

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Intergovernmental and Military Affairs

From: Paul T. Tsukiyama, Director

Date: March 14, 2008, 1:15 p.m.
State Capitol, Room 229

Re: Testimony on H.B. No. 2217, H.D. 1
Relating to the Office of Information Practices

Thank you for the opportunity to submit testimony on H.B. No. 2217, H.D. 1.

The Office of Information Practices ("OIP") opposes this bill for the reasons discussed below. This bill requires the OIP to issue a written opinion within ninety days from the date that a county legislative body requests the opinion under Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA") and Hawaii's open meetings law, part I of chapter 92, Hawaii Revised Statutes ("Sunshine Law").

OIP has several concerns about this bill. First, while OIP appreciates the Legislature's intent to expedite the process, OIP believes that the bill gives an unfair automatic priority to opinion requests from county legislative bodies when OIP is responsible for issuing opinions upon requests from any person, including other government agencies, private citizens and businesses, as well as the news media.

Currently, where an opinion request raises significant issues warranting OIP's immediate review, OIP does make the executive decision to prioritize this request and issue a written opinion. However, this bill would remove OIP's ability to prioritize based upon public policy considerations, and instead imposes a deadline based only upon considerations of whether the requester is a county legislative body and the date of the opinion request.

OIP is mandated by the UIPA and the Sunshine Law to perform a range of services in its administration of the UIPA and the Sunshine Law. What makes OIP's responsibilities under the UIPA and the Sunshine Law unique are the tremendously broad scope of subject matter over which OIP has jurisdiction, namely all government records of all State and county agencies as well as the meetings of all boards and commissions governed by the Sunshine Law.

Usually within the same business day of receiving an inquiry by telephone or e-mail raising issues under the UIPA or the Sunshine Law, OIP expeditiously provides informal advice or opinion in response. In certain instances, agencies, particularly the county councils, have requested and received such guidance by telephone or e-mail, but then choose to request a formal opinion from OIP on the very same issue so that OIP will provide, in writing, an expanded analysis and conclusions on the matters. Often times, OIP has not prioritized such requests for formal written opinions since OIP has already addressed the same issues informally and OIP must be responsive and timely in addressing the many other demands on its limited resources.

Thank you for the opportunity to testify.

Council Chair
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March 13, 2008

TO: Honorable Lorraine R. Inouye, Chair
Senate Committee on Intergovernmental and Military Affairs

FROM: G. Riki Hokama 
Council Chair

SUBJECT: **HEARING OF MARCH 14, 2008; TESTIMONY IN SUPPORT OF HB 2217, HD1,
RELATING TO THE OFFICE OF INFORMATION PRACTICES**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to require the Office of Information Practices (OIP) to provide a written opinion to a county legislative body, or a member of a county legislative body, within 90 days of a written request for an advisory opinion concerning meetings of that body's functions and responsibilities.

This measure is in the Maui County's Legislative Package; therefore, I offer this testimony on behalf of the Maui County Council.

The County Council supports this measure for the following reasons:

1. While the OIP's practice is to provide both verbal and written opinions at the request of an agency, current law does not provide a deadline for the OIP to submit written advisory opinions.
2. Because there is no deadline, the OIP can take months, or longer, to provide a written advisory opinion.
3. The delay of a written advisory opinion often ties the hands of government bodies and officials subject to the Sunshine Law and/or the Uniform Information Practices Act (UIPA), as they try to understand and comply with a verbal opinion, stalling the efficient functioning of government.
4. When a government body is unsure of how to comply with either the Sunshine Law or the UIPA, the agency needs the OIP's guidance as quickly as possible so that it can efficiently perform its functions and duties for the benefit of the people the body serves.
5. HD1 extends the deadline for OIP's written opinion from 60 to 90 days. We understand that OIP's workload necessitates this change; however, we would request that a county legislative body not be bound to comply with a verbal opinion, which may not be fully understood and cannot be challenged, if the verbal opinion is not followed by a written opinion within the 90-day deadline.

For the foregoing reasons, the Maui County Council supports this measure.