From 1967...A Commitment to the Public's Right to Know

The Big Island Press Club

P.O. Box 1920 • Hilo • Hawaii 96721

February 26, 1995

The Honorable Senator Rey Graulty
Chairman, Senate Judiciary Committee
State Capitol
Honolulu, Hawaii 96813

Dear Senator Graulty:

On behalf of the board of directors of the Big Island Press Club, I would like to express our opposition to an exemption to the Uniform Information Practices Act for police department personnel in the state.

The board believes your committee will be considering a companion bill to one passed in the House last week that excludes police officers from disclosure laws for all administrative actions taken against an officer short of firing.

We believe there is no reason to treat police officers differently than school teachers, sanitation workers and others when it comes to the disclosure of disciplined public employees. Indeed, it is critical that the public be made aware of misconduct and the disciplines meted out for violations of administrative procedures, especially for police officers, who are vested with tremendous authority over the citizenry, in order to maintain public trust.

Entrusting the police chief to this responsibility without mechanism for oversight is to invite abuse by means of the secret process. How would *anyone* know, much less the citizen with a specific complaint, that appropriate investigation and sanctions have been carried out in a case of alleged misconduct? It is difficult to register a complaint about a matter that takes place in secret.

Minor infractions are rarely, if ever, reported by the media, while major infractions may very well be reported. Certainly incidents such as verbal and physical abuse of citizens and inmates in police custody, or of an officer's abuse of his or her authority over the public, among other areas of misconduct, are serious acts well

within the scope of the public interest and should be fully disclosed to the public along with the discipline meted out in each case.

In addition, the board's understanding is that the names of police officers being disciplined were routinely disclosed until the mid-1970s with no reported incidents of public humiliation or physical harm as a result.

While I regret that a representative of the Big Island Press Club is unable to present these remarks to you in person, I trust you will take them into serious consideration before voting to adopt any measure that would exclude police officers from the disclosure provisions of the Uniform Information Practices Act.

Thank you for your time. Should you have any questions, please do not hesitate to call me at 935-6621.

Yours truly,

Hunter Bishop
Vice president, BIPC

CC: Hugh R. Jones, Esq. (via fax)
Jeffrey Portnoy, Esq. (via fax)

TESTIMONY OPPOSING SENATE BILL 178
RELATING TO UNIFORM INFORMATION PRACTICES ACT
PRESENTED TO THE COMMITTEE ON JUDICIARY
AND AGRICULTURE, LABOR AND EMPLOYMENT
HAWAII STATE SENATE, THE 18TH LEGISLATURE

By Jahan Byrne

February 27, 1995, 1:00 p.m.

Conference Room 504, Leiopapa A Kamehameha Building

Thank you for the opportunity to provide written testimony in strong opposition to this bill. I am the former president of the Society of Professional Journalists - University of Hawaii Chapter. My written remarks today reflect my individual views.

This bill seeks to carve out an exemption for police officers in the public records law. The law currently states that the name of a government employee who is suspended or discharged for employee-related misconduct can be released 30 days after all internal grievance procedures are exhausted.

I think that is a fair balance between the public's right to know about government employee misconduct, and a person's right to confidentiality about minor disciplinary action. If this bill were to pass, police personnel would be the only government employees in the state whose suspension or dismissal as a result of on-the-job misconduct would remain secret.

The bill is factually flawed on many counts. It states that "[disciplinary] information has historically been private and confidential" (page 1, line 13-14).

That is simply not true. From 1974 to 1979, disciplinary sanctions of police officers were routinely released. A look through the news clippings of the time shows that these stories were only a few inches long and were never on the front page.

The bill also states that personnel actions against police officers are confidential as negotiated in collective bargaining agreements. It is ridiculous to assert that a bargaining agreement that is confidentially negotiated can supersede a publicly adopted state law. If that were the case, public employee unions could bargain away other state laws that they didn't like such as civil rights protections.

SHOPO would like you to believe that police officers are routinely suspended or fired for minor infractions, like being late for work or being overweight. Disclosure of such infractions, according to SHOPO would subject police officers to violent retaliations by other officers and the public, and would cause severe grief and embarrassment to their families and friends.

SHOPO has been deliberately misstating the facts, which in turn, have found their way into this bill. First, according to HPD's own publicly released reports, police officers do not get suspended or fired for such minor infractions; those officers were given verbal or written reprimands, and their names, under law, are not released to the public. (Just ask HPD Chief Michael Nakamura, who is the one who decides how severely an officer should be disciplined.)

The officers who were suspended or fired were so disciplined because they engaged in serious acts of misconduct or excessive force, such as criminal activity, stealing evidence, and in one recent case, entering a jail cell and brutally beating a handcuffed suspect. This is the kind of misconduct the public has a right to know about, and the kind of misconduct that would be released under present law.

Second, SHOPO has not presented one scintilla of evidence that a police officer would be "retaliated against." Retaliated by whom? For what? Being late to work? Being overweight? SHOPO is using this emotional rhetoric to move the focus away from the core of this issue: that the public has a right to know which of its police officers have been suspended or fired because of serious misconduct and how well the police are policing themselves.

Third, police officers are complaining that they might be embarrassed if their names are released to the public. Well, perhaps a little embarrassment is a good thing and even a deterrent to those police officers who repeatedly violate citizens' civil rights and cost the city millions of dollars in civil judgments to victims of police brutality.

Fourth, the police argue that their family and friends will be humiliated if their names are disclosed. That may or may not be the case. But I ask you to think about the pain and humiliation felt by victims of police brutality and *their* families. Their names are known to the police officers who beat them up. But if this bill becomes law, these victims will be prohibited from knowing which officers brutalized them and how they were disciplined as a result.

Finally, the bill seeks to exempt all police personnel, not just police officers from any type of disclosure about their suspension or discharge (page 5, line 6). This would mean that the hundreds of civilian employees of the county police departments would also enjoy an exemption that no other government employee would have. It simply doesn't make sense.

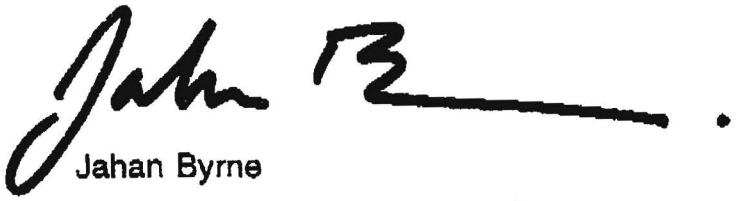
In 1993, the Legislature carefully deliberated on this section of the law and came up with a fair compromise. The law is fair as it stands on the books today. I urge this Legislature to kill this bill, and not allow all police department personnel to gain a special and unnecessary exemption from the public disclosure law that has worked so well for the past five years.

So today, it is sad to see legislators falling all over themselves to show how much they love and support cops, all in the mistaken belief that supporting secrecy about police misconduct is somehow good public policy. Those of us who support the disclosure of the names of government employees (not just police officers) who have been suspended or discharged for on-the-job misconduct do so not because we are "anti-police." We are anti-government secrecy, and for the same principles and beliefs that police officers are sworn to uphold and defend. The United States Constitution. The Hawaii Constitution. The laws of the United States and state of Hawaii. And above all, the democratic process.

Proposed Senate Draft 1

This last-minute proposal looks innocuous because it deletes any reference to police personnel, but in reality it seeks to make any and all information about government employee misconduct secret throughout the entire state. If this version of the bill were to pass, the suspension or firing of a government employee because of on-the-job misconduct would be a state secret. The logic of this proposal seems to be, "It is none of the public's business if a government employee commits such a grievous act that he or she is suspended or fired." I argue that it is the public's business. We have a right to know which of our public employees are violating the public trust, breaking the law, or cheating taxpayers. I urge you to kill this proposal, and to ensure public accountability through responsible public disclosure of government employee misconduct.

Respectfully submitted,



Jahan Byrne

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TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. NO. 171 PROPOSED S.D. 1

Relating to the Uniform Information Practices Act

BEFORE THE SENATE COMMITTEES ON
JUDICIARY AND
AGRICULTURE, LABOR AND EMPLOYMENT

DATE: MONDAY, February 27, 1995

TIME: 1:00 P.M.

PLACE: Conference Room 504
Leiopapa A Kamehameha Building
235 South Beretania Street

PERSON(S) TESTIFYING:

Kathleen A. Callaghan
Director
Office of Information Practices

Deliver to Rm. 509, Sen. Rey Graulty (35 copies)

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. NO. 171 PROPOSED S.D. 1

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

The Honorable Chairperson and Committee Members:

The Office of Information Practices ("OIP") opposes the passage of this bill.

The OIP, an agency attached to the Department of the Attorney General for administrative purposes only, was created by the Legislature to administer and implement the State's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). The UIPA applies to all State and county agencies in the executive, legislative, and judicial branches of government. Among other things, the OIP issues advisory opinion letters, upon request by any person in the private or public sector, concerning the extent to which government records must be made available for public inspection and copying. The Legislature also directed the OIP to make "recommendations for legislative changes." Haw. Rev. Stat. §92F-42(7) (Supp. 1992).

I. THIS BILL, IF ADOPTED, WOULD EXTEND SPECIAL TREATMENT TO POLICE OFFICERS, IN THE DISCLOSURE OF INFORMATION CONCERNING ON-THE-JOB MISCONDUCT

This bill, if adopted, would repeal current provisions of the UIPA that require the public availability of individually identifiable information concerning State and county employees (including police officers) who have:

(1) Been suspended or discharged for employment related misconduct; and

(2) Exhausted all non-judicial grievance adjustment procedures that have been timely invoked.

Police officers are not singled out by the current disclosure provisions of the UIPA, and in fact, the names of all public employees who have been suspended or discharged must be publicly accessible under the current provisions of the UIPA.

This bill proposes to make individually identifiable information concerning discipline imposed upon police department employees confidential on the basis that: (1) the State of Hawaii Organization of Police Officers ("SHOPO") collective bargaining agreement requires the confidentiality of disciplinary actions; (2) information concerning discipline imposed upon police officers has always been treated confidentially; and (3) police officers and their families would be subject to retaliation and possible physical injury if the names of police officers who have been suspended or discharged for employment-related misconduct were public available.

In truth and in fact:

(1) No provision of SHOPO's collective bargaining agreement applicable through June 30, 1993 expressly requires the confidentiality of disciplinary information.

(2) Individually identifiable information about police misconduct was routinely disclosed by the Honolulu Police Commission until 1978 and routinely published by Honolulu newspapers. See Exhibits "A" and "B."

(3) Arguments that police officers and their families would be subject to retaliation and possible physical injury are speculative, especially in light of the fact that until 1978 the names of police officers accused of misconduct were publicly accessible and there is no historical evidence to suggest that such retaliation

occurred in the past. The best that can be said is that such retaliation could conceivably take place, and this is an insufficient basis to cloak police disciplinary information in secrecy.

There are a number of sound public policy reasons why the public should have the right to know the names of police officers who have been suspended or discharged for employment related misconduct after they have exhausted applicable grievance procedures.

II. POLICE OFFICERS ARE NOT SUSPENDED OR DISCHARGED FOR MINOR VIOLATIONS OF THE STANDARDS OF CONDUCT

According to records provided to the OIP by the Honolulu Police Department summarizing disciplinary actions, police officers who are suspended or discharged are not disciplined for minor or frivolous infractions. For example, consider the following:

A. January 1994. In January 1994: (1) one officer received a five day suspension for unnecessary use of force while processing a prisoner, (2) an officer received a five day suspension for use of force during an investigation, (3) an officer was reprimanded while using force during an arrest; and (4) an officer was suspended for one day for use of force during a traffic stop.

B. November 1993. In November 1993: (1) one officer was suspended for five days for failing to turn in evidence; (2) an officer was suspended for three days for unnecessary use of force; and (3) an officer was suspended for five days for unnecessary use of force.

C. October 1993. In October 1993: (1) One officer received a reprimand for unnecessary use of force against the public and (2) another was terminated for failing to follow traffic rules while on duty.

D. September 1993. In September 1993, (1) one officer was terminated for unnecessary use of force; (2) an officer was suspended for three days for unnecessary use of force; and (3) an officer was suspended for one day for conviction of a misdemeanor.

E. August 1993. In August 1993, (1) an officer was terminated for unprofessional conduct toward the public; (2) an officer was suspended for five days for a misdemeanor conviction; (3) an officer resigned in lieu of termination for unprofessional conduct towards the public; (4) an officer resigned in lieu of

termination for unprofessional conduct toward the public; (5) an officer was suspended for one day for a misdemeanor conviction; (6) an officer was suspended for one day for a misdemeanor conviction; and (7) an officer was suspended for five days for unprofessional conduct toward the public.

F. July 1993. In July 1993: (1) an officer was terminated for unprofessional conduct toward the public; (2) an officer was suspended for three days for unprofessional conduct toward the public; (3) an officer was suspended for five days for unprofessional conduct toward the public; (4) an officer was suspended for one day for a misdemeanor conviction; (5) an officer was suspended for five days for unnecessary use of force while off-duty; (6) an officer was terminated for unnecessary use of force against the public; and (7) an officer was reprimanded for unprofessional conduct toward the public.

G. June 1993. In June 1993: (1) an officer was suspended for three days for conviction of a misdemeanor; (2) an officer was suspended for one day for a misdemeanor conviction; and (3) and three others were disciplined for unprofessional conduct toward the public.

Records obtained by the OIP strongly suggest that officers are not suspended or discharged for minor violations of the standards of conduct.

III. THE DISCLOSURE OF THIS INFORMATION WOULD NOT VIOLATE THE OFFICERS' RIGHT TO PRIVACY

Hawaii is not the only state having a constitution specifically guaranteeing the right of the people to privacy. The courts of several other states having constitutional privacy provisions have held that due to the unique public trust placed in police officers, the public has a legitimate interest in information concerning their misconduct. These courts have held that information concerning discipline imposed upon police officers does not constitute intimate personal information, nor is it information in which society is willing to recognize a legitimate expectation of privacy.

For example, holding that the public disclosure of the names of the disciplined

officers would not violate the privacy provision of the Montana Constitution, the Montana Supreme Court reasoned:

> In the present case, the District Court declared that "it is not good public policy to recognize an expectation of privacy in protecting the identity of a law enforcement officer whose conduct is sufficiently reprehensible to merit discipline." We agree. The law enforcement officers in the present case may have had a subjective or actual expectation of privacy relating to the disciplinary proceedings against them. However, law enforcement officers occupy positions of great public trust. What ever privacy interest the officers have in the release of their names as having been disciplined, it is not one which society recognizes as a strong right.
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> On the other hand, the public has a right to know when law enforcement officers act is such a manner as to be subject to disciplinary action. The public health, safety, and welfare are closely tied to an honest police force. The conduct of our law enforcement officers is a sensitive matter so that if they engage in misconduct in the line of duty, the public should know. We conclude that the public's right to know in this situation represents a compelling state interest.
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> When we balance the limited privacy interests of the law enforcement officers against the public's right to know which officers have been disciplined for unlawful acts, we conclude that the District Court was correct. The privacy interests of the officers does not clearly exceed the public's right to know. We note that we are not ruling that the entirety of any personnel files must be revealed. The District Court ordered only the release of the names of the officer who was terminated and those who resigned.

Great Falls Tribune v. Sheriff, 238 Mt. at 103, ___, 775 P.2d 1267, 1269 (1989) (emphases added).

Likewise, in Jones v. Jennings, 788 P.2d 732 (Alaska 1990), in deciding whether an order granting discovery of documents relating to the internal investigation of

citizen complaints violated the privacy provision of Section 22 of Article I of the Constitution of the State of Alaska, the Alaska Supreme Court reasoned:

> There can be little doubt that Jones does have a "legitimate expectation that the material or information will not be disclosed." The municipality correctly points out that personnel files "contain the most intimate details" of an employee's work history. What then, is the state interest in compelling disclosure? We have already set forth the state's interest in maintaining and preserving our system of government by ensuring openness. There is perhaps no more compelling justification for public access to documents regarding citizen complaints against police officers than preserving democratic values and fostering the public's trust in those charged with enforcing the law.
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> . . . .
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> . . . We find the public policy considerations of openness, free access to the workings of government, insuring the effective operation of our judicial system, and preservation of democratic ideals compelling.

Jones v. Jennings, 788 P.2d at 738-39 (emphasis added).

Similarly, in Cowles Publishing Company v. State Patrol, 109 Wash.2d 712, 748 P.2d 597 (Wash. 1988), the Washington Supreme Court held that the disclosure of an internal affairs investigative file for law enforcement officers against whom complaints had been sustained did not constitute an unreasonable invasion of privacy. In determining whether the disclosure of the names of the law enforcement officers would constitute an invasion of privacy, the court applied principles set forth in section 652D of the Restatement (Second) of Torts. In holding that the disclosure of the names of the law enforcement officers would not constitute an invasion of privacy, the court reasoned:

> We continue the discussion of the right to privacy with the comment to § 652D, the Restatement (Second) of Torts in mind. In contrast to the types of information listed in the Restatement's

comment, the information contained in the police investigatory reports in the present case does not involve private matters, but does involve events which occurred in the course of public service. Instances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life when examined from the viewpoint of the Hearst case. They are matters with which the public has a right to concern itself.

We read the foregoing cases as indicating a balancing test is involved when resistance to the disclosure of public records is based on a claim of unreasonable invasion of personal privacy. The court must first decide whether the matters to be disclosed involve "personal privacy," as defined by § 652D to wit: the intimate details of one's personal and private life. If such personal and private details are involved then the court must decide whether the invasion caused by the disclosure would be unreasonable. If the off duty acts of a police officer bear upon his fitness to perform public duty or if the activities reported in the records involve the performance of a public duty, then the interest of the individual in "personal privacy," is to be given slight weight in the balancing test and the appropriate concern of the public as to the proper performance of public duty is to be given great weight. In such situations, privacy considerations are overwhelmed by public accountability.

We also conclude that a law enforcement officer's actions while performing his public duties or improper off duty actions in public which bear upon his ability to perform his public office do not fall within the activities to be protected under the Comment to § 652D of Restatement (Second) of Torts as a matter of "personal privacy."

Under the Hearst § 652D test, disclosure of the officers' names would not invade the officers' right to privacy because such a disclosure would not be offensive to the reasonable person, and because matters of police misconduct are of legitimate concern to the public.

Cowles, 109 Wash.2d at 727, 748 P.2d at 605 (emphases added).

Additionally, in Rawlins v. Hutchison Publishing Co., 218 Kan. 295, 543 P.2d 988 (Kan. 1975), the Supreme Court of Kansas held that the publisher of a newspaper did not

libel and invade the right to privacy of a former police officer by its publication of accounts of his alleged misconduct and termination from employment. In determining whether the newspaper publisher libeled and invaded the officer's right to privacy, the court cited to the Restatement (Second) of Torts, § 652D, and reasoned:

> We must determine, then, whether what was publicized concerned the "private life" of the plaintiff. We think it clear it did not. In 1964, plaintiff was a police officer, charged with the duties of that office. He was a public official, in whose conduct the public has a vital interest. His contention that his rank did not elevate to the status a "public official" cannot be sustained. In a libel action brought by a patrolman against a newspaper, the Illinois Supreme Court answered such a contention in convincing language:
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> "It is our opinion that the plaintiff is within the "public official" classification. Although as a patrolman he is the 'lowest rank of police officials' and would have slight voice in setting departmental policies, his duties are peculiarly `governmental' in character and highly charged with the public interest. It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an `on the street' level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm; hence, public discussion and public criticism directed towards the performance of that office cannot constitutionally be inhibited by threat of prosecution under State libel laws."

Rawlins, 218 Kan. at ___, 543 P.2d at 991-992 (emphasis added).

Similarly, in Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335, 783 P.2d 781 (Ariz. 1989), the court held that a sheriff and deputies could not maintain an action for invasion of privacy for news reports concerning alleged illegal activities and misconduct. Observing that police and other law enforcement officials are almost always public figures,

the court reasoned:

> A number of jurisdictions take the position that because false light is a form of invasion of privacy, it must relate only to the private affairs of the plaintiff and cannot involve matters of public interest. See Annot., supra, 57 A.L.R.4th 22 §10. It is difficult to conceive of an area of greater public interest than law enforcement. Certainly the public has a legitimate interest in the manner in which law enforcement officials perform their duties. Therefore, we hold that there can be no false light invasion of privacy for matters involving the official acts or duties of public officers.

Godbehere, 162, Ariz. at ___, 783 P.2d at 789 (emphasis added).[1]

As the foregoing cases illustrate, since police officers are "public officials," information concerning their on-the-job misconduct does not involve highly intimate or personal information. Further, these cases demonstrate that there is a legitimate public interest in the disclosure of information concerning police misconduct and that to the extent that police officers claim some expectation of privacy in disciplinary matters, it is not a right

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[1]See also, Morales v. Ellen, 840 S.W.2d 519 (Tex. App.-El Paso (1992) (citizens have a legitimate interest in the full disclosure of facts behind the resignation of a police officer such that disclosure would not constitute a clearly unwarranted invasion of privacy under Texas Open Records Law); White v. Fraternal Order of Police, 909 F.2d 512 (D.C. Cir. 1990) (possibility that a high-ranking police official used drugs was squarely a matter of public concern, citing to Restatement (Second) of Torts); Powhida v. City of Albany, 147 A.D.2d 236, 542 N.Y.S.2d 865, 867 (A.D. 3 Dept. 1989) (police misconduct records "were clearly of significant interest to the public," and would "significantly contribute to the general public's evaluation of one of the most important public agencies"); Hardge-Harris v. Pleban, 741 F. Supp. 764 (E.D. Mo. 1990) ("[w]here the operation of laws and activities of the police or other public bodies are involved, the matter is within the public interest"); Coughlin v. Westinghouse Broadcasting & Cable, 603 F. Supp. 377 (E.D. Penn. 1985) ("[a] public officer's on-the-job activities are matters of legitimate public concern"); Santillo v. Reedel, 634 A.2d 264 (Penn. 1993) (disclosure by police chief that former police officer and candidate for judicial office made unwarranted sexual advances toward minor when a police officer not an invasion of privacy because information was of legitimate public interest).

that state courts have found to recognized by society as a strong right. Accordingly, the present provisions of the UIPA concerning the disclosure of suspension or discharge information about police officers and other public employees do not violate the police officers' right to privacy under section 6 of article I of the Constitution of the State of Hawaii.

IV. THE DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE INFORMATION ABOUT POLICE DISCIPLINE WOULD PROMOTE GOVERNMENTAL ACCOUNTABILITY AND DETER POLICE MISCONDUCT

One of the purposes of the UIPA is to promote governmental accountability through a general policy of access to government records. See Haw. Rev. Stat. § 92F-2 (Supp. 1992).

Other state courts have held that the policy of open government is critical to a democratic society, and that the public's right to know is a compelling state interest. As James Madison once observed:

> A popular Government without popular information or a means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power that knowledge gives.

Letter to W.T. Barry, August 4, 1822, in G.P. Hunt ed., IX The Writings of James Madison 103 (1910).

Further, as United States Supreme Court has observed, the purpose of open records laws are "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242, 98 S. Ct. 2311, 2327, 57 L.Ed.2d 159 (1978).

As Acting Circuit Court Judge John S. W. Lim observed when he denied

SHOPO's Motion for a Preliminary Injunction prohibiting the Honolulu Police Department from disclosing disciplinary information:

> And the Honolulu Police Department, I know . . . is the best police force in the nation. Professional, effective, efficient, helpful, mindful of individual rights and protection, gracious, courteous, and often cheerful. How do we as a people, who are so mistrustful of government and its attendant police power, enjoy such excellent men and women in uniform? It is precisely because of the public's right to know.
>
> The public has a right to know, and therefore it does know and because it knows it insists its police officers be professional.
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> The public has a right to know, and therefore it does know and because it knows, it insists that its police officers be educated.
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> The public has a right to know, and therefore it does know and because it knows, it insists that its police officers observe individual rights and protections, at the same time it serves the public and protects the public.
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> . . . .
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> Now, I'm not saying that you, ladies and gentleman of the Honolulu Police Department, if left without supervision would automatically not be men and women who want to do their best, men and women who want to serve the public interest. <u>But let me repeat to you a truism and it is a truism because it is true. Despite all the best efforts of men and women down through the ages, this one fact remains, and that is that power corrupts and absolute power corrupts absolutely. Despite our best intentions, that still remains true</u>.

Transcript of Proceedings, <u>State of Hawaii Organization of Police Officers, et al. v. City and County of Honolulu, et al.</u>, Civil No. 94-0547-02, First Circuit Court, State of Hawaii (March 31, 1994).

This bill expressly provides in section 1 that county police departments and the county police commissions disclosure of summary data about police misconduct and

disciplinary information is sufficient to serve the legitimate public interest in the accountability of the county police forces. We respectfully disagree. For without access to individually identifiable information about police officers who have been suspended or discharged a complaining party is left without any information concerning whether their complaint was given serious investigation and appropriate action taken. Without access to individually identifiable information, the public is unable to determine whether appropriate action is taken against officers who have repeatedly violated the standards of conduct. Furthermore, where the public is left without knowledge of the identities of officers who have been suspended or discharged, it is possible that citizens may view an officer's conduct as an isolated instance of misconduct and not report misconduct to the appropriate authorities, thereby permitting repeated misconduct to go undetected. Without access to individually identifiable information about police discipline involving a suspension or discharge, the county police officers remain only accountable to the chiefs of police, who themselves are only accountable to county police commissions, who in turn are accountable to the officials appointing them to the commissions. Thus, police officers remain unaccountable to the public, those whom they serve and who pay their salaries.

On the other hand, the disclosure of individually identifiable information about officers who have been suspended or discharged and its attendant accountability would have a significant effect in deterring police misconduct by county police department officers.

Finally, when the Legislature adopted Act 191, Session Laws of Hawaii 1993, it observed:

Your Committee finds that the current law regarding

> disclosure of public employee misconduct has led to confusion, uncertainty and controversy.
>
> A balance needs to be drawn between the public's right to know about government functions and the public employee's right to privacy.
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> Your Committee notes that this measure appropriately distinguishes between minor and more serious misconduct by focusing on the disciplinary consequences, and protects the employee from the disclosure of information while formal grievance procedures are still in progress. Yet the bill also serves the public at large by refusing to provide further protection from disclosure of misconduct when the employee has exhausted non-judicial grievance adjustment procedures, and has been suspended or discharged.
>
> Your Committee also finds that because of the unique responsibilities of police officers, special care must be taken to clearly delineate private conduct from conduct as a government employee.

Conf. Comm. Rep. No. 61, 17th Leg., 1993 Reg. Sess., Haw. S.J. 764, Haw. H.J. 900 (1993) (emphases added).

For the foregoing reasons, the OIP is strongly opposed to the passage of this bill. I will be happy to try to answer any questions.

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