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To: Senate Committees on Public Safety, Intergovernmental,
and Military Affairs, on Water and Land, and on
Transportation and Energy

From: Cheryl Kakazu Park, Director

Date: February 12, 2018, 10:30 a.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2947
Relating to Public Safety

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) **opposes this bill** as currently written, because it would have the net effect of reducing government accountability and expanding an exemption from the disclosure requirements of the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS. If this is not the intent, **OIP could support an amended version.**

Currently, 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 add state law enforcement officers to police officers as employees whose suspensions do not automatically become public** until an officer’s second

suspension within a five-year period. The bill would also add a misconduct reporting requirement for state law enforcement officers that is similar to the one for police officers, so that if a law enforcement officer is suspended for a second time within a five-year period, the law enforcement officer must be identified in the relevant department's annual misconduct report to the Legislature.

OIP has supported other versions of this bill (see also HB 1849) that applied only to police officers, even though they would not have placed police officers on the same footing as all other government employees for public disclosure of misconduct information, because those bills would at least have closed part of the gap and provided a greater level of government accountability. **This bill, however, amends the UIPA to add state law enforcement officers into the class of government employees whose suspensions are not automatically public, so its net effect would be to decrease, rather than increase, public transparency.** In other words, this proposed amendment would mean that (1) identities of police officers suspended for a second time in two years would become public, but (2) identities of suspended state law enforcement officers would no longer be public unless the suspension was the second one within two years. **OIP thus believes the UIPA amendment in its current form would decrease public transparency and accountability, and opposes it for that reason.**

Less accountability does not appear to be the bill's intended result, as its purpose statement expresses a desire to (1) increase transparency by requiring misconduct reporting for state law enforcement officers, and (2) change the UIPA's public disclosure requirements by providing greater transparency regarding police officers' misconduct information. Therefore, **OIP recommends that this Committee amend the bill by deleting the phrase "or state law enforcement officer[s]"** where it is added to the UIPA's existing language in

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subsection 92F-14(b)(4)(B)(v), HRS (**bill page 9, lines 7 and 10-11**). **OIP would support the bill if so amended.**

Thank you for the opportunity to testify.



Hawai'i

Committee: Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Water and Land
Senate Committee on Transportation and Energy
Hearing Date/Time: Monday, February 12, 2018, 10:30 a.m.
Place: Conference Room 225
Re: Testimony of the ACLU of Hawai'i in **Support** of S.B. 2947
Relating to Public Safety

Dear Chair Nishihara, Chair Rhoads, Chair Inouye, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes in **support** of S.B. 2947, 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 S.B. 2947 and asks that your committees pass the bill without amendments.

Thank you for the opportunity to testify.

Sincerely,

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.

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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 Water & Land
Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair

Senate Committee on Transportation & Energy
Honorable Lorraine R. Inouye, Chair
Honorable Will Espero, Vice Chair

RE: Testimony Opposing S.B. 2947, Relating to Public Safety
Hearing: February 12, 2018 at 10:30 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 S.B. 2947. 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.

SB-2947

Submitted on: 2/10/2018 10:34:30 PM

Testimony for PSM on 2/12/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Cuddle Party	Support	No

Comments:

SB-2947

Submitted on: 2/9/2018 8:56:09 AM

Testimony for PSM on 2/12/2018 10:30:00 AM

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

Comments:



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SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY
Monday, February 12, 2018, 10:30 AM, Conference Room 225
SB 2947, RELATING TO PUBLIC SAFETY

TESTIMONY

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

Chairs Nishihara, Rhoads, Inouye and Committee Members:

The League of Women Voters of Hawaii opposes SB 2947 because the bill would delay disclosure of the identify of Department of Public Safety, Department of Transportation, and Department of Land and Natural Resources law enforcement officers until their second suspension in a five-year period.

The League of Women Voters of Hawaii requests amendment of SB 2947 so that UIPA unquestionably applies to suspensions of all law enforcement officers, INCLUDING COUNTY POLICE, 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, law enforcement officers who have been suspended but not discharged for serious misconduct.

Thank you for the opportunity to submit testimony.