

**HB 1849**

**RELATING TO  
PUBLIC SAFETY**

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to:

2 (1) Require the chief of each county police department to  
3 disclose to the legislature the identity of a police  
4 officer upon the officer's second suspension in a  
5 five-year period or discharge; and

6 (2) Require disclosure under the Uniform Information  
7 Practices Act after a police officer's second  
8 suspension in a five-year period.

9 SECTION 2. Section 52D-3.5, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By amending subsection (b) to read:

12 "(b) The report shall:

13 (1) Summarize the facts and the nature of the misconduct  
14 for each incident;

15 (2) Specify the disciplinary action imposed for each  
16 incident;



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- 1           (3) Identify any other incident in the annual report  
2                   committed by the same police officer; [~~and~~]
- 3           (4) State whether the highest nonjudicial grievance  
4                   adjustment procedure timely invoked by the police  
5                   officer or the police officer's representative has  
6                   concluded:
- 7                   (A) If the highest nonjudicial grievance adjustment  
8                           procedure has concluded, the report shall state:
- 9                           (i) Whether the incident concerns conduct  
10                                   punishable as a crime, and if so, describe  
11                                   the county police department's findings of  
12                                   fact and conclusions of law concerning the  
13                                   criminal conduct; and
- 14                           (ii) Whether the county police department  
15                                   notified the respective county prosecuting  
16                                   attorney of the incident; or
- 17                   (B) If the highest nonjudicial grievance adjustment  
18                           procedure has not concluded, the report shall  
19                           state the current stage of the nonjudicial  
20                           grievance adjustment procedure as of the end of  
21                           the reporting period[-]; and



1        (5) Disclose the identity of the police officer upon the  
 2            police officer's second suspension in a five-year  
 3            period or discharge."

4            2. By amending subsection (d) to read:

5            "(d) The summary of facts provided in accordance with  
 6 subsection (b) (1) shall not be of such a nature so as to  
 7 disclose the identity of the individuals involved[-], except as  
 8 required under subsection (b) (5)."

9            SECTION 3. Section 92F-14, Hawaii Revised Statutes, is  
 10 amended by amending subsection (b) to read as follows:

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

13            (1) Information relating to medical, psychiatric, or  
 14            psychological history, diagnosis, condition,  
 15            treatment, or evaluation, other than directory  
 16            information while an individual is present at such  
 17            facility;

18            (2) Information identifiable as part of an investigation  
 19            into a possible violation of criminal law, except to  
 20            the extent that disclosure is necessary to prosecute  
 21            the violation or to continue the investigation;



1 (3) Information relating to eligibility for social  
2 services or welfare benefits or to the determination  
3 of benefit levels;

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

8 (A) Information disclosed under section 92F-  
9 12(a)(14); and

10 (B) The following information related to employment  
11 misconduct that results in an employee's  
12 suspension or discharge:

13 (i) The name of the employee;

14 (ii) The nature of the employment related  
15 misconduct;

16 (iii) The agency's summary of the allegations of  
17 misconduct;

18 (iv) Findings of fact and conclusions of law; and

19 (v) The disciplinary action taken by the agency;  
20 when the following has occurred: the highest  
21 nonjudicial grievance adjustment procedure timely



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1           invoked by the employee or the employee's  
2           representative has concluded; a written decision  
3           sustaining the suspension or discharge has been issued  
4           after this procedure; and thirty calendar days have  
5           elapsed following the issuance of the decision or, for  
6           decisions involving county police department officers,  
7           ninety days have elapsed following the issuance of the  
8           decision; provided that subparagraph (B) shall not  
9           apply to a county police department officer except in  
10          a case which results in the discharge or the second  
11          suspension in a five-year period of the officer;

12          (5) Information relating to an individual's  
13          nongovernmental employment history except as necessary  
14          to demonstrate compliance with requirements for a  
15          particular government position;

16          (6) Information describing an individual's finances,  
17          income, assets, liabilities, net worth, bank balances,  
18          financial history or activities, or creditworthiness;

19          (7) Information compiled as part of an inquiry into an  
20          individual's fitness to be granted or to retain a  
21          license, except:



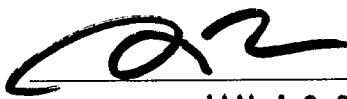
# H.B. NO. 1849

- 1 (A) The record of any proceeding resulting in the
- 2 discipline of a licensee and the grounds for
- 3 discipline;
- 4 (B) Information on the current place of employment
- 5 and required insurance coverages of licensees;
- 6 and
- 7 (C) The record of complaints including all
- 8 dispositions;
- 9 (8) Information comprising a personal recommendation or
- 10 evaluation;
- 11 (9) Social security numbers; and
- 12 (10) Information that if disclosed would create a
- 13 substantial and demonstrable risk of physical harm to
- 14 an individual."

15 SECTION 4. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18

INTRODUCED BY:  \_\_\_\_\_  
 JAN 18 2018



# H.B. NO. 1849

**Report Title:**

Police Officers; Disciplinary Action; Public Records; Disclosure

**Description:**

Requires police departments to disclose to the legislature the identity of an officer upon the officer's 2nd suspension in a 5-year period or discharge. Requires disclosure under the Uniform Information Practices Act after a police officer's 2nd suspension in a 5-year period.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





**HB 1849**

**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: House Committee on Labor and Public Employment

From: Cheryl Kakazu Park, Director

Date: February 13, 2018, 9:15 a.m.  
State Capitol, Conference Room 309

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

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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 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.**

Thank you for the opportunity to testify.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

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House Committee on Labor  
Honorable Aaron Ling Johanson, Chair  
Honorable Daniel Holt, Vice Chair

**RE: Testimony Opposing H.B. 1849, Relating to Public Safety**  
Hearing: February 13, 2018 at 9:15 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 government transparency. Thank you for the opportunity to submit testimony on H.B. 1849. 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.<sup>1</sup> 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.

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



Hawai'i

Committee: House Committee on Labor & Public Employment  
Hearing Date/Time: Tuesday, February 13, 2018, 9:15 a.m.  
Place: Conference Room 309  
Re: Testimony of the ACLU of Hawai'i in **Support** of H.B. 1849  
Relating to Public Safety

Dear Chair Johanson, Vice Chair Holt, and Committee Members:

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

This bill seeks to treat law enforcement officers **on terms more equal to those of other government employees**, providing that an employee's disciplinary information be kept private unless the infraction is so severe or recurrent that it results in termination or frequent suspensions. This bill will help to provide much needed transparency in police department matters, thus promoting public trust of law enforcement.

The ACLU of Hawai'i supports H.B. 1849 and asks that your committee pass it without amendments.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mateo Caballero'.

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.*

American Civil Liberties Union of Hawai'i  
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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Tuesday, February 13, 2018, 9:15 AM, Conference Room 309  
HB 1849, RELATING TO PUBLIC SAFETY

**TESTIMONY**

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

Chair Johanson and Committee Members:

**The League of Women Voters of Hawaii supports the intent of HB 1849 because the bill requires disclosure of the identify of any county 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 HB 1849 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. 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.

Thank you for the opportunity to submit testimony.



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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Tuesday, February 13, 2018, 9:15 AM, Conference Room 309  
HB 1849, RELATING TO PUBLIC SAFETY

**TESTIMONY**

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

Chair Johanson and Committee Members:

**The League of Women Voters of Hawaii supports the intent of HB 1849 because the bill requires disclosure of the identify of any county 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 HB 1849 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. 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.

Thank you for the opportunity to submit testimony.

**HB 1849**

**LATE  
TESTIMONY**



**HB-1849**

Submitted on: 2/12/2018 10:39:56 PM

Testimony for LAB on 2/13/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Urasaki	Individual	Support	No

Comments:



**LATE**