



**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE HOUSE COMMITTEE ON HAWAIIAN AFFAIRS  
IN SUPPORT OF

**HB 2287, RELATING TO PERSONAL PRIVACY**

February 5, 2014

Chair Hanohano, Vice-Chair Cullen, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) is in strong support of this bill which aims to protect the sensitive content of homestead application files and homestead lease files. This bill is part of the Governor's administrative package by request of our department.

Article I, Section 6 of the State Constitution recognizes "the right of the people to privacy", a right that "shall not be infringed without the showing of a compelling state interest." Section 6 also indicates that "the legislature shall take affirmative steps to implement this right." (Italics added) This bill is consistent with this constitutional requirement.

We understand that certain documents and information (e.g., homestead lease, beneficiary's blood quantum) must be disclosed, and other documents and information (e.g., birth certificates, marriage certificates, Social Security Number) are already protected and are not required to be disclosed. DHHL's intent in requesting this bill is not to shield government records already required by HRS 92F-12 to be disclosed. Instead, DHHL's goal is to seek clarity.

DHHL's lessee and applicant files currently include other documents that remain ambiguous as to their status. Since there is no apparent reason for any member of the general public to have access to these other documents or any compelling state interest, this bill would help to clarify the status of these documents as protected consistent with the constitutional requirement of the legislature to act affirmatively to protect the right to privacy of our lessees.

For DHHL to effectively perform its government function, clients (including existing and potential applicants, lessees, and successors) must feel that they have the ability to communicate freely with us about highly sensitive personal information. Protecting the privacy of our lessees and applicants is a serious matter for us. The relationship between DHHL and its applicants and lessees is unique and very different than relationships between other agencies and members of the public they each serve. The department is required to maintain records that affect beneficiaries', especially lessees', day-to-day life related to matters that are highly personal -- their home and their families. In many cases the documents in these files may be very old, stretching back 90 years for our oldest homestead communities. This fact distinguishes these beneficiary files from other types of government records, and therefore those documents that are not currently required by HRS 92F-12 to be disclosed, should be protected. We acknowledge the concerns the Office of Information Practices has raised regarding the broad exemption proposed in this

*Department of Hawaiian Home Lands*

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bill, and we have provided proposed language for a House Draft 1 to address these concerns.

Thank you for your consideration of our testimony.

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Ocean, Marine Resources, & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 5, 2014, at 8:00 a.m.  
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2287  
Relating to Personal Privacy

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) opposes the bill’s passage in its current form.

OIP’s first concern is a technical problem with how DHHL seeks to make its records confidential. The bill adds what is essentially a confidentiality provision for certain records of a specific agency into the list of exceptions to the general rule of public disclosure in Hawaii’s Uniform Information Practices Act (“UIPA”), chapter 92F, HRS. The UIPA’s five existing exceptions to disclosure apply to all agencies and are more categorical in nature; for example, protecting records whose disclosure "would constitute a clearly unwarranted invasion of personal privacy" or that "must be confidential in order for the government to avoid the frustration of a legitimate government function." HRS § 92F-13(1) and (3). **The UIPA's list of exceptions to disclosure is not the correct place for a confidentiality provision applicable to records of a specific agency. Such a confidentiality provision should instead be placed in the relevant section of the HRS chapter(s) relating to that agency and those records, and not in the UIPA at chapter 92F, HRS.**

Second, **the proposed bill conflicts with provisions elsewhere in the UIPA.** Although the justification sheet cites the DHHL's administrative rules requiring confidentiality of personal data, the rules must conform to the statutory requirements of the UIPA. With respect to information about a loan made by DHHL itself, the Legislature has already determined in passing the UIPA that the names of persons borrowing money from a state or county loan program, along with the amount and status of the loan, must be disclosed, as they are items of sufficient public interest to which the privacy and other exceptions to disclosure are not applicable. HRS section 92F-12(a)(8). Lessees' names are of strong public interest and **leases of state land are specifically required to be made public "any other provision in this chapter to the contrary notwithstanding"** due to that strong public interest. HRS section 92F-12(a)(5). Thus, as OIP recognized in its opinion letter number 91-19, **lessees' names and the status of the lease are specifically required to be public under current law; the proposed bill would seek to change this requirement for only DHHL leases.**

Third, **the Legislature has already specifically recognized that individuals have a significant privacy interest in certain information, which must not be disclosed unless the public interest in disclosure outweighs the individual's privacy interest.** HRS Sec. 92F-14. The UIPA lists examples of information, with some qualifications, in which the individual has a significant privacy interest, such as social security numbers; information comprising a personal recommendation or evaluation; medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation; investigations of possible criminal violations; eligibility for social services or welfare benefits; personnel information; and an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

Under the privacy exception, OIP has previously advised DHHL in 1989 and 1991 opinion letters that **the social security numbers** of lessees and their spouses and **home and mailing addresses should be kept confidential**. OIP Op. Ltr. No. 91-19; OIP Op. Ltr. No. 89-4. But because the public interest in knowing whether DHHL's program is efficiently and fairly benefiting the proper individuals outweighed the lessees' or applicants' privacy interest in their ethnicity, OIP has determined **that native Hawaiian quotient information (not a full genealogy) in DHHL's records must be made public** under the UIPA. OIP Op. Ltr. No. 91-19. Similarly, the public interest in shedding light on the DHHL's fair and efficient administration of its programs outweighed the privacy interest in **homestead lease applicant's name, island-wide rank, application date, area code, and deferral status, which OIP determined must be disclosed** in OIP Op. Ltr. 89-4.

Fourth, **the bill gives DHHL's records blanket confidentiality, without requiring the department to disclose public information after redacting what is truly confidential, as all other state and county agencies subject to the UIPA must do. The proposed provision seeks to protect more information than just personal contact information, genealogies, and finance and loan documents – it would protect all correspondence between DHHL and a homestead applicant or lessee, and apparently would even protect the names of lessees.** It is not clear whether DHHL believes there is information contained in its correspondence and other records relating to leases that is not already covered by the UIPA's existing exceptions and yet would be in some way harmful to release, or whether DHHL just does not want to go to the effort of reviewing its records and segregating out non-public

information when responding to a request (as agencies in general are required to do).

OIP has been discussing with DHHL proposed amendments that would move the confidentiality provision outside of the UIPA and would clarify that unless required to be disclosed under section 92F-12, the following records would not be made open to public inspection:

- 1) government records which include any personal information related to a homestead applicant or lessee; and
- 2) government records related to homestead applications, loan applications, financial assessments, applications for permits, genealogical information, family history, successors or alleged lease violations.

While OIP appreciates these efforts to improve the bill, the proposal still calls for an open-ended confidentiality provision; for example, the proposal makes confidential all government records simply because they include any personal information related to a homestead applicant or lessee. OIP cannot support this latest draft, particularly when the specific items that it seeks to protect are either currently required to be disclosed, or fall within the privacy exception and may be redacted. For example, certain information regarding alleged lease violations, loan applications, and homestead applications must be disclosed under the UIPA. See HRS section 92F-12(5), -(8), -(13). Information not required to be disclosed may still be kept confidential under the privacy exception, such as financial assessments, genealogical information, and family history. Consequently, OIP would be happy to work with DHHL to provide them with additional training and guidance in future opinions, or to craft a more limited confidentiality provision in the appropriate portion of the HRS.

## **HAWAIIAN AFFAIRS CAUCUS**

Democratic Party of Hawaii

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January 31, 2014

LEGISLATIVE TESTIMONY

IN SUPPORT OF

**HB2287, RELATING TO PERSONAL PRIVACY**

Hearing, February 5, 2014, 8:00 a.m., Room 325

Representative Faye P. Hanohano, Chair

Representative Ty J. K. Cullen, Vice Chair

Members, Committee on Ocean, Marine Resources, and Hawaiian Affairs

Aloha mai kākou

The Hawaiian Affairs Caucus of the Democratic Party of Hawai'i urges your committee to fully support the provisions of HB2287 that would protect the sensitive content of homestead application files and homestead lease files by including these government records as examples of government records not required to be disclosed.

Respectfully

Leimomi Khan

Co-Chair, Legislative Committee





## **Association of Hawaiian Civic Clubs**

P. O. Box 1135  
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### COMMITTEE ON OCEAN MARINE RESOURCES AND HAWAIIAN AFFAIRS

#### HOUSE BILL 2287 RELATING TO PERSONAL PRIVACY

Wednesday, 2/05/14; 8:00 am; Room 325

Aloha Madam Chair Hanohano, Vice Chair Cullen and members of the House Committee on Ocean Marine Resources and Hawaiian Affairs. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs here to speak in support of this bill. Three weekends ago the AHCC Board of Directors held a quarterly meeting and this issue was brought to our attention.

The AHCC finds it appropriate that applicant and lessee files and correspondence that include personal data held by the Department of Hawaiian Homes should be treated with confidentiality as are the records of other government agencies. The Department should not be required to disclose the records of their applicants or lessees but should make every effort to keep such records protected and secure at all times.

Thank you for the opportunity to testify.

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