

Civil Beat Editorial

Make It Easier, Not Harder, To Access Hawaii's Public Records

Gov. David Ige and his Office of Information Practices are sending very different messages about openness and accountability in state government.

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By Civil Beat Editorial Board  / September 21, 2017

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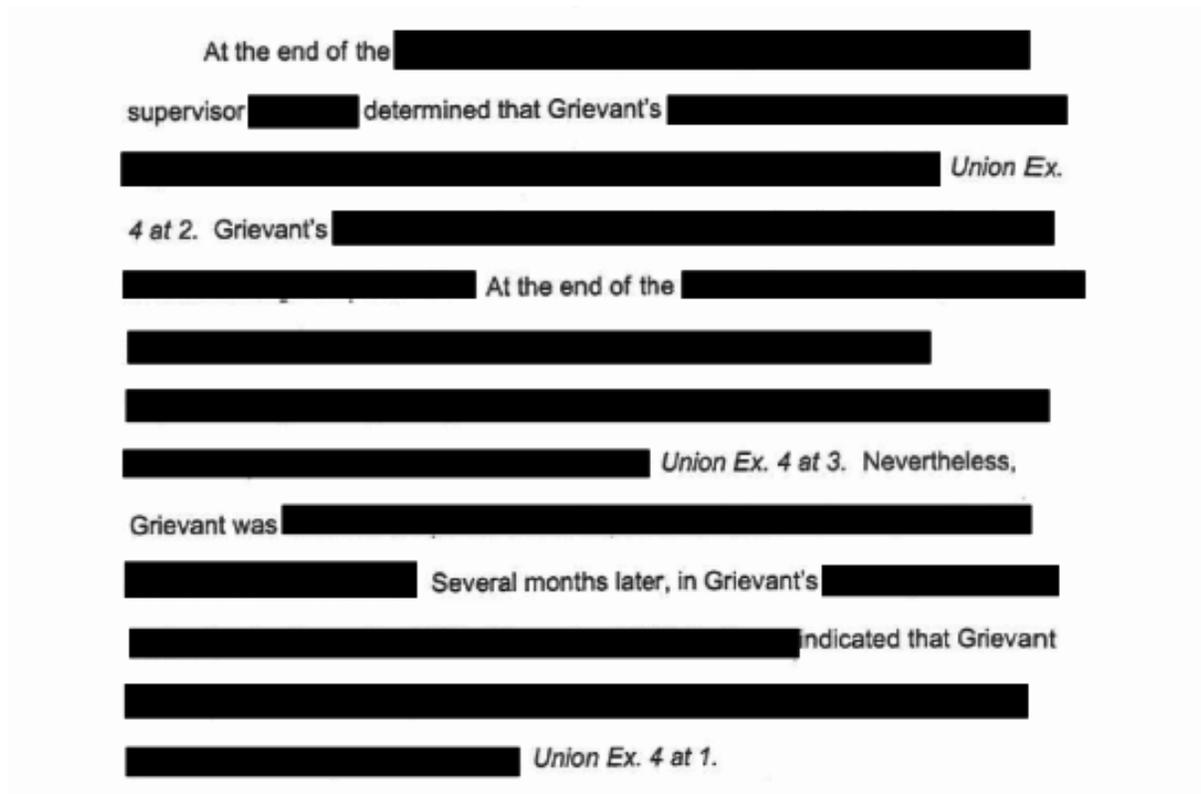
The Washington Post drew mixed reactions when it [adopted a new motto](#) earlier this year, “Democracy Dies In Darkness.”

Critics deemed it melodramatic and likened it to the title of a Batman movie.

But the slogan is intended to convey the newspaper's dedication to uncovering the truth in the Trump era of fake news. That is a mission that Honolulu Civil Beat has embraced since we began operations more than seven years ago.

What we have found, however, is that government agencies often go to great lengths to make it difficult to obtain public records of the public's

business.



Let's not have more of this, please: Excerpt from a redacted Board of Water Supply document.

First the good news. Gov. David Ige issued [an executive memorandum](#) last month to all of his department heads regarding implementation of the public records law, the [Uniform Information Practices Act](#),

The memo lists directives that Ige says “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.”

Among other things, the directives call for agencies to provide for “accurate, relevant, timely and complete records”; to establish a single point of contact for an executive agency “when practicable”; and to disclose government records in electronic form rather than paper form “when that would reduce copying costs.”

We give the governor credit for his memo, even though it should have come sooner. The [Civil Beat Law Center for the Public Interest](#) has been pushing Ige and the Attorney General’s Office on this for three years now.

It also does not apply to the University of Hawaii and the Office of Hawaiian Affairs — they operate autonomously from the executive branch — or to city and county governments or the judiciary.

Still, the law center's executive director, Brian Black, called the governor's action a positive development and urged media and good government groups to remain vigilant when dealing with state agencies on public records.

Red Flags In Proposed Rules

But while Ige may be taking a step toward a more open and transparent government, his own agency — the state Office of Information Practices — is taking a giant step backward.

[OIP](#) has proposed [draft rules](#) for processing public record requests. The agency administers two key laws designed to promote open and transparent government in Hawaii: UIPA, which requires open access to government records; and the [Sunshine Law](#), which requires open public meetings.

Concerned citizens, media and good government groups, among others, are being given an opportunity to provide input on how the state handles public records requests of government agencies.

The proposed rules it's circulating would make it much harder for the public to access their own public records.

There is troubling language regarding under what circumstance a records request may be denied. Other provisions raise questions as to whether an agency could limit the circumstances of requests that it must respond to.

There are vague processes for incremental disclosures that might allow for indefinite delays of information, for example, and “do-nothing” rules on record collection and disclosure for research purposes appear contrary to legislative intent.

But most important, the proposal would triple the already excessive fees agencies can charge for fulfilling a records request — with no protection for requesters to ensure that costs are not inflated and no requirement that an agency prove it isn't just quoting an exorbitant price in the hopes the requester will go away.

Citizens, organizations and reporters who regularly seek public records are often stymied by high fees as it is. It's one thing to pay reasonable copying costs but quite another to foot the bill for government officials to look through their files and then, adding insult to injury, pay them even more to black out the information you've asked for.

A few years ago, Civil Beat [looked at the fees issue in a series on Hawaii's public records law](#) and found that high costs frequently kept people from accessing records. Our review showed many agencies are already charging hundreds if not thousands of dollars to produce public records. The city of Honolulu wanted more than \$11,000 just to tell us what public records requests it had received in the previous two years.

Just this week, we've carried stories about a number of instances involving public officials seeking to block public access to government records or public meetings:

- The Honolulu Police Department and the police union continue to try and prevent information [about misconduct by officers](#) from becoming public.
- An attorney defending a man accused of inflight behavior that prompted military fighter jets to escort an airplane wants a hearing on his mental competency and detention [closed to the public](#).
- State lawmakers held [a behind-closed-doors meeting](#) this week at the Capitol to get briefed on a potential nuclear strike by North Korea.
- In its first meeting since the Hawaii Legislature approved a \$2.4 billion bailout for Honolulu rail, the Honolulu Authority for Rapid Transportation's

board met for hours [in executive session](#) to discuss legal issues surrounding the rail bailout bill, as well as financing issues.

This is nonsense.

The state should be making it easier, not harder, for citizens to be informed about and involved in the public process.

Read the proposed rules, please, and let OIP know where you stand.

The OIP's proposal requires Ige's approval. Make sure he knows that the public does indeed want his administration to abide by the public records law and conduct the public's business "as openly as possible."

[Executive Memorandum On Implementation Of The UIPA, Aug. 25:](#)

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 15

OFFICE OF INFORMATION PRACTICES

CHAPTER 200

**AGENCY PROCEDURES AND FEES FOR PROCESSING RECORD
REQUESTS, AND ADDITIONAL PROCEDURES FOR DISCLOSURE,
CORRECTION AND AMENDMENT, AND COLLECTION OF PERSONAL
RECORDS**

Subchapter 1 General Provisions

- §3-200-1 Purpose, scope, and construction**
- §3-200-2 Definitions**
- §3-200-3 Reporting to OIP**
- §3-200-4 Computation of time**
- §3-200-5 Compilation or summary of information
from records when readily retrievable**

§§3-200-6 to 3-200-10 (Reserved)

**Subchapter 2 Agency Procedures for Processing
Record Requests under Parts II and
III of Chapter 92F, Hawaii Revised
Statutes**

- §3-200-11 Informal requests for access to
records; agency response**

[OIP Proposed Draft Rules For The UIPA, Sept. 1:](#)



DAVID Y. IGE
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.

About the Author



Civil Beat Editorial Board 

The members of Civil Beat's editorial board are Pierre Omidyar, Patti Epler, Jim Simon, Richard Wiens, Chad Blair, Jessica Terrell and Landess Kearns. Opinions expressed by the editorial board reflect the group's consensus view. Chad

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