

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental,  
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 2, 2017, 1:15 p.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 331  
Relating to Police Reports

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports the intent of this bill to ensure that police departments have uniform state standards to follow in their responses to requests under the Uniform Information Practices Act (“UIPA”), chapter 92F, for recordings made by body-worn cameras, as well as standards for when to use body-worn cameras, but is **concerned that this bill would unduly limit public access and would create a special request process and fee structure**, separate from what is set out for government records in general by OIP’s rules under the UIPA, **and leave disclosure decisions largely within the discretion of the individual police departments.**

**OIP anticipates that the increased use of body-worn cameras will lead to a high volume of UIPA requests for body-worn camera footage, thus requiring additional staffing and operational funding for OIP to address these new cases.** Regardless of whether this bill becomes law, the county police departments have been and are likely to continue to acquire and use body-worn

cameras. Thus, OIP expects to be dealing in the near future with increasing numbers of appeals from the public for the resulting footage as well as requests from police departments for guidance as to their UIPA responsibilities.

This bill would address the potential for time-consuming record requests and appeals, but it would do so by placing the disclosure of body-worn camera footage largely within the discretion of the police departments. Specified categories of footage, including footage filmed in private spaces or where disclosure would be “inappropriate,” are exempted altogether from disclosure under the UIPA by proposed section 52D-D, and under proposed section 52D-F footage related to the use of deadly force or an investigation of an officer cannot be released to the public before all criminal or administrative matters have concluded unless a law enforcement agency “determines that the release furthers a law enforcement purpose.” Proposed subsection 52D-G(d) also exempts from public disclosure any footage that was not required to be made by law or departmental policy, unless it “relate(s) to a law enforcement purpose.” For the remaining footage, public record requests would be accepted under section 52D-G, but would only be processed if they specified the date, time, and place of the recording, and the name of at least one person who was a subject of the recording. Thus, a request for footage taken at a specified place and time but where the requester did not know the names of the people involved could be denied under this bill, as would a request for footage of a specified individual taken at a specific place but where the date was not precisely known, or on a specified evening at an unknown place. A request for the footage of more than five different incidents would be deemed a “voluminous request” under proposed section 52D-H and would be given an extended response time of twenty-one business days rather than being subject to the usual time limits for UIPA requests. Further, proposed section 52D-G would allow police departments to set

their own fees for responding to record requests, in place of those set forth by OIP's rules under the UIPA.

**OIP believes that the effect of this bill would be to unduly limit public access to body-worn camera footage. The tight restriction on the public's ability to request footage, combined with the discretion for the individual law enforcement agencies to determine that footage related to a law enforcement purpose and release it on that basis, would put the release of footage largely at the discretion of law enforcement agencies. Further, the special response process in this bill and the ability by the individual departments to set their own fees would run counter to the UIPA's policy of setting uniform standards for access to government records.** Thus, while OIP supports the intent of the bill to set standards for public access to body-worn camera footage, **OIP believes that this bill is a flawed vehicle** for doing so.

Thank you for the opportunity to testify.

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**SENATE BILL 331**

**RELATING TO LAW ENFORCEMENT CAMERAS**

**BEFORE THE COMMITTEE ON FINANCE**

DATE : Thursday, February 2, 2017

TIME : 1:15 P.M.

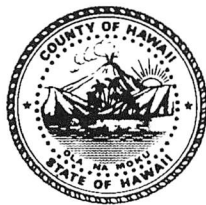
PLACE : Conference Room 229  
State Capitol  
415 South Beretania Street

**PERSON TESTIFYING:**

Police Chief Paul K. Ferreira  
Hawaii Police Department  
County of Hawaii

(Written Testimony Only)

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

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February 1, 2017

Senator Clarence K. Nishihara, Chair  
Chairman and Committee Members  
Committee on Public Safety, Intergovernmental and Military Affairs  
415 South Beretania Street, Room 308  
Honolulu, Hawai'i 96813

**Re: SENATE BILL 331 RELATING TO LAW ENFORCEMENT CAMERAS**

Dear Senator Nishihara:

The Hawai'i Police Department supports Senate Bill 331, with its primary purpose being to regulate the use of body-worn video cameras by law enforcement officers and body-worn video camera footage.

The Hawai'i Police Department supports a body-worn camera program and believes that like any other law enforcement tool, the four county departments as nationally accredited law enforcement agencies are vested with the responsibilities to create policies and procedures which are in line with national standards. We believe the legislature's intent to support a law enforcement body-worn camera program and its ultimate successful deployment is best suited when the employing agency is vested with the responsibility for its success as is the case with all new law enforcement programs.

It is for these reasons we fully support Senate Bill 331.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF



Committee: Committee on Public Safety, Intergovernmental and Military Affairs  
Hearing Date/Time: Thursday, February 2, 2017, 1:15 p.m.  
Place: Room 229  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 331, Relating to Body-Worn Video Cameras

Dear Chair Nishihara and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 331, which requires each county police department to develop policies for the use of body-worn cameras and vehicle cameras.

While we support the use of police body-worn and vehicle cameras and generally support the footage disclosure provisions of this measure, we recommend that the Legislature set clear guidelines to protect individual privacy and ensure consistency in law enforcement practices. Police body-worn cameras are only as good as the policies governing them. As written, S.B. 331 fails to establish any guidance for the actual use of body cameras, leaving substantive policy decisions to departmental discretion. This discretion creates loopholes for abuse. The ACLU of Hawaii respectfully requests that this Committee amend S.B. 331 to incorporate the policy guidelines set out in S.B. 421, which we believe adequately addresses these concerns.

Thank you for this opportunity to testify.

Mandy Finlay  
Advocacy Coordinator  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii 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 Hawaii has been serving Hawaii 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

**RE: Testimony Supporting S.B. 331, Relating to Body-Worn Video Cameras**  
Hearing: February 2, 2017 at 1:15 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 government transparency. Thank you for the opportunity to submit testimony on S.B. 331. The Law Center **strongly supports the intent of this bill, but has concerns about some of the disclosure provisions.** Rather than setting new standards with likely unintended consequences, the bill should largely leave disclosure to the case-by-case analysis of existing law under the UIPA.<sup>1</sup>

Eliminate Proposed Section 52D-F; Issues Are Addressed Under Existing Law  
*Under proposed section 52D-F, video of a police officer taking a life might never become public.* When a police officer kills someone or commits a potential crime, the relevant body camera footage should be publicly accessible in appropriate circumstances and with proper precautions. Existing law under the UIPA already provides precautions to preserve an officer's right to fair trial in criminal proceedings and to protect the integrity of pending criminal or administrative proceedings. *E.g.*, OIP Op. No. 90-18 at 5-6 (permitting police to withhold videotaped confession). Restrictions on access to body camera videos for those purposes do not require special legislation.

Also, under the bill, as soon as criminal or administrative proceedings are complete, the department has no obligation to preserve the video. But the public will not have notice of criminal proceedings if the officer is never charged and no notice regarding many administrative proceedings. Without notice, publicly significant footage will be destroyed before anyone can ever ask for it. *That is exactly what happened with police disciplinary files before the Legislature amended HRS § 52D-3.5 in 2014 to require preservation of files for 18 months after public notice that a proceeding is complete.*<sup>2</sup>

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<sup>1</sup> The Law Center does not object to the limited exemption for clearly private situations identified in proposed section 52D-D.

<sup>2</sup> Civil Beat, *Fired Honolulu Police Officer's File Destroyed Before Discharge Revealed* (Feb. 18, 2014) (referring to HPD's destruction of Ethan Ferguson's termination file before the Department even published its annual disciplinary report).

Lastly, subsection (c) erroneously contemplates that video evidence is protected from disclosure when there is no conviction. HRS chapter 846 protects arrest information under such circumstances, but it does not protect investigative information from disclosure. HRS § 846-1 (definitions); *accord* OIP Op. No. 99-02 at 6. A police officer's general privacy interests are protected by redacting the video, not withholding.<sup>3</sup>

#### Requiring Request for Video by Person's Name Creates a Privacy Problem

Requesters should not be required to request video by reference to the name of a subject in the video, as in proposed section 52D-G(a)(3). If a requester names an individual, the police department cannot redact that person's identity from the footage to preserve his or her privacy. If the individual has a legitimate privacy interest, then the department will refuse to disclose the footage.

The Law Center appreciates the concern about unmanageable requests for video footage.<sup>4</sup> Requiring a requester to specify date, approximate time, and location to retrieve a recording will avoid blanket requests. Adding a person's name will not measurably further that goal.

#### Existing Law Already Covers Fees

HRS § 92F-42(13) provides for rules on "fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide a waiver of such fees when the public interest would be served." There is no reason to have a separate fee for police body camera video.

Moreover, digital-tracking technology provides agencies the ability to mark an individual for obscurity throughout a video with minimal cost and effort. *E.g.*, Axon, *The Future of FOIA: Find, Redact, Deliver*, at <http://www.axon.io/webinar/follow-up-redaction> (presentation by TASER International's technology unit regarding the ease of using its automated video redaction tool for Evidence.com, a digital evidence management platform); Yale Law School Media Freedom & Information Access Clinic, *Police Body Cam Footage: Just Another Public Record* at 23 (December 2015) (describing other automated blurring tools available at little or no cost). Thus, existing fees are adequate to address the cost of reviewing body camera video.

Thank you again for the opportunity to testify.

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<sup>3</sup> *E.g.*, ACLU, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* at 7 (March 2015) ("If recordings are redacted, they should be discloseable [sic].").

<sup>4</sup> Local police departments have had video evidence for decades and other video footage (*e.g.*, Taser video) for years. Unlike the oft-cited Seattle situation where an individual requested all police footage, the Law Center is not aware of anyone making excessive requests for police video here. So, while the Law Center appreciates the concern about large requests, it does not appear to be an issue in Hawai'i.





Feb. 2, 2017

Sen. Clarence Nishihara  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
State Capitol  
Honolulu, HI 96813

Re: SB 421, 331

Sen. Nishihara and Committee Members:

We support both measures as a way to provide transparency for body cameras used by police officers. Such use would increase the protection and accountability of officers in encounters.

We would prefer SB 421, which appears to be the same as the measure that nearly made it through the Legislature last year.

Thank you for your time and attention.

Sincerely,

Stirling Morita  
President, Hawaii Chapter SPJ

My name is Maile Murphy. I am the Civil Rights Committee Chairperson of the Hawaii chapter of the Young Progressives Demanding Action. We have close to 1,000 members statewide and it is on their behalf that I am testifying today.

In addition, I personally am a resident of congressional district 18 and senate district 8.

The YPDA, like the majority of Americans, is strongly in favor of police worn body cameras. In 2015, a national Cato/YouGov poll found that 92% of people surveyed were in favor of police wearing body cameras. In addition 55% of respondents were willing to pay increased taxes to equip local police. It is not even remotely under debate whether or not this is something that the people want.

The question that remains, then, is how this will impact our men and women in blue. A year-long study regarding body cameras was performed on the Orlando Police Department by the University of South Florida between 2014 and 2015. This study found that police officers who wear body cameras had a 53% less chance to be involved in use of force incidents, otherwise known as "response to force". In addition, civilian complaints against those officers wearing body cameras dropped by 65%. A majority of officers surveyed after the conclusion of the study indicated that they would be in favor of their force adopting body worn cameras for all front-line officers. A full 25% of officers surveyed confirmed that wearing body cameras impacted their behavior on the job with 30-40% of officers agreeing that body worn cameras also led to a trend of "de-escalated" confrontations between themselves and citizens in the community. Two thirds of officers indicated that they would want to continue wearing body cameras; "[These officers] reported agreement that [body worn cameras] are capable of improving their evidence collection and their recollection of events, minimizing errors in their reports, and that reviewing [body worn camera] video after an incident would help them become a better officer, identify ways to improve interactions with citizens, and identify issues in general that they may need to improve on."

On behalf of the YPDA, I would like to thank you for taking the time to listen to this testimony and once again would strongly urge you to vote in favor of SB331 and to merge it with SB331.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 1:28 PM  
**To:** PSMTestimony  
**Cc:** annsfreed@gmail.com  
**Subject:** Submitted testimony for SB331 on Feb 2, 2017 13:15PM

**SB331**

Submitted on: 2/1/2017

Testimony for PSM on Feb 2, 2017 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments: Aloha Chair Nishihara and members, As stated in previous testimony on SB421 I believe body cameras are the right way to go for our police departments. Ann S. Freed, Women's Rights Advocate

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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