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To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: Wednesday, March 2, 2011, 2:05 p.m.
State Capitol, Room 325

Re: Testimony on H.B. No. 1200
Relating to Information Practices

The Office of Information Practices (OIP) administers the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), which this bill seeks to amend. The overt purpose of this bill is to authorize an agency to publicly disclose the names and salaries of an undercover officer after the officer has not served in an undercover capacity for five years. OIP has several concerns about this bill.

First, OIP is unsure about the specific objective that the bill is seeking to achieve. Section 92F-12(a), HRS, sets forth a list of government records that must be publicly disclosed. Subsection - 12(a)(14) requires the disclosure of the names and other employment information about government employees, but excludes "information regarding present or former employees involved in an undercover capacity in a law enforcement agency." HRS § 92F-12(a)(14). Although not mandated by section 92F-12(a)(14), HRS, to disclose information about undercover officers, an agency still has the discretion to disclose the same information about an undercover officer, and would be required to do so where the public interest in the information outweighed the employee's privacy interest (assuming no additional exceptions to disclosure applied). Thus, by providing that an agency "may" disclose this information after five years has passed from the time that the officer's the undercover work has ended, the bill as written merely allows an agency to do what the UIPA already allows the agency to do.

Given this, the actual intent of this bill may be to **require** an agency to disclose this information about a law enforcement employee when the employee is no longer serving in an undercover capacity and five years has passed after the undercover work has ended because the UIPA is not clear as to when section 92F-12's public disclosure mandate would apply to a law enforcement employee who is no longer serving in an undercover capacity.

If this is the intent, OIP recommends that the proposed subparagraph B, be revised to affirmatively state what is exempt from mandatory public disclosure under section 92F-12(a)(14) as follows :

- (B) Apply to information regarding present or former employees[~~involved in an undercover capacity in a law enforcement agency;~~] of any law enforcement agency during service in an undercover capacity and for any previous periods of service in an undercover capacity :

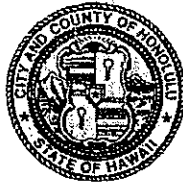
OIP's recommended language does not include the current bill's proposed five-year delay in public disclosure of information about undercover law enforcement employees. OIP is concerned that this delay alone would not provide the protection for undercover employees originally intended because it would not, for example, allow a law enforcement agency to avoid having to identify former employees whose last positions at the agency were in an undercover capacity.

Finally, this bill also adds to section 92F-12(a), HRS, proposed definitions to the terms "undercover capacity" and "undercover officer." OIP finds that these terms are self-explanatory and that the definitions only state the terms' plain language meaning. OIP recommends that the bill be amended by removing the proposed definitions from section 92F-12, HRS, or at a minimum, by placing these definitions in section 92F-3, HRS, the UIPA section that sets forth the general definitions used in this chapter.

Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE KK-SEB

March 2, 2011

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 1200, Relating to Information Practices

I am Kurt Kendro, Major of the Legislative Liaison Office of the Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports House Bill No. 1200. This bill limits the disclosure of names and salaries of undercover officers and defines the terms "undercover capacity" and "undercover officer." While we support the release of appropriate information, the disclosure of public employee names in relation to their salaries does not serve a meaningful public purpose.

Thank you for the opportunity to testify.

Sincerely,


KURT B. KENDRO, Major
Legislative Liaison Office

APPROVED:


LOUIS M. KEALOHA
Chief of Police

Serving and Protecting With Aloha



ALAN M. ARAKAWA
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OUR REFERENCE
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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

March 1, 2011

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

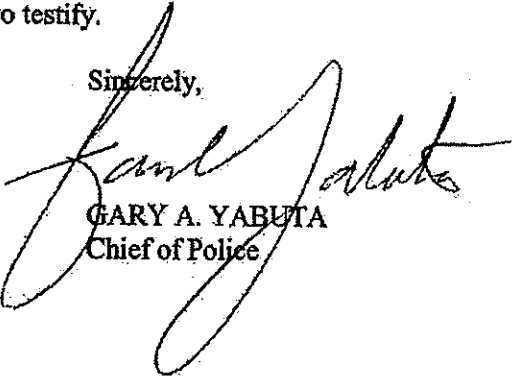
RE: House Bill 1200, Relating to Information Practices

The Maui Police Department supports the passage of H.B. No. 1200. This bill limits the disclosure of names and salaries of undercover officers, and defines the terms "undercover capacity" and "undercover officer." While we support the release of appropriate information, the disclosure of public employee names in relation to their salaries does not serve a meaningful public purpose.

The Maui Police Department asks for your support for H.B. No. 1200.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police