

# Common Cause Hawaii

P.O. Box 235353 Honolulu, HI 96823-3505 Tel. (808) 533-6996

*Citizens Working for Open, Honest, Accountable Government*

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Friday, March 20, 1998

2 PM, Rm 325, 40 copies

Testimony to the House Judiciary Committee Supporting SB 2983 SD 2, With An Amendment.

First, thank you to the Chairs and committee members for the opportunity to offer testimony. I'm Larry Meacham, writing for the 1200 members of Common Cause Hawaii.

The Office of Information Practices is currently under the Attorney General's office, which has a conflict of interest in representing both executive agencies and the public. These two responsibilities often conflict when bureaucrats forget that citizens' tax money pays for their salaries and for developing government information, and that the records belong to the public, not the bureaucracy, as long as disclosure does not violate any individual's privacy. When the public, the media or public interest groups ask for government records, the bureaucrats stonewall, give us the runaround or dare us to take them to court. Going to the Attorney General's office often results in no action because they are in conflict, representing both the public and the agencies.

For example, Environment Hawaii, the Sierra Club Legal Defense Fund and Common Cause finally took DLNR to court for repeatedly holding illegal secret meetings and preparing minutes late or not at all. The AG defended DLNR. After much wasted time and money on both sides, we won 90% of the case in a summary judgement. In another example, a set of proposed rules on opening government records has sat in the AG's office for over a year without a response.

In contrast, OIP has been active in getting agencies to release many files and records that the public is entitled to see. Therefore, we support the original SB 2983 SD 1, to add sunshine law enforcement responsibilities and to put OIP under the Legislature, which has a good record of allowing the Legislative Auditor's office, the State Ethics Commission and the Legislative Research Bureau to be independent and impartial. Under the Legislature, OIP could continue its good work. We disagree with WAM's suddenly putting OIP under the Judiciary. Since OIP does not have enforcement powers, this would be a difficult fit.

Without OIP to advocate for open records and open meetings, the tendency will be to shut out the public. Bureaucrats will make worse decisions, make more mistakes and waste more money because of lack of public input. Our best guarantee for honest and effective government is open records and meetings. In order to preserve OIP, we urge you to pass SB 2983 and to put OIP under the legislature. Thank you for the opportunity to speak. I will try to answer any questions.

Common Cause Hawaii

# Hawai'i Clean Elections (HI.CLEAN)

c/o League of Women Voters, 49 South Hotel Street, Rm. 314, Honolulu, HI 96813  
ph. 808-531-7448 or 988-4889, fx. 599-5669 or 988-7488 Email: worst@lava.net

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To: Chair Terrance Tom and Vice Chair Brian Yamane  
House Judiciary Committee

From: Toni Worst, President

Hearing: House Committee on Judiciary to be held on  
Friday, March 20, 1998 at 2 pm

RE: SB 2983, SD 1.

## TESTIMONY IN SUPPORT OF OFFICE OF INFORMATION PRACTICES

Chair Tom, Vice Chair Yamane: Thank you for hearing this bill. I'm sorry I cannot testify in person.

Hawai'i Clean Elections supports the work of Office of Information Practices (OIP) because it has provided a great public service: namely, the assurance that information which should be publicly available will not be unreasonably and unduly withheld from public view.

In our case, we are very interested in the financial disclosure and campaign spending reports filed by candidates, and we want to ensure that those records continue to be free and accessible to the public.

We commend Moya Gray and her staff for doing much with little. We believe the relatively small budget that is allocated to this office is a tiny enough public price to pay for some measure of institutionalized assurance that government will operate without too much secrecy, which helps to contribute to public trust of government. Supporting the "good government" institutional structures which help preserve the public's declining trust in government and ability to keep a sharp eye on the operations of government will be very cost-effective in the short and long run.

We also urge you to approve transferring OIP to the legislative branch. We think OIP can function more effectively in a more independent setting, whereas currently they could be publicly perceived as constrained in their functions and decisions by political considerations. We urge you to give them the autonomy to continue their public service in protecting the public's right-to-know.

Thank you for this opportunity to testify.

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HI.CLEAN Members: League of Women Voters • Common Cause Hawai'i • Advocates for Consumer Rights • Hawai'i Green Party, O'ahu • Graduate Students Org. of U.H. • Univ. of Hawaii Student Caucus • Sierra Club-Hawaii Chapter. Supporting Neighborhood Boards (so far): Liliha • Kalihi Valley • Ko'olaupoa • Makiki • Waialae-Kahala • Kailua • Wahiawa

**FACSIMILE COVER PAGE**

**To: Moya Gray**  
**From : R.S. Miller**  
**Subject: Visioneer PaperPort**  
**Pages (including cover): 3**

**Time: 08:35:08**  
**Date: 03/20/98**

To: Moya Davenport Gray

From: Dick Miller

Tried t fax this last night but couldn't get through. If it needs anything please let me know -  
254-1796.

A good meeting yesterday.

98 MAR 20 A9:09  
RECEIVED  
OFC INFORM PRACTICES

## HONOLULU COMMUNITY-MEDIA COUNCIL

P.O.Box 22415 Honolulu, Hawaii 96823-2415 Telephone (808) 983-4744

### TESTIMONY OF

Richard S. Miller, President

Before the Judiciary Committee, House of Representatives

March 20, 1998 2:00 P.M.

Regarding S.B. 2983, S.D. 2, regarding  
the Office of Information Practices

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\*Founding Member

\*\*Emeritus

Chair Tom, Vice-Chair Yamane, and Distinguished Members of the  
Judiciary Committee:

I very much appreciate the opportunity to present this testimony to you.

Except for the venue to which this bill would consign the OIP, I am  
speaking in favor of its passage.

The Honolulu Community-Media Council was instrumental in the  
creation and adoption of the UIPA and has supported the OIP since its  
creation.

The Media Council recognizes that two important but often conflicting  
values are at stake:

First, is the importance of open government in a free and  
democratic society. **Without an open government there can be no real  
freedom.** And we should all recall that many Hawai'i citizens have  
fought with outstanding bravery and sacrificed much to preserve  
freedom. Openness in government requires both public access to public  
records and public decision-making, which should be hidden behind  
closed door for only the most compelling of reasons.

Second, is the vital importance of the right of privacy of the  
individual: The right not to have private information about an individual  
made public without a compelling State interest. This right of individual  
privacy is separately recognized in our own State Constitution. **It is an  
essential element of human dignity.**

The Office of Information Practices has proved itself to be an  
essential organ to sort out the intricate issues involved in deciding under  
the UIPA when information should be made public and when, because of  
overriding privacy concerns, it should not. Without the OIP it would be  
necessary in every case where an information seeker differs with the



possessor of the information -- a governmental officer -- to bring suit to resolve the conflict. The costs of litigation in such cases would likely outweigh by many times the cost to the public of the Office of Information Practices. Equally important, the O.I.P., notwithstanding any backlog it may have because of insufficient personnel, provides a far more prompt response to a request for information than the courts could possibly provide. The speed with which the OIP operates should increase substantially, and the number of cases requiring adjudication by O.I.P. should decline, as the OIP completes its work on developing rules and regulations on which all can rely. **In short, the O.I.P. is an efficient and money-saving device for serving the important functions of protecting both openness and privacy.**

For this reason, the Media Council strongly urges you to pass this bill extending the jurisdiction of the O.I.P. to the Open Meeting Law, and thus reaffirm the Legislative commitment to maintain the O.I.P. as a strong and effective office.

Further, as a way of insulating the O.I.P. from conflicts of interest when the Attorney General represents State administrative offices from which records and information are sought, we believe that the O.I.P. should be moved out of the Attorney General's Office.

As a long-time law professor, however, you should know that I personally entertain very serious doubt whether a move to the Judiciary, which ultimately may have to pass on the propriety of O.I.P. decisions and which has a unique and separate function in the adjudication of cases and controversies, is appropriate. Indeed, it may not be constitutionally valid under the separation of powers. The bill should therefore be amended to place the O.I.P. under the mantle of the Legislature, much like the Ombudsman, the Legislative Reference Bureau, the Ethics Commission, and the State Auditor.

You have my deep gratitude and that of the Media Council for your consideration of this testimony.

A handwritten signature in dark ink, appearing to read "R. S. Miller", with a long horizontal flourish extending to the right.

# Testimony to the Nineteenth State Legislature, 1998 Session



To: The Honorable Terrance W.H. Tom, Chair  
The Honorable Brian Yamane, Vice Chair  
House Committee on Judiciary

Hearing Date: Friday, March 20, 1998  
Time: 2:00 p.m.  
Location: State Capitol, Conference Room 325

The Judiciary-State of Hawai'i

By: Michael F. Broderick  
Administrative Director of the Courts

Clyde W. Namu'o  
Deputy Administrative Director

**Bill No. and Title:** S.B. No. 2983, S.D. 2, Relating to Office of Information Practices.

**Purpose:** The purposes of Senate Bill No. 2983, Senate Draft 2, are: (1) to put administration of the open meetings law (HRS, Chapter 92) and the open records law (HRS, Chapter 92F) under the Office of Information Practices (OIP); (2) to move the OIP from the Department of the Attorney General to the Judiciary; and (3) to provide that the Chief Justice rather than the Governor appoint the director of the Office of Information Practices.

## Judiciary's Position:

The Judiciary's testimony relates only to that part of the bill which moves the OIP to the Judiciary. The Judiciary has no position on the other sections of the bill.

The Judiciary opposes placing the OIP in the Judiciary because it (1) will create an appearance that the courts are not neutral decision-makers and (2) raises separation of power concerns.

Because of concerns about maintaining neutrality and the appearance of neutrality, the Judiciary generally prohibits its employee-attorneys from advising parties who will appear before the courts, and from appearing in state courts in opposition to other parties. However, the OIP has a rulemaking function, an advisory function, and a litigation function. (See, e.g., HRS§92F-42(16) which provides that OIP has "standing to appear in cases where the provisions of this chapter are called into question.") Consequently, this bill would place the courts in the tenuous position of having an agency of the Judiciary advising, advocating, and assisting parties in opposition to the actions of other state agencies, and then having the courts sit in judgment of the issues raised by the parties. (A real-life example is the lawsuit between the OIP and Hawai'i Government Employees' Association relating to whether collective bargaining agreements supersede the Uniform Information Practices Act provisions. In that case, pursuant to HRS§92F-42(16), the OIP intervened as a

party in the original action before the HLRB and then later filed a related lawsuit in the state Circuit Court.)

Another example of a potential for a conflict, or appearance thereof, would arise where OIP is named as a defendant in cases seeking disclosure (or nondisclosure) of certain records. For instance, in 1996, the Office of Information Practices was named as a defendant in a high profile case brought by the State of Hawaii Organization of Police Officers (SHOPO) regarding whether the HPD was required to disclose the names of officers who were disciplined. That case was ultimately decided by the Hawaii Supreme Court, the same entity which, under this bill, the OIP Director would serve at the pleasure of. Had OIP been administratively attached to the Judiciary, a conflict of interest, or at minimum an appearance of unfairness, may have been needlessly created in that lawsuit.

In short, the process of resolving issues between OIP, agencies, and citizens will not appear to be fair if OIP is housed in the Judiciary.

In addition to creating a conflict of interest or an appearance thereof, this bill violates the separation of powers doctrine. Section 3, page 2, of the bill amends HRS, §92-12, so that the Director of OIP, appointed by the Chief Justice and nominally a Judiciary officer, may forward enforcement issues to the state attorney general or the prosecuting attorney. This provision creates a separation of powers problem because prosecution is clearly an executive function, and the Judiciary should not, as a matter of course, be telling the executive branch how to use its resources when deciding prosecution issues. Further, as noted generally above, the courts would then sit in judgment of the prosecution initiated by the Judiciary agency, thereby creating an appearance of unfairness.

To summarize, S.B. 2983, S.D. 2, raises serious concerns relating to conflicts of interest and breach of the separation of powers doctrine. Consequently, the Judiciary opposes the bill. Thank you for the opportunity to provide comments on this measure.

**BEVERLY ANN DEEPE KEEVER****2176 AHA NUI PLACE****HONOLULU, HAWAII 96821****TESTIMONY PRESENTED ON S.B. 2983, S.D. 2****TO THE HOUSE JUDICIARY COMMITTEE****BY BEVERLY ANN DEEPE KEEVER****2 p.m., Friday, March 20, 1998, State Capitol Room 325****Chairman Tom and Members of the House Judiciary Committee:**

My name is Beverly Ann Deepe Kever, a journalism educator who has taken an active role for the past 18 years in facilitating open government in Hawaii. That Hawaii's state and local government records up to now has been so much more open in the past decade is significantly due to the earlier initiative of this Committee.

I have some concerns about this bill. I doubt that transferring the Office of Information Practices to the Judiciary would be helpful to either party. Such a transfer would immediately raise the specter of a conflict of interest for both OIP and the Judiciary.

More appropriate would be adhering to the language of Senate Draft No. 1 calling for the transfer of OIP to the Legislative branch. Putting OIP under the aegis of the Legislature would facilitate making the Office of Information Practices (OIP) what it was truly intended to be in 1988 when the Legislature passed what has been codified as H.R.S. Chapter 92F.

That intention was to create an office that would serve the interests of the public with a minimum of interference from the state executive branch, specifically the Department of Attorney General, which was responsible only for the administration of OIP. But interference has grown to the extent that enhancing OIP's independence by transferring its functions for government records from the Attorney General's office to the Legislative branch now seems desirable.

More important than where OIP is placed is the certainty that it will be continued at no less than its present level of operations -- perhaps even with increased resources and responsibilities.

The justification for the continuation of OIP is this. Under conditions of great uncertainty and threat, citizens need one office to turn to for authoritative information. It is these conditions of threat and uncertainty that now persist in Hawaii with the prospects of cutbacks in government jobs, programs and funds. These conditions foster rumors that will lead to more confusion among the population and that will increase the lack of public confidence in the economy and in the ability of the government to cope with the economy.

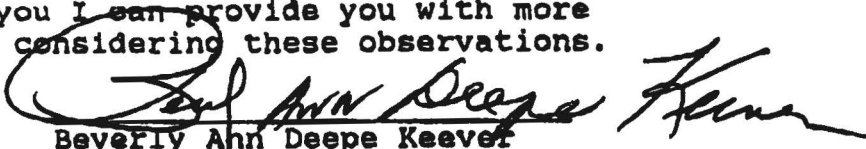
A great body of research about the role of rumors in World War II -- including those that proliferated in Hawaii -- shows that rumors arise in situations of uncertainty and threat, when authoritative information is in short supply. This statement is based on the excellent summary of this great body of research made by Professor Eleanor Singer.

For example, she notes the research of Tamotuse Shibutani about "improvised news" -- that rumors arise in any situation in which the demand for information exceeds its authoritative supply. Therefore, cutting back OIP that was originally designed to centralize and normalize procedures for the release of government information may actually worsen the very economic crisis that Legislators are seeking to ameliorate.

I thus urge this Committee to try to persuade the entire Legislature to ensure the staffing and budget necessary for OIP to take on added duties -- or at the minimum to implement its existing statutory responsibilities. During this period of growing economic and employment uncertainties, Hawaii's residents more than ever before need to be able to turn to a reliable, efficient and effective agency ensuring them access to public information at both the state and local levels of government.

Without such a user-friendly agency ensuring such access, the public is likely to perceive government as the main preserve of the powerful and the wealthy. And the lack of fast, authoritative government information will actually escalate Hawaii's accelerating economic crisis legislators erroneously think they are ameliorating.

Please let me know if you I can provide you with more information. Thank you for considering these observations.

  
Beverly Ann Deepe Keever  
Telephone: 732-7598



TESTIMONY ON S.B. 2983, S.D.2 RELATING TO OFFICE OF INFORMATION PRACTICES BEFORE THE HOUSE COMMITTEE ON JUDICIARY - Mar. 20, 1998

Chair Tom, Members,

I am Jean Aoki, president of the League of Women Voters of Hawaii.

The League of Women Voters of Hawaii supports S.B. 2983, S.D.2 which would, among other things, require the open meetings law to be administered by the Office of Information Practices.

Section 1 of this bill clearly and accurately describes the existing problem with the sunshine law - no one agency overseeing compliance of open meeting requirements.

Nine years ago when the Honolulu Charter Review Commission was going through the process of reviewing the Honolulu County Charter, we were allowed to attend and testify at all of their meetings, but were kept completely in the dark about the subject matter committees where most of the discussions took place. There was no publishing of the committees and their memberships, no posting of the times and places of their meetings, and when late in the process we accidentally stumbled into one of the subject committee meetings, we were barred from entering. The two of us who were representing League at that time were rather new at this game, and while we had felt that something was not quite right, that certain decisions were being made outside of the Commission meetings, and that most of the meeting time was devoted to gathering testimony and information from government agencies and elected officials and the public, <sup>and</sup> little in the way of substantive discussions was taking place at the public meetings, by the time we realized why, the work of the subject matter committees was nearly completed and we did nothing about it except protest to the executive secretary. Had there been an agency like the OIP to consult, we surely would have turned to it for help.



It was only toward the end when they were reconsidering certain issues, and considering a few additional proposals, and the Commission as a whole discussed them at length, that we were able to give more direct and meaningful testimony. If we had been allowed to attend the meetings of the subject matter committees, we could have listened in on the reasons for their rejecting certain proposals and adopting others, been able to refute or support certain assumptions, data and reasonings. We, and others, may have had more impact on the final results, and certainly would have been more satisfied with the whole process.

Another problem we see is the slow erosion of the sunshine law. How often do we see bills that exempt certain task forces and committees from Chapter 92. How often do we see bills that would add another reason for allowing boards and commissions to go into executive sessions. If this bill passes, there will now be an agency which we can consult; register our concerns, ask for advice, etc.

Democracy demands an involved citizenry. Citizens need accurate and complete information for any kind of meaningful participation.

In her testimony before one of the Senate Committees, Moya Gray, the present director of OIP stated that her agency would be able to administer the sunshine law in addition to its present duties without expansion of her staff. The implementation and monitoring of the Uniform Information Practices Act and the open meeting law logically should be the responsibility of one agency.

Thank you for this opportunity to testify.

# Hawai'i Clean Elections (HI.CLEAN)

c/o League of Women Voters, 49 South Hotel Street, Rm. 314, Honolulu, HI 96813  
ph. 808-531-7448 or 988-4889, fx. 599-5669 or 988-7488 Email: worst@lava.net

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To: Chair Terrance Tom and Vice Chair Brian Yamane  
House Judiciary Committee

From: Toni Worst, President

Hearing: House Committee on Judiciary to be held on  
Friday, March 20, 1998 at 2 pm

RE: **SB 2983, SD 1.**

## **TESTIMONY IN SUPPORT OF OFFICE OF INFORMATION PRACTICES**

Chair Tom, Vice Chair Yamane: Thank you for hearing this bill. I'm sorry I cannot testify in person.

Hawai'i Clean Elections supports the work of Office of Information Practices (OIP) because it has provided a great public service: namely, the assurance that information which should be publicly available will not be unreasonably and unduly withheld from public view.

In our case, we are very interested in the financial disclosure and campaign spending reports filed by candidates, and we want to ensure that those records continue to be free and accessible to the public.

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We also urge you to approve transferring OIP to the legislative branch. We think OIP can function more effectively in a more independent setting, whereas currently they could be publicly perceived as constrained in their functions and decisions by political considerations. We urge you to give them the autonomy to continue their public service in protecting the public's right-to-know.

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HI.CLEAN Members: League of Women Voters • Common Cause Hawai'i • Advocates for Consumer Rights • Hawai'i Green Party, O'ahu • Graduate Students Org. of U.H. • Univ. of Hawaii Student Caucus • Sierra Club-Hawaii Chapter. Supporting Neighborhood Boards (so far): Liliha • Kalihi Valley • Ko'olauloa • Makiki • Waialae-Kahala • Kailua • Wahiawa



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
 711 KAPI'OLANI BOULEVARD, SUITE 500  
 HONOLULU, HAWAII 96813

**TESTIMONY SUPPORTING THE PASSAGE OF SB 2983, SD2**  
**BEFORE THE HOUSE COMMITTEE ON JUDICIARY**  
**RELATING TO OFFICE OF INFORMATION PRACTICES**

March 20, 1998; 2:00 pm; , Conference Room 325

Aloha mai, Chairperson Terrance Tom, and members of the House Committee on Judiciary. I am Haunani Apoliona, Vice Chair of the Board of Trustees of the Office of Hawaiian Affairs (OHA), and Chair of OHA's Legislative and Governmental Affairs Committee (LAGA). On February 23, 1998, OHA's Board of Trustees voted to support SB 2983. I am here today on behalf of OHA's Board of Trustees to testify in support of the passage of SB 2983, SD2, RELATING TO OFFICE OF INFORMATION PRACTICES.

The Office of Hawaiian Affairs supports this Bill for the following reasons:

- Presently, there is no single agency charged with the responsibility to administer the State's Sunshine Laws (HRS Chapter 92). Assistance in resolving complaints of violation of the Sunshine Laws and requests for technical assistance on Sunshine Law matters are commonly provided by the State Attorney General. However, conflict is inherent in this arrangement because the Attorney General is simultaneously called upon to be a counselor, as well as, the prosecutor (enforcer) in these matters. Placing the administration of Chapter 92 under the Office of Information Practices centralizes this function and removes that conflict. However, the Office of Information Practices should not remain administratively attached to the Attorney General in order to avoid similar conflict with the departments, boards and commissions under the Executive Branch.
- There is a conflict with the Office of Information Practices remaining administratively attached to the Executive Branch and having oversight over OHA. Please note that HRS, §10-4 states:

**§10-4.** There shall be an Office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch.

Oversight of OHA by the Office of Information Practices would not constitute independence from the executive branch unless the Office of Information Practices is moved administratively out of the Department of the Attorney General. The move of the Office of Information Practices from the Executive Branch to the Judicial Branch of state government resolves this problem.

For the forgoing reasons, I urge this Committee to support SB 2983, SD2 and pass it out of committee.

Thank you for the opportunity to testify on behalf of OHA's Board of Trustees in support of SB 2983, SD2. I will be happy to answer any questions you or your committee members may have.



49 S. HOTEL #314  
HONOLULU, HAWAII 96813  
PHONE (808) 531-7448

TESTIMONY ON S.B. 2983, S.D.2 RELATING TO OFFICE OF INFORMATION PRACTICES BEFORE THE HOUSE COMMITTEE ON JUDICIARY - Mar. 20, 1998

Chair Tom, Members,

I am Jean Aoki, president of the League of Women Voters of Hawaii.

The League of Women Voters of Hawaii supports S.B. 2983, S.D.2 which would, among other things, require the open meetings law to be administered by the Office of Information Practices.

Section 1 of this bill clearly and accurately describes the existing problem with the sunshine law - no one agency overseeing compliance of open meeting requirements.

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Another problem we see is the slow erosion of the sunshine law. How often do we see bills that exempt certain task forces and committees from Chapter 92. How often do we see bills that would add another reason for allowing boards and commissions to go into executive sessions. If this bill passes, there will now be an agency which we can consult; register our concerns, ask for advice, etc.

Democracy demands an involved citizenry. Citizens need accurate and complete information for any kind of meaningful participation.

In her testimony before one of the Senate Committees, Moya Gray, the present director of OIP stated that her agency would be able to administer the sunshine law in addition to its present duties without expansion of her staff. The implementation and monitoring of the Uniform Information Practices Act and the open meeting law logically should be the responsibility of one agency.

Thank you for this opportunity to testify.



TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
JUDICIARY

**SB 2983 RELATING TO THE OFFICE OF INFORMATION PRACTICES**

*March 20, 1998*  
Friday, ~~March 19, 1998~~

Members of the Committee, *I will be unable to attend* today's hearing due to my work schedule.

Please accept my written testimony in **STRONG SUPPORT OF SB 2983** and consider:

- The Office of Information Practices (OIP) is entirely unique in the functions and services it offers to *both government agencies and the general public* alike.
- The Uniform Information Practices Act, Chapter 92F, Hawaii Revised Statutes, is a relatively new law. It covers a broad range of issues that affect the way government does business and the public accesses government information.
- Statistics and surveys taken by the OIP and reported on in its *1996 Annual Report* and monthly newsletters indicate that both government agencies and the general public are still uncertain about many of their *RIGHTS* and *RESPONSIBILITIES* under this law. The requests to the OIP for guidance, training, consultations, and mediation from BOTH government agencies and the general public are apparently endless.

In addition, if we eliminate the OIP we run the risk that the amount of litigation for access to government records in Hawaii would begin to rise and approach the national average. The costs in *time* and *resources* involved in advising and defending agencies combined with the costs of *settlements* that the State will surely have to pay may offset any savings gained by the elimination of the OIP. Further, even if some money is saved, we would no longer benefit from the trainings and the quick answers the OIP is able to provide.

Therefore, the OIP has served this community by upholding and advocating the principles of *Open Government* in invaluable ways. If the OIP were eliminated, as proposed by the current version of the House budget, which agencies would have the time, expertise, or manpower to continue these much needed functions for us? The costs of maintaining this one agency are **minimal** compared to what we gain from maintaining these services. Citizens are far better served when those in government conduct their business in ways that are **uniform and consistent** with the democratic principles our lives have been founded

on. *What one government employee gains from one OIP training session can have far reaching effects on opening the process of government.*

In addition, I feel that the Open Meetings Law, Chapter 92, Hawaii Revised Statutes would be well placed in the Office of Information Practices (OIP). The OIP is already responsible for maintaining "open government" through the administration of the UIPA. It is logical to consolidate the "open government" function by placing it in one of our "Government Watchdog" agencies.

Finally, might I suggest that, for the time being, the OIP be moved into the Lieutenant Governor's Office for administrative purposes until a more appropriate placement can be decided. This will free the OIP from the constrictions it now faces as part of the Administration under the Department of the Attorney General.

Please pass this bill. Thank you for the opportunity to comment.

**John Mathews**  
**P.O. Box 1143**  
**Honokaa, HI 96727**

Written Testimony From Stephen Romanelli in support of SB 2983 S.D.2  
Relating to the Information Practices Office  
P.O.Box 11672,  
Honolulu, Hawaii 96828 988-9277 March 20th, 1998

Representatives,

I give my support to SB 2983 and hope it sails right into a revision of the state statutes. For the few people that have heard parts of this testimony before I apologize in advance for some repetition.

This bill would make OIP an investigative watchdog regarding open meetings, a good revision. As expressed in the bill no agency is presently charged with that obligation. As I see it, when an open meeting takes place that falls under the definition of Chapter 92's "Sunshine Law" this is a public record being composed. Complaints of violations to the law need to be analyzed and fairly treated.

While this is nice and good what I am really here to do is try to save this office. If the Office remains at the mercy of the Attorney General the Office will lose its funding survive. The Governor could and will impose a budget restriction to defund the Office. The Office is under attack by the Governor and the Attorney General and given the chance they will demolish it.

It saddens me to hear that some who supposedly govern the rest of us have not learned an essential lesson: government gets more complex, yearly. Will we the people, really save anything or at least balance out if the office that was created to make government approachable is abandoned, the office created to help government and all citizens in our authority to access open non-confidential records is stopped because of bogus budget cutting? No, we will not be saved. Paraphrasing her interview with J.P. Montal, of Hawaii Public Radio, Attorney General Bronster has said functions of the office can be handled by the Office of the Ombudsman. According to Donna Wu, 1st Assistant to the Hawaii State Ombudsman, they average a total of Six Thousand and Five Hundred requests per year. She said without adequate funding for personnel and other resources they would not be able to handle all the additional Information Practice requests. She concurred that the Ombudsman Office work would not get done without a lot of new money and new hires flowing into their office.

In Governor Cayetano's press conference following the State of the State Address, he proposed eliminating the office to achieve some savings. Cayetano is quoted in the Star Bulletin as saying "What's important to me when I make a decision about that office is some assurance that the attorney generals office, for example, will be able to service the request of the public". This may turn into an Us and Them situation. Us being we the people of this state and them being the Governor's office and Hawaii State government agencies. Government agencies will get all the help and opinions they need from various attorneys at the AG's office if they have any questions about other government agencies records. The AG's office is the lawyer for the Governor and State Agencies, not we the people. The AG's office is not charged with the responsibility of informing the public about their right to see records and they certainly will not write opinions for private citizens, business, the media or especially other attorneys regarding public records. Our only alternative, we the people, will be to sue any government agency that is obviously not in compliance with the Uniform Information Practices Act.

Business and media may do just that but the majority of citizens seeking a legal outcome because they have been denied access to information do not have the time or money in the pursuit of judicial redress.

If OIP is dismantled I'm sure people telephoning or writing the Attorney Generals Office requesting access to public records would be instructed to contact the Ombudsman's office. The Office of Information Practices does a lot of work that could not be duplicated at all by the office of the Ombudsman or in a timely manner without adequate funding and personnel. If we examine OIP's annual reports for years 92 to 96, they handled approximately Seventeen Hundred telephone and approximately One Hundred written requests for assistance per year. They issue an average of 25 written legal opinions a year. This average of 25 opinions a year do not just help the parties involved. They tell the rest of us citizens, for all of time, a state agency must show us thier files, or why some records can be purposely concealed. Summations of interesting opinions are printed in OIP's monthly publication "OpenLine". An excellent resource in understanding the nature and complexity of OIP's written opinions is stored on the Hawaii State Bar Associations web site. All opinions written before the summer of 97' are recorded there in their totality. Will written requests for opinions regarding public files and the subsequent case work that is made in attempt to address those concerns magically disappear in 1999? Of course not.

If we examine OIP's 1997 annual report an attempt has been made to train government employees in small group workshops about the Uniform Information Practices Act and public access to information at various agencies such as Taxation, State public information office, University of Hawaii and Department of Hawaiian Homelands. That good effort, training employees in the basics, could be terminated in 1999. In the reports "Requests for Assistance, Guidance and Opinions" section it concludes with, "It is evident that without an increase in staffing, the case load will continue to backlog, the needs of the public and government agencies will go unanswered, and the purpose and spirit behind the UIPA will remain unrealized." Abolishing OIP would ob-fus-cate public intelligence and is a confusing and embarrassing way to start the new millenium.

It's not the messenger that matters but the message and here is a quote from President Richard Nixon:

"Fundamental to our way of life is the belief that when information... is **systematically** withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and eventually incapable of determining their own destinies."

Freedom of Information is not free. Public agency records, collected and filed arbitrarily or methodically did not get there for free. This agency is charged with telling government and all citizens what is rightfully theirs to see. The cost of OIP is justice.

The Office Of Information Practices is a shiny beacon of light and liberty offering government and all citizens safe passage on the occasionally obscure and turbulent ocean of Tens of Thousand of government records.

Sincerely,

  
Stephen Romanelli



Society of Professional  
**Journalists**

HAWAII CHAPTER

P.O. Box 3141  
Honolulu, Hawaii 96802

House Judiciary Committee  
State Capitol Room 302  
Honolulu, Hawaii

Re: SB 2983, SD 2, Relating to the Office of Information Practices

The Society of Professional Journalists, Hawaii chapter, supports the Office of Information Practices as an important agency for administering public access.

Much work and study went into the formation of OIP a decade ago, and it would be unfortunate to let OIP be gutted because of budget-cutting.

The need for the public to know what is going on in its government doesn't change in good time or bad.

OIP provides a uniform approach to information policies statewide as well as an alternative to litigation, and has been praised as a model approach by national freedom of information advocates.

While Hawaii Chapter SPJ is bothered by problems that OIP has experienced in recent years that have reduced its effectiveness, the chapter feels it is a mechanism that should be preserved.

We support the intent of SB 2983, which would protect the functions of the office by transferring OIP from the attorney general's office.

We do, however, raise questions about whether the Judiciary is the proper place to put it administratively.

We wonder about the legality of giving a judicial agency enforcement powers over the executive branch. We also believe that the Judiciary, by its history and function, is not as open as the legislative branch of government, and oftentimes has been free of dealing with public points of view.

We would prefer that OIP be transferred to the legislative branch and have the same advisory powers over the executive branch that the Ethics Commission and state ombudsman have.

*Stirling Morita*

Stirling Morita  
FOI Committee Chairman  
Hawaii Chapter, SPJ

**TESTIMONY OF THE STATE ATTORNEY GENERAL**

**ON S.B. NO. 2983, S.D. 2**

**RELATING TO OFFICE OF INFORMATION PRACTICES**

**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY**

**DATE:** Friday, March 20, 1998

**TIME:** 2:00 p.m.

**PLACE:** Conference Room 325  
State Capitol  
415 South Beretania Street

**TESTIMONY PRESENTED BY:**

Margery S. Bronster  
Attorney General  
State of Hawaii

or

Charleen M. Aina  
Deputy Attorney General

Deliver 45 copies to Committee Clerk, Room 302, State Capitol



TESTIMONY OF THE STATE ATTORNEY GENERAL

ON S.B. NO. 2983, S.D. 2

RELATING TO THE OFFICE OF INFORMATION PRACTICES

The Honorable Chairperson and Committee Members:

The State Department of the Attorney General does not support adoption of this measure.

Another oversight agency to ensure compliance with the open meeting or Sunshine law is not needed.<sup>1</sup>

The purpose of this bill is to increase the responsibilities of the Office of Information Practices to include oversight of the State's open meeting law or the Sunshine Law.

Initially, it is important to understand that

- Hawaii has had an open meeting law since 1959, although the Sunshine Law as we know it today, with its clear policy declaration in favor of openness, was not enacted until 1975 when the Legislature enacted the provisions which are set out in Part I of Haw. Rev. Stat. Chapter 92.
- The Sunshine Law is only Part I of Haw. Rev. Stat. Chapter 92.<sup>2</sup>

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<sup>1</sup>The Governor has also suggested that given what the Office of Information Practices has accomplished since its founding, i.e., a heightened awareness of the public records law in the community and among government agencies, publication of opinions that elaborate upon elaborate upon and apply the provisions of our public records law to real situations, and procedures that facilitate access to government records, it is no longer necessary to maintain the office's current staffing level. In S.B. No. 3030, the Administration proposed that the Office be down-sized as a cost-saving measure.

<sup>2</sup>This is emphasized by Haw. Rev. Stat. § 92-1's declaration (" (1) It is the intent of this part to protect the people's right to know;"), by the introductory phrase in § 92-2 ("As used in this part") and § 92-6(a) ("This part shall not apply"), by the provision of § 92-6(b) ("Notwithstanding provisions in this section to the contrary, this part shall apply to . . ."), and the enforcement and penalty provisions in § 92-12 ("(a) The attorney general and the prosecuting

- The Sunshine Law is a state law of statewide and general application; it applies to both state and county “boards;” however, while state and county “boards” are state and county “agencies,” the Sunshine Law does not apply to state and county “agencies” which are not “boards.”
- The deliberations and decisions of state and county agencies that are not boards, e.g., state and county departments, offices, or other executive units headed by a single executive, are not subject to the Sunshine Law
- The present implementation design of the Sunshine Law is to direct state and county boards to conform their actions to its access, notice, and other requirements, rely upon laws like Haw. Rev. Stat. § 28-4 which directs the Attorney General to advise all state officers, employees and agencies as to the faithful execution of their responsibilities, to provide legal advice to boards, as requested, as to the Sunshine Law’s requirements, and depend upon the law enforcement agencies of the State (i.e., the Attorney General) and the counties (their respective prosecutors) to enforce board compliance.

With this as background, we suggest the following revisions:

1. Rewrite the Ramseyer directions in SECTION 2 of the bill to read as follows:

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to Part I to be appropriately designated and to read as follows:

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attorney shall enforce this part”), §92-12(b) (“The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy”), and § 92-13 (“Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, . . .”). It is also confirmed by Section 1 of Act 166, Haw. Sess. Laws 364 (1975) and its accompanying legislative history.

2. Substitute "part" for every reference to "chapter" in the title and contents of the new section added to Haw. Rev. Stat. Chapter 92 by SECTION 2 of the bill, including at page 1, line 19, and page 2, lines 1 and 3.
3. Substitute "board" for "agency" at page 2, line 3.
4. Replace Sections 3 and 4 of the bill with the following:

SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to Part I to be appropriately designated and to read as follows:

**§92- Oversight by office of information practices.**

Complaints of board non-compliance with the provisions of this part may be submitted to the office of information practices. The director of the office of information practices may forward unresolved complaints concerning board non-compliance with the requirements of this part to the Attorney General or the prosecuting attorney for enforcement, if the director is unable to resolve the complaint with the board in question.

5. Insert "part I of" before "chapter 92" at page 7, lines 3 and 8 of the bill.
6. Insert "and county" between "state" and "boards" at page 7, line 4 of the bill.

Having made these suggestions, we nonetheless believe that the bill's complaint resolution process is not necessary. The Attorney General is the State's chief legal officer. In that capacity, the Attorney General wears two hats -- the Attorney General advises public agencies (including boards), officers, and employees on legal issues to allow them to faithfully execute their duties and responsibilities; the Attorney General also is responsible for enforcing the law, i.e., initiating actions in the court to compel state officials and agencies (including boards), to comply with state law. By the State's Constitution and statutes, these are consistent, not conflicting responsibilities.

Presently, boards are advised and admonished to comply with the Sunshine Law by the deputy attorneys general assigned to provide legal services and support for their activities. Momentary strains in board-attorney relations are often traceable to advice provided on Sunshine

Law related matters, and attest to an unappreciated effectiveness in the Department of Attorney General's oversight of Sunshine Law compliance.

Accordingly, we ask you to reconsider the wisdom of designating a second agency to "investigate" Sunshine Law complaints, given the Attorney General's and the county prosecutors' continued responsibility to prosecute violations of the Sunshine Law criminally. We suggest that if the Office is to have a Sunshine Law compliance oversight role, that its role be limited to receiving and resolving complaints administratively only. When the Office is unable to resolve a complaint administratively, the Office should be required to refer the matter to the Attorney General for judicial enforcement by civil or criminal proceedings. To demarcate the respective responsibilities of the Office and the Attorney General, we suggest that the term "investigating" be deleted from line 5 at page 7.

Finally, we suggest that the Office's assignment to the Judiciary generally undermines the separation between the branch of government responsible for adjudicating claims and the branches of government responsible for making and enforcing the law, which by deliberate design our Constitution and statutes strive to maintain. The Chief Justice's power to appoint the Director of the Office erodes this separation and unnecessarily exposes the State's highest court to the possibility that claims of bias and partiality will be asserted when alleged violations of the Sunshine Law or the Uniform Information Practices Act are brought to the Supreme Court for final adjudication. To avoid this result, we suggest that this Committee replace the Senate Committee on Ways and Means' reassignment of the Office from the Department of the Attorney General to the Judiciary, with its reassignment to the Legislative Reference Bureau, as proposed in the original version of the bill, or to the Office of the Ombudsman, as proposed by the Administration in S.B. 3030 and H.B. 2994.

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

**ON S.B. 2983, S.D. 2**

RELATING TO OFFICE OF INFORMATION PRACTICES

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: FRIDAY, March 20, 1998

TIME: 2:00 P.M.

PLACE: Conference Room 325  
State Capitol

**PERSON TESTIFYING:**

Moya T. Davenport Gray  
Director  
Office of Information Practices

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. 2983, S.D. 2

RELATING TO OFFICE OF INFORMATION PRACTICES

Honorable Chairpersons and Committee Members:

The intent of the bill is to allow the Office of Information Practices ("OIP") to investigate complaints regarding open meetings law. Currently, when the OIP receives questions or complaints about government, the caller often asks questions about both open records and meetings. The OIP does not have jurisdiction over open meetings. While the OIP can assist the caller on records, it cannot assist with questions on open meetings and must refer the caller to the Department of the Attorney General. Thus, members of the public must have their one concern addressed by two different agencies.

This bill benefits the public without adding additional costs. The bill would add additional work to the OIP's caseload. However, we recognize that this body must make difficult fiscal choices for the State of Hawaii and therefore, we are not asking for additional positions.

We have reviewed the requirements of the bill and have preliminarily determined that many of the complaints can be handled through the OIP's "Attorney of the Day" service.



Additionally, both government and the public would clearly benefit by assuring that government operate without secrecy. But, the OIP does not believe that placement of the office within the judicial branch of government would achieve that goal.

The OIP supports the intent of this bill and is available to answer questions.

STATE OF HAWAII  
ALL INFORMATION FOR A BILL  
1998 Regular Session

Date: 3/19/98  
Time: 10:21 a.m.  
Page: 1  
Leg. day:32

SB 2983 SD 2 - RELATING TO OFFICE OF  
INFORMATION PRACTICES

By Senator(s) IHARA / IGE, D. / MCCARTNEY / METCALF

Keywords: CIVIL SERVICE, CIVIL SERVICE, EXEMPT POSITIONS, DEPARTMENT OF THE ATTORNEY GENERAL, JUDICIARY, LEGISLATURE, PERSONAL RECORDS, PUBLIC ADMINISTRATION, PUBLIC RECORDS, SUPREME COURT

Citations:

Report Title: Office Of Info. Practices

Description: Requires open meetings law to be administered by the office of information practices (OIP). Moves OIP from the department of the attorney general to the judiciary for administrative purposes. (SD2)

1-27-98	S Introduced and passed First Reading
1-29-98	S Referred to 1. CPI 2. WAM
2- 6-98	S Bill scheduled to be heard by CPI on 02-13-98 at 9:00 a.m. in conference room 016
2-13-98	S The committee on CPI recommends that the measure be PASSED, WITH AMENDMENTS.
2-13-98	S The votes in CPI were as follows: 5 Ayes: Senator(s) Ige, D., Metcalf, Chun Oakland, Tanaka, Slom; Ayes with reservations: Senator(s) ; none Noes: Senator(s) ; and 3 Excused: Senator(s) Kanno, Levin, Solomon
2-20-98	S Reported from CPI (Stand. Com. Rep. No. 2204) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM
2-20-98	S Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
3- 2-98	S Bill scheduled to be heard by WAM on 03-04-98 at 9:00 AM in conference room 211
3- 3-98	S Notice of public decision making by WAM on 03-05-98 at 9:00 a.m. in conference room 211.
3- 5-98	S The measure is deferred.
3- 6-98	S The committee on WAM recommends that the measure be PASSED, WITH AMENDMENTS.
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3- 6-98	S Reported from WAM (Stand. Com. Rep. No. 2685) with recommendation of passage on Third Reading, as amended (SD 2)
3- 6-98	S 48 hours notice 03-10-98
3-10-98	S Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 25. Noes, none (). Excused, none ().

STATE OF HAWAII  
ALL INFORMATION FOR A BILL

Date: 3/19/98  
Time: 10:21 a.m.  
Page: 2  
Leg. day:32

1998 Regular Session

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SB 2983 SD 2 - RELATING TO OFFICE OF  
INFORMATION PRACTICES

3-10-98 S Transmitted to House  
3-10-98 H Received from Senate (Sen. Com. No. 317)  
3-12-98 H Introduced and passed First Reading  
3-12-98 H Referred to the committees on 1. JUD 2. FIN , referral  
sheet 24  
3-18-98 H Bill scheduled to be heard by JUD on Friday, 03-20-98  
at 2:00 P.M. in House conference room 325.

Testimony

Andrew 6-14/0

STATE OF HAWAII  
ALL INFORMATION FOR A BILL  
1998 Regular Session

Date: 3/16/98  
Time: 2:35 p.m.  
Page: 1  
Leg. day:29

SB 2983 SD 2 - RELATING TO OFFICE OF  
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STATE OF HAWAII  
ALL INFORMATION FOR A BILL

1998 Regular Session

Date: 3/16/98  
Time: 2:35 p.m.  
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SB 2983 SD 2 - RELATING TO OFFICE OF  
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