

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 54

PERSONAL RECORDS

Subchapter 1 General Provisions

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-54-1 Purpose. This chapter is adopted pursuant to chapter 92E, Hawaii Revised Statutes, to establish procedures governing an individual's access to the individual's personal records and access to those personal records by the public and governmental agencies. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §92E-10)

§16-54-2 Definition. As used in this chapter:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Division" means any division or office of the department of commerce and consumer affairs including but not limited to the administrative services office, the division of financial institutions, the business registration division, the cable television division, the consumer advocacy division, the director's office,

the Hawaii public broadcasting authority, the hearings office, the insurance division, the office of consumer protection, the professional and vocational licensing division, the regulated industries complaints office, and all boards, commissions, and programs assigned to the department for administrative purposes.

"Individual" means the person about whom a personal record is maintained by the department and includes only natural persons but not corporations, partnerships, associations, cooperatives, or other similar entities.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by the department. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §92E-1)

§16-54-3 Individuals access to personal records. (a) An individual seeking access to the individual's personal records shall make a request in writing on a form provided by the department. The request shall be submitted to the division which the individual believes maintains the personal record.

(b) Prior to production of the personal record, the division may require the requesting individual to produce verification of identity such as a driver's license or other photo identification.

(c) Except as provided in subsection (d), within ten working days following the date of receipt of the request the division shall permit the individual to review the record. The ten day period may be extended for an additional twenty working days if the division provides to the individual within the initial ten working days, a written explanation of the unusual circumstances causing the delay.

(d) The individual may be denied access to the record if:

(1) The request is exempted under section 92E-3, HRS; or

(2) The individual is unable to produce verification of identity in accordance with this chapter.

Where the division denies access to the record, it shall provide to the individual, in writing, the reasons therefor within the time period prescribed in subsection (c).

(e) The individual reviewing the file may request a copy of any portion or all of the individual's personal record. The copy shall be provided within the time period prescribed in subsection (c). The division shall charge the individual for any copies and for certification of copies. The cost shall include the cost of duplication, transcription of the record, if necessary, and any search required to find the records involved.

(f) At the request of the individual, the division shall provide an explanation of any machine readable code or any code or abbreviation which is employed for internal division or departmental use and which is contained in the record. [Eff 1/6/86] (Auth: §§26-9, 91-2, 92E-10) (Imp: HRS §§92E-2, 92E-3, 92E-6, 92E-7)

§16-54-4 Correction of personal record. (a) If, after reviewing the individual's personal record, an individual believes that there is a factual error, misrepresentation, or misleading entry in the record, the individual may request that the record be corrected, provided this section shall not apply to challenges to testing or examination scores which are used to determine whether the individual has qualified for a professional or vocational license and which has been given to that individual pursuant to the test or examination. A request for correction shall:

- (1) Be in writing;
- (2) Specify the portion of the record sought to be corrected;
- (3) Explain why the record should be corrected; and
- (4) Be accompanied by any documentary support for the correction. Any request for correction shall be submitted to the division which maintains the record involved.

(b) Within twenty working days after receipt of the request for correction and evidence in support thereof, the division shall respond to the request either by correcting the record and notifying the requesting individual of the correction or by informing the requesting individual that the record will not be corrected, the reasons why the record will not be corrected, and that review of the division's decision is available pursuant to section 16-54-7. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §92E-8)

§16-54-5 Public access to personal records. (a) Except as provided in subsection (b) the personal record of an individual shall not be disclosed to any person other than the individual to whom the record pertains.

(b) The personal record may be disclosed to a person other than the individual to whom the record pertains if that disclosure is authorized by sections 92E-4 or 92E-13, HRS, or both provided that:

- (1) Where the person who requests access to the personal record claims to be an authorized agent of the individual to whom the record pertains, the division may require the agent to present written authorization or other documentation establishing the agent's authority to act on behalf of the individual and to obtain access to the individual's personal record;
- (2) Information collected and maintained by the department for the purpose of creating a record available to the general public means information as to:

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- (A) Whether or not an individual is licensed or authorized to engage in a particular profession or vocation, or to carry on a particular type of activity or trade;
 - (B) Whether or not an individual has been disciplined by the department for any misconduct; and
 - (C) Whether the individual maintains bonding or insurances and if so, information about that coverage;
- (3) The division may require a person seeking disclosure for compelling circumstances affecting the health or safety of any individual to provide proof establishing those circumstances. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §§92E-4, 92E-13)

§16-54-6 Disclosure of personal record to other agencies. The department may disclose information contained in personal records to other agencies provided that the agencies demonstrate that the disclosure falls into one or more of the categories enumerated in section 92E-5, HRS. The department may enter into agreements with agencies to provide for regular access to departmental files provided that the department retains the authority to authorize each instance of specific access to personal records and to ensure that access is solely for one of the purposes enumerated in section 92E-5, HRS. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §92E-5)

§16-54-7 Review procedures; denial of request for access or correction. (a) If the division denies a request for access to a personal record or denies an individual's request to correct the individual's personal record, the affected person may request a review of the decision of the division. A request for review shall be filed with the office of the director within twenty working days after the date of the division's denial, and shall explain why the person believes that the division's determination is erroneous.

(b) Within thirty working days after receipt of the request for review of the division's decision, the director or the director's designee shall respond to the request either by ordering a correction of or access to the record and so notifying the requesting individual, or by informing the requesting individual that the division's decision will not be changed and why it will not be changed. If the director or the director's designee affirms the division's refusal to correct the record or refusal to grant access to the record, the director or the director's designee shall inform the individual of the right to seek judicial review of the department's decision pursuant to section 92E-11, HRS, and shall permit the individual to submit, for inclusion in the record, a concise statement of the reasons why the individual

believes the file should be corrected. [Eff 1/6/86] (Auth: HRS §§26-9, 91-2, 92E-10) (Imp: HRS §§92E-9, 92E-11)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-54, Hawaii Administrative Rules, on the Summary Page dated December 9, 1985, was adopted on December 9, 1985, following a public hearing held on the same date, after public notice was given in the Honolulu Advertiser on November 4, 1985.

The adoption of chapter 16-54 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Russel S. Nagata

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Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 12/17/85

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APPROVED: Date 12/26/85

/s/ George R. Ariyoshi

GEORGE R. ARIYOSHI
Governor, State of Hawaii

December 27, 1985

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-54
Hawaii Administrative Rules

December 9, 1985

SUMMARY

Chapter 16-54, Hawaii Administrative Rules, entitled "Personal Records" is adopted.