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No. _____

TESTIMONY ON SENATE BILL 572, SENATE DRAFT 1
RELATING TO INFORMATION PRACTICES

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 15, 2017; 2:00 p.m.
State Capitol, Conference Room 325

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) supports Senate Bill (SB) 572, Senate Draft (SD) 1, as it would standardize the manner in which state and county agencies protect records as related to the Uniform Information Practices Act (UIPA). The clarity and consistency of standardized practices will ensure agencies are in full UIPA compliance.

Thank you for the opportunity to present this testimony.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 15, 2017, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 572, S.D. 1
Relating to Information Practices

Thank you for the opportunity to submit testimony on this bill. **The Office of Information Practices (“OIP”) supports this bill**, which would amend chapter 92F, the Uniform Information Practices Act (UIPA), to make OIP the agency responsible for adopting rules to protect original agency records during public inspection, and clarify that agencies are required to follow rules adopted by OIP regarding personal record requests. **OIP requests, however, that the effective date be amended to be “upon approval.”**

Following crucial legislative clarification of agencies’ right to judicially appeal from OIP’s decisions (Act 176, SLH 2012), OIP adopted new rules in 2012 relating to appeals made to OIP. OIP also created the UIPA Record Request Log to obtain empirical data before drafting anticipated updates to existing rules as well as new rules required to be created on other matters. All state, county, and independent agencies have been using the Log to record and report, among other things, the number of UIPA record requests they received and completed; how the requests were resolved; how long it took for agencies to respond to and resolve the requests; how much the agencies incurred in hours and costs to respond; and how

much the agencies recovered. The information obtained from the agencies' Logs has been very enlightening and has been reported on the [Master Log at data.hawaii.gov](http://data.hawaii.gov) and in OIP reports summarizing the data on the [Reports page at oip.hawaii.gov](http://oip.hawaii.gov).

Now that OIP has sufficient empirical data, and because OIP's recent administrative transfer to the Department of Accounting and General Services requires all OIP's existing rules to be renumbered, **OIP is currently in the process of drafting comprehensive rules and rule amendments**, pursuant to chapter 91 rulemaking requirements. OIP's existing rules relating to fees, costs, and response procedures for government record requests were adopted in 1998 and are being reviewed. OIP is also developing new rules for personal records and other matters for which rules are required by OIP's powers and duties provisions in Section 92F-42, HRS. OIP's new rules will also address section 92F-11(e), HRS, which modifies the UIPA's general requirement to make records available for inspection and copying by allowing "each agency" to individually adopt rules to protect those records "from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions." As OIP is itself an agency that receives public requests for access to its own records, it will adopt a rule addressing public inspection of its own records in any case.

Since OIP already will be adopting a rule under Section 92F-11(e) and is the agency responsible for administering the UIPA as a whole, this bill would allow all agencies to follow the rule adopted by OIP instead of each adopting their own. Not only will this save the state and county governments countless employee hours and tax dollars as their various agencies will not have to draft and adopt similar rules, this bill promotes uniformity in agency responses to record requests by ensuring that all

agencies will follow a single standard adopted by OIP, rather than adopting different and potentially conflicting rules. Agencies are already required to follow OIP's existing rules relating to government records and appeals to OIP, so the statutory amendment would be consistent with current requirements. Without the amendment, it would be confusing to agencies as well as the public to have to follow most OIP rules regarding the UIPA, but follow a different rule for each agency relating to public inspections under section 92F-11.

This bill would also **clarify section 92F-26, HRS**, which currently states that once OIP has adopted rules setting out personal record request procedures, each agency must then separately adopt those same rules "insofar as practicable." As the bill proposes, this section will simply **require the agencies to follow those rules once adopted by OIP. This, too, will promote uniformity in agency responses to record requests and avoid the potential conflict, inefficiency, and expense of having each state and county agency separately adopt the same set of rules.**

There was some confusing testimony in the Senate that apparently misunderstood SB 572 to require OIP to create rules for the preservation, disposition, and disposal of government records. Such rule-making is the current responsibility of the State Archives and the Department of Accounting and General Services under chapter 94, HRS, and is not what this bill encompasses. **SB 572 is clearly limited to section 92F-11(e) of the UIPA and deals specifically with protecting records during the public inspection process, as described above. OIP does not deal with general record retention or preservation requirements and is not seeking such additional responsibility, which are beyond the scope of OIP's statutory authority and limited resources.**

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Finally, the SD 1 amended the bill to provide for an intentionally defective effective date. **OIP respectfully requests that the effective date be “upon approval.”**

Thank you for considering OIP’s testimony in support of this bill with an amended effective date “upon approval.”



March 15, 2017

Rep. Scott Nishimoto
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: SB 572, SD1

Chairman Nishimoto and Committee Members:

We oppose this bill.

The purpose of the Office of Information Practices is to work out differences over disclosure of public information for the public, but that function has slowed in recent years.

We do not support adding records retention (long the responsibility of the Department of Accounting and General Services) to the OIP's duties and taking away from that important duty of helping to provide information to the public.

Thank you for your time and attention.

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 14, 2017 5:03 PM
To: JUDtestimony
Cc: cathyg@animalrightshawaii.org
Subject: *Submitted testimony for SB572 on Mar 15, 2017 14:00PM*

SB572

Submitted on: 3/14/2017
Testimony for JUD on Mar 15, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Animal Rights Hawai'i	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 6:32 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB572 on Mar 15, 2017 14:00PM*

SB572

Submitted on: 3/13/2017

Testimony for JUD on Mar 15, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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