

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON H.B. NO. 1594

RELATING TO THE UNIFORM INFORMATION PRACTICES ACT (MODIFIED)

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: TUESDAY, February 16, 1993

TIME: 2:00 p.m.

PLACE: Conference Room 802
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.

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