

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental,  
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 2, 2017, 1:15 p.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 424  
Relating to Police Reports

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) **supports this bill**, which would amend the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS, to limit a clause giving special treatment to information about police officers’ misconduct. **The proposal would only protect an officer’s first suspension within five years, and would require police departments to include information about second or subsequent suspensions in their annual reports to the Legislature.**

In section 92F-14(b)(4), HRS, the UIPA recognizes a government employee’s significant privacy interest in information about possible misconduct, up to a point. 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. This bill would limit the special statutory privacy interest to apply only to an officer’s first suspension within a five-year period. If a

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police officer is suspended for a second time within a five-year period, the officer must be identified in the police department's annual report to the Legislature.

**The UIPA amendment proposed by this bill still would not place police officers on the same footing as all other government employees for public disclosure of misconduct information, but it would at least close part of the gap and provide a greater level of government accountability. Therefore, OIP supports this bill.**

Thank you for the opportunity to testify.

THE CIVIL BEAT  
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Honorable Clarence K. Nishihara, Chair  
Honorable Glenn Wakai, Vice Chair

**RE: Testimony Opposing S.B. 424, Relating to Public Safety**  
Hearing: February 2, 2017 at 1:15 p.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 S.B. 424. The Law Center **opposes this bill because it will not increase public access to information about police discipline.**

Under existing law as recently interpreted by the Hawai'i Supreme Court in *Peer News LLC v. City & County of Honolulu*, No. SCAP-14-889 (June 9, 2016), police departments must weigh the public interest in disclosure of police disciplinary suspensions matters against the privacy interests of individual police officers.<sup>1</sup> In other words, disciplinary suspensions are not necessarily exempt from disclosure under the UIPA.

That case remains pending to litigate what information the courts will consider when weighing the public interest against the officer's privacy interests. An officer's subsequent discipline (*e.g.*, two suspensions within five years) is only one aspect of what the courts might consider relevant to that issue. There is no reason for the Legislature to make this minor amendment before the courts fully resolve the scope of existing law.

Also, amendments to HRS § 92F-14(b)(4) should only be made if they will increase public access. There is no indication that this amendment would do so. The Legislature has only required the annual police disciplinary reports to link multiple incidents by the same police officer since 2015. It is not apparent from the reports that many, if any, officers have been suspended twice or more within five years.

Thank you again for the opportunity to testify.

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<sup>1</sup> The Law Center represents Peer News in that litigation, but submits this testimony on its own behalf.



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SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
Thursday, February 2, 2017, 1:15 PM, Conference Room 229  
SB 424, RELATING TO PUBLIC SAFETY

**TESTIMONY**

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Nishihara and Committee Members:

**The League of Women Voters of Hawaii supports the intent of SB 424 because the bill explicitly requires disclosure of the identify of any police officer upon the officer's second suspension in a five-year period,**

The League of Women Voters of Hawaii requests that this Committee amend SB 424 so that UIPA unquestionably applies to suspensions of police officers in exactly the same way that UIPA applies to suspensions of all other public employees. There is no compelling justification for UIPA to apply differently to the misconduct of police officers than to the misconduct of other public employees. However, despite rulings to the contrary by the Hawaii Supreme Court, county police departments still mistakenly assume that the current wording of UIPA totally prohibits disclosure of the identity of police officers who have been suspended but not discharged for serious misconduct.

Thank you for the opportunity to submit testimony.

# SHOPO



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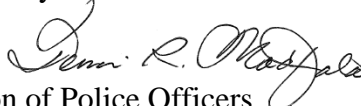
**MAUI CHAPTER CHAIR**

Barry Aoki

**TO:** The Honorable Clarence K. Nishihara, Chair  
Senate Committee on Public Safety, Intergovernmental, and  
Military Affairs

The Honorable Glenn Wakai, Vice-Chair  
Senate Committee on Public Safety, Intergovernmental, and  
Military Affairs

Members of the Senate Committee on Public Safety,  
Intergovernmental, and Military Affairs

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

**DATE:** February 1, 2017

**SUBJECT:** Testimony on S.B. No. 424, Relating to Public Safety

**HEARING:** Thursday, February 2, 2017  
1:15 p.m. Conference Room 229

Thank you for the opportunity to provide testimony on this bill regarding provision of a police officer's name who has been suspended for the second time in a five-year period or discharged. The State of Hawaii Organization of Police Officers ("SHOPO") opposes S.B. 424.

Currently, the Uniform Information Practices Act ("UIPA"), Hawaii Revised Statutes section 92F-14(b)(4)(B), provides that a police officer does not have a significant privacy interest regarding employment misconduct that results in a discharge, ninety days after the highest nonjudicial grievance adjustment procedure has concluded and a decision has been issued sustaining the discharge. Thus, UIPA already provides access to a police officer's name who has been discharged when this period ends.

Additionally, suspensions can result for a variety of reasons, including being late to work, turning in a mileage slip late, missing court, etc. Police officers should not be publicly named and shamed for suspensions.

Further, the Hawaii Supreme Court, in Peer News LLC dba Civil Beat v. City and County of Honolulu and Honolulu Police Department, and State of Hawaii Organization of Police Officers (Hawaii'i, 2016), recognized that Hawaii Revised Statutes section 92F-2 provides in relevant part:

The policy of conducting government business as openly as possible must be tempered by a recognition of the right to people to privacy, as embodied in section 6 and section 7 of the constitution of the state of Hawaii'i.

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The Court further stated that it is not:

[T]he Legislature's exclusive role to "define" the constitutional privacy right, nevertheless...the legislature is not precluded from providing privacy protections greater than those provided by the constitution.

In conclusion, the Court held, that:

HRS § 92F-14 recognizes a significant privacy interest in police officers' disciplinary suspension records, and this interest must be balanced against the public interest in disclosure of the requested records.

With the recognition of a police officer's significant privacy interest in disciplinary suspension records, SHOPO opposes this bill.



Feb. 2, 2017

Sen. Clarence Nishihara  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
State Capitol  
Honolulu, HI 96813

Re: SB 424

Sen. Nishihara and Committee Members:

Thank you for the opportunity to give our support to this bill, which would allow disclosure of the name of a police officer suspended for the second time within five years.

We would prefer that the names of disciplined police officers be made public as are the identities of other disciplined government servants but recognize this as a good first step.

Sincerely,

Stirling Morita  
President, Hawaii Chapter SPJ