

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 22, 2018, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1849, H.D. 1
Relating to Public Safety

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 identify officers receiving a second or subsequent suspension 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

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, and recommends that this Committee amend its effective date to be effective upon approval.

Thank you for the opportunity to testify.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Judiciary
Honorable Scott Y. Nishimoto, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Opposing H.B. 1849 H.D. 1, Relating to Public Safety
Hearing: February 22, 2018 at 2:00 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 H.B. 1849 H.D. 1. The Law Center **opposes this bill because it will not measurably increase public access to information about police discipline.**

Under existing law as interpreted by the Hawai'i Supreme Court in *Peer News LLC v. City & County of Honolulu*, 138 Hawai'i 53 (2016), police departments must weigh the public interest in disclosure of police disciplinary suspensions matters against the privacy interests of individual police officers.¹ In other words, disciplinary suspensions are not necessarily exempt from disclosure under the UIPA.

The circuit court on remand currently is 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 measurably increase public access. There is no indication that this amendment would do so.

Thank you again for the opportunity to testify.

¹ The Law Center represents Honolulu Civil Beat in that litigation, but submits this testimony on its own behalf.



Committee: House Committee on Judiciary
Hearing Date/Time: Tuesday, February 22, 2018, 2 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i with comments on H.B. 1849, H.D. 1
Relating to Public Safety

Dear Chair Nishimoto, Vice Chair Buena Ventura, and Committee Members:

The American Civil Liberties Union of Hawai'i ("*ACLU of Hawai'i*") writes with comments on H.B. 1849, H.D. 1, which requires police departments to disclose the identity of police officers upon the officer's second suspension in a five-year period or discharge.

We support the intent of this bill, which is to promote much needed transparency and public trust in local law enforcement by treating county police officers on terms more equal to those of other government employees whose disciplinary records are available to the public. However, **we have serious concerns that H.B. 1849, H.D. 1, will not in fact result in increased transparency as the bill intends for at least two reasons.**

First, prior disclosures show that few officers would be covered by the bill as second suspensions within five years are rare and not necessarily very serious, and this bill threatens that such suspensions become even more infrequent as police departments and officers would have an incentive to time and negotiate other punishment in lieu of suspension to avoid disclosure.

Second, under Hawai'i Supreme Court precedent, in deciding whether to disclose any disciplinary suspensions, police departments are already required to weigh the public interest in disclosure against the privacy interests of individual police officers. *Peer News LLC v. City & County of Honolulu*, 138 Hawai'i 53 (Haw. 2016). This bill would call into question the balance struck in *Peer News*, potentially leading to less, not more disclosure, than under current law.

For these reasons, we respectfully request that your Committee consider amending H.B. 1849, H.D. 1, to simply treat county police officers like other state law enforcement and every other government employee. To achieve such parity, your Committee would only need to amend H.B. 1849, H.D. 1, to provide that Hawai'i Revised Statutes Section 92F-14(b)(4) be amendment to strike out its last sentence as follows:

(b) The following are examples of information in which the individual has a significant privacy interest: . . .

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

- (A) Information disclosed under section 92F-12(a)(14); and
- (B) The following information related to employment misconduct that results in an

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employee's suspension or discharge:

- (i) The name of the employee;
- (ii) The nature of the employment related misconduct;
- (iii) The agency's summary of the allegations of misconduct;
- (iv) Findings of fact and conclusions of law; and
- (v) The disciplinary action taken by the agency;

when the following has occurred: the highest nonjudicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision or, for decisions involving county police department officers, ninety days have elapsed following the issuance of the decision; ~~provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;~~

Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.



Feb. 22, 2018

Rep. Scott Nishimoto
House Committee on Judiciary
State Capitol
Honolulu, HI 96813

Re: HB 1849

Rep. Nishimoto and Committee Members:

We support this bill, which would allow explicit disclosure of the name of a police officer suspended for the second time within five years.

But we also ask that the names of disciplined police officers be made public as are the identities of other disciplined public employees but recognize this as a first step.

Such openness is warranted for officers who must be accountable to the public because of their powers.

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ