



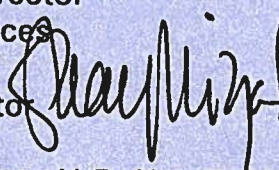
STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
300 KONGI STREET
HONOLULU, HAWAII 96813-5001

SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE (LOU)
DEPUTY DIRECTOR

March 23, 1993

TO: Ms. Kathleen Callaghan, Director
Office of Information Practices

FROM: Sharon Y. Miyashiro, Director 

SUBJECT: DPS' Proposed Amendment to H.B. No. 1594

Thank you for your comments and concerns to our proposed amendment to H.B. No. 1594.

However, in view of our previous experiences requiring inter-agency disclosure, which were eventually deemed permissible to a limited extent based on a finding that disclosure "reasonably appears to be proper for the performance of the requesting agency's duties and functions", my managers still have concerns that the amendments proposed in H.B. 1594 impose more stringent requirements for inter-agency disclosure. They believe that they would not be able to perform their functions expeditiously, including providing timely advisory services to the line departmental personnel offices. We thus intend to present the attached testimony at the hearing on Wednesday, March 24. If you have any concerns, please call me at 587-1100, or have your staff call Ann Morimoto, my Labor Relations Division Chief at 587-0918.

We appreciate your cooperation in attempting to allay our concerns and hope you understand our unwillingness to wait and see.

Attachment

DIP
KBY
A/H
EAB
CLP
RLE
ANDJOHN WAIHEE
GOVERNOR
ROBERT A. MAFFES
ATTORNEY GENERALKATHLEEN A. CALLAGHAN
DIRECTOR
PH. (808) 586-1400
FAX (808) 586-1412STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES
420 QUEEN STREET, ROOM 901
HONOLULU, HAWAII 96813-1804

March 19, 1993

MEMORANDUM

TO: Honorable Sharon Y. Miyashiro
Director of Personnel Services

Attention: Ms. Ann Yamamoto
Labor Relations Division

FROM: Kathleen A. Callaghan, Director *KAC*
HB 1594

RE: DPS's Proposed Amendment to S.B. No. 1594

Please accept my apology for the delay associated to our reply to your request to review and comment upon language that the Department of Personnel Services ("DPS") would like included in S.B. No. 1594.

For the reasons set forth below, the Office of Information Practices ("OIP") would prefer that S.B. No. 1594 be adopted as currently drafted, without the amendments proposed by the DPS.

First, section 92F-19(a), Hawaii Revised Statutes, merely authorizes, but does not require the inter-agency disclosure of government records that are protected from public disclosure under section 92F-13(1), Hawaii Revised Statutes. Thus, even if the DPS's language were to be included in the bill, it would not guarantee the DPS's access to such confidential information maintained by other State and county agencies.

Additionally, in Ms. Yamamoto's memorandum dated March 8, 1993 to Staff Attorney Hugh R. Jones, she set forth three examples of cases in which the DPS has had difficulty in obtaining information from other agencies for purposes of administering the State's personnel program. We believe the amendments being proposed to section 92F-19(a), Hawaii Revised Statutes, would permit the disclosure of information to the DPS, or its disclosure to other agencies, under the three scenarios described in your memorandum. In the case of the first example,

Honorable Sharon Y. Miyashiro
March 19, 1993
Page 2

Ms. Yamamoto explained in a telephone conversation that the DPS would have been satisfied to receive statistical data in non-individually identifiable form. The UIPA's privacy exception would not prohibit the disclosure of such information to the DPS.

With respect to the DPS's intention to develop an integrated human resources management system, we believe that to the extent that the information is compiled for personnel purposes, "line department personnel" and DPS personnel would be authorized to disclose to one another information that is otherwise protected from public disclosure. To the extent that the information being disclosed is compiled for personnel purposes, its disclosure to another agency for personnel administration would generally be: (1) compatible with the purpose for which the information was collected; (2) consistent with reasonable expectations of use under which the information was provided; and therefore, permitted under this bill.

Thus, the OIP would prefer that the DPS hold-off on its suggested amendments for a one-year interim period. If during this period, the DPS finds that it is unable to obtain information that is important to the performance of its functions, further amendments to section 92F-19(a), Hawaii Revised Statutes might be in order. However, as we stated above, we believe that the examples you provided to the OIP of cases where the DPS has encountered difficulty, are addressed by the present provisions of this bill and may be largely the result of miscommunication and misunderstandings.

→ If, however, the DPS insists upon proposing an amendment to S.B. No. 1594, as currently drafted, the OIP would prefer that you submit the language set forth in Exhibit A.

If you have any questions concerning this matter, please contact me at 586-1413. Thank you again for your patience in this matter.

KAC/HRJ:SO\0936311
Attachment

EXHIBIT A

*by rule
by practice*

*deposal
and line personnel
Maus of the
state*

(10) To the department of personnel services, or county personnel departments, for the performance of their statutory functions and duties, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety and workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or

[10] (11) Otherwise subject to disclosure under this chapter.

03/19/93

15:19

DPS/LABOR RELATIONS DIVISION

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KATHLEEN A. GALLAGHAN
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JOHN WAINES
GOVERNOR

ROBERT A. LAMORE
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES
415 QUEEN STREET, ROOM 201
HONOLULU, HAWAII 96813-2004

FAX TRANSMITTAL

FAX NO. (808) 587-0930

DATE: March 19, 1993

TO: THE HONORABLE SHARON MIYASHIRO

DPS

FROM: Kathleen A. Callaghan

OIP

IF ANY TRANSMISSION PROBLEMS

CONTACT: Sylvia PH. #: (808) 586-1400

2 PAGE(S) TO FOLLOW

March 19th letter to Director of DPS re: DPS' Proposed Amendment to
S.B. No. 1594

WARNING:

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15:19

DPS LABOR RELATIONS DIVISION

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JOHN WAIHEE
GOVERNOR OF HAWAII



SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
630 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

FAX TRANSMISSION

Labor Relations Division
888 Millilani Street, 5th Floor
Honolulu, Hawaii 96813
Fax No.: 587-0930

If Transmission Problems
Occur, Call (808) 587-0911

TO:

Sharon / Tim

Date:

3/19/93

FROM:

A. Yamamoto (ha!)
LRD

4 Pages Follow

MESSAGE:

JOHN WAINHE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

SHARON T. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

LR.280

March 8, 1993

TO: Mr. Hugh Jones, Staff Attorney
Office of Information Practices

FROM: Ann Morimoto *Ann Morimoto*
Labor Relations Division

SUBJECT: LIMITATIONS ON DISCLOSURE OF GOVERNMENT RECORDS
TO OTHER AGENCIES (Reference H.B. 1594)

Since we last discussed DPS concerns on March 1, 1993, regarding disclosure of government records to other agencies, I have not heard from you. You informed me that since there was sufficient time before the bill would be heard in the Senate, this exception was not a high priority item.

Frankly, however, some of our division managers are getting a bit "antsy" not knowing about the progress of our discussions on whether acceptable amendatory language to address DPS concerns will be forthcoming.

Therefore, I have taken the liberty of drafting some language along the lines we previously discussed which OIP might find acceptable. The City and County of Honolulu has also brought to our attention that they have concerns similar to ours so the suggested language includes the other jurisdictions. (See attachment.)

I realize that you need to clear the matter with your Director, but we want to ensure that our concerns are not overlooked. Briefly, the concerns we discussed are summarized below:

- o We encountered difficulty in acquiring available data from another agency when we needed to assess the feasibility of developing employee benefit programs.

Mr. Hugh Jones
Page 2

LR.289
March 8, 1993

- o In another situation, we were unable to provide information to a departmental personnel office. This thwarted our efforts to provide much needed advisory guidance services and assistance in the area of recruitment and examination.
- o Ironically, the legislative offices that are listed under (9) frequently call upon us to furnish personnel information pertaining to State employees and programs, which we collect from line department personnel.
- o Finally, but most importantly, as a result of civil service reform efforts, we have developed a network among human resource personnel (between the central agency and line department personnel) for sharing and exchanging information, increasing delegation to line department personnel, and streamlining operations in general. Included in DPS long range plans is the development of an integrated human resource management system where the line department personnel would have on-line access to the system. This is intended to minimize data redundancy, labor intensive efforts, data storage requirements, and paperbound activities. Hopefully, thereby, this would enable us to provide increased and more qualitative services to our customers.

We truly appreciate the opportunity to work with your office and the courtesy you and your Director have extended to us on this matter of urgency to our department. Please feel free to call me at 587-0911 or my Director, Sharon Y. Miyashiro at 587-1100 at your earliest convenience for further discussion on this matter.

Attachment

Draft amendment to HB 1594 (SECTION 2) concerning limitations on disclosure of government records to other agencies.

§92F-19(a)

* * *

- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; [or]
- (10) To the department of personnel services or line departmental personnel of the State or a county for the performance of their respective functions, including but not limited to, recruitment and examination, classification and compensation review, administration and audit of personnel transactions and records, training and safety, employee assistance and benefit programs, workers compensation, and labor relations; or
- [10] (11) Otherwise subject to disclosure under this chapter."

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON H.B. NO. 1594

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: WEDNESDAY, March 24, 1993

TIME: 8:30 a.m.

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

PERSON(S) TESTIFYING:

Kathleen Callaghan
Director
Office of Information Practices

or

Mimi Horiuchi
Staff Attorney

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON H. B. NO. 1594

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT (MODIFIED).

The Honorable Chairperson and Committee Members:

The Office of Information Practices supports this bill. The purposes of this bill are:

- (1) To clarify the conditions set forth in section 92F-19, Hawaii Revised Statutes, under which an agency may disclose to another agency government records that are otherwise confidential under part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA");
- (2) To clarify that "criminal history record information" is not exempt from inspection and copying by the individual to whom the information pertains, under part III of the UIPA; and
- (3) To clarify that (a) the exceptions to public access set forth in section 92F-13, Hawaii Revised Statutes, apply only to requests under part II of the UIPA, and (b) the exemptions to an individual's right to inspect the individual's personal records set

forth in section 92F-22, Hawaii Revised Statutes, apply only to requests under part III of the UIPA.

The Office of Information Practices ("OIP"), an agency attached to the Department of the Attorney General for administrative purposes only, was created by the Legislature to implement and administer the UIPA. The UIPA, which took effect on July 1, 1989, is a public records law that promotes open government while protecting individuals' constitutional right to privacy. It was also the Legislature's intention that the UIPA "[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1992).

In passing this landmark legislation, the Legislature of the State of Hawaii declared it to be the public policy of this State that "[o]pening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest." All government agencies at both the State and county levels are subject to the UIPA's provisions.

For purposes of clarity, each of the proposed amendments to the

UIPA proposed by this bill shall be separately addressed below:

1. **Clarification of Inter-Agency Disclosure Provisions of Section 92F-19(a), Hawaii Revised Statutes**

Section 92F-19(a), Hawaii Revised Statutes, sets forth the conditions under which an agency may disclose government records that are otherwise confidential under part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), to other agencies. By carefully limiting the inter-agency disclosure of confidential information about individuals, it was the Legislature's intention to "[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1992); see also S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S. J. 689, 691 (1988) ("the bill will continue current prohibitions on the sharing of information between agencies except in specific circumstances").

Most of the changes to section 92F-19(a), Hawaii Revised Statutes, proposed by this bill were taken from parallel provisions of the Uniform Information Practices Code drafted by the National Conference of Commissioners on Uniform State Laws (1980) ("Model Code"), upon which

the Legislature modeled the UIPA.

A significant problem encountered by the OIP since the enactment of the UIPA is that because the term "agency" is defined as units of government "in this State," only two provisions of section 92F-19(a), Hawaii Revised Statutes, expressly permit the disclosure of confidential information to agencies outside of this State. See Haw. Rev. Stat. § 92F-19(a)(5) (Supp. 1992) ("[t]o an agency . . . within or under the control of the federal government . . . for a civil or criminal law enforcement investigation"); Haw. Rev. Stat. § 92F-19(a)(8) (Supp. 1992) ("[t]o . . . a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal moneys"). Thus, some of the changes proposed by this bill will clarify that under certain circumstances, confidential information may be disclosed to agencies of other states or to agencies of the federal government.

Additionally, since the enactment of the UIPA, a significant number of OIP opinions have been generated as a result of the inability of State and county agencies to determine whether section 92F-19(a), Hawaii Revised Statutes, authorizes them to disclose confidential information to other

agencies. The OIP believes that the amendments offered by this bill will provide clear guidance to State and county agencies concerning the inter-agency disclosure of "confidential" government records, and at the same time make the UIPA's restrictions on the inter-agency disclosure of records meaningful.

The first proposed amendment to section 92F-19(a), Hawaii Revised Statutes, would require that, as one of the several specified conditions authorizing inter-agency disclosure, the disclosure must be:

- (1) reasonably proper for the requesting agency's duties and functions; and
- also (2) either (a) compatible with the purpose for which the information was collected, or (b) consistent with the conditions or reasonable expectations of use under which the information was provided.

As currently worded, section 92F-19(a)(3), Hawaii Revised Statutes, authorizes the inter-agency disclosure of otherwise confidential information when it "reasonably appears to be proper" for the performance of the requesting agency's duties and functions. Thus, under the current wording, section 92F-19(a)(3), Hawaii Revised Statutes, authorizes a wide range of inter-agency disclosures of confidential information, including in

those situations in which: (1) the disclosure is not in fact proper for the performance of the requesting agency's duties but merely "reasonably appears" proper, (2) the disclosure is completely incompatible with the original purpose for which the information was collected from an individual, or (3) the disclosure is completely inconsistent with the conditions or reasonable expectations of use under which the individual provided the information to an agency. As such, the OIP believes that the current language in section 92F-19(a)(1) through (3), Hawaii Revised Statutes, fails to effectuate the Legislature's intention that the UIPA's inter-agency disclosure provisions "[m]ake government accountable to individuals in the . . . dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1992).

Additionally, this bill proposes to also amend the inter-agency disclosure provisions set forth by section 92F-19(a), Hawaii Revised Statutes, by adding a provision authorizing an agency to disclose information to other agencies of this State, other states, or the federal government, for the purpose of a civil or criminal law enforcement activity that the agency is authorized by law to pursue and when disclosure is pursuant to an agreement or a

written request.

Currently, section 92F-19(a), Hawaii Revised Statutes, does not expressly permit the disclosure of information to another agency of this State specifically for the purpose of a law enforcement activity. See Haw. Rev. Stat. § 92F-19(a)(5) (Supp. 1992) ("[t]o an agency . . . within or under the control of the United States . . . for a civil or criminal law enforcement investigation"); OIP Op. Ltr. No. 90-1 (Jan. 8, 1990) ("[s]ection 92F-19(a)(5) only permits disclosure of government records to federal agencies . . . not agencies of other states"). As such, State and county agencies have lacked clear statutory guidance when receiving information requests from State and county law enforcement agencies such as the police departments and the county prosecuting attorneys. The amendment offered by this bill strikes an appropriate balance between the need to carefully limit the unrestricted inter-agency disclosure of confidential information and the legitimate information needs of law enforcement agencies, both state and federal, in conducting civil and criminal law enforcement investigations.

This bill also proposes to clarify that an agency may disclose information concerning an individual's name, address, and other identifying

particulars to a criminal law enforcement agency of any state or of the federal government. This amendment is also based upon similar provisions of the Model Code.

Further, this bill proposes to add a provision to section 92F-19(a), Hawaii Revised Statutes, that would authorize the disclosure of otherwise confidential records to a foreign government pursuant to an executive agreement, compact, treaty, or statute. This provision is similar to the one presently contained in section 92F-19(a)(5), Hawaii Revised Statutes. However, the proposed provision will authorize disclosure to foreign governments for purposes other than a law enforcement investigation. Moreover, by creating a separate provision for disclosure to foreign governments, the OIP believes that the law will be clearer and more understandable. This amendment is identical to a provision in the Model Code.

Additionally, this bill proposes to amend section 92F-19(a)(6), Hawaii Revised Statutes, by permitting the disclosure of otherwise confidential information to the various county councils, or any committee or subcommittee thereof. Currently, disclosure is limited to the Legislature and

its committees and subcommittees. Since the passage of the UIPA, the OIP has found that, like the Legislature, the various county councils occasionally have a legitimate need for otherwise confidential information in the performance of their duties. For example, the county councils occasionally require information concerning the exact salaries paid to civil service employees as part of the budgeting process. Under the UIPA, only the salary ranges of civil service employees are deemed "public" information. See Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 1992).

Finally, this bill proposes to amend section 92F-19(a)(8), Hawaii Revised Statutes, to authorize agencies to disclose otherwise confidential records to officials of another agency, another state, or the federal government, for the purpose of auditing or monitoring an agency program that receives federal, state, or county funding. As currently worded, section 92F-19(a)(9), Hawaii Revised Statutes, limits similar disclosures only to officials of federal government agencies. The OIP has found that, like the federal government, other agencies of this and other states have a legitimate need to monitor agency programs that receive funding from them.

The OIP believes that the amendments proposed to section

92F-19(a), Hawaii Revised Statutes, will significantly strengthen and clarify the legislative policies underlying its limitations on the inter-agency disclosure of confidential government records, while at the same time recognizing the legitimate needs of agencies to have access to this information in the performance of their official duties. The OIP also believes that the amendments provide greater clarity in the law to all State and county agencies, which in turn will result in a more efficient administration of the UIPA and lessen the administrative burdens imposed by the UIPA.

2. **Clarification Concerning An Individual's Right To Review Criminal History Record Information**

Currently, section 92F-22(1)(A), Hawaii Revised Statutes, does not require an agency to disclose "criminal history record information" to the individual to whom that information pertains. This appears to conflict with section 846-14, Hawaii Revised Statutes, which permits an individual to inspect criminal history record information relating to that individual for the purpose of determining its accuracy and completeness.

The provisions of section 92F-22, Hawaii Revised Statutes, were originally set forth in chapter 92E, Hawaii Revised Statutes, which has been repealed. According to the legislative history of former chapter 92E, Hawaii

Revised Statutes, it appears that the Legislature added the exemption for criminal history record information in order to acknowledge that chapter 846, Hawaii Revised Statutes, governs an individual's right to review and request correction of this information. See H. Stand. Comm. Rep. No. 614-80, 10th Leg., 1980 Reg. Sess., Haw. H.J. 1560, 1565 (1980).

The proposed repeal of section 92F-22(1)(A), Hawaii Revised Statutes, would eliminate the apparent conflict between this section and section 846-14, Hawaii Revised Statutes. This amendment would effectuate the Legislature's intent that individuals be permitted to review criminal history record information that pertains to them.

3. Other Amendments Offered for Clarity

A few other amendments to the UIPA are offered in this bill for purposes of clarity, and to correct an apparent grammatical error in part III of the UIPA.

First, as currently worded, the exceptions set forth in section 92F-13, Hawaii Revised Statutes, and the exemptions set forth in section 92F-22, Hawaii Revised Statutes, state that "this chapter" shall not require the disclosure of information set forth in the enumerated exceptions or

exemptions. The OIP proposes to amend sections 92F-13 and 92F-22, Hawaii Revised Statutes, by changing the phrase "this chapter" to the phrase "this part."

This amendment would implement the Legislature's expressed intention that the exceptions in section 92F-13, Hawaii Revised Statutes, apply only to requests under part II of the UIPA, and that the exemptions set forth in section 92F-22, Hawaii Revised Statutes, apply only to requests under part III of the UIPA. See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 691 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988) ("these provisions will be limited to handling an individual's desire to see his or her own record[s]. All other requests for access to personal records (i.e., by others) will be handled by preceding sections [in part II] of the bill").

This amendment would also make the UIPA's exceptions and exemptions sections consistent with the parallel exceptions and exemptions in Articles II and III of the Uniform Information Practices Code. The OIP believes that the inclusion of the phrase "this chapter" in sections 92F-13 and 92F-22, Hawaii Revised Statutes, was a mere drafting error.

Finally, this bill proposes to correct an apparent grammatical error in section 92F-22(1)(B), Hawaii Revised Statutes, by changing the term "or" to the term "of" in the phrase "reports or informers, witnesses, and investigators." The OIP believes that an unintentional drafting error occurred when the Legislature repealed section 92E-3, Hawaii Revised Statutes, and recodified it as section 92F-22, Hawaii Revised Statutes. See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 691 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw H.J. 817, 818 (1988).

In conclusion, we urge the passage of this bill. We will be happy to answer any questions.

LT9303:si

JOHN WAIHEE
GOVERNOR OF HAWAII



SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

March 24, 1993

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY
AND
SENATE COMMITTEE ON PUBLIC SAFETY AND CORRECTIONS

BY
SHARON Y. MIYASHIRO, DIRECTOR

House Bill No. 1594

This bill proposes, in part, to clarify the circumstances under which an agency may disclose, to another government agency, government records that are protected from public disclosure.

The Department of Personnel Services (DPS) has strong reservations on imposing more stringent requirements on inter-agency disclosure based on our past experiences with the current law. Some examples of our work which have been delayed or stymied waiting for a ruling on the permissibility of inter-agency disclosure are: our efforts to quickly recruit suitable and qualified candidates; to enable departments to get applicant information to enhance its applicant pool; to share information on suitability of applicants to various agencies in our resource-limited system; and to access health fund data on State employees to develop child care and retention enhancement programs.

More importantly, as a result of our civil service reform efforts, DPS is accelerating its plans toward developing a network among human resource personnel (between DPS as the central agency and the line departmental personnel offices as

H. B. No. 1594
Page 2

our clients) to streamline personnel operations so we can expedite personnel processes. This entails increased delegation of functions to line departmental personnel offices and increased exchange of personnel information to avoid duplication of efforts. Included in DPS's long range plans is the development of an integrated human resource management information system whereby departmental personnel offices will have on-line access and input. This will minimize paperbound activities, labor intensive and duplicative data collection and storage requirements -- all with the intent of working faster and smarter to recruit, retain and develop a strong workforce.

Therefore, DPS recommends that HB 1594 be amended to provide a specific exception from inter-agency disclosure limitations for DPS and its network of departmental personnel offices. Since the counties have expressed similar concerns, we feel that the counties should also be encompassed under the exception while performing their respective personnel functions.

The following amendment will enable the personnel departments and line departmental personnel offices of the State and counties to be more responsive and expeditious in the performance of their functions and enable DPS, in particular, to continue its momentum on civil service reform efforts and, ultimately, to ensure that State and county governments can recruit and retain "the best and the brightest" to lead our State forward. With the following amendment, DPS recommends passage of this bill:

§92F-19(a)

* * *

- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of the State for the performance of their respective functions;

H. B. No. 1594
Page 3

[or]

(10) To the department of personnel services or line departmental personnel offices of the State or a county for the performance of their functions and duties authorized by law or delegated or required by other lawful authority, including employee recruitment and examination, classification and compensation review, the administration and auditing of personnel transactions and records, the administration of workers' compensation, the administration and development of training, safety, employee benefits, and employee assistance programs, and for labor relations purposes; or

[10] (11) Otherwise subject to disclosure under this chapter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494



KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CORA K. LUM
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE ANDREW LEVIN, CHAIRMAN
SENATE JUDICIARY COMMITTEE
Seventeenth State Legislature
Regular Session of 1993
State of Hawaii**

March 24, 1993

RE: H.B. 1594; Relating to the Uniform Information Practices Act

Chairman Levin and members of the Senate Judiciary Committee, the Department of the Prosecuting Attorney submits the following testimony in favor of House Bill 1594.

The purpose of this bill is, in part, to clarify **Section 92F-19, H.R.S.** by adding new sections regarding the conditions under which an agency may disclose otherwise confidential government records to other local, federal, or foreign agencies or agencies of other states.

Section 92F-19 as presently enacted does not clearly permit the cooperative exchange of information between various law-enforcement and other agencies. However, the effectiveness of law enforcement efforts frequently turns upon the availability of information from other local, inter-state, federal, or international agencies. Without such inter-agency cooperation, the effectiveness of law enforcement efforts will be seriously jeopardized, thus having a direct impact upon public safety and the ability of law enforcement to do its job. Therefore, this amendment is necessary to assure the availability of such inter-agency cooperation in the area of law enforcement.

The Department of the Prosecuting Attorney is presently engaged in a dialogue with the Office of Information Practices. While we generally agree with the purpose of this bill, we request this body to consider possible improvements to this bill which enhance its effectiveness while still preserving individual privacy interests.

First, we suggest that the language of new **Section 92F-19(3)** be amended to include foreign agencies. The purpose of this amendment is to permit cooperation between local law enforcement agencies and foreign agencies which are not affiliated with a

specific foreign government, such as Interpol, a multi-national police force. Without this amendment, information could never be shared with Interpol because there is no foreign government with whom a treaty or compact could be reached for the exchange of information as required by new Section 92F-19(5). However, because of its critical geographical location, Hawaii is frequently involved in investigations of international impact. Without this further amendment, we may lose access to needed foreign information and cooperation.

Second, there may be circumstances, particularly in the midst of an ongoing multi-state or international investigation, where information must be relayed immediately and the exigencies of the investigation are such that there is no time to send a prior request, even by "FAX", without jeopardizing the ongoing investigation, or the safety of officers or witnesses. Therefore, we also suggest an amendment to the "written request" requirement of new Section 92F-19(3) permitting disclosure of information but requiring a written request as soon as practicable after the exigency has passed. This will continue to preserve individual privacy interests without significantly hampering law enforcement efforts or creating additional risks to public safety.

We thank you for this opportunity to testify on House Bill 1594.

JOHN WAINHE
GOVERNOR OF HAWAII



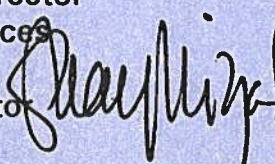
SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5081

March 23, 1993

TO: Ms. Kathleen Callaghan, Director
Office of Information Practices

FROM: Sharon Y. Miyashiro, Director 

SUBJECT: DPS' Proposed Amendment to H.B. No. 1594

Thank you for your comments and concerns to our proposed amendment to H.B. No. 1594.

However, in view of our previous experiences requiring inter-agency disclosure, which were eventually deemed permissible to a limited extent based on a finding that disclosure "reasonably appears to be proper for the performance of the requesting agency's duties and functions", my managers still have concerns that the amendments proposed in H.B. 1594 impose more stringent requirements for inter-agency disclosure. They believe that they would not be able to perform their functions expeditiously, including providing timely advisory services to the line departmental personnel offices. We thus intend to present the attached testimony at the hearing on Wednesday, March 24. If you have any concerns, please call me at 587-1100, or have your staff call Ann Morimoto, my Labor Relations Division Chief at 587-0918.

We appreciate your cooperation in attempting to allay our concerns and hope you understand our unwillingness to wait and see.

Attachment

Dir
VBY
A/H
CAB
KATHLEEN A. CALLAGHAN
DIRECTOR
PH. (808) 586-1400
FAX (808) 586-1413
RLE
ANT

JOHN WAINES
GOVERNOR
ROBERT A. MARRS
ATTORNEY GENERAL



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES
480 QUEEN STREET, ROOM 901
HONOLULU, HAWAII 96813-2004

March 19, 1993

MEMORANDUM

TO: Honorable Sharon Y. Miyashiro
Director of Personnel Services

Attention: Ms. Ann Yamamoto
Labor Relations Division

FROM: Kathleen A. Callaghan, Director *KAC*
HB 1594

RE: DPS's Proposed Amendment to S.B. No. 1594

Please accept my apology for the delay associated to our reply to your request to review and comment upon language that the Department of Personnel Services ("DPS") would like included in S.B. No. 1594.

For the reasons set forth below, the Office of Information Practices ("OIP") would prefer that S.B. No. 1594 be adopted as currently drafted, without the amendments proposed by the DPS.

First, section 92F-19(a), Hawaii Revised Statutes, merely authorizes, but does not require the inter-agency disclosure of government records that are protected from public disclosure under section 92F-13(1), Hawaii Revised Statutes. Thus, even if the DPS's language were to be included in the bill, it would not guarantee the DPS's access to such confidential information maintained by other State and county agencies.

Additionally, in Ms. Yamamoto's memorandum dated March 8, 1993 to Staff Attorney Hugh R. Jones, she set forth three examples of cases in which the DPS has had difficulty in obtaining information from other agencies for purposes of administering the State's personnel program. We believe the amendments being proposed to section 92F-19(a), Hawaii Revised Statutes, would permit the disclosure of information to the DPS, or its disclosure to other agencies, under the three scenarios described in your memorandum. In the case of the first example,

Honorable Sharon Y. Miyashiro
March 19, 1993
Page 2

Ms. Yamamoto explained in a telephone conversation that the DPS would have been satisfied to receive statistical data in non-individually identifiable form. The UIPA's privacy exception would not prohibit the disclosure of such information to the DPS.

With respect to the DPS's intention to develop an integrated human resources management system, we believe that to the extent that the information is compiled for personnel purposes, "line department personnel" and DPS personnel would be authorized to disclose to one another information that is otherwise protected from public disclosure. To the extent that the information being disclosed is compiled for personnel purposes, its disclosure to another agency for personnel administration would generally be: (1) compatible with the purpose for which the information was collected; (2) consistent with reasonable expectations of use under which the information was provided; and therefore, permitted under this bill.

Thus, the OIP would prefer that the DPS hold-off on its suggested amendments for a one-year interim period. If during this period, the DPS finds that it is unable to obtain information that is important to the performance of its functions, further amendments to section 92F-19(a), Hawaii Revised Statutes might be in order. However, as we stated above, we believe that the examples you provided to the OIP of cases where the DPS has encountered difficulty, are addressed by the present provisions of this bill and may be largely the result of miscommunication and misunderstandings.

→ If, however, the DPS insists upon proposing an amendment to S.B. No. 1594, as currently drafted, the OIP would prefer that you submit the language set forth in Exhibit A.

If you have any questions concerning this matter, please contact me at 586-1413. Thank you again for your patience in this matter.

KAC/HRJ:so\093631c
Attachment

EXHIBIT A

*by rule
- by practice*

*deposal
and line personnel
Matters of the
state*

(10) To the department of personnel services, or county personnel departments, for the performance of their statutory functions and duties, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety and workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or

[10] (11) Otherwise subject to disclosure under this chapter.

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FRI 14:56 OFC OF INFO PRACTICES

KATHLEEN A. GALLAGHAN
DIRECTOR

PH. (808) 586-1400

FAX (808) 586-1410

JOHN WAINES
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ATTORNEY GENERALSTATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES
120 QUEEN STREET, ROOM 251
HONOLULU, HAWAII 96813-1904

FAX TRANSMITTAL

FAX NO. (808) 587-0930

DATE: March 19, 1993TO: THE HONORABLE SHARON MIYASHIRODPSFROM: Kathleen A. CallaghanOIP

IF ANY TRANSMISSION PROBLEMS

CONTACT: Sylvia PH. #: (808) 586-14002 PAGE(S) TO FOLLOWMarch 19th letter to Director of DPS re: DPS' Proposed Amendment to
S.B. No. 1594

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03/19/93

15:19

DPS LABOR RELATIONS DIVISION

Copied from Hawai'i State Archives
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JOHN WAIKEE
GOVERNOR OF HAWAII



SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
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FAX TRANSMISSION

Labor Relations Division
888 Millilani Street, 5th Floor
Honolulu, Hawaii 96813
Fax No.: 587-0930

If Transmission Problems
Occur, Call (808) 587-0911

TO:

Sharon / Tim

Date:

3/19/93

FROM:

A. Yamamoto (ha!)
LRD

4 Pages Follow

MESSAGE:

JOHN WAINUE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
430 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

LR.280

March 8, 1993

TO: Mr. Hugh Jones, Staff Attorney
Office of Information Practices

FROM: Ann Morimoto *Ann Morimoto*
Labor Relations Division

SUBJECT: LIMITATIONS ON DISCLOSURE OF GOVERNMENT RECORDS
TO OTHER AGENCIES (Reference H.B. 1594)

Since we last discussed DPS concerns on March 1, 1993, regarding disclosure of government records to other agencies, I have not heard from you. You informed me that since there was sufficient time before the bill would be heard in the Senate, this exception was not a high priority item.

Frankly, however, some of our division managers are getting a bit "antsy" not knowing about the progress of our discussions on whether acceptable amendatory language to address DPS concerns will be forthcoming.

Therefore, I have taken the liberty of drafting some language along the lines we previously discussed which OIP might find acceptable. The City and County of Honolulu has also brought to our attention that they have concerns similar to ours so the suggested language includes the other jurisdictions. (See attachment.)

I realize that you need to clear the matter with your Director, but we want to ensure that our concerns are not overlooked. Briefly, the concerns we discussed are summarized below:

- o We encountered difficulty in acquiring available data from another agency when we needed to assess the feasibility of developing employee benefit programs.

Mr. Hugh Jones
Page 2

LR.280
March 8, 1993

- o In another situation, we were unable to provide information to a departmental personnel office. This thwarted our efforts to provide much needed advisory guidance services and assistance in the area of recruitment and examination.
- o Ironically, the legislative offices that are listed under (9) frequently call upon us to furnish personnel information pertaining to State employees and programs, which we collect from line department personnel.
- o Finally, but most importantly, as a result of civil service reform efforts, we have developed a network among human resource personnel (between the central agency and line department personnel) for sharing and exchanging information, increasing delegation to line department personnel, and streamlining operations in general. Included in DPS long range plans is the development of an integrated human resource management system where the line department personnel would have on-line access to the system. This is intended to minimize data redundancy, labor intensive efforts, data storage requirements, and paperbound activities. Hopefully, thereby, this would enable us to provide increased and more qualitative services to our customers.

We truly appreciate the opportunity to work with your office and the courtesy you and your Director have extended to us on this matter of urgency to our department. Please feel free to call me at 587-0911 or my Director, Sharon Y. Miyashiro at 587-1100 at your earliest convenience for further discussion on this matter.

Attachment

Draft amendment to HB 1594 (SECTION 2) concerning limitations on disclosure of government records to other agencies.

§92F-19(a)

* * *

- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; [or]
- (10) To the department of personnel services or line departmental personnel of the state or a county for the performance of their respective functions, including but not limited to, recruitment and examination, classification and compensation review, administration and audit of personnel transactions and records, training and safety, employee assistance and benefit programs, workers compensation, and labor relations; or
- [10] (11) Otherwise subject to disclosure under this chapter."