

**SB1094**  
**TESTIMONY**

NEIL ABERCROMBIE  
GOVERNOR



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February 1, 2011

TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY & LABOR  
For Hearing on Wednesday, February 2, 2011  
10:00 a.m., Conference Room 016

BY

SUNSHINE P.W. TOPPING  
INTERIM DIRECTOR

**Senate Bill No. 1094**  
**Relating to Public Disclosure**

TO CHAIR CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No.1094 is to amend Section 92F-12, Hawaii Revised Statutes, by limiting the disclosure of specific salary and personal information for certain public employees.

The Department of Human Resources Development wishes to provide a comment on this bill. The inclusion of Sections 89-6(f)(3) and (4) in S.B. No. 1094 would now require the disclosure of actual compensation for civil service top-level managerial and administrative personnel and the secretaries to such individuals, which may have been unintended. Therefore, we recommend that the bill be amended to clarify that only the salary range for those civil service employees will need to be disclosed.

Thank you for the opportunity to provide testimony on this measure.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cathy L. Takase, Acting Director

Date: February 2, 2011, 10:00 a.m.  
State Capitol, Room 016

Re: Testimony on S.B. No. 1094  
Relating to Public Disclosure

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Thank you for the opportunity to submit testimony on S.B. No. 1094.

This bill would eliminate the requirement that a government employee's name be considered public information and would further eliminate the requirement for "regulatory agenc[ies]" to disclose any information about their employees, including information such as job titles, salary information, qualifications, and dates of service. The bill would also narrow the types of public employee positions for which exact compensation, rather than a salary range, must be disclosed.

OIP does not object to this bill's effort to more closely specify which categories of exempt employee positions would have their exact salary (as opposed to salary range) made public. Indeed, OIP believes that such an effort is appropriate given that the decision some 20 years ago to make the exact salary of exempt employees public was based on an assumption that such employees generally represented senior management, which seems no longer to be a sound assumption.

The Office of Information Practices ("OIP") is opposed, however, to the provisions of this bill that would put into question whether a government

employee's identity must be revealed and whether a "regulatory agency" must reveal any information about its employees, because these provisions would represent a radical change in policy as to what information must be disclosed about government employees.

The UIPA has long required that some information about government employees be considered automatically public without exception, including name, salary range or (for exempt employees) exact salary, job title, description, and location, qualifications for the position, and dates of service. The effect of this bill would be that a government employee's name would no longer be automatically public. At a minimum, this would create the potential that government employees' names might be initially withheld from the public under the UIPA's privacy exception, given the legislature's deliberate action to remove government employee names from the list of automatically public information. Even if OIP or a court were ultimately to determine that a government employee does not have a significant privacy interest in his or her identity as an employee, there would still be questions as to whether an employee has a privacy interest in the other information about himself or herself (such as job description, qualifications, dates of service, or salary information), or whether instead an agency would be required to release such information only in a de-identified form as provided for in the amended version of §92F-12(a)(14).

Furthermore, even the requirement to make de-identified information about its employees public would not apply to a "regulatory agency." It is not entirely clear what is meant by "regulatory agency," but it would seem that the majority of government agencies could fairly be described as such given that they do promulgate regulations and conduct activities such as licensing, oversight of various industries, administration of health or safety rules, or even (as in OIP's case) administration of laws applying to other government agencies. Thus many, if not

all, government agencies would apparently be excluded from the requirement to release any information about their employees. Further, it is unclear to OIP why a distinction would be made between regulatory and non-regulatory agencies.

Because of the drastic change in policy that the proposed provisions represent, as well as the likely confusion in interpretation and application, OIP opposes the proposed amendment in its current form that removes employee names from the list of mandatorily public information and the exclusion of “regulatory agenc[ies]” from agencies required to make public some information about their employees. However, OIP does not object to this bill’s effort to more closely specify which categories of exempt employee positions would have their exact salary (as opposed to salary range) made public. This could be accomplished by simply deleting the “compensation” clause and replacing it with the term “salary range” that would then apply to all employees.

Thank you for the opportunity to testify.