

# NOTICE TO REQUESTER

TO: R. Brian Black - Civil Beat Law Center for the Public Interest, request+s55argesz@foi.uipa.org  
(Requester's name)

FROM: The Department of the Corporation Counsel, City and County of Honolulu, Erin Tamashiro 768-5102  
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: June 21, 2018

DATE OF THIS NOTICE: July 5, 2018

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

1. See attached Request to Access a Government Record
- 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.

**METHOD & TIMING OF DISCLOSURE:**

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

**Method of Disclosure:**

- Inspection at the following location: \_\_\_\_\_
- As requested, a copy of the record(s) will be provided in the following manner:
  - Available for pick-up at the following location: \_\_\_\_\_
  - Will be mailed to you.
  - Will be transmitted to you by other means requested: electronic copy will be emailed

**Timing of Disclosure:** All records, or the first increment if applicable, will be made available or provided to you:

- On July 5, 2018.
- After prepayment** of 50% of fees and 100% of costs, as estimated below.

**For incremental disclosures**, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

**Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:**

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency’s control prevents agency from responding to the request within 10 business days.

**ESTIMATED FEES & COSTS AND PAYMENT:**

**FEES:** For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

**COSTS:** For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

**PREPAYMENT:** The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs

from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

**The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:**

**For public record requests only:**

<b>Fees:</b> Search	Estimate of time to be spent: _____ hours (\$2.50 for each 15-minute period)	\$
Review & segregation	Estimate of time to be spent: _____ hours (\$5.00 for each 15-minute period)	\$
Fees waived	<input type="checkbox"/> general (\$30), <b>OR</b> <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	<\$ _____ >
Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
<b>Total Estimated Fees:</b>		<b>\$</b>

**For public or personal record requests:**

<b>Costs:</b> Copying	Estimate of # of pages to be copied: _____ (@ \$0.50 for the first page, and \$ 0.25 per additional page, pursuant to HRS § 92-21)	\$
Delivery	Postage	\$
Other	_____	\$
<b>Total Estimated Costs:</b>		<b>\$</b>

**TOTAL ESTIMATED FEES AND COSTS from above:** \$

**The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.**

**PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$

**UNPAID BALANCE FROM PRIOR REQUESTS** (100% must be paid before work begins) \$

**TOTAL AMOUNT DUE AT THIS TIME** \$

Payment may be made by:  cash  
 personal check payable to \_\_\_\_\_  
 other \_\_\_\_\_

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, [oiip@hawaii.gov](mailto:oiip@hawaii.gov), or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

# REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: 06-21-2018

TO: **City Department of the Corporation Counsel**  
Agency that Maintains the Government Record

cor@honolulu.gov  
Agency's Contact Information

FROM: request+s55argescz@foi.uipa.org  
Requester's Name or Alias

request+s55argescz@foi.uipa.org  
Requester's Contact Information

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## **AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:**

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

Honolulu Corporation Counsel Opinion 86-28, regarding the release of City employees' medical data for research purposes.

**I WOULD LIKE:** (Please check one or more of the options below, as applicable)

- To inspect the government record**
- A copy of the government record:** (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
- Pick up at agency (**date and time**): \_\_\_\_\_
- Mail (address): \_\_\_\_\_
- E-mail (address): request+s55argescz@foi.uipa.org
- Fax (toll free and only if available; provide fax number): \_\_\_\_\_
- Other, if available (please specify): \_\_\_\_\_

- If the agency maintains the records in a form other than paper, please advise in which **format you would prefer to have the record.**

Electronic  Audio  Other (please specify): \_\_\_\_\_

[ ] Check this box if you are attaching a request for waiver of fees in the public interest  
(See waiver information on next page).

#### **FEES FOR PROCESSING PUBLIC RECORD REQUESTS**

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

#### **WAIVER OF FEES IN THE PUBLIC INTEREST**

As an alternative to the \$30 fee waiver (not in addition to), the agency may waive the first \$60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

- (1) The requested record pertains to the operations or activities of an agency;
- (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 public at large.

#### **COSTS**

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

#### **AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS**

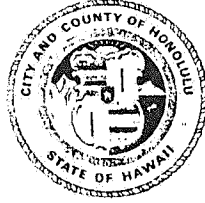
The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in ***extenuating circumstances***, the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

**Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency.** If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, [oiip@hawaii.gov](mailto:oiip@hawaii.gov), or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

#### **REQUESTER'S RESPONSIBILITIES**

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at [oip.hawaii.gov](http://oip.hawaii.gov) or from OIP.

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**  
HONOLULU, HAWAII 96813



FRANK F. FASI  
MAYOR

RICHARD D. WURDEMAN  
CORPORATION COUNSEL

August 13, 1986

MEMORANDUM

TO: ALMA CHING CORN, M.D., DIRECTOR  
DEPARTMENT OF HEALTH

FROM: MARIA C. AVINANTE-TANAKA  
DEPUTY CORPORATION COUNSEL

SUBJECT: MEDICAL RECORDS

This is in response to your letters of March 21, 1986 asking whether Dr. J. David Curb could obtain confidential employee data through your Department for an N.I.H. high blood pressure program.

We answer in the negative.

Although this request involves gray areas in the applicable statutes, reasonable alternatives make "statute-bending" unnecessary in this case.<sup>1</sup>

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<sup>1</sup>Compare, e.g., *Getman v. NLRB*, 450 F.2d 670 (1971), where law professors engaged in an NLRB voting study sued to compel the NLRB to furnish them with the names and addresses of employees eligible to vote in certain elections, such lists to be used to contact those employees willing to be questioned about their attitudes toward the election process. The Court of Appeals held that disclosure of the list sought by the plaintiffs was not an invasion of the employee's privacy. Although a limited number of employees would suffer some loss of privacy by receiving calls, the

(Footnote Continued)

MEMORANDUM

TO: ALMA CHING CORN, M.D.

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August 13, 1986

The right to privacy is explicit in the Hawaii State Constitution. In 1978, the Hawaii State Constitution was amended to add Article I, Section 6, which provides:

RIGHT TO PRIVACY

Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

In 1980, the State Legislature passed Act 226, Fair Information Practice (Confidentiality of Personal Record), codified as Hawaii Revised Statutes (hereinafter "HRS") Chapter 92E. Session Laws of Hawaii 1980, Act 226, Section 1, provides:

The purpose of this Act is to implement in part the 1978 amendment to the Hawaii State Constitution (Article 1, Section 6) relating to the right to privacy.

This Act permits individuals to gain access to personal records relating to themselves maintained by State or county executive branch agencies and to correct or amend those records under certain circumstances.

"Personal record" is defined in HRS Section 92E-1(3) as follows:

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(Footnote Continued)

loss would be minor. The applicable rule (Exemption 6 of the Freedom of Information Act, 5 USCS § 552(b)(6) was meant to guard against the unnecessary disclosure of intimate details. Any disclosure beyond name and address would be voluntary because the employees could refuse to be interviewed. The court further noted the public interest purpose and quality of the study, and the possibility that the plaintiffs could pursue their study without the lists.

MEMORANDUM

TO: ALMA CHING CORN, M.D.

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August 13, 1986

- (3) 'Personal record' means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. 'Personal record' includes a 'public record,' as defined in section 92-50. [Emphasis added]

Pursuant to HRS Section 92E-2, each City agency that maintains any accessible personal record shall make that record available to the person to whom it pertains in a reasonably prompt manner and in a reasonably intelligible form. The statute, however, sets forth important exemptions and limitations regarding public access to personal records (HRS § 92E-4) and the disclosure of personal records to other agencies (HRS § 92E-5).

A. PUBLIC ACCESS TO PERSONAL RECORD.

With respect to limitations on public access to personal records pertaining to other persons, HRS Section 92E-4 provides:

§92E-4 Limitation on public access to personal record. No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

- (1) To a duly authorized agent of the individual to whom it pertains;
- (2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;



MEMORANDUM

TO: ALMA CHING CORN, M.D.

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August 13, 1986

- (3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;
- (4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual. [Emphasis added]

B. AGENCY'S ACCESS TO PERSONAL RECORDS.

HRS Section 92E-5 protects against the disclosure of personal records to other agencies, providing as follows:

§92E-5 Limitations on disclosure of personal record to other agencies. No agency may disclose or authorize disclosure of personal record to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;

. . . .

- (6) To the legislature or any committee or subcommittee thereof;

- (7) Pursuant to an order of a court of competent jurisdiction;

. . . . [Emphasis added]

MEMORANDUM

TO: ALMA CHING CORN, M.D.

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August 13, 1986


Thus, Dr. Curb, by not falling explicitly within an exception to HRS Section 92E-4, lacks a right of access and the City Physician, by not falling within an exception to either HRS Section 92E-4 or 92E-5, lacks a right of access on Dr. Curb's behalf.

As an alternative, we suggest that Dr. Curb provide a flyer or have the City Physician disseminate a memorandum informing employees of his study. This circumvents the statutory disability, saves the City Physician work, and imposes no significant burden on a useful study that may prove helpful to its participants.

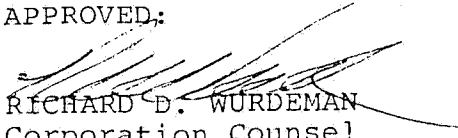
The same discussion applies to your query of March 12, 1986 regarding H.R. No. 112 and H.C.R. No. 69 calling for the release of ambulance service records. We believe that a Department of Health ambulance report form that contains information about an individual including name, medical, and other identifying information, constitutes a personal record within the definition set forth in HRS Section 92E-1(3).

The legislature, however, is exempt from the rule of confidentiality in that HRS Section 92E-5(6) specifically authorizes disclosure of personal records "[t]o the legislature or any committee or subcommittee thereof." We suggest that in the event records are released, the names of the patients be deleted and some kind of numbering system be substituted. The deletion of names would not interfere with the information the Legislature has requested and would conform to the spirit of the statute in protecting confidentiality.

The Legislature should also reimburse the Department of Health for any extraordinary expenses incurred in delivering 50,000 documents.

  
MARIA C. AVINANTE-TANAKA  
Deputy Corporation Counsel

APPROVED:

  
RICHARD D. WURDEMAN  
Corporation Counsel

MCAT:ct

(Prepared by Jan de Werd  
Summer Law Clerk)