

TO: SCR 192 Working Group

FROM: Natalie Iwasa

DATE: Tuesday, October 4, 2022

RE: Proposed Draft Legislation – **Opposed**

Thank you for accepting testimony on the draft legislation that would allow government agencies not to provide certain inter-agency or intra-agency deliberative and pre-decisional government records to the public.

We already have too much secrecy in government, e.g., a legislature that operates under an exemption from the Sunshine Law. Generally, I find that agencies already look for ways to withhold information from the public – we do not need to offer them another option in that regard.

For example, on March 1, 2020, I requested a copy of the signed amended contract with Hitachi for rail operations and maintenance. While I received parts of it, whole appendices and pages were redacted, because the Division of Purchasing of the Department of Budget and Fiscal Services deemed parts confidential. I recently requested copies of several of those appendices, and they were provided after I followed up with another department head – he told me they are not confidential.

If this bill were to pass, I can imagine cases in which an agency would withhold information because it has “not been finalized for circulation.” (Note that HART has regularly marked its documents “draft,” even when they were finals ready for decision making.)

In addition, the “frustration of a legitimate government function” itself is over used. On November 2, 2018, I was denied access to the “conclusions and recommendations” of an investigation report that was discussed during the October 17, 2018, Honolulu Ethics Commission’s meeting. Two reasons were cited for denial – privacy of the officer involved and frustration of a legitimate government function. The name could have been redacted to maintain the individual’s privacy, but the public should have been able to access that document and learn at the very least what the officer did that had to be investigated.

As far as redacting names, it might be reasonable to redact a low-level staff person’s name. However, the public should be allowed to learn the identities of division heads, deputies, directors and others who put themselves before the public with respect to public policy and decision making.

We should be working to make government more open and transparent, not offering more ways to remain secret. Please do not pass this bill as is.