

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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1. **Please provide a brief description of: The Proposed Charter amendment, the purpose of the proposed Charter amendment, the issue or problem to be addressed by the proposal, and how the proposal would address the issue or problem.**

The Proposed Amendment would prohibit City agencies from charging fees for records when disclosure of the requested information is in the public interest. The City benefits from an informed citizenry; that cannot happen if only the wealthy are given access government information. State law permits agencies to charge \$10/hour to search for records and \$20/hour to review and redact records; total charges are reduced by \$60 if disclosure is in the public interest. Although State law permits agencies to charge fees, it does not require that agencies charge any fees. City agencies have used high fee estimates to deter requesters from publicly distributing records. This amendment would provide a waiver of fees for a narrow group of requesters who satisfy the public interest standard, which requires the requester to widely disseminate the information to the general public.

- a. The standard for public interest requests is well established. Under State law, a request is made in the public interest when:
  - i. The requested record pertains to the operation or activities of an agency;
  - ii. The record is not readily available in the public domain; and
  - iii. The requester has the primary intention and the actual ability to widely disseminate information from the government record to the general public at large.

HAR § 2-71-32(b). A requester does not satisfy this standard if the agency already published the relevant information, if the requester does not plan to publish the information, or if the requester does not have the ability to widely distribute the information.

- b. Waiving fees for public interest requests will not unduly burden City agencies. State law permits agencies to mitigate any undue burden of a request. If a request requires significant effort to review voluminous records, the agency may review documents over time (disclosing records once a month) to avoid interfering with the agency's other duties. HAR § 2-71-15(b).

2. **If applicable, list the Charter provision(s) affected by the proposal:**

The Charter Proposal would be an addition to Section 13-105.

- 3. If the proposal is based on a provision or provisions in the charter or laws of another jurisdiction (e.g., another county, city, or municipality), name the jurisdiction and, if possible, attach a copy of each provision or law.**

This proposal builds on language from the HRS §§ 92-21, 92F-42(13).

- 4. If the proposal is based on any written materials you have, please attach a copy of each with a citation to its source.**

HRS § 92F-42

HRS § 92-21

HAR § 2-71-32

HAR § 2-71-15

- 5. Attach the text of the proposed Charter amendment in Ramseyer format (see instructions below).**

New subsection to Section 13-105

“( ) Fees shall not be charged to inspect the books and records of the city when the public interest would be served; provided that charges may be imposed for the reasonable actual cost of reproducing any copies provided to the person.”

**§92F-42 Powers and duties of the office of information practices.**

The director of the office of information practices:

(1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;

(2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;

(3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;

(4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;

(5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;

(6) May recommend disciplinary action to appropriate officers of an agency;

(7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;

(8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;

(9) Shall review the official acts, records, policies, and procedures of each agency;

(10) Shall assist agencies in complying with the provisions of this chapter;

(11) Shall inform the public of the following rights of an individual and the procedures for exercising them:

- (A) The right of access to records pertaining to the individual;
- (B) The right to obtain a copy of records pertaining to the individual;
- (C) The right to know the purposes for which records pertaining to the individual are kept;
- (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
- (E) The right to correct or amend records pertaining to the individual; and
- (F) The individual's right to place a statement in a record pertaining to that individual;

(12) Shall adopt rules that set forth an administrative appeals structure which provides for:

- (A) Agency procedures for processing records requests;
- (B) A direct appeal from the division maintaining the record;

and  
(C) Time limits for action by agencies;

(13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of fees when the public interest would be served;

(14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies;

(15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;

(16) Shall have standing to appear in cases where the provisions of this chapter are called into question;

(17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter;  
and

(18) Shall take action to oversee compliance with part I of chapter 92 by all state and county boards including:

(A) Receiving and resolving complaints;

(B) Advising all government boards and the public about compliance with chapter 92; and

(C) Reporting each year to the legislature on all complaints received pursuant to section 92-1.5. [L 1988, c 262, pt of §1; am L 1989, c 192, §10; am L 1998, c 137, §5]

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### PART III. COPIES OF RECORDS; COSTS AND FEES

**§92-21 Copies of records; other costs and fees.** Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. Except as provided in section 91-2.5, the cost of reproducing any government record, except geographic information system digital data, shall not be less than 5 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include but shall not be limited to labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33. [L 1921, c 96, §1; RL 1925, §166; am L 1929, c 166, pt of §1; am L 1931, c 178, §1; RL 1935, §147; RL 1945, pt of §458; am L 1945, c 248, §1; am L 1949, c 345, §1; am L Sp 1949, c 23, §1; RL 1955, §7-1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §92-21; am L 1974, c 145, §2; am L 1976, c 212, §3; am L 1991, c 145, §3; am L 1993, c 103, §1; am L 1994, c 226, §2; am L 1998, c 311, §4; am L 1999, c 160, §1 and c 301, §3(1)]

#### Cross References

Court documents, see §607-5.

#### Case Notes

Records not otherwise open to the public are not opened by this section. 42 H. 14.

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- (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)

- (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)