

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**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON
HAWAIIAN AFFAIRS**

IN SUPPORT OF

SB 2782 RELATING TO PERSONAL PRIVACY

February 6, 2018

Aloha Chair Shimabukuro 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.

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: Senate Committee on Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 6, 2018, 1:35 p.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2782
Relating to Personal Privacy

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.

SB-2782

Submitted on: 2/3/2018 4:21:35 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

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

Comments:

SB-2782

Submitted on: 1/31/2018 3:40:48 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

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

Comments:

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

Senate Committee on Hawaiian Affairs
Honorable Maile S.L. Shimabukuro, Chair
Honorable Brickwood Galuteria, Vice Chair

RE: Testimony Commenting on S.B. 2782, Relating to the Personal Privacy
Hearing: February 6, 2018 at 1:35 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 governmental transparency. Thank you for the opportunity to submit testimony **commenting** on S.B. 2782 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 S.B. 2782 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 S.B. 960 to restrict public access. *E.g.*, Rob 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 S.B. 2782, 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 S.B. 2782 is not intended to change the law as interpreted in OIP Opinion 91-19.

Thank you again for the opportunity to testify.

SB-2782

Submitted on: 1/31/2018 7:41:23 PM

Testimony for HWN on 2/6/2018 1:15:00 PM

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

Comments:

SB-2782

Submitted on: 2/2/2018 11:48:42 AM

Testimony for HWN on 2/6/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Koonohiokala Norenberg		Support	No

Comments:



TESTIMONY IN **SUPPORT** OF SB2782, RELATING TO PERSONAL PRIVACY

Tuesday, February 6, 2018, 1:15 p.m., Conf. Rm. 016

Aloha Senator Shimabukuro,

The DPH Hawaiian Affairs Caucus supports SB2782 that would specify certain records of the Department of Hawaiian Home Lands not be required for public disclosure or for inspection pursuant to public records requests, and may be discussed during an executive meeting of the Hawaiian Homes Commission.

This legislation seeks to protect the privacy of lessee files, including information relating to loan applications; personal finances; birth, marriage, and death certificates; genealogies; and designations of successors for a lease. Beneficiaries have a significant interest that such sensitive information be held in confidence and not released for public dissemination. The department has gone so far as to uphold such confidentiality through its own administrative rules, title 10-1-3, that requires "personal data received or recorded by the department be held in absolute confidence and no release of information shall be made without the written approval of the individual concerned." Protecting this information statutorily is a logical next step.

We strongly encourage the passage of SB2782.

Me kealoha pumehana,
LEIMOMI KHAN, Chair