

**HB1812**

**HD1 SD1**

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: March 28, 2014, 10:00 a.m.  
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 1812, H.D. 1, S.D. 1  
Relating to Law Enforcement

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports the current version of this bill amending section 92F-14, HRS, in the Uniform Information Practices Act (“UIPA”).

The UIPA amendment deletes a clause giving special treatment to information about police officers’ misconduct. While all other government employees’ misconduct information becomes public if the misconduct resulted in suspension or termination, the current law gives police officers a special statutory privacy interest even in information about misconduct that resulted in suspension. The S.D. 1 puts police officers on the same footing as other government employees. As the committee report for the H.D. 1 (which added the amendment) noted, the amendment is intended to be consistent with the Hawaii Supreme Court’s opinion in State of Hawaii Organization of Police Officers v. Society of Professional Journalists, University of Hawaii Chapter, 83 Haw. 378 (1996) (SHOPO opinion), which held that such information was not “highly personal and intimate information” and thus not covered by Hawaii’s constitutional privacy protection.

Based on the Hawaii Supreme Court's SHOPO opinion, OIP similarly concluded in its Opinion Letter Number 97-1 that the names of suspended police officers are publicly disclosable, notwithstanding the 1995 amendment to the UIPA that statutorily stated that suspended police officers had a significant privacy interest in their misconduct information. Following the SHOPO opinion, OIP reasoned that this statutory privacy interest was still outweighed by the public interest in disclosure, and thus the information remained public. The UIPA amendment proposed by this bill is consistent with both the SHOPO opinion and OIP's Opinion Letter Number 97-1, and would restore the UIPA's own treatment of suspended police officers' misconduct information to what it was prior to 1995. **Therefore, OIP supports the current version of this bill.**

Thank you for the opportunity to testify.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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OUR REFERENCE CH-MM

March 28, 2014

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

**SUBJECT: House Bill No. 1812, HD 1, SD 1, Relating to Law Enforcement**

I am Clyde K. Ho, Major of the Professional Standards Office, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD respectfully opposes House Bill No. 1812, HD 1, SD 1, Relating to Law Enforcement. This bill establishes specific requirements in the annual report to the Legislature concerning incidents of misconduct. Further, we do not support the amendment in House Bill No. 1812, HD 1, SD 1, SECTION 2, Section 92F-14, Hawaii Revised Statutes. Subsection (b) of this segment is amended to remove the exemption for county police department officers from disclosure of their names for incidents of misconduct resulting in suspension.

We strongly feel that the release of the officers' names deters from the disciplinary intention, which is to correct the behavior of the employee and not proliferate a more severe penalty through ridicule in a public forum. Having such a requirement would adversely affect the recruiting efforts of the HPD and may be considered in grievances and arbitrations as a part of the imposed penalty by the agency. The HPD is not in opposition to the current standard of divulging the information when an employee is terminated from employment, as it is surmised that the employee's misconduct would be so egregious that such protection would not be extended.

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
March 28, 2014  
Page 2

We have already taken measures to meet key aspects of this bill by providing added information to the report summary and modifying our retention policies to make the reports available six months after being published in the legislative report.

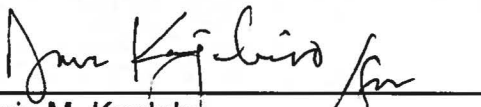
The Honolulu Police Department urges you to oppose the amendment to House Bill No. 1812, HD 1, SD 1, as currently written.

Thank you for the opportunity to testify.

Sincerely,

  
Clyde K. Ho, Major  
Professional Standards Office

APPROVED:

  
\_\_\_\_\_  
Louis M. Kealoha  
Chief of Police

# SHOPO



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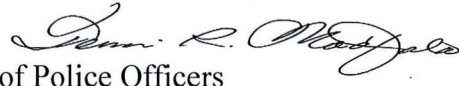
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TO: The Honorable Clayton Hee, Chair  
Senate Committee on Judiciary and Labor

The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

FROM: Tenari Ma'afala, President   
State of Hawaii Organization of Police Officers

DATE: March 27, 2014

SUBJECT: Testimony on H.B. No. 1812 H.D.1 S.D.1, Relating to Law  
Enforcement

DECISION: Friday, March 28, 2014  
MAKING DATE: 10:00 a.m. Conference Room 016

This bill concerns the current annual reports submitted by the county police departments regarding incidents of misconduct that result in suspension or discharge of a police officer. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill.

First and foremost, the wheel is not broken and doesn't need fixing. The Chiefs of Police of the county police departments already have internal policies in place to investigate police misconduct and to impose discipline. The Chiefs are accountable to their respective Police Commissions for their handling of police misconduct. These Commissions are made up of citizens from our community.

Second, based on statistics compiled from Honolulu Police Department ("HPD") Annual reports and other sources, in 2012, **HPD had 5.3 complaints per 100,000 public contacts**. In 2011, HPD had 4.2 complaints per 100,000 public contacts, and in 2010, the rate was 4.6 complaints per 100,000 public contacts. This is a record that any department and community in the nation would be proud of, especially when public contact is daily and constant, and often involves dangerous, highly confrontational and stressful situations, with people in highly emotional states, whether angry, agitated, upset, etc.

Third, annual misconduct reports have been submitted to the legislature by the Chiefs of Police for many years and already provide sufficient information.

Fourth, when county prosecutors believe there is sufficient evidence to proceed against a police officer for alleged criminal conduct, they file documents in court that name the officer and are available to the public. Likewise, if a person files a civil suit against an officer, those court documents including the officer's name, are available at the courts.

Thus, we respectfully request this bill be deferred.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary and Labor  
Honorable Clayton Hee, Chair  
Honorable Maile S.L. Shimabukuro, Vice Chair

**RE: Testimony in Support of H.B. 1812 H.D. 1 S.D. 1, Relating to Law Enforcement**  
Hearing: March 28, 2014 at 10:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on H.B. 1812 H.D. 1 S.D. 1. The Law Center strongly supports this bill.

With one major exception, H.B. 1812 H.D. 1 S.D. 1 is substantively identical to S.B. 2591 S.D. 1, which unanimously passed the Senate on March 4. These companion bills will shed light on police officers who have been suspended for criminal conduct, an area that has been shrouded in secrecy for more than a decade. Annual reports to the Legislature pursuant to Hawai'i Revised Statutes (HRS) § 52D-3.5 reveal incidents in which police officers have, among other things, lied to other law enforcement, hindered investigations, assaulted others, committed hit-and-runs, or pled guilty to criminal conduct. Suspensions for such conduct range from 1 day to 626 days. All the public learns is: "Hindered a federal investigation . . . 626 days" or "Pled guilty to criminal charges . . . One day."<sup>1</sup> E.g., Honolulu Police Department, 2010 Annual Report ¶¶ 1, 7.

As this Committee explained in reporting on S.B. 2591, this measure "creates a more informed public dialogue about misconduct by police officers." S. Stand. Comm. Rep. No. 2581. And as the House Committee on Judiciary noted in connection with H.B. 1812, "consistent with *State of Hawai'i Organization of Police Officers v. Society of Professional Journalists, University of Hawai'i Chapter*, 83 Hawai'i 378 (1996) (*SHOPO v. SPJ*), this measure does not violate the privacy rights of individual police officers." H. Stand. Comm. Rep. No. 651-14. No agency should hide from public scrutiny and oversight when an employee commits a crime, especially a law enforcement agency.

The major difference between the companion bills is an amendment to HRS § 92F-14(b)(4)(B) of the Uniform Information Practices Act (Modified) (UIPA). H.B. 1812 H.D. 1 S.D. 1 amends the UIPA to be consistent with the Hawai'i Supreme Court's

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<sup>1</sup> On November 7, 2013, the Law Center filed a Complaint on behalf of the online publication Civil Beat to obtain additional information regarding several egregious examples of police misconduct. On February 10, 2014, the Circuit Court orally granted Civil Beat summary judgment.

holding in *SHOPO v. SPJ* and the State of Hawai'i Office of Information Practices (OIP) Opinion 97-1 concerning public disclosure of police disciplinary suspensions.

In 1995, the Legislature amended the UIPA to provide for mandatory disclosure— notwithstanding any purported privacy interests— of information about police officers discharged for misconduct. The Legislature left open the possibility that *suspended* police officers may have valid privacy claims.<sup>2</sup>

In 1996, the Hawai'i Supreme Court shut the door on the possibility that suspended police officers have valid privacy claims. As the House Committee on Judiciary recognized when quoting from *SHOPO v. SPJ*: “The information that must be disclosed pursuant to HRS § 92F-14(b)(4)(B) regarding a public employee’s employment related misconduct and resulting discipline, is not ‘highly personal and intimate information’ and is, therefore, not within the scope of Hawai’i’s constitutional right of privacy.” H. Stand. Comm. Rep. No. 651-14.

In light of the Supreme Court’s ruling, OIP held in 1997 that police disciplinary suspensions must be disclosed. OIP Op. No. 97-1. “[T]he only possible conclusion that OIP can reach is that disclosure of this information would *not* be a clearly unwarranted invasion of personal privacy under the UIPA and, therefore, information required to be made public under section 92F-14(b)(4)(B) for discharged officers, must also be made public for suspended officers.” *Id.* at 12. OIP’s conclusion was upheld recently in *Peer News LLC v. City and County of Honolulu*, Civil No. 13-1-2981-11 KKS.

The UIPA amendment in H.B. 1812 H.D. 1 S.D. 1 thus would conform the UIPA to existing judicial and OIP interpretations. The Law Center strongly supports passage of H.B. 1812 H.D. 1 S.D. 1 with the UIPA amendment.

The only suggested amendment is correction of the defective effective date in H.B. 1812 H.D. 1 S.D. 1. It should take effect on approval.

Thank you again for the opportunity to testify.

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<sup>2</sup> In prior written testimony on this measure, SHOPO and the Honolulu Police Department have referred to the 1995 Legislature as creating an “exemption” for police suspension records. To the contrary, Section 92F-14(b)(4)(B) does not grant absolute confidentiality to suspension records. *Compare, e.g.,* HRS § 134-3(b) (firearm registration data confidential) (“All registration data . . . shall be confidential and shall not be disclosed to anyone . . .”), and HRS § 235-116 (tax returns confidential) (“All tax returns and return information required to be filed under this chapter shall be confidential . . .”). As noted above, OIP and the Judiciary have rejected the purported “exemption” claimed by SHOPO and the Honolulu Police Department.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [mizuno3-Charles](#)  
**Subject:** Submitted testimony for HB1812 on Mar 28, 2014 10:00AM  
**Date:** Thursday, March 27, 2014 9:27:45 AM

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**HB1812**

Submitted on: 3/27/2014

Testimony for JDL on Mar 28, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Jenks	Individual	Oppose	No

Comments: Should disclose only those officers names whose offense resulted in a six month or more suspension. Anything less will result in reluctant officer performance because afraid of public name disclosure if wrong decision/action taken.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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