

# OFFICE OF INFORMATION PRACTICES

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

From: Cheryl Kakazu Park, Director

Date: February 6, 2018, 9:45 p.m.  
State Capitol, Conference Room 312

Re: Testimony on H.B. No. 2355  
Relating to Personal Privacy

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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.

In summary, DHHL narrowly limited the types of information it seeks to protect in this bill 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  
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House Committee on Ocean,  
Marine Resources, & Hawaiian Affairs  
Honorable Kaniela Ing, Chair  
Honorable Lynn DeCoite, Vice Chair

**RE: Testimony Commenting on H.B. 2355, Relating to the Personal Privacy**  
Hearing: February 6, 2018 at 9:45 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. 2355 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. 2355 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. 2355 to restrict public access. *E.g.*, Rob

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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. 2355, 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. 2355 is not intended to change the law as interpreted in OIP Opinion 91-19.

Thank you again for the opportunity to testify.

**HB-2355**

Submitted on: 2/2/2018 2:11:25 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Hawaiian Affairs Caucus, DPH	Support	No

Comments:

The Hawaiian Affairs Caucus, DPH, supports HB2355. We fully understand and respect the need to protect the privacy of HHCA beneficiaries as it pertains to those areas addressed by this measure. Too, release of sensitive, personal information to the public puts HHCA beneficiaries at risk for identity theft and improper use of data included in loan application and related files.

Please pass HB2355.

**HB-2355**

Submitted on: 2/3/2018 4:05:26 PM

Testimony for OMH on 2/6/2018 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

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

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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 2355 RELATING TO PERSONAL PRIVACY**

February 6, 2018

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. This bill also allows the Hawaiian Homes Commission to discuss these matters during an executive session recognizing the sensitive nature of these private family matters.

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.