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**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, &  
HAWAIIAN AFFAIRS**

**IN SUPPORT OF**

**SB 2782, SD1 RELATING TO PERSONAL PRIVACY**

March 13, 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, succession 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.

# OFFICE OF INFORMATION PRACTICES

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

From: Cheryl Kakazu Park, Director

Date: March 13, 2018, 9:45 a.m.  
State Capitol, Conference Room 312

Re: Testimony on S.B. No. 2782, S.D. 1  
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. **OIP, however, does not want the proposed statute to be placed within the UIPA itself**, for reasons explained later.

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.

Finally, OIP notes that the Senate Committee on Judiciary expressed concern in its committee report regarding the placement of this proposed statute in a new chapter and suggested that the statute could be inserted into part III of the UIPA instead, although it did not make an amendment to that effect. OIP generally objects to placement of confidentiality statutes for specific records in the UIPA, as **the UIPA is a disclosure statute** with limited exceptions applicable to agency records in general, **and does not contain provisions mandating confidentiality for specific records. Confidentiality provisions are more appropriately placed in the relevant agency's own chapter or other chapters of the HRS.** Part III of the UIPA sets out laws governing an individual's request for "personal records," *i.e.*, records "about" the individual requester, and thus it would be a particularly inappropriate placement for a confidentiality statute applicable to requests by third parties. OIP's understanding is that the placement of the proposed statute in a new chapter was necessary because OHA did not have a more suitable HRS chapter to place it in; however, **OIP's main concern is that the proposed statute not be placed within the UIPA.**

Thank you for the opportunity to testify.

**SB-2782-SD-1**

Submitted on: 3/12/2018 5:22:12 AM

Testimony for OMH on 3/13/2018 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT this bill. Mahalo.

**SB-2782-SD-1**

Submitted on: 3/9/2018 6:19:59 PM

Testimony for OMH on 3/13/2018 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.	Individual	Support	No

Comments: