When disclosure is required (HRS section 92F-12);
- When disclosure of government records is not required (HRS section 92F-13); and
- When significant privacy interests are involved (HRS section 92F-14).

When the Legislature adopted the UIPA in 1988, it also created the state Office of Information Practices ("OIP") as the agency to uniformly administer the law, which is applicable to all state, county, and independent government agencies. OIP generally advises – and this administration agrees – that doubts regarding disclosure of a record should likely be resolved in favor of access. This does not mean, however, that any government record requested must always be disclosed. For example, government records that are strictly protected from disclosure (e.g., an individual's medical records, confidential taxpayer information, vital records such as birth certificates, or personal identifiers such as social security numbers) should not be publicly disclosed. Similarly, government records containing information that carries significant privacy interests as defined in HRS section 92F-14 should only be disclosed if the interest in public disclosure outweighs the significant privacy interests.

In light of this, I am directing all executive agencies as follows:

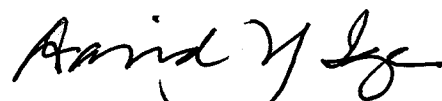
- In order to make it easier for the public to learn about government records, submit requests, and inquire about the status of requests, each executive agency shall provide point of contact information for record requests on its website or on the website of the department to which it is administratively attached ("agency website"). The point of contact's information shall include an email address, phone number, and physical mailing address, and shall also be kept updated on the website and provided to OIP.

Each executive agency is encouraged – where practicable – to provide a single point of contact. Where that is not practicable (e.g., agencies that receive thousands of public record requests each year or for larger agencies where a single point of contact will create a bottleneck), the executive agency may provide multiple points of contact, but must provide contact information for each one as described above. If an executive agency identifies multiple points of contact, each point of contact should be identified by the type or types of government record that individual handles.

- In order to comply with the law and OIP's administrative rules, each agency's point of contact person should study OIP's online training materials that are readily available at oip.hawaii.gov.

- As required by the UIPA and OIP's rules, each executive agency shall promptly respond to all requests for government records.
- Each executive agency shall comply with OIP's instructions to maintain and provide its UIPA Record Request Log to OIP.
- Consistent with Hawai'i's Open Data Policy at HRS sections 27-41.1 and 27-44, each executive agency shall, as appropriate, post electronic data sets on the State's open data portal at data.hawaii.gov, and link to them from its website. If there are additional government records that are frequently requested by the media or other members of the public, those records – to the extent practicable and without significant cost or effort – should be posted on the executive agency's website or at the State's open data portal at data.hawaii.gov.
- The UIPA permits agencies to charge for the disclosure of government records. These charges include fees and costs incurred as a result of copying, searching, reviewing, redacting, and related activities.
- In addition to the fee waivers required by OIP's rules, executive agencies should take practical actions to reduce the costs of complying with UIPA requests. These actions include but are not limited to:
 - Disclosing government records in electronic form rather than paper form when that would reduce copying costs;
 - Working with the requester(s) to narrow the scope of complex record requests to reduce the amount of agency response time and effort that detract from personnel's normal assigned duties;
 - Working with the requester on the timeline for responding to a request where doing so will help reduce the cost of responding;
 - Working with the requester on finding ways to decrease the cost of complying with the request.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Hawai'i, its departments, agencies, or entities, its officers, employers, or agents, or any other person. This memorandum is not intended to change or redefine any law, but solely to declare a policy of directing and encouraging government departments and agencies to disclose publicly available information as quickly and inexpensively as practicable.



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Governor, State of Hawai'i