

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

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

Relating to the Uniform Information Practices Act

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: FRIDAY, March 31, 1995

TIME: 2:00 P.M.

**PLACE: Conference Room 802
Leiopapa A Kamehameha Building
235 South Beretania Street**

PERSON(S) TESTIFYING:

**Kathleen A. Callaghan
Director
Office of Information Practices**

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES
ON S.B. NO. 171, S.D.1
RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

Honorable Chairperson and Committee Members:

The Office of Information Practices opposes the passage of this bill, which would amend the State's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), to make confidential the names of police officers who are suspended for employment-related misconduct and who have exhausted all non-judicial grievance adjustment procedures timely invoked by the police officers, or their representatives.

The OIP will not restate our lengthy testimony previously submitted to this Committee on February 24, 1995, setting forth our opposition to amending the current provision of the UIPA that requires the public availability, upon request, of the names of all public employees, who have been suspended or discharged for employment-related misconduct, and who have exhausted grievance adjustment procedures, including arbitration by a neutral party. Instead, in our testimony, we shall attempt to explain why the provisions of S.B. No. 171, Senate Draft 1 are not adequate to protect the public interest in disclosure and to promote governmental accountability, two of the central legislative policies underlying the UIPA.

I. THE COUNTY POLICE COMMISSIONS AND INTERNAL AFFAIRS UNITS OF COUNTY POLICE DEPARTMENTS ARE NOT ADEQUATE GUARANTEES FOR THE PUBLIC ACCOUNTABILITY OF THE POLICE FORCE

The proponents of this bill have testified that because police officers' actions are subject to review by each police department's internal affairs unit, chief of police, and county police commission, governmental accountability is adequately served without the disclosure of the names of police officers who have been suspended for employment-related misconduct.

The OIP submits that while these oversight agencies perform their responsibilities admirably, without public access to the names of police officers who have been suspended for employment misconduct, the public is deprived of information that is critical to the determination of whether these oversight agencies are adequately performing their responsibilities. In section 92F-2, Hawaii Revised Statutes, the Legislature declared that "opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest." Further, as the 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 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) (emphasis added).

Without the names of police officers suspended for employment-related misconduct, the public is deprived of important information necessary to permit the public to make an informed judgment concerning whether agencies currently responsible for overseeing police misconduct are performing their responsibilities in a professional, equitable, and efficient manner. In particular, without the disclosure of the names of disciplined officers, the public is left without sufficient information to determine whether these review agencies have properly acted with respect to officers who engage in repeated instances of misconduct.

II. THE LEGISLATURE ALREADY HAS BEEN PROVIDED WITH THE INFORMATION REQUIRED TO BE SUBMITTED TO THE LEGISLATURE ANNUALLY BY SENATE DRAFT 1

Senate Draft 1 of this bill would require the county police departments to report to the Legislature annually on the number of police officers suspended and discharged for the malicious use of force, mistreatment of prisoners, use of drugs and narcotics, and cowardice, so that the Legislature can determine whether the UIPA should be amended in the future to permit greater public disclosure.

The information required to be provided to the Legislature by S.D. 1 is already public information under the UIPA, and has already been provided to the Legislature by the Honolulu Police Department during this legislative session. Attached as Exhibit A for your information is a listing of all suspensions imposed by the Honolulu Police Department for the period of August 1991 through August 1994. During this four year period, a total of 81 officers were suspended for periods ranging from one to thirty days. No officers were discharged. The employment-related misconduct warranting the 81 suspensions include:

- Twenty four (24) officers suspended for conduct involving unnecessary use of force, mistreatment of prisoners, or overbearing conduct.
- Fourteen (14) officers suspended for falsification of traffic citations, overtime cards, or other records.
- Two (2) offices suspended for commission of a criminal act.
- Three (3) officers suspended for firearm and weapons violations.
- Five (5) officers suspended for reporting late for duty.
- Eleven (11) officers suspended for failing to submit required reports, failing to complete investigations, or failing to follow directives regarding the submission of reports; and
- Four (4) officers suspended for failing to appear in court.

III. THE INFORMATION REQUIRED TO BE FURNISHED TO THE LEGISLATURE IS INSUFFICIENT TO PERMIT MEANINGFUL ANALYSIS

As presently drafted, this bill only requires the county police departments to furnish the number of officers suspended or discharged for certain offenses, but does not require the submission of detailed information that would be necessary for the Legislature to have, if it plans to undertake an oversight function with respect to county police department disciplinary matters. Without more detailed information, the Legislature will not possess the information necessary to determine whether the officers have been previously disciplined, the seriousness of the misconduct, and other important matters. At a minimum, if the Legislature intends to act in an oversight capacity to determine whether the law should be amended to permit greater public access to information, it should demand detailed reports concerning the conduct leading to the suspension or discharge, not just information on the number of officers suspended or discharged.

IV. LIMITING PUBLIC ACCESS TO ONLY THE NAMES OF FIRED OFFICERS EFFECTIVELY FORECLOSES PUBLIC ACCESS

This bill would permit the disclosure of only the names of officers who have been terminated for employment-related misconduct. Since no Honolulu Police Department officer was discharged during the period of August 1991 through August 1994, this bill effectively forecloses public access to the names of disciplined officers. Further, this bill does not appear to address the situation where an officer is permitted to resign in lieu of termination. Will the names of police officers who resign in lieu of discharge be publicly accessible under this bill?

VI. SENATE DRAFT 1 CONTINUES TO LEAVE COMPLAINING PARTIES IN THE DARK

During previous hearings on this bill, the Honolulu Police Department confirmed that it is its policy not to inform a complaining party of the nature of disciplinary action taken, if any, in response to their complaint filed with the Honolulu Police Commission or the Honolulu Police Department. As a matter of due process, it would seem that where a person brings a complaint to a county police commission or county police department, that they should be informed of the action taken by the agency in response to their complaint.

For the foregoing reasons, and those set forth in the OIP's previous testimony, the OIP is opposed to the passage of this bill. We will be happy to try to answer any questions.

**SUMMARY OF DISCIPLINARY VIOLATIONS BY CATEGORY OF VIOLATION
HONOLULU POLICE DEPARTMENT
AUGUST 1991 THROUGH AUGUST 1994**

Note: This summary has been compiled from disciplinary summaries provided to the Society of Professional Journalists, by the Honolulu Police Department, pursuant to the order of Judge Wendell K. Huddy, in Society of Professional Journalists, University of Hawaii Chapter v. City and County of Honolulu, et al., Civil No. 94-0657-02.

A. SUMMARY:

DISCHARGES: 0
SUSPENSIONS: 81

1 DAY SUSPENSIONS: 46
2 DAY SUSPENSIONS: 5
3 DAY SUSPENSIONS: 11
5 DAY SUSPENSIONS: 14
10 DAY SUSPENSIONS: 2
20 DAY SUSPENSIONS: 2
30 DAY SUSPENSIONS: 1

B. SUSPENSIONS BY CATEGORY AND BY LENGTH

ONE DAY SUSPENSIONS: TOTAL 46

4 Officers: Unnecessary use of force or malicious use of force

4 Officers: Overbearing conduct on or off duty; threatening, or harassment

6 Officers: Alteration or falsification of records, citations, or overtime cards and offenses involving truthfulness

2 Officers: Firearm and weapons violations

2 Officers: Commission of a criminal act

3 Officers: Outside/special duty violations or unauthorized special duty

7 Officers: Failed to submit citations, reports, evidence, or lost or stolen evidence

2 Officers: Insubordination

1 Officer: Sleeping



ONE DAY SUSPENSIONS (Continued)

- 3 Officers: Absent without leave
- 4 Officers: Reported late for duty
- 3 Officers: Failed to appear in court
- 1 Officer: Failure to render assistance; impartial attitude
- 2 Officers: Investigation violations, incomplete or failure to follow directives
- 1 Officer: Vehicle violations or transporting citizens
- 1 Officer: Property violation, damaged private property

TWO DAY SUSPENSIONS: TOTAL 5

- 2 Officers: Overbearing Conduct on-duty or off-duty
- 2 Officers: Alteration of traffic citations; falsification or records, or truthfulness
- 1 Officer: Failure to appear in court

THREE DAY SUSPENSIONS: TOTAL 11

- 3 Officers: Unnecessary use of force
- 2 Officers: Overbearing conduct on-duty
- 2 Officers: Alteration of records, reports, or citations; falsification or records
- 1 Officer: Use of weapon on duty
- 2 Officers: Failed to initiate a report in an investigation
- 1 Officer: Failed to report for an exam, interview or AWOL

FIVE DAY SUSPENSIONS: TOTAL 14

- 7 Officers: Unnecessary use of force, mistreatment of prisoners; malicious use of force
- 2 Officers: Alteration of records, citations, or falsification of records or truthfulness
- 2 Officers: Investigations: failure to follow directives or to submit reports
- 1 Officer: Sleeping
- 1 Officer: Reported late for duty
- 1 Officer: Traffic stop off-duty, truthfulness, loyalty, cooperation, impartial attitude

TEN DAY SUSPENSIONS: TOTAL 2

- 1 Officer: Unnecessary use of force, mistreatment of prisoners
- 1 Officer: Alteration or falsification of reports or records

TWENTY DAY SUSPENSIONS: TOTAL 2

- 1 Officer: Falsification or records, insubordination, truthfulness, conduct toward superior and subordinate officers
- 1 Officer: Failure to respond or render assistance; conduct or performance

THIRTY DAY SUSPENSIONS: TOTAL 1

- 1 Officer: Overbearing conduct off-duty, threatening, loyalty, cooperation, truthfulness, assistance and conduct toward superior or subordinate officers

TERMINATIONS: TOTAL: 0

