

# Office of Information Practices (OIP)

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# OIP administers:

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Uniform Information Practices Act  
(UIPA) HRS Chapter 92F – **open  
records**

Sunshine Law, part I of HRS Chapter  
92 – **open meetings**

# OIP's Role

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Resolves disputes as a neutral third-party in a free and informal process that is an alternative to the courts.

Issues written opinions.

AOD informal advice by phone or email.

No enforcement power.

# OIP APPEALS

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Ch. 2-73, HAR.

Requester can appeal a UIPA denial within 1 year (or file lawsuit for access).

A board's actions in violation of Sunshine Law may be appealed within 6 months.

OIP will ask agency for its position and then render a decision in a formal or informal opinion letter.

# Court's Role

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- Action taken in violation of Sunshine Law = voidable by court
- Injunction or other appropriate remedy
- For UIPA cases, order records be disclosed

# Policy of Sunshine Law & UIPA:

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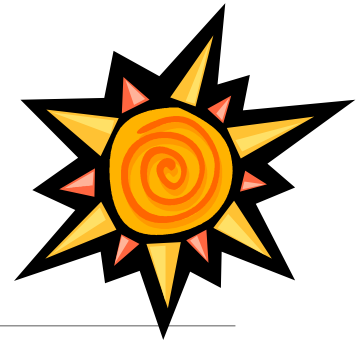


“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”

# Sunshine Law:

## Basic Requirements:

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**6 days' advance written notice and agenda;**

Meetings open to the public and allow **testimony;**

**Minutes** to be available within 40 days request, whether or not board approved; and

**Discussions, deliberations, and decision-making** by more than two board members can occur **only at open meetings.**

# Sunshine Law applies to:

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State and county “**boards**”  
(including county councils,  
commissions, agencies,  
authorities, etc)

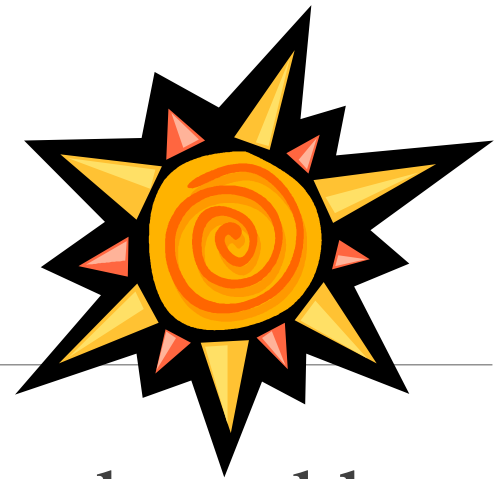


Applies when discussing **board  
business**



# “Board Business”

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Specific matters over which the board has supervision, control, jurisdiction or advisory power which are currently or reasonably anticipated to come before the board in the foreseeable future.

Ok to talk about completed matters.

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**The Sunshine Law is not applicable to non-board members, such as the general public, lobbyists, reporters, government officials, or board staff.**

# Sunshine Law requires:

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**All discussions,  
deliberations and decisions  
must be conducted at a  
meeting open to the public.**

If **not** in a noticed meeting and have more than 2 members, **STOP** to think:

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**No** discussions

**No** memos

**No** e-mails

**No** texting

**No** Facebook posts or tweets

**No** polling

**No** serial communications

**ABOUT BOARD BUSINESS**



# Chance Meeting

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**Chance meeting** is a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

## **Permitted Interaction HRS § 92-2.5(e)**

### **Informational meetings; less than a quorum**

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**Meeting cannot be specifically and exclusively organized for or directed to board**

**Can discuss board business, but no commitment to vote can be made or sought**

**Report attendance and matters discussed at next open board meeting**

# Permitted Interaction HRS § 92-2.5(e)

## Informational meetings; less than a quorum

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**Ok to attend legislative hearing, convention, seminar, or community event if less than quorum**

**Not applicable to a quorum or more of board members**

# Notice

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Written **notice** 6 calendar days in advance:

- Posted to **County electronic calendar**
- **Filed with the County Clerk's office** (retain copy for proof of filing)
- Posted in board office
- Posted at meeting site when feasible
- **Mailed or emailed upon request.**



# Notice

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New Requirement: notice must include instructions on how to request auxiliary aid (e.g., aids for hearing or vision impaired), or accommodation due to a disability.

Act 244 SLH 2019 (SB 235 SD 2 HD 1 CD 1)

# Amending the Agenda

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Only with 2/3 vote of all members

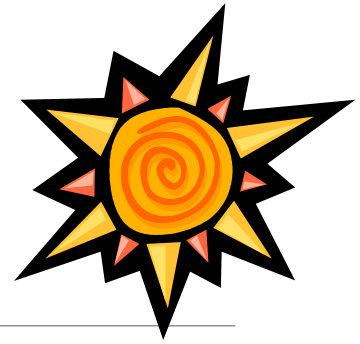
**Cannot add** item if:

- of reasonably major importance, and
- will affect a significant number of people



# Cancelling a Meeting:

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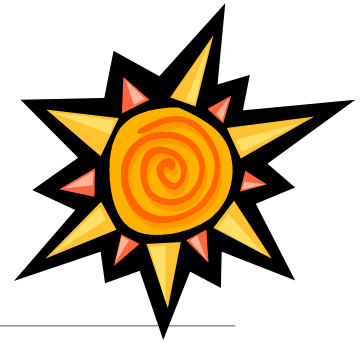
When notice not posted on electronic calendar 6 days before meeting: meeting cancelled as matter of law & notice of cancellation must be posted at meeting site.

OIP recommends, as a courtesy:

- Post notification at board's office & meeting location
- Remove notice from online calendar
- Notify people on mailing or email list

# Board Packets:

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**Board packets must be made available for public inspection when distributed to board members**

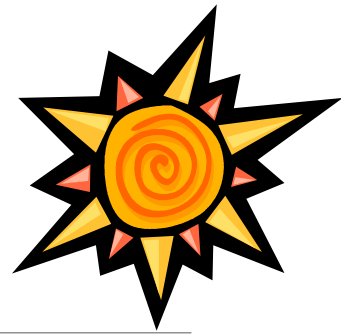
For records public under UIPA

Excludes executive session minutes, license applications, or other records that board cannot reasonably redact in time for its meeting

Packets need not be mailed to requesters, but boards must e-mail as soon as practicable

**Written or recorded minutes  
must be available within 40 days**

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**No requirement for Board's approval of minutes before disclosure**

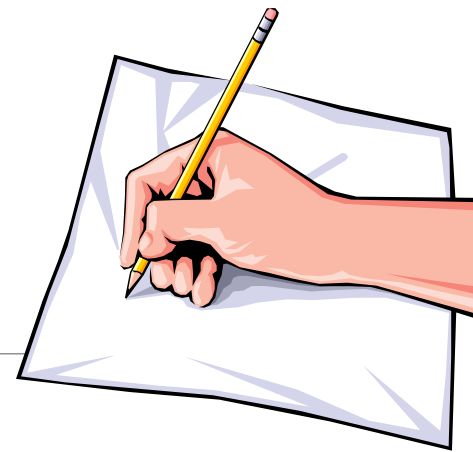
**Use staff to circulate draft minutes – avoid serial communications**

Under **UIPA**, people may request tape recordings or draft of minutes, which must generally be provided **within 10 work days**

**No requirement for transcripts or recordings**

# Written Minutes

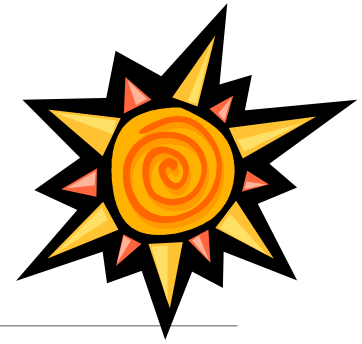
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- True reflection of matters discussed and views of participants
- Date, time and place
- Members present/absent
- Substance of all matters proposed, discussed or decided
- Record, by member, of votes
- Other information that a member requests be included
- Minutes must be public 40 days after meeting

# Minutes:

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**Meeting minutes may be kept in recorded form (e.g. audio tape), with a written summary that includes:**

Date, time, and place of meeting

Board members present/absent and when they entered or left meeting

Motions and votes, as made by individual members

Time reference to find agenda items, motions, votes in the recording

# **Executive Session Procedures**

## **HRS § 92-4**

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**Public announcement** of purpose

**2/3 vote** of board members present at open meeting & majority of members to which the board is entitled

**Vote recorded** and entered into minutes



# Executive Sessions

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## **Closed to public**

Cannot close meeting simply because matter is embarrassing or highly personal or concerns confidential/proprietary information

**Must be for one of 8 specific reasons**

# Executive Session Purposes

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(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

**(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;**

- **Civil Beat Law Center v. City and County of Honolulu, SCAP-17-0000899 (June 27, 2019)**

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

# Executive Session Purposes

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- (4) **To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;**
- (5) To investigate proceedings regarding criminal misconduct;
- (6) To consider sensitive matters related to public safety or security;
- (7) To consider matters relating to the solicitation and acceptance of private donations; and
- (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

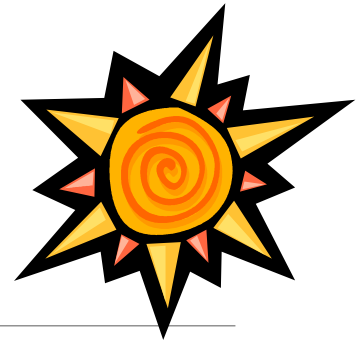
**Civil Beat Law Center v. City and County of Honolulu,**  
**SCAP-17-0000899 (June 27, 2019)**

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HRS § 92-13 provides for criminal prosecution of board members who willfully violate the Sunshine Law, but holding an open meeting does not violate the Sunshine Law. Thus, board members are not subject to criminal prosecution for holding an open meeting.

# Other Exceptions to Public Meeting Requirements

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Permitted interactions in HRS § 92-2.5

Limited meetings HRS § 92-3.1

# Emergency Meetings

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2/3 vote of all members to which the Board is entitled

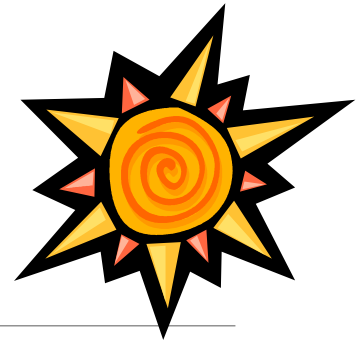
**Attorney General's concurrence** for an unanticipated event

Agenda and findings are filed

Contact persons on mailing list ASAP

# Sunshine Law recap:

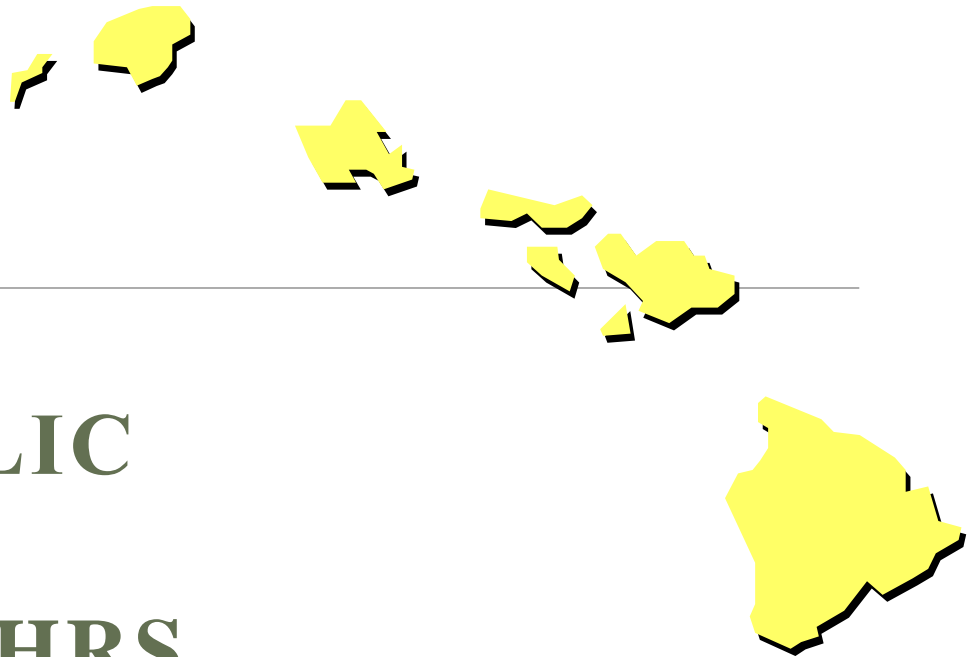
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A **board and its committees** must conduct all board business in the open:

1. **6 days' advance written notice and agenda;**
2. Meeting open to the public and allow **testimony;**
3. **Minutes** to be available within 40 days upon request, whether or not approved; and
4. **Discussions, deliberations, and decision-making** by two board or more members can occur **only at open meetings** (with exceptions).

# The Uniform Information Practices Act (UIPA)



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**HAWAII'S PUBLIC  
RECORDS LAW**

**CHAPTER 92F, HRS**





# Main Concepts

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UIPA applies to all Hawaii State and county agencies  
(except nonadministrative functions of State courts)

Applies to all records **maintained** by each agency



# Main Concepts

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Presume records are public unless closed by law

Inspection and copies

Not required to provide compilations or information that is not “readily retrievable”

# MANDATORY DISCLOSURE,

**without exception, for:**

- Rules & policies
- Minutes of public meetings
- Certain employment information
- Certain information about contract hires/consultants
- Government purchasing information

# All records must be disclosed unless an exception applies. 5 Exceptions:

## 1. Clearly unwarranted invasion of personal privacy:

Must balance public interest in disclosure against privacy interests.

Examples:

Medical, financial, & other highly personal information (age, ethnicity).

Personal address/email/phone.

# More Exceptions

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**2. Not discoverable in litigation: attorney work product, physician-patient privileged records.**

**3. To avoid frustration of a legitimate government function: drafts, confidential business info.**

- Under Peer News LLC v. City and County of Honolulu, 143 Haw. 472 (2018), no DPP (deliberative process privilege)

# More Exceptions

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- 4. Protected by state or federal law or court order: HIV/AIDS status, SSNs.**
- 5. Certain State legislative records.**

# Interagency Sharing: HRS § 92F-19

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Agencies may share nonpublic information.

Examples:

- Legislature, or legislative committees or subcommittees
- Law enforcement
- Auditor, LRB, Ombudsman – for performance of their respective duties.

Receiving agency subject to same limitations on disclosure as originating agency.

# Responding to Requests

Chapter 2-71, HAR

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Oral request = “informal”

Written request = “formal”

OIP rules set forth procedures and timelines for responding to both.



Within 10 business days of receiving a record request, you must respond:

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1. **Notice** – typical request
2. **Acknowledgment** – for complex cases with extenuating circumstances only; but a Notice must still be sent within 20 days after receiving request
3. **Provide records**

# Notice to Requester

at: [oip.hawaii.gov/forms/](http://oip.hawaii.gov/forms/)

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Notice informs requester:

Whether you will disclose all or part of the record;

How much, if anything, you will charge to do so;

Whether disclosure will be made on an incremental basis.

**If denying access**, identify portion that will not be disclosed, AND the applicable HRS § 92F-13 exception and brief explanation for claiming that exception.

## NOTICE TO REQUESTER

TO: \_\_\_\_\_  
(Requester's name)

FROM: \_\_\_\_\_  
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: \_\_\_\_\_

DATE OF THIS NOTICE: \_\_\_\_\_

**GOVERNMENT RECORDS YOU REQUESTED** (attach copy of request or provide brief description below):

- 1.
- 2.
- 3.
- 4.

**THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:**

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)  
Other agency that is believed to maintain records: \_\_\_\_\_
  - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: \_\_\_\_\_
  - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, **OR**  Is denied in its entirety  
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.  
(Describe the portions of records that the agency will not disclose.)

RECORDS OR  
INFORMATION WITHHELD

APPLICABLE  
STATUTES

AGENCY  
JUSTIFICATION

### REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

# Fees and Costs

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Search, review, and segregation (redaction) fees are allowed by OIP rules.

Copying costs are governed by HRS § 92-21.

# Government Records

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graph TD; A[Government Records] --> B[Public Records  
UIPA Part II]; A --> C[Personal Records  
UIPA Part III]; B --> D[Exceptions  
92F-13]; C --> E[Exemptions  
92F-22];
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## Public Records

UIPA Part II

Exceptions

92F-13

## Personal Records

UIPA Part III

Exemptions

92F-22

UIPA Part III requires disclosure of your own personal record and gives the right to correct factual errors.

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Record must be “about” the requester, not a third party

If record is not readily accessible, it need not be disclosed

**Exceptions:** law enforcement, confidential source; exam materials; investigative report; & protected by law or court order

# For the law, OIP's opinions and rules, and UIPA and Sunshine Law training:

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Go to OIP's website [oip.hawaii.gov](http://oip.hawaii.gov)

click on “Laws/Rules/Opinions” or  
click on the “Training”

