

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

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DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879
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**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES,
AND HAWAIIAN AFFAIRS**

IN SUPPORT OF

HB 1094 RELATING TO PERSONAL PRIVACY

February 3, 2017

Aloha Chair Ing and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill that creates a new section of the HRS specifying that certain content of the Department's homestead applicant and lessee files are not required to be disclosed. This bill is part of the Governor's administrative package by request of our department.

The Department has received Uniform Information Practices Act (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. Public access to this information should be considered an unwarranted invasion of privacy.

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' 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 should not be required to be disclosed.

Thank you for your consideration of our testimony

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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EMAIL: oip@hawaii.gov

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

From: Cheryl Kakazu Park, Director

Date: February 3, 2017, 9:30 a.m.
State Capitol, Conference Room

Re: Testimony on H.B. No. 1094
Relating to Personal Privacy

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes **no position** on this bill, which would provide exceptions to public disclosure under chapter 92F, the Uniform Information Practices Act (“UIPA”), for specified information maintained by the Department of Hawaiian Home Lands (“DHHL”) in connection with its lease files. OIP has worked with DHHL in reviewing the draft of the bill and believes the exceptions for public record disclosure provided for in this bill are reasonably limited in scope and in many instances protect information that OIP has already found is not required to be disclosed under the UIPA., so OIP considers the decision on whether to put those exceptions into statute to be a policy call for the Legislature.

The bill’s proposed protection for loan applications and related material specifically excludes information that is required to be disclosed by section 92F-12(a)(8), a UIPA provision requiring disclosure of specific information about government loans including a borrower’s name, address, and occupation and the amount, purpose, and status of the loan. Thus, that information would remain

public. Under current law, additional information about a government loan could theoretically be public if the borrower's privacy interest in the information was outweighed by the public interest in disclosure such that the UIPA's privacy exception did not apply, but in practice, OIP has not found information about DHHL loans to be public beyond the information made public by section 92F-12(a)(8). Thus, while this bill would change the law by definitively making the loan applications and related information confidential except where disclosure was required by section 92F-12(a)(8), it would not change what DHHL loan information the public has been able to access in practice.

The bill also provides protection for consents to release personal information to the DHHL. Such consents may not be categorically exempt from disclosure under current law – OIP has not issued an opinion on them, but it is not clear that the disclosure of a consent to release would be an unwarranted invasion of individual privacy as a general rule. At the same time, though, OIP does not see a strong public interest in inspecting consents to release personal information to DHHL, as they would not shed any particular light on DHHL's performance of its functions. Thus, OIP does not have real concerns about the provision making consents to release personal information confidential.

The remaining provisions would protect lease successor designations: both requests to succeed and designations of successor, for both leases and lease application rights. OIP has previously found similar information to fall within the UIPA's privacy exception. Thus, OIP believes these provisions would simply provide a statutory protection for information that OIP has already found to be protected under the UIPA's privacy exception.

OIP also notes that in past sessions DHHL has introduced bills to protect lease file information that OIP considered overly broad. Those bills would have

applied to far more information than the limited categories of information protected by this bill. In this bill, DHHL narrowly specified the types of information it sought to protect, and limited it to information that either has not previously been public under the UIPA, or that does not raise serious concerns that the public interest would be harmed by making it confidential.

Thus, OIP believes that whether to grant the statutory protection this bill would provide for specified lease file information maintained by DHHL is a policy call for the Legislature to make, and OIP takes no position on this bill.

Thank you for the opportunity to testify.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Ocean, Marine Resources, & Hawaiian Affairs
Honorable Kaniela Ing, Chair
Honorable Cedric Asuega Gates, Vice Chair

RE: Testimony Commenting on H.B. 1094, Relating to the Personal Privacy
Hearing: February 3, 2017 at 9:30 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 governmental transparency. Thank you for the opportunity to submit testimony **commenting** on H.B. 1094 to the extent it may seek to reverse a 1991 Office of Information Practices (OIP) Opinion declaring that DHHL leases are public records. The Law Center respectfully requests that the Committee clarify in its report that H.B. 1094 is not intended to change the law as interpreted in OIP Opinion 91-19.

Records of government land ownership and what the State does with that land, including leasing it to private parties, should be publicly accessible. Citizens should be able to learn how the State is managing the assets entrusted to it. The 1988 Legislature recognized the critical public value of this information when it enacted the Uniform Information Practices Act (UIPA) because it had a specific provision requiring – without exception – that government agencies disclose records of “Land ownership, transfer, and lien records, including real property tax information and leases of state land.” HRS § 92F-12(a)(5).

In 1991, OIP held that the mandatory disclosure provision regarding land ownership required DHHL to disclose information regarding leases of DHHL land. OIP Op. No. 91-19. At DHHL’s request, OIP addressed at length and in detail concerns about privacy and held that lessee data must be released after DHHL removed the lessee’s and spouse’s home address and social security numbers. For more than twenty years, this information has been publicly accessible, and DHHL never challenged the legality of the OIP opinion in court.

As a direct result of OIP’s opinion, citizens have been able to learn more about DHHL leases and raise questions about the Department’s management of State land. *E.g.*, Rob Perez, *Mismanagement Plagues Leases*, Honolulu Star-Advertiser (May 5, 2013). When the public began to question DHHL leasing practices based on the agency’s own data, the Department introduced a bill similar to H.B. 1094 to restrict public access. *E.g.*, Rob Perez, *House Committee Advances Hawaiian Home Lands Secrecy Bill*, Honolulu

Star-Advertiser (Feb. 6, 2014) (referring to H.B. 2287 during the 2014 session). There is no basis for taking away the public's right to this information.

In its justification sheet for H.B. 1094, DHHL claims that the bill is necessary to protect personal contact information, genealogies, finance and loan documents, and other correspondence. As reflected in OIP Opinion 91-19 and OIP's 2014 testimony on H.B. 2287, most of that information is protected already under the UIPA. DHHL's bill focuses substantially on succession records (designations of successor and requests to succeed). OIP never held that such records on succession are publicly accessible. It provided only that DHHL must provide data on whether a lessee had made a survivorship designation (*i.e.*, status – not names – such as designation approved, no designation made, designation invalid). OIP Op. No. 91-19 at 4-6.

The Law Center would appreciate clarification from the Committee that H.B. 1094 is not intended to change the law as interpreted in OIP Opinion 91-19.

Thank you again for the opportunity to testify.

gates2 - Thomas

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 1:21 PM
To: omhtestimony
Cc: elamafarms@gmail.com
Subject: Submitted testimony for HB1094 on Feb 3, 2017 09:30AM

HB1094

Submitted on: 2/2/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick L. Kahawaiolaa	Keaukaha Community Association	Support	No

Comments: Aloha Chair and members of OMH committee, I am Patrick L. Kahawaiolaa, currently the president of the Keaukaha Community Association and we are in support HB1094 with companion bill SB960 and HB1095 and companion SB961 as we feel it is trying to one protects the information of a native Hawaiian beneficiaries as it deals with the DHHL lease and financial status, however please do not restrict the simple REQUEST when written consent (permission) is granted for a family member to view the mo'okuauhau in trying to get information on qualifying for an award using records of already qualified applicants. It is abundantly clear that the inclusion of a representative from the island of Lana'i is necessary to have native Hawaiian beneficiaries from that island represent the beneficiaries from Lana'i. Any additional info please call 1-808-937-8217. 'Owau Patrick L. Kahawaiolaa

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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From: mailinglist@capitol.hawaii.gov
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To: omhtestimony
Cc: blawaiianlvr@icloud.com
Subject: *Submitted testimony for HB1094 on Feb 3, 2017 09:30AM*

Follow Up Flag: Follow up
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HB1094

Submitted on: 1/31/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments:

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Sent: Wednesday, February 1, 2017 2:17 PM
To: omhtestimony
Cc: naregion9@gmail.com
Subject: Submitted testimony for HB1094 on Feb 3, 2017 09:30AM

HB1094

Submitted on: 2/1/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Derek Kimura	Individual	Support	No

Comments: In support of HB1094.

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Sent: Wednesday, February 1, 2017 9:38 PM
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Cc: kpurdyavelino@yahoo.com
Subject: *Submitted testimony for HB1094 on Feb 3, 2017 09:30AM*

HB1094

Submitted on: 2/1/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Kilia Purdy-Avelino	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 3:25 PM
To: omhtestimony
Cc: kaipelayo@gmail.com
Subject: *Submitted testimony for HB1094 on Feb 3, 2017 09:30AM*

HB1094

Submitted on: 2/2/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Alvin K Pelayo	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
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To: omhtestimony
Cc: kilohanah@gmail.com
Subject: Submitted testimony for HB1094 on Feb 3, 2017 09:30AM

HB1094

Submitted on: 2/2/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Reis Haitsuka	Individual	Support	No

Comments: To further the individual rights of Native Hawaiians.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 9:33 PM
To: omhtestimony
Cc: lilia@papakolea.org
Subject: *Submitted testimony for HB1094 on Feb 3, 2017 09:30AM*

HB1094

Submitted on: 2/2/2017

Testimony for OMH on Feb 3, 2017 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Lilia Kapuniai	Individual	Support	No

Comments:

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BEFORE THE COMMITTEE ON VETERANS, MILITARY, & INTERNATIONAL AFFAIRS, &
CULTURE AND THE ARTS

Hawaii State Legislature, February 3, 2017

House Bill No. 1094
Relating to Protecting Privacy of Beneficiary Information

Aloha Chair Ing, and Vice Chair Gates,

The Ka Lahui Hawaii Political Action Committee (KPAC) supports HB 1094 Relating to Protecting Privacy of Beneficiary Information.

Personal records maintained by the department of Hawaiian Home Lands related to loans, birth, marriage, death, successors or any other personal information that could be used in identity theft or for political reasons like adding them to unsecure Kana’iolowalu list should not be released. The Kana’iolowalu or Native Hawaiian Role that has been used to support the Department of Interior Rule has been released to hundreds of people despite the fact that it has personal information. The personal information of beneficiaries and applicants of the Department of Hawaiian Home Lands should not be subject to the Hawai’i State Sunshine laws.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC