

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: March 1, 2017, 9:15 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 424
Relating to Public Safety

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) **supports this bill**, which would amend the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS, to limit a clause giving special treatment to information about police officers’ misconduct. **The proposal would only protect an officer’s first suspension within five years, and would require police departments to include information about second or subsequent suspensions in their annual reports to the Legislature.**

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 limit the special statutory privacy interest to apply only to an officer’s first suspension within a five-year period. If a police officer is suspended for a second time within a five-year period,

Senate Committee on Judiciary and Labor
March 1, 2017
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the officer must be identified in the police department's annual report to the Legislature.

The UIPA amendment proposed by this bill still would not place police officers on the same footing as all other government employees for public disclosure of misconduct information, but it would at least close part of the gap and provide a greater level of government accountability. Therefore, OIP supports this bill.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE CO-MM

March 1, 2017

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 424, Relating to Public Safety

I am Cary Okimoto, Acting Chief of Police of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of Senate Bill No. 424, Relating to Public Safety.

The HPD already discloses the names of officers who have been discharged from the department, and this bill would add in the names of the officers who have been suspended twice within a five-year period. We believe that this bill is reasonable. We feel that it will encourage public trust by providing additional information on officer misconduct. At the same time, it withholds the names of officers who have committed minor infractions, such as turning in a late mileage slip or missing the deadline for special duty.

As the acting chief, I am very aware of the public's push for transparency and accountability. We agree that more information should be provided, and we see this bill as a step in the right direction.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Okimoto", is written over a circular stamp or seal.

Cary Okimoto
Acting Chief of Police

SHOPO



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Barry Aoki

TO: The Honorable Gilbert Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

The Honorable Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

FROM: Tenari Ma'afala, President 
State of Hawaii Organization of Police Officers

DATE: March 1, 2017

SUBJECT: Testimony on S.B. No. 424, Relating to Public Safety

DECISION: Wednesday, March 1, 2017

MAKING: 9:15 a.m. Conference Room 016

This bill regards provision of a police officer's name who has been suspended for the second time in a five-year period or discharged. The State of Hawaii Organization of Police Officers ("SHOPO") opposes S.B. 424.

Currently, the Uniform Information Practices Act ("UIPA"), Hawaii Revised Statutes section 92F-14(b)(4)(B), provides that a police officer does not have a significant privacy interest regarding employment misconduct that results in a discharge, ninety days after the highest nonjudicial grievance adjustment procedure has concluded and a decision has been issued sustaining the discharge. Thus, UIPA already provides access to a police officer's name who has been discharged when this period ends.

Additionally, suspensions can result for a variety of reasons, including being late to work, turning in a mileage slip late, missing court, etc. Police officers should not be publicly named and shamed for suspensions.

Further, the Hawaii Supreme Court, in Peer News LLC dba Civil Beat v. City and County of Honolulu and Honolulu Police Department, and State of Hawaii Organization of Police Officers (Hawaii'i, 2016), recognized that Hawaii Revised Statutes section 92F-2 provides in relevant part:

The policy of conducting government business as openly as possible must be tempered by a recognition of the right to people to privacy, as embodied in section 6 and section 7 of the constitution of the state of Hawaii'i.

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The Court further stated that it is not:

[T]he Legislature's exclusive role to "define" the constitutional privacy right, nevertheless...the legislature is not precluded from providing privacy protections greater than those provided by the constitution.

In conclusion, the Court held, that:

HRS § 92F-14 recognizes a significant privacy interest in police officers' disciplinary suspension records, and this interest must be balanced against the public interest in disclosure of the requested records.

This case was sent back to the Circuit Court to come up with the factors for the balancing test and to balance each officer's privacy versus the public's interest.

Finally, please keep in mind that a police officer's job is like no other government employee. Police Officers respond to robberies with suspects armed with shotguns, affrays with people fighting with baseball bats, and domestic violence cases, to name a few. No one is happy when they are pulled over for speeding. Yet how often does speed cause fatalities? Police Officers frequently interact with people when people are at their worst.

Thus, SHOPO opposes this bill and recommends that this Committee defer this bill so that the court can determine the factors to weigh in making a determination as to whether to release police officer suspension records or not. Thank you for consideration of our testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary and Labor
Honorable Gilbert S.C. Keith-Agaran, Chair
Honorable Karl Rhoads, Vice Chair

RE: Testimony Opposing S.B. 424, Relating to Public Safety
Hearing: March 1, 2017 at 9:15 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. 424. The Law Center **opposes this bill because it will not measurably increase public access to information about police discipline.**

Under existing law as recently interpreted by the Hawai'i Supreme Court in *Peer News LLC v. City & County of Honolulu*, No. SCAP-14-889 (June 9, 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.

That case remains pending to litigate what information the courts will consider when 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. The Legislature has only required the annual police disciplinary reports to link multiple incidents by the same police officer since 2015. It is not apparent from the reports that many, if any, officers have been suspended twice or more within five years.

Thank you again for the opportunity to testify.

¹ The Law Center represents Peer News in that litigation, but submits this testimony on its own behalf.



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SENATE COMMITTEE ON JUDICIARY AND LABOR
Wednesday, March 1, 2017, 9:15 AM, Conference Room 016
SB 424, RELATING TO PUBLIC SAFETY

TESTIMONY

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

Chair Keith-Agaran and Committee Members:

The League of Women Voters of Hawaii supports the intent of SB 424 because the bill explicitly requires disclosure of the identify of any police officer upon the officer's second suspension in a five-year period,

The League of Women Voters of Hawaii requests that this Committee amend SB 424 so that UIPA unquestionably applies to ALL suspensions of police officers 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 a county police department to disclose the identity of, and summary information about misconduct by, police officers who have been suspended but not discharged for serious misconduct.

Thank you for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB424 on Mar 1, 2017 09:15AM
Date: Sunday, February 26, 2017 11:21:43 PM

SB424

Submitted on: 2/26/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments: In strong support.

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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From: mailinglist@capitol.hawaii.gov
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Subject: *Submitted testimony for SB424 on Mar 1, 2017 09:15AM*
Date: Friday, February 24, 2017 8:56:36 AM

SB424

Submitted on: 2/24/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

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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