

# SB 1259

Measure Title: RELATING TO FREEDOM OF INFORMATION.

Report Title: Freedom of Information; Significant Privacy Interests

Description: Clarifies that a license applicant does not have a significant privacy interest in records that show relevant experience, trade examination results, or adequate bonding. Makes such information contained in government records subject to disclosure.

Companion:

Package: None

Current Referral: CPN/TEC, JDL

Introducer(s): BAKER, KEITH-AGARAN, Kahele, Ruderman

<u>Sort by Date</u>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/28/2013	S	Referred to CPN/TEC, JDL.
1/30/2013	S	The committee(s) on CPN/TEC has scheduled a public hearing on 02-06-13 9:45AM in conference room 229.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Consumer Protection & Commerce  
Senate Committee on Technology & the Arts

From: Cheryl Kakazu Park, Director

Date: February 6, 2013, 9:45 a.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 1259  
Relating to Freedom of Information

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The Office of Information Practices (OIP) takes no position on the primary purpose of the bill, but recommends technical amendments that would help to prevent a conflict of laws as well as confusion about the bill's provisions.

First, this bill amends the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), by providing that "notwithstanding any law to the contrary" the disclosure of a record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest. The proposed insertion of the phrase "notwithstanding any law to the contrary" is confusing and its purpose is unclear. Possibly, the bill intends to provide that the UIPA's "clearly unwarranted invasion of personal privacy" prevails over all other statutes.

However, this proposed phrase would create a conflict between the UIPA, which allows an agency to withhold a record from public disclosure under any of its exceptions, including its "clearly unwarranted invasion of personal privacy" exception, and all other statutes mandating specific records to be confidential in

order to protect an individual's privacy. The proposed phrase even creates an inconsistency in the UIPA itself since another UIPA exception already recognizes other "state or federal law" that protects records from disclosure. See HRS § 92F-13(4). Therefore, **OIP recommends that this bill be amended by removing the proposed phrase "notwithstanding any law to the contrary."**

Second, the primary purpose of this bill is to amend the UIPA to clarify that an individual does not have a significant privacy interest in records showing the individual has met licensing requirements for work experience, passage of trade examinations, and adequate bonding. Because the individual does not have a significant privacy interest such licensing information, it would be public information. See HRS § 92F-14(a) (2012) (UIPA's "clearly unwarranted invasion of personal privacy" exception does not apply if the individual's privacy interest is outweighed by the public interest).

Notably, the UIPA already lists other licensing information in which an individual does not have a privacy interest, but the listed information expressly pertains to licensees only, i.e., individuals who currently hold valid licenses. **Similarly, OIP recommends that this bill be amended to specify that the licensing information proposed to be excluded from the individual's significant privacy interest should be limited to "licensees" only.**

Otherwise, licensing agencies would be required to disclose this licensing information about "individuals," even if the individuals were denied licensure, are no longer licensed, or whose licensing applications are still pending. Thus, OIP recommends that the bill **be amended on page 4, lines 6-11 as follows:**

- (D) The record showing that the licensee has met or exceeded the requisite experience for licensure;

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- (E) The record showing that the licensee has passed relevant trade examinations; and
- (F) The record showing the licensee's possession of adequate bonding.

Thank you for the opportunity to submit testimony on this bill.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE TN-DNK

February 6, 2013

The Honorable Rosalyn H. Baker, Chair  
and Members  
Committee on Commerce and Consumer  
Protection  
The Honorable Glenn Wakai, Chair  
and Members  
Committee on Technology and the Arts  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Baker and Wakai and Members:

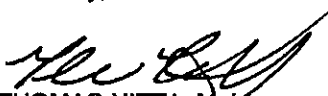
Subject: Senate Bill No. 1259, Relating to Freedom of Information

I am Thomas Nitta, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

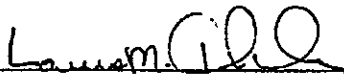
The HPD strongly opposes Senate Bill No. 1259, Relating to Freedom of Information. The HPD contests the change in the language to Chapter 92F, Section 14 (a) of the Hawaii Revised Statutes (HRS). The proposed change reads, "Notwithstanding any law to the contrary, the disclosure of a government record shall not constitute a clearly unwarranted invasion of person privacy if the public interest in disclosure outweighs the privacy interest of the individual." The HPD feels that such an amendment will eclipse existing laws, statutes, and provisions that provide against disclosure of government records and unwarranted invasions of personal privacy. An example would be the overriding of the registration of firearms covered under Section 134-3 (3) of the HRS.

Thank you for the opportunity to testify.

Sincerely,

  
THOMAS NITTA, Major  
Records and Identification Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

## IRON WORKERS STABILIZATION FUND

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Fax No. – 586-6071 and 586-8588

January 31, 2013

Rosalyn H. Baker, Chair  
Committee on Commerce and Consumer Protection  
Hawaii Senate  
State Capitol  
Honolulu, HI 96813

Glenn Wakai, Chair  
Committee on Technology and the Arts  
Hawaii Senate  
State Capitol  
Honolulu, HI 96813

Re: **S.B. No. 1259, Relating to Freedom of Information.**  
**February 6, 2013, 9:45 a.m.**  
**Conference Room 229**

Chairs Baker and Wakai, and, Members:

Under the present statutory scheme as found in HRS, Chapter 92, Relating to Freedom of Information, individuals applying for licenses have certain privacy rights that are protected from disclosure. These rights are protected when they outweigh the public's right to know.

As HRS 92F-14 presently stands, the individual applying for a contractor's license or any other license, is protected from having the following information about him or her disclosed:

1. The record showing that the requisite experience for licensure is met or exceeded;
2. The record showing that relevant trade examinations have been passed; and
3. The record showing possession of adequate bonding.

We believe the public's right to know clearly outweighs any privacy rights the applicant may have as pertaining to these 3 examples as set forth immediately above.

At the hearing on HB 143 (the companion measure to SB 1259) before the house Consumer Protection and Commerce committee on January 30, 2013, the Office of Information Practices recommended certain technical changes that should be made. We

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concur and respectfully request that this bill, with the technical changes sought by OIP,  
be passed and transmitted to the Committee on Judiciary and Labor for action.