

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary and Government Operations

From: Paul T. Tsukiyama, Director

Date: Monday, March 2, 2009, 10:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 176
Relating to Information Practices.

Thank you for the opportunity to testify on S.B. No. 176. The Office of Information Practices ("OIP") supports the bill's intent to provide OIP with an enforcement mechanism under the Uniform Information Practices Act (Modified), chapter 92F, HRS ("UIPA"), but has concerns about the bill.

The purpose of this bill is to authorize OIP to impose a monetary fine upon an agency that does not comply with an OIP opinion issued under UIPA section 92F-15.5, providing a person denied access to a government record the option to appeal to OIP instead of bringing a judicial action. Although OIP supports the concept of a mechanism that would allow OIP to enforce its decision that an agency must disclose a government record under this appeal provision, OIP is uncertain as to whether the bill's proposal of a monetary fine is the best mechanism.

First, OIP has very limited personnel (the equivalent of approximately three full-time attorneys). If OIP is allowed to impose fines for an agency's noncompliance with an OIP decision, OIP is concerned that it will then be burdened by "appeals" of the fines. OIP believes that it does not have the resources to address

such “appeals” and that its limited resources are better directed towards its core functions of providing informal legal guidance, training, advisory opinions, investigations and appeal determinations under the UIPA and the Sunshine Law, chapter 92, HRS.

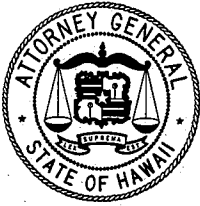
Second, OIP has concerns about the propriety of an executive agency imposing fines against agencies under the Legislature and the Judiciary, and also against the counties. Even assuming that such authority is appropriate, OIP has concerns about how to accomplish this task. The logistics of collecting the fines, including compelling payment of the fines, makes this proposal problematic.

Third, unless OIP is given the ability to set high fines or running fines until compliance, OIP questions whether a fine would realistically compel an agency to comply.

In the event the Legislature believes that the authority to impose fines, as contemplated by this bill, is appropriate, OIP recommends that the fine should similarly be imposed when the OIP renders a decision against an agency under section 92-27.5, HRS, when an individual appeals to the OIP an agency’s denial of access to personal records. Further, the Legislature may wish to direct where the fines collected would be deposited and what they may be used for.

OIP respectfully suggests that, in lieu of the authority to impose fines, OIP be empowered to initiate legal action to compel compliance with its decisions and to recover costs and reasonable attorneys’ fees incurred to compel compliance. Although OIP anticipates that its resort to court action would be minimal, OIP believes that the ability to bring suit to compel compliance would be an effective means to ensure compliance with OIP’s decisions with less impact on its limited resources.

Thank you for the opportunity to testify.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 176, RELATING TO INFORMATION PRACTICES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Monday, March 2, 2009 **TIME:** 10:00 AM

LOCATION: State Capitol, Room 016

TESTIFIER(S): Mark J. Bennett, Attorney General
or John P. Deller, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General opposes this bill.

The bill would authorize the Office of Information Practices (OIP) to assess fines against any agency that does not comply with a decision of OIP that a government record be disclosed to the public.

The bill is objectionable because it would penalize agencies for withholding records in good faith where their interpretation of federal or state laws, privileges, rules, court orders, or advice of the Attorney General conflicts with a decision issued by OIP. In a case where the requester brings an action to compel disclosure under section 92F-15(a) of the Hawaii Revised Statutes, OIP may intervene under section 92F-15.3, and the courts will decide the issue. In other cases, an agency may seek a declaratory judgment that disclosure is not required. See County of Kauai v. Office of Information Practices, ICA No. 29059 (1/30/2009). Allowing OIP to assess fines against agencies before judicial review is complete would prejudice its outcome.

We respectfully request that this bill be held.



SB 176
RELATING TO INFORMATION PRACTICES

Senate Committee on Judiciary and Government Operations

March 2, 2009
Room 016

10:00 a.m.

Aloha Chair Taniguchi, Vice Chair Takamine, and Members.
OHA opposes Senate Bill No. 176 Relating to Information Practices.

The bill would authorize the Office of Information Practices (OIP) to fine an agency that does not comply with an OIP decision that the agency should disclose a government record to which the agency has denied a person access. However, we observe that the agency that denied access may have acted in good faith with a legally sound basis for non-disclosure, based on existing laws including Chapter 92F, Hawaii Revised Statutes. Furthermore, Section 92F-15, HRS, authorizes the person who was denied access to seek judicial relief by bringing an action against the agency in circuit court to compel disclosure. Respectfully in light of the above, authorizing OIP to impose fines is unnecessary and unwarranted.

Mahalo for the opportunity to testify.



P.O. Box 22703 • Honolulu, Hawaii 96823 • (808) 286-2285 • info@commoncausehawaii.org

**Senate JGO Committee
Monday 3/2/09 at 10:00 AM in Room 016
Senate Bill 176**

TESTIMONY

Nikki Love, spokesperson, Common Cause Hawaii

Chair Taniguchi, Vice Chair Takamine, and Committee Members,

I am testifying in **support of SB176** relating to information practices.

This bill authorizes the Office of Information Practices to fine agencies that do not comply with OIP decisions.

This is an important bill that provides much needed “teeth” for the OIP. At last, OIP will have the enforcement mechanism it needs to ensure that government agencies comply with the sunshine law.

We urge you to pass this measure and make Hawaii a more open place for citizens to participate in and monitor the workings of our government.

Mahalo.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON S.B. 176 RELATING TO INFORMATION PRACTICES

Committee on Judiciary and Government Operations
Monday, March 2, 2009
10:00 a.m.
Conference Room 016

Testifying: Jean Aoki, LWV Legislative Liaison

Chair Taniguchi, Vice Chair Takamine, members of JGO,

The League of Women voters strongly supports SB 176 which would give the Office of Information Practices the power to enforce its decisions on disputes over access to government records. It would have the right to fine agencies that refuse to provide a request for records which the OIP had decided should be provided the requester. Under this bill, the OIP is to "adopt rules that will set forth uniform standards for issuing fines against agencies failing to comply with the office of information practices' decisions under section 92-F 15.5 (b)".

Government collects data for many reasons. Through the analysis of the data collected, government can enact policies that will best meet the needs of the state and its people. Most of this information should be available to the public. A Government Accountability Office report says, "Under the Freedom of Information Act, federal agencies must generally provide access to their information, enabling the public to learn about government operations and decisions." We speak of democracy needing an informed public in order for it to thrive. The public needs the information that often only government can provide, either directly to citizens who ask for it, from the media which has acquired it from some agency, or because of some agency releasing the information directly to the public. When there is evidence or even the perception that government is concealing too much of the information that should be shared, human nature tends to distrust that government.

When people have trust in their government, government can function more creatively and boldly with the public's consent. A willingness to be as transparent as possible also indicates government's trust in the people, and also confidence in its own integrity---fertile ground for true democracy.

We urge you to pass SB 176. Thank you for this opportunity to testify on this bill.



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
Brien Hallet, President	Juliet Begley	Nancy Bey Little	Barbara Polk	PO. Box 61792
Karin Gill, Vice-President	John Bickel	Jan Lubin	George Simson	Honolulu,
Fritz Fritschel, Treasurer	Carolyn Golojuch	Stephen O'Harrow		Hawai'i 96822
Tom Horton, Secretary	Chuck Huxel	Jim Olson	Bart Dame (Alt)	

February 28, 2009

TO: Chair Brian Taniguchi, Dwight Takamine Vice-Chair and
Members of the Senate Judiciary and Government Operations Committee

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Committee Chair

RE: SUPPORT FOR SB176 Relating to Information Practices

Chair Taniguchi, Vice-Chair Takamine and members of the Judiciary Committee. Thank you for the opportunity to testify on this bill.

Americans for Democratic Action/Hawaii strongly supports SB 176. This bill puts some teeth into the Information Practices law. Without a means of enforcement, the law is meaningless. The Office of Information Practices is the right body to enforce this law.

Thank you for this opportunity to testify.

From: Joel Fischer [jfisher@hawaii.edu]
Sent: Friday, February 27, 2009 1:09 PM
To: JGO Testimony
Subject: SB176;JGO;3/2/09;10AM;Rm016

Importance: High

SB176, Relating to Information Practices
JGO; Chair, Sen Taniguchi

PLEASE PASS THIS BILL!

The OIP absolutely needs the clout this bill will afford them. I have waited for many months for papers that the OIP ruled should be turned over to me immediately. Such obstructionism of the public interest is absolutely unconscionable.

With this act in place, our state will almost immediately move to far greater transparency.

Thank you very much for supporting this bill.

Aloha, joel

Dr. Joel Fischer, ACSW
Professor
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."
Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill