

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Water, Land, and Ocean Resources

From: Cheryl Kakazu Park, Director

Date: February 13, 2012, 9:00 a.m.  
State Capitol, Room 325

Re: Testimony on H.B. No. 1839  
Relating to Water Service Consumption Data

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Thank you for the opportunity to submit testimony on H.B. No. 1839.

As explained in section 1 of this bill, this bill seeks to make confidential service location and billing addresses and billing information of persons who are consumers of water service provided by the county boards of water supply (service holders) by amending Hawaii's public records law, the Uniform Information Practices Act (Modified) (UIPA), chapter 92F, HRS. For the reasons described below, the Office of Information Practices (OIP) believes that the statutory amendment proposed by this bill does not achieve the bill's stated purpose and thus, misleads the public into believing that this purpose is achieved.

The bill seeks to make confidential service holders' addresses and billing information by removing these items of information from a category of records that is mandated to be public, and must be automatically disclosed without exception, under the UIPA. Specifically, the UIPA, in section 92F-12(a)(12), HRS, requires that "water service consumption data maintained by the boards of water supply" must be publicly available, "[a]ny provision to the contrary notwithstanding."

It appears that this bill's proposed amendment was drafted with the mistaken belief that by excluding service holders' address and billing information from the mandated-to-be-public category of "water service consumption data," these items of information would then be kept confidential. The proposed statutory amendment does not make the records confidential.

OIP administers and interprets the UIPA, which generally requires all public records to be disclosed. OIP has issued the attached advisory opinion letter, OIP Opinion Letter No. 90-29 (October 5, 1990), already concluding that water service holders' addresses and billing information do not constitute "water service consumption data" that must automatically be made public under section 92F-12(a)(12), HRS. But, as OIP had advised in its opinion, even if service holders' addresses and billing information are outside this expressly public category of records, these items of information are nonetheless required to be disclosed under the UIPA's general mandate of public disclosure.

Specifically, this OIP opinion found that service holders' addresses and billing information could not be kept confidential because none of the UIPA's exceptions to disclosure applied. OIP found that not even the UIPA's exception for "a clearly unwarranted invasion of personal privacy" would apply to the addresses and billing information about individual service holders. Haw. Rev. Stat. § 92F-13(1)(1993). In reaching this conclusion, OIP took into account that such address and billing information are already made public in other types of property records, such as real property tax records, land ownership, lien and transfer records, and state leases.

Therefore, the statutory amendment proposed by this bill would not make service holders' addresses and billing information confidential. Even if your Committee seeks to make such information confidential, this bill may not be the appropriate legislative vehicle because it is limited by its title to the subject matter

relating to “water service consumption data,” which, as OIP has already determined, consists of data directly related to service holders’ water usage (e.g., gallons used and water zones) and not their addresses and billing information.

Thank you for the opportunity to testify.