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TRANSMITTAL

TO: Jon Riki Karamatsu
41st Representative District
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, HI 96813

Date: March 17, 2010

Item	DATE	DESCRIPTION
		Supplemental Testimony for SB2937 SD1

TRANSMITTED FOR:

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| <input type="checkbox"/> YOUR INFORMATION | <input type="checkbox"/> YOUR REVIEW & COMMENT |
| <input type="checkbox"/> YOUR FILES | <input type="checkbox"/> NECESSARY ACTION |
| <input type="checkbox"/> YOUR SIGNATURE & FORWARDING | <input checked="" type="checkbox"/> PER OUR CONVERSATION |
| <input type="checkbox"/> APPROVAL | <input type="checkbox"/> SEE "REMARKS" BELOW |

REMARKS:

Dear Honorable Sir:

Pursuant to the Committee on Judiciary's request, attached is written testimony on SB 2937 SD1, which supplements my oral testimony.

Thank you.


PETER L. FRITZ

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**HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010**

COMMITTEE ON JUDICIARY

**Hearing March 16, 2010
Testimony on S.B. 2937 SD1**

(Relating To Information Practices)

Chair Karamatsu, Vice Chair Ito and members of the Committee:

My name is Peter Fritz. This written testimony supplements my oral testimony at the hearing on March 16, 2010 before the House Committee on Judiciary. I am an attorney licensed to practice law in Hawaii. While my practice is primarily limited tax law, I have experience with due process claims arising under the Fifth Amendment of the United States Constitution as applied to the States under the Fourteenth Amendment of the United States Constitution. I am testifying **in opposition to this measure** because I believe that in order to hold government accountable for its actions, its citizens must know what those actions are and to that end, they must insist that government act openly and transparently to the greatest extent possible. This measure is contrary to my beliefs as well as the original purpose of the Uniform Information Practices act. I am opposed to this measure for the following reasons:

- **Failure to Provide Adequate Due Process.**
 - This bill provides that **an uncontested** hearing, a person may be declared a vexatious requestor. Such informal hearings do not offer the due process protection that formal contested hearings offer.
 - **There are no appeal rights for any imposition of bar on requesting documents.** The bill does not set out any procedure or rights of appeal. It is likely that this will violate
- **The OIP is a Biased Decision Maker.** The Agency will have sought advice from the OIP on the request. Such communications would taint the OIP and if in a court system would be considered ex-parte communication. The measure does not provide for an independent decision maker and as such, raises issues of fairness.
- **This Measure Will Not Survive a Constitutional Challenge When Less Burdensome Remedies Are Available.**
 - **Amend the UIPA Law** to provide that an agency can inform a document requestor that the Agency will not be responding to duplicitous requests.

- **Obtain and Publish an Opinion from the Attorney General.** Upon information and belief, the attorney for the Department of Health is the Attorney General. Statements by the Department of Health regarding the allowable scope of document requests will not carry as much weight as a formal opinion by the Attorney General.
- **Bring an action in Circuit Court to Enjoin a Document Requestor.** A Court decision on the matter, where attorney fees were awarded, would be notice to other requestors and would be stare decisis for other cases and would allow for quick disposition in future cases. It will provide for a decision by an independent decision maker using procedures established to protect an individual's right.
- **Pursue other Available Remedies in a Court.**

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Fritz". The signature is written in a cursive, somewhat stylized font.

Peter L. Fritz