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To: Senate Committees on Public Safety, Intergovernmental, and Military
Affairs and on Labor

From: Cheryl Kakazu Park, Director

Date: March 15, 2018, 1:15 p.m.
State Capitol, Conference Room 229

Re: Testimony on H.B. No. 1849, H.D. 2
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 or subsequent time within a five-year period,

Senate Committees on Public Safety, Intergovernmental, and Military Affairs
and on Labor
March 15, 2018
Page 2 of 2

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.



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

March 12, 2018

The Honorable Scott K. Saiki, Speaker
House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: House Bill No. 1849, RELATING TO PUBLIC SAFETY

Dear House Speaker Scott Saiki:

The Maui Police Department **OPPOSES** the passage of H.B. No. 1849.

The passage of this bill will mandate law enforcement agencies release names of disciplined officer to the public upon the second offense within five years.

The Circuit Court is already weighing an officer's privacy interests, in the disclosure of disciplinary matters, against public interest. HRS 92F-14 protects an officer's significant privacy interests, as well as the UIPA, to an extent. Officers are consistently placed in the public's eye and always subject to their purview. This bill will only enhance the public's scrutiny of an officer into his private life as a citizen.

It does not appear there will be a significant increase to public safety by the passage of this bill. There could be a significant decrease for an officer's safety in his/her private life should this bill be passed. Nor will this bill create a significant impact on government transparency.

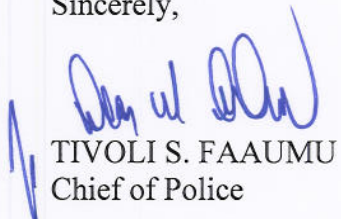
The Chiefs of each county and their staff strive to ensure the highest standards of professionalism and accountability of their officers. It is agreed that misconduct sheds a negative cloud upon the departments; although account for only a minute percentage of the law enforcement community in the State of Hawaii. These few incidents, sensationalized by media outlets, should not be the driving force, especially as the issue of privacy versus public interests is still at bay.

The Maui Police Department asks that you **OPPOSE** the passage of H.B. No. 1849.

The Honorable Scott K. Saiki, Speaker
House of Representatives
Page 2
March 12, 2018

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU
Chief of Police

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

Senate Committee on Labor
Honorable Jill N. Tokuda, Chair
Honorable J. Kalani English, Vice Chair

RE: Testimony Opposing H.B. 1849 H.D. 2, Relating to Public Safety

Hearing: March 15, 2018 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 H.B. 1849 H.D. 2. 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.



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SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
SENATE COMMITTEE ON LABOR

Thursday, March 15, 2018, 1:15 PM, Conference Room 229

HB 1849, RELATING TO PUBLIC SAFETY

TESTIMONY

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

Chairs Nishihara, Tokuda, and Committee Members:

HB 1849, HD 2 would make UIPA apply upon the second suspension of a county police officer in a five-year period. The League supports the intent of this measure.

It should not be necessary to file a lawsuit and obtain a court order to compel disclosure of the identity of, and summary information about misconduct by county police officers who have been suspended but not discharged for **serious** misconduct. The League of Women Voters of Hawaii requests that this Committee amend HB 1849, HD 2 so that UIPA unquestionably applies to all suspensions of county police officers in exactly the same way that UIPA applies to all suspensions of other public employees.

Thank you for the opportunity to submit testimony.



March 15, 2018

Sens. Clarence Nishihara and Jill Tokuda
Senate committees on Public Safety and Labor
State Capitol
Honolulu, HI 96813

Re: HB 1849, HD2

Sens. Nishihara and Tokuda 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



Aloha Chairs Nishihara and Tokuda, members of the Senate Committees on Public Safety, Intergovernmental, and Military Affairs, and Labor,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action (YPDA) Hawaii, I would like to express support for the intent of HB1849 HD2. Although increased transparency is the goal, and it is one we support, we do not believe this bill as currently drafted would have anywhere near the impact it must have to protect public health and safety interests from abuse by law enforcement officers.

As the ACLU has testified, prior disclosures show that few officers would be covered by this bill. 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. 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, see *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.

The Uniform Information Practices Act ("UIPA") should only protect government employees' reasonable rights to privacy when there is no possible repercussions to public health and safety. It should not be a shield behind which law enforcement officers may hide indiscretions from public scrutiny, and from other law enforcement agencies that might hire officers with records of misconduct. As has been tragically demonstrated, the ability of law enforcement officers to hide behind the UIPA can and does, in fact, represent a significant risk to public health and safety.

It's obvious that not all law enforcement agents are bad people capable of abusing their power and causing physical, psychological and emotional harm to victims. But it is also obvious that

some law enforcement officers do abuse their power and do cause significant harm to victims. Whether we are talking about HPD Sgt. Darren Cachola, who was caught on camera viciously beating—not “fighting with”—his girlfriend, and remaining on the force until last year; or whether its Ethan Ferguson, hired by DLNR after being fired by HPD for misconduct that should have rendered him ineligible to wear a badge of any kind, there are multiple examples of misconduct swept under the rug and left unaddressed, with disgusting and vile consequences.

It's time we treated law enforcement officers the same as other public employees. They hold a high degree of power and privilege over the average citizen and are entrusted with a high degree of responsibility. They are, therefore, more than deserving of a higher level of scrutiny than other government employees, not a lower level. They ought to be held to the highest standard of behavior and excellence and they ought to be held accountable for their actions by the public, whom they must answer to.

We recommend that the committees consider amending the bill to simply treat county police officers like other state law enforcement and every other government employee. To achieve this, the committees 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 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;~~

Mahalo,

Will Caron

Social Justice Action Committee Chair

HB-1849-HD-2

Submitted on: 3/13/2018 7:35:38 AM

Testimony for PSM on 3/15/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

HB-1849-HD-2

Submitted on: 3/13/2018 10:25:50 AM

Testimony for PSM on 3/15/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

The names of ALL disciplined police officers must be made public, including the reasons for discipline. These persons have life and death power, are armed with tasers, guns, mace, etc. and must be held to a higher standard. All too often we are learning of police misconduct, nationally and here.

HB-1849-HD-2

Submitted on: 3/13/2018 9:54:04 PM

Testimony for PSM on 3/15/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

In STRONG SUPPORT.