

Testimony/Comments on Draft Legislation to Improve Government Decision Making

October 31, 2022

As a government employee with experience in the process of collaborative government decision making, especially for planning, design, and construction of state facilities, I strongly support the intent of the proposed amendments to HRS, Chapter 92F-3 and 13.

If emails that are deliberative in nature, drafts of documents, and personal notes on issues remain accessible through a UIPA request, the openness, candor, and creativeness for good collaborative decision making will be substantially diminished and is not in the best interest of the public at large and the state.

Just because someone is thinking of something, it does not mean action will be taken on the thought. In today's world, emails are wide used to share thoughts, instead of verbal face to face conversations or phone calls. Because an email is a written document, it can be taken as an official statement rather than just a conversation or a sharing of thoughts: "what do you think if we ... or what if...maybe not good idea..." In a verbal conversation this would generally not be held against you, but that same conversation in an email can be definitely used against you and therefore causes frustration to a legitimate government function to perform its duties in the best manner possible. While one could still have verbal discussion, many will prefer emails to discuss matters rather than a verbal discussion. Therefore, emails should not be accessible through the UIPA process unless they are used as an official direction, order or decision and not deliberative or truly preliminary in nature.

In addition, releasing working drafts or drafts not ready for public dissemination can severely cause unnecessary opposition or even favoritism for an issue, project, or other effort prematurely, because the information may be incomplete or even wrong. Therefore, causing premature positions and actions on incomplete or wrong information. To undo this kind of mess can take a lot of time and money, public money. This is unnecessary frustration to the state.

Last but not least, setting a timeframe for release of documents, e.g. one-year maximum timeframe, is also impractical, as many planning or procurement processes exceed that time frame. If working documents must be made public prior to completion of the process, erroneous conclusions may be drawn as described above, at best, or the processes may be deemed invalid, at worst, due to premature disclosure of proprietary or sensitive information.

Please don't interpret this testimony to mean we don't want to be open and transparent. We do want to be open and transparent and I believe we like engaging the public on a project. While we may not be able to always do everything stakeholders desire, engaging and communicating information to the ultimate end users/stakeholder of our project, allows the various stakeholders to understand each other, understand pros and cons of issues from various perspectives, to be a part of and knowing they have contributed to whatever it is that is being proposed.

Respectfully,

Eric K. Nishimoto
Project Management Branch Chief
Public Works Division
Department of Accounting & General Services
State of Hawaii