

July 25, 2016 |  79° |  Check Traffic**Editorial | Island Voices**

Freedom of Information Act has made government more transparent

By Jeff Portnoy

Posted July 24, 2016

July 24, 2016

Raise a glass this month to toast the Freedom of Information Act, which turned 50 earlier in July. Although most Americans probably have never heard of it, few laws are more important — both in America at large, and here in Hawaii.

The Act, affectionately known as “FOIA” to the journalists, activists and researchers who rely on it, codifies one of the core values of American democracy: government transparency. FOIA requires the government to make vast troves of information available for inspection by anyone who asks. Under FOIA, if you ask for information, the United States government must provide it, or have a statutory reason for not doing so. If the government refuses, the applicant can sue to get the information — and if successful, the government may have to pay attorney’s fees.

The goal of FOIA is to remove political considerations from the act of informing the public. So long as the information does not fall within specific exemptions (such as “classified” information that affects national security), it must be provided, no matter who may be embarrassed by its disclosure. Journalists and others therefore have used FOIA, and the many state “sunshine laws” modeled on FOIA, to investigate, uncover and disclose government mistakes, excesses and sometimes outright corruption.

Without FOIA, and the ideal of transparent government that it embodies, Hawaii might not have its own “Sunshine Law,” the Uniform Information Practices Act, that requires



our state and local governments to disclose information to the public. Hawaii legislators emulated FOIA in 1988 when they passed the Sunshine Law. Local journalists and others have relied on that law to reveal information that otherwise could have remained secret.

The Sunshine Law also created a government watchdog agency, the Office of Information Practices, which has issued more than 900 written rulings on public information requests, often concluding that the government must disclose the requested information.

Without this Sunshine Law passed in the spirit of FOIA, Hawaii might still be stuck with its "Privacy Act," a law passed in 1980 that reduced government transparency by forbidding disclosure of an ill-defined swath of "confidential" documents.

The result was that the Hawaii government through the 1980s became increasingly insular, with oceans of information, previously public, declared "confidential" and therefore off-limits.

It was Hawaii's Sunshine Law, and the subsequent hard work of journalists and others to enforce that law, that forced government agencies to reverse course and increase their transparency — however grudgingly.

And government officials in Hawaii have too many times been grudging indeed, reacting to information requests with what appears to be a non-disclosure philosophy.

To this day, Hawaii media outlets and others are engaged in a constant tug-of-war with government officials to extract information under the Sunshine Law. One of the most recent examples was the state Department of Health's refusal to turn over the names of people appointed to a panel to review medical marijuana dispensary license applications, asserting that it did not want its selection process to be tainted by unspecified "external influence and disruption."

After the Star-Advertiser threatened a Sunshine Law lawsuit, the government reversed course and agreed to provide the names.

Similar battles have occurred too many times, as news organizations have sought public contract data, public employee salary information, police officers' disciplinary records, and countless other items of information that government officials, for whatever reason, have refused to release.

And every now and then, bills are proposed in the state Legislature to limit the reach of the Sunshine Law and restrict the public's right to view certain types of documents.

Hawaii residents, therefore, should not take for granted the open access to information that FOIA and its progeny, the state sunshine laws, have provided. Without it, government might choose to operate in the dark, keeping malfeasance, errors in judgment and the workings of government from the public it is supposed to serve.

We, the public, must be consistently vigilant in opposing efforts to restrict access to public records and meetings.



Our elected officials, and those they appoint to serve in administrative positions, work for us and we are entitled to an open and transparent government.

or now, however, FOIA is 50, and there is good reason to celebrate. Without it, our government, and our lives, would be far less sunny.

First Amendment attorney Jeff Portnoy is a partner with the Cades Schutte law firm.
