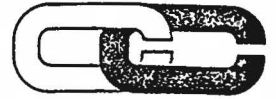


COMMON CAUSE HAWAII

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Ref: 95-G1

April 19, 1995

RECEIVED
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Senator Norman Mizuguchi
President, The Senate
and members of the Senate

Representative Joseph Souki
Speaker, House of Representatives.
and members of the House

SB 171 Disclosure of information on Police discipline
HRS Ch. 92F Uniform Information Practices Act

We urge the Legislature to vote **NO** to this bill. The real issue is confidence.

•We are attaching Article VIII of the Standards of Conduct of the Honolulu Police Department. These standards were not disclosed voluntarily, but only due to a recent opinion of the Office of Information Practices.

•The public is principally concerned with Class A and B and a few Class C standards.

•SHOPO in it's public relations campaign and it's unattributed and misleading video refers to Class D standards.

• The real question is confidence in our institutions, in particular the professionalism and integrity of our county police departments. This bill does not enhance that confidence but diminishes it considerably.

•Police departments across the country, and Hawaii is no exception, have a tradition of secrecy and "looking after their own". We cannot rely on the fact that the current Chief of Police, Michael Nakamura is a man of integrity. Police chiefs come and go especially with the other three counties.

•If the police were true professionals, rather than just a union, they would not want this bill. True professionals want to maintain their independence and integrity and prove to the public that they will not tolerate their members deviating from high standards.

•A very high level of confidence is necessary:

-to entrust the police with extraordinary powers not given to other government employees, They carry guns, can arrest people and detain them for certain periods of time. Their word is usually accepted by other parts of the law enforcement system and judges.

-to recruit and retain high quality men and women.

-to allocate adequate budgets to fund police departments properly and pay police competitively.

-to ensure respect and cooperation of all sections of the community, especially young people, immigrants, the poor and uneducated.

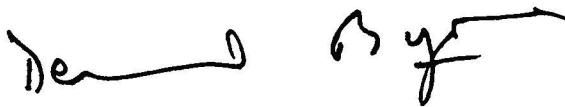
•We are surprised and disappointed that SHOPO is pushing so hard for a bill that might win a their personal battle but lose the war of enhancing public confidence in the police. They are doing their members a grave disservice.

•We are even more disappointed with the Legislature, that is apparently allowing itself, to be coerced and intimidated into passing this bill. SHOPO is in effect saying "vote for this bill and show that you are a friend or else you will be an enemy and on our blacklist". Does the Legislature have the backbone to do what is right?

Emotion and intimidation are everything with this bill and logic and the duty of the Legislature to represent the wider public interest are being ignored.

If this bill passes not only will be confidence be lowered in our police but also in our legislature. That will be a sad day.

Vote NO. You represent the public interest and not SHOPO's interest.



Desmond J. Byrne
Chair

cc Governor Ben Cayetano
Police Chiefs
Office of Information Practices

STANDARDS OF CONDUCT OF THE HONOLULU POLICE DEPARTMENT



Issued to: _____

ARTICLE VIII

STANDARDS

A. CLASS A STANDARDS

- A 1 - Malicious Use of Physical Force - Officers shall not maliciously use physical force or willfully use a dangerous instrument which may result in bodily injury to another person.
- A 2 - Cowardice - Officers shall not display cowardice in the performance of their duty.
- A 3 - Mistreatment of Prisoners - Officers and civilian employees shall not abuse prisoners.
- A 4 - Use of Drugs and Narcotics - The illegal possession or use by officers or civilian employees of any tranquilizer, narcotic, depressant, intoxicating compound, stimulating drug, or marijuana or its derivatives is expressly prohibited.

B. CLASS B STANDARDS

- B 1 - Physical Abuse - Officers and civilian employees shall not physically abuse other officers or civilian employees.
- B 2 - Drinking Intoxicating Beverages on Duty - Officers and civilian employees shall not drink intoxicating beverages while on duty except in performance of a police duty, and only with the specific consent of a commanding officer.
- B 3 - Security of Departmental Business - Officers and civilian employees shall not reveal police information outside the department, or remove or cause to be removed any official records except as provided elsewhere in these Standards of Conduct or as required by directives, orders, law or competent authority. Specifically, information ordinarily accessible only to officers and civilian employees, and names of informants, complainants, witnesses and other persons known to the police, are considered confidential.

- B 4 - Personal Preferment - Officers and civilian employees shall not seek the influence or intervention of any organization or persons outside the department for purposes of personal preferment, advantage, or transfer, except as provided for by civil service rules and regulations or any collective bargaining contract.
- B 5 - Departmental Investigations - Testifying - Officers and civilian employees are required to respond truthfully to questions of, or render all materials and relevant statements to, a competent authority in a departmental administrative investigation when so directed.
- B 6 - Commission of any Criminal Act - Officers and civilian employees shall not commit any criminal act.
- B 7 - Gambling - Officers and civilian employees are prohibited from engaging in any unlawful gambling activity unless in performance of an assigned duty.
- B 8 - Assistance - Officers shall take appropriate police action to aid a fellow police officer, or any other person, who is exposed to danger or in a situation where danger may impend.

C. CLASS C STANDARDS

- C 1 - Solicitation and Acceptance of Gifts, Gratuities, Fees, Rewards, Loans, Etc. - Officers and civilian employees shall not solicit or accept any gifts, gratuities, loans, fees, or rewards where there are any direct or indirect connections between the solicitations or offerings and their departmental membership or employment, without prior written approval and prior determination by the chief of police that the item is not intended to influence the recipient in the performance of official duties.
- C 2 - Disposition of Unauthorized Gifts, Gratuities, Etc. - Any unauthorized gifts, gratuities, loans, fees, rewards or other things which come into the possession of officers or civilian employees shall be forwarded to the Office of the Chief of Police together with a written report of the circumstances which led to such possession.

- C 3 - Falsification of Records - Officers and civilian employees shall not knowingly falsify, either orally or in writing, official reports or enter or cause to be entered, either orally or in writing, any inaccurate, false or improper information on any records of the department.
- C 4 - Conduct Toward Superior and Subordinate Officers and Associates - Officers and civilian employees shall treat superior officers, subordinates and associates with respect. Officers and civilian employees shall not be insubordinate to superior officers and/or supervisors.
- C 5 - Relief - Officers and civilian employees are to remain at their assignments and on duty until properly relieved.
- C 6 - Reports - Officers and civilian employees shall promptly submit such reports as are required in performance of their duties or by competent authority.
- C 7 - Consumption of Intoxicants and Prescribed Drugs - Officers and civilian employees shall not consume intoxicants nor use prescribed drugs to the extent that evidence of such consumption is apparent when reporting for duty, or to the extent that their ability to perform duty is impaired.
- C 8 - Intoxicants on Departmental Premises - Officers and civilian employees shall not bring, or keep, any opened container of intoxicating liquor, or display or consume any intoxicating liquor, on departmental premises except as required by official duty.
- C 9 - Firearms - Officers shall not display, brandish, or manipulate firearms unnecessarily or draw them except for inspection or official use in accordance with departmental directives.
- C10 - Malingering - Officers and civilian employees shall not mangle.

- C11 - Recommending Attorneys, Bail Bond Brokers, Tow Services, or Others, Prohibited - Officers and civilian employees shall not suggest, recommend, advise or otherwise counsel any person who comes to their attention as a result of police business, in the retention of any attorney, bail bond broker, tow service, alarm company, private investigator or security service.
- C12 - Commercial Testimonials - Officers and civilian employees shall not permit their names or photographs to be used to endorse any product or service which may in any way be connected with law enforcement without the prior written permission of the chief of police. They shall not, without prior written permission of the chief of police, allow their names or photographs to be used in any commercial testimonial which alludes to their position or employment with the department.
- C13 - Impartial Attitude - Officers and civilian employees shall remain completely impartial toward all persons coming to the attention of the department. They shall not display favoritism for, or discrimination against, a person because of race, sex, creed or influence.
- C14 - Obtaining of Liquor - Officers on duty or in uniform shall not enter any place for the purpose of obtaining liquors.
- C15 - Use of Physical Force - Physical force shall not be used except to the extent necessary to accomplish a police objective.
- C16 - Overbearing Conduct - Overbearing or oppressive conduct shall not be practiced under color of police authority.

D. CLASS D STANDARDS

- D 1 - Absence from Duty - All officers and civilian employees who, unless otherwise directed, fail to appear properly attired and equipped for duty at the date, time and place specified for so doing are "absent without leave." Failure to return from lunch break or any other approved absence shall be included under this standard. If an officer or civilian employee is unable to report for duty, such inability shall be reported in accordance with departmental directives.

- D 2 - Conduct Toward the Public - Officers and civilian employees shall be courteous when dealing with the public. They shall refrain from using harsh, violent, degrading, or insolent language that could be construed as being directed at a member of the public. When requested, officers shall courteously furnish their names and badge numbers either orally or in writing.
- D 3 - Court Attendance - Officers and civilian employees shall be punctual and attend court when duly subpoenaed. If an officer or civilian employee is unable to report for court, such inability shall be reported in accordance with departmental directives.
- D 4 - Ticket Sales by Police Officers and Civilian Employees - Officers and civilian employees are prohibited from selling or offering for sale tickets of any character whatsoever, without prior written approval of the chief of police.
- D 5 - Ticket Sales, Etc., by Police-Associated Groups - Associations, clubs, auxiliaries, fraternities or other groups of officers and civilian employees acting under the auspices or sanction of the department shall not sell tickets, solicit sales of any kind, or offer performances of any nature to raise funds for special purposes without prior written approval of the chief of police.
- D 6 - Criticism of Orders - Officers and civilian employees shall not publicly criticize any instruction or order received from competent authority.
- D 7 - Conducting Personal Business - Officers and civilian employees are prohibited from conducting personal business while on duty.
- D 8 - Military Courtesy - Officers shall conform to normal standards of military courtesy.
- D 9 - National Colors and Anthem - Uniformed officers shall render full military honors to the national colors and anthem at appropriate times.

- D10 - Reporting for Duty - Unless otherwise directed, officers and civilian employees shall report for duty at the time and place specified, properly attired and equipped. If an officer or civilian employee is unable to report for duty or court, such inability shall be reported in accordance with departmental directives.
- D11 - Wearing the Uniform - Uniforms shall be kept neat, clean and well pressed at all times. Unless otherwise directed, uniforms shall be worn complete. Uniformed employees shall also maintain a military bearing.
- D12 - Equipment - All equipment must be clean, in good working order and conform to department specifications.
- D13 - Departmental Property and Equipment - Employees shall not use any departmental equipment unless authorized by competent authority. Employees are responsible for the proper care of departmental property and equipment assigned to them.
- D14 - Transporting Citizens - Citizens will be transported in police vehicles only when necessary to accomplish a police purpose. Such transportation will be provided in conformance with departmental directives or at the direction of a command officer, immediate supervisor or communications center.
- D15 - Reporting Accidents - Accidents involving officers and civilian employees, city property and/or equipment must be reported in accordance with established procedures.
- D16 - Traffic Regulations - Officers and civilian employees shall comply with traffic regulations and signals except when operating under the exemptions granted by law. In any event, caution shall be exercised to safeguard lives and property.

- D17 - Truthfulness - Officers and civilian employees are required to be truthful at all times, whether under oath or not.
- D18 - Vehicles - All subsidized vehicles shall be equipped and maintained in accordance with departmental directives.
- D19 - Appearance - The personal appearance and grooming of officers and civilian employees shall conform to published department requirements.
- D20 - Radio Discipline - Use of police radio equipment and response to radio calls shall conform to departmental directives and the rules and regulations of the Federal Communications Commission.
- D21 - Conduct and Responsibility While in Uniform - Any time an officer is in uniform, compliance with departmental directives is required as if the officer were on duty.
- D22 - Sleeping - Officers and civilian employees shall not sleep on duty.
- D23 - Directives - Violation of departmental directives is prohibited.

**TESTIMONY OPPOSING SENATE BILL 171
RELATING TO THE UNIFORM INFORMATION PRACTICES ACT
THE 18TH LEGISLATURE, STATE OF HAWAII**

By Jahan Byrne

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." 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 sensationalized. Nor were police officers made a "media target" as they allege they will be if their names are again disclosed. I don't really know what a media target is, but it seems that SHOPO believes anything less than flattering prose by the press constitutes media harassment and bullying of cops.

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 mandatory drug testing.

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 HPD 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. 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. 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.

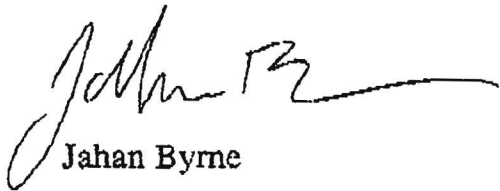
The law is fair as it stands on the books today. I urge this Legislature to kill this bill, and not allow all police department personnel to gain a special

and unnecessary exemption from the public disclosure law that has worked so well for the past five years.

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,

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

Jahan Byrne

1308 Monterey Avenue
Berkeley, California 94707-2721

Tel. (510) 527-9686

April 24, 1995

The Honorable Rey Gaulty
The Honorable Richard Matsuura

The Honorable Brian Kanno
The Honorable Mike McCartney

Dear Senators:

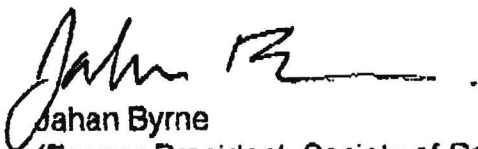
RE: S.B. 171, S.D. 1, H.D. 1 Relating to Uniform Information Practices Act

During your conference committee deliberations today, I urge you not to dilute the public records law by making serious police misconduct a state secret. SHOPO wants you to believe that police officers are routinely suspended or fired for minor infractions, such as being late to work. THAT IS SIMPLY NOT TRUE. According to HPD's own statistics, no police officer was suspended or discharged for such minor infractions; those officers were reprimanded and their names, under law, are not released to the public. The officers who were suspended or discharged were so disciplined because they engaged in serious acts of misconduct or unnecessary force. Recent cases included an officer stealing evidence, and another entering a jail cell and brutally beating a prisoner.

If you pass this bill, you will grant police officers a special exemption that no other government employees enjoy. You will create a double standard in which a government employee's name in another department would be released, but a police officer guilty of same misconduct would enjoy complete secrecy. You will also help to foster the public's mistrust of the police, because we will now never know how well the police are policing their own ranks. Disclosure serves as an effective deterrent; by taking it away, some officers may think they can act with impunity toward citizens, knowing their names and any disciplinary action will never be made public.

If you are concerned that the names of officers guilty of minor misconduct will be released, I urge you to amend the bill to protect from such disclosure. (OIP drafted some compromise legislation to this end.) But, please, don't take away the public's right to know about serious police misconduct. Thank you for the opportunity to share these concerns with you.

Respectfully submitted,



John Byrne
(Former President, Society of Professional Journalists - UH Chapter)
1308 Monterey Avenue, Berkeley, California 94707

P.S. I am attaching a news clipping to show that such disclosure is routine in other states, and that the media, contrary to SHOPO's assertion, do not "sensationalize" these important matters.

Cops Cleared of Assaulting Man

S.F. chief says there was officer misconduct at AIDS benefit

By Thaal Walker
Chronicle Staff Writer

An investigation into claims that a homeless man was roughed up by San Francisco police last November — when he was mistaken for a second suspect in a shootout that left an officer dead — found that officers acted appropriately, Chief Anthony Ribera told the Police Commission last night.

Ribera also told the commission that an internal investigation into a raid at an AIDS benefit early New Year's day has found that there were incidents of officer misconduct.

Although Robert Pickney never filed a complaint with the department in connection with the November 13 shootout, Ribera ordered an internal investigation after Pickney told reporters that officers had ground his face in glass-covered pavement the night of the Pine Street incident.

Pickney, 35, was himself a shooting victim of Vic Lee Bout-

well, who was armed with several guns and more than 3,000 rounds of ammunition when he engaged police in a 40-minute shootout.

Boutwell killed Officer James Guelff and wounded another officer. Then police killed Boutwell. Afterward, Pickney was found lying face down only four feet from the gunman and several weapons. Police, thinking two suspects were involved, arrested Pickney, Ribera told the Police Commission last night.

Lieutenant Bill Davenport said Pickney's arms were tucked beneath his body and he did not respond to officers' orders to take them out so he could be handcuffed. It was while officers were struggling with him, that Pickney's face was cut by glass on the pavement, Davenport said.

Regarding the raid of the AIDS benefit early on New Year's Day, Ribera would not provide specifics about the findings but said they would be presented to the Office of Citizen Complaints, which is

conducting its own investigation.

Partygoers have complained that they were treated in an abusive manner by police and agents from the state Alcohol and Beverage Control unit, who have said they raided the party because it was being held unlawfully.

In other matters, the commission disciplined Sergeant Andrew Blackwell after sustaining two complaints brought against him by the department last year. Blackwell was accused of falsely reporting that he had injured himself in the line of duty and of lying to officers investigating his claims that he had been injured on the job.

Blackwell was placed on probation for three years and suspended from the department without pay for 30 days, and his name was stricken from the list of candidates for lieutenant. He was also ordered to seek counseling.

How -
For what
it's worth.
Jahan