

**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 SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
IS SUPPORT OF

**SB 2837, RELATING TO PERSONAL PRIVACY**

January 31, 2014

Chair Shimabukuro, Vice-Chair Hee, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) is in strong support of this bill which amends the State's Uniformed Information Practices Act (UIPA) to protect the sensitive content of homestead application files and homestead lease files by including these government records as examples which are not required to be disclosed. This bill is part of the Governor's administrative package by request of our department.

The department has recently received UIPA requests for specific homestead application files and homestead lease files that include personal contact information, genealogies, finance and loan documents, successorship forms, permission forms regarding the use of records in the file and other correspondence. 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 lessee and applicant files, however, 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, this bill would help to clarify the status of these documents as being protected information.

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 information. Unfettered communication between DHHL and its beneficiaries is absolutely necessary. If clients believe that the information they share with DHHL could potentially be released to any member of the public without their permission, it will have a chilling effect on this communication and significantly hinder DHHL's ability to meet its mission.

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 deemed public information (leases and blood quantum amounts) should not be required to be disclosed.

Thank you for your consideration of our testimony.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: January 31, 2014, at 1:30 p.m.  
State Capitol, Conference Room 224

Re: Testimony on S.B. No. 2837  
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, OIP cannot see the need for the proposed confidentiality provision when **information is already not disclosable under the privacy exception.** The UIPA's general rule is that government records are public, unless an exception to disclosure applies. The specific information listed in the justification sheet for this bill as examples of information needing protection, "personal contact information, genealogies, finance and loan documents," would already fall under the UIPA's privacy exception, assuming that the finance and loan documents relate to a loan from a bank or similar source rather than DHHL itself, so DHHL does not need a new confidentiality provision to protect that information. If DHHL's administrative rules referenced in the justification sheet are based on a statutory requirement of confidentiality or a statutory authorization for the department to create rules governing confidentiality of the records in question, then the UIPA's exception for records protected by a confidentiality statute provides a further basis for denying a request for such information.

Third, **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). From the information provided in the justification sheet, OIP cannot see why a new confidentiality provision is needed for these files, and OIP has been unsuccessful in obtaining a further explanation.

Last but not least, **the proposed bill conflicts with provisions elsewhere in 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). OIP further notes that while the names of **applicants** would fall under the UIPA's privacy exception and thus could be withheld under current law, the names of **lessees** 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.**

In summary, OIP opposes passage of this measure in its current form based on both technical and substantive concerns. However, if DHHL can identify specific information that is not already protected by the UIPA's existing exceptions and that for sound policy reasons should not be public, OIP would be happy to work with DHHL to craft a more limited confidentiality provision in the appropriate portion of the HRS.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 31, 2014 9:43 AM  
**To:** HWNTestimony  
**Cc:** mkhan@hawaiiantel.net  
**Subject:** Submitted testimony for SB2837 on Jan 31, 2014 13:30PM

**SB2837**

Submitted on: 1/31/2014

Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	DPH Hawaiian Affairs Caucus	Support	No

Comments: Aloha, On behalf of the Hawaiian Affairs Caucus, Democratic Party of Hawaii, we urge support of this bill 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. Leimomi Khan, Co-Chair, Legislative Committee, Hawaiian Affairs Caucus

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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## **Association of Hawaiian Civic Clubs**

P. O. Box 1135  
Honolulu, Hawai`i 96807

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

SB2837 RELATING TO PERSONAL PRIVACY

Friday, 1/31/14; 1:30 pm; Room 224

Aloha Madam Chair Shimabukuro, Vice Chair Hee and members of the Senate Committee on Hawaiian Affairs. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs here to speak in support of this bill. Two 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 keep such records secure at all times.

Thank you for the opportunity to testify.

Contact: [jalna.keala2@hawaiiantel.net](mailto:jalna.keala2@hawaiiantel.net)



## Auamo I Na Alaka'i (AINA)

*“AINA supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”*

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### TESTIMONY OF SB 2837 RELATING TO PERSONAL PRIVACY

#### SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Chairwoman M. Shimabukuro, Vice Chair C. Hee

Committee Members

#### NOTICE OF HEARING

Friday, January 31, 2014

1:30 p.m.

Conference Room 224

Hawaii State Capitol

415 South Beretania Street

Madame Chair Shimabukuro and Vice Chair Hee and Committee Members, Aloha!

My name is Paul P. Richards elected President of Auamo I Na Alaka'i (AINA) a state not-for-profit organization whose sole purpose, *“supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”* Our organization was founded several years ago as an alternative and option for Hawaiian homestead community associations serving as a resource and providing information and training opportunities in leadership development. As our guiding quotation above states, *“self-governance through education, training and exploration”* are the common practices we put into place and encourage our fellow constituents to those opportunities. We have selected not to create or form any formal membership roster, payments, dues or fees, but do encourage discussions, forums, workshops and conferences.

Please accept this testimony in *strong support* of SB 2837 relating to Personal Privacy with the inclusion of §92F-13-(6) as it reads:

*“Government records which include any personal data received or recorded by department of Hawaiian home lands related to a homeland applicant or lessee, or any correspondence between the department and between a homestead applicant or lessee.”*





## Auamo I Na Alaka'i (AINA)

*“AINA supports all Hawaiian Homestead community organizations in Hawai'i by strengthening their capacity building and discovering opportunities towards self governance through education, training and exploration.”*

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Into the current law which will help to support, maintain and treat such information, data and discussions with confidentiality as official records similar to other State government agencies.

Furthermore, the Department of Hawaiian Home Lands (DHHL) should not be required to disclose the records of their applicants or lessees to any third-party entity without the appropriate and official court rulings and documents.

We appreciate the opportunity to submit this testimony and offer our contact information should you have any questions or concerns.

Mahalo nui loa,

Paul P. Richards  
President

<Signature>

Josiah “Uncle Black” Ho’ohuli  
Vice-President

<Signature>

Shirley Swinney  
Secretary

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HWNTestimony](#)  
**Cc:** [paul\\_28827@msn.com](mailto:paul_28827@msn.com)  
**Subject:** Submitted testimony for SB2837 on Jan 31, 2014 13:30PM  
**Date:** Thursday, January 30, 2014 10:12:46 AM  
**Attachments:** [AINA Testimony 013114 SB 2837.pdf](#)

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**SB2837**

Submitted on: 1/30/2014

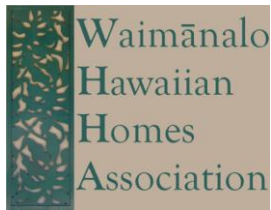
Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul P Richards	Auamo I Na Alaka'i (AINA)	Support	No

Comments: Mahalo for the opportunity to submit our testimony.

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P.O. Box 353, Waimānalo, Hawaii 96795-0353

TESTIMONY IN *STRONG SUPPORT* OF SB 2837

RELATING TO PERSONAL PRIVACY

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Chairwoman M. Shimabukuro, Vice Chair C. Hee

Committee Members

NOTICE OF HEARING

Friday, January 31, 2014  
1:30 p.m.  
Conference Room 224  
Hawaii State Capitol  
415 South Beretania Street

Madame Chair Shimabukuro and Vice Chair Hee and Committee Members, Aloha!

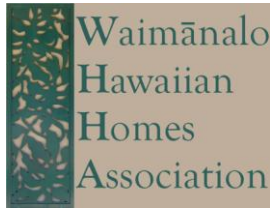
My name is Paul P. Richards elected President of Waimanalo Hawaiian Homes Association (WHHA) and Na Kuhio ‘Ike (NKI) its subsidiary representing 740 households in Waimanalo.

Please accept this testimony in *strong support* of SB 2837 relating to Personal Privacy with the inclusion of §92F-13-(6) as it reads:

*“Government records which include any personal data received or recorded by department of Hawaiian home lands related to a homeland applicant or lessee, or any correspondence between the department and between a homestead applicant or lessee.”*

Into the current law which will help to support, maintain and treat such information, data and discussions with confidentiality as official records similar to other State government agencies.

Furthermore, the Department of Hawaiian Home Lands (DHHL) should not be required to disclose the records of their applicants or lessees to any third-party entity without the appropriate and official court rulings and documents.



P.O. Box 353, Waimānalo, Hawaii 96795-0353

We appreciate the opportunity to submit this testimony and offer our contact information should you have any questions or concerns.

Mahalo nui loa,

A handwritten signature in black ink, appearing to read "Paul P. Richards". The signature is fluid and cursive.

Paul P. Richards

President

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HWNTestimony](#)  
**Cc:** [paul\\_28827@msn.com](mailto:paul_28827@msn.com)  
**Subject:** Submitted testimony for SB2837 on Jan 31, 2014 13:30PM  
**Date:** Thursday, January 30, 2014 10:17:07 AM  
**Attachments:** [WHHA Testimony 013114 SB 2837.pdf](#)

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**SB2837**

Submitted on: 1/30/2014

Testimony for HWN on Jan 31, 2014 13:30PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul P Richards	Waimanalo Hawaiian Homes Association	Support	No

Comments: Mahalo nui for the opportunity to submit our testimony.

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