

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Labor and Public Employment

From: Cheryl Kakazu Park, Director

Date: February 12, 2019, 9:20 a.m.  
State Capitol, Conference Room 309

Re: Testimony on H.B. No. 285  
Relating to Public Safety

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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. As amended by the S.D. 1, this proposal would treat information about an officer’s suspension the same way as information about any other government employee’s suspension, and would require police departments to identify officers receiving a suspension in their annual reports to the Legislature. To reach the same result with less confusing statutory language, OIP has recommended an amendment to S.D. 1 of the bill.

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. **The S.D. 1 version of this bill would no**

**longer provide a special statutory privacy interest for an officer's suspension.**

OIP notes as a technical matter, however, that because of the way this bill was originally written, the statutory language proposed by the S.D. 1 ended up more complicated than is necessary and could be simplified by taking out the police officer exception altogether, as under the S.D. 1 the exception would no longer provide for any different treatment of misconduct information than what is set out for public employees in general.

The current law first sets out a general rule that suspension and termination information is not private, then an exception to that general rule for police officer misconduct information, and then an exception to that exception for police officer terminations. The bill as originally introduced proposed to broaden the exception-to-the-exception to remove the privacy protection for second or subsequent suspensions as well. The S.D. 1 further broadened that to remove the privacy protection for all suspensions, which means that the exception-to-the-exception has now swallowed the original exception – in other words, there is no longer any reason to set out an exception at all, since the S.D. 1 proposes to treat suspension or termination information regarding a county police department officer in the same way as the general rule provides for.

**To simplify the proposed amendment and avoid confusion, OIP recommends that instead of the added language in bill page 5, line 10, “discharge or suspension of . . .,” this Committee should amend this bill by entirely removing the exception for misconduct information about a county police department officer, so that the language at bill page 5, lines 8-11 would read as follows:**

**~~“decision; [provided that subparagraph (B) shall not apply to a county police department officer except in a case which results in the discharge of the officer;]”~~**

**The UIPA amendment proposed by this bill would close the gap between treatment of law enforcement officers’ misconduct information and that of other government employees, and provide a greater level of government accountability. OIP therefore supports the S.D. 1 version of this bill, with a recommended amendment to simplify the language and an effective date of upon approval.**

Thank you for considering OIP’s testimony and suggested amendment.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Labor & Public Employment  
Honorable Aaron Ling Johanson, Chair  
Honorable Stacelynn K.M. Eli, Vice Chair

**RE: Testimony Supporting H.B. 285, Relating to Public Safety**  
Hearing: February 12, 2019 at 9:20 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 in support of H.B. 285. The Law Center **strongly supports this bill because it will measurably increase public access to information about police discipline.**

In 2018, the Honolulu Police Department reinstated Sgt. Darren Cachola despite a 2014 video that captured him beating a women in a restaurant. HPD wanted to explain to the public why it was required to reinstate Sgt. Cachola, rather than terminate him. But SHOPO filed a lawsuit to stop HPD from telling the public why Sgt. Cachola is still a police officer.<sup>1</sup>

That lawsuit is based on the language that this bill would fix. The case will tie up public access to the Cachola files for years. Unless the Legislature makes police officers like all other government employees, *every* record requested about a suspended police officer will be held up for years – regardless how strong the public interest.

In 2013, Honolulu Civil Beat filed a lawsuit to require access to records about suspended police officers who used malicious force, lied during investigations, falsified records, hindered a federal investigation, and committed hit and runs. Five years later, that request also is still in litigation.

HPD's most recent disciplinary report to the Legislature shows that other officers have been suspended (despite HPD's efforts to discharge them) for: (1) "slap[ing] and kick[ing] his girlfriend during an argument" (No. 16-040); (2) "a physical altercation with his ex-wife, causing numerous injuries . . . in the presence of a minor less than 14 years of age" (No. 16-049); (3) DUI and hit-and-run (No. 16-052); (4) DUI, hit-and-run,

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<sup>1</sup> The Law Center represents Honolulu Civil Beat in that litigation, but submits this testimony on its own behalf.

lying during an investigation, and falsifying records (No. 17-010); (5) stealing drug evidence and lying and/or falsifying records (No. 17-046); and (6) DUI (No. 18-008).

Bills to fix the issues with public access to records of suspended police officers have been introduced every year since 2015. After nearly 25 years, it is apparent that the reasons that the 1995 Legislature distinguished police officers from other government employees (because police officers might be suspended for minor offenses, such as failing to shine their shoes) are no longer legitimate concerns.

The long history of police discipline reflected in the annual legislative reports shows that suspended police officers have committed exceptionally troubling conduct. The public deserves clear and timely access to information about suspended police officers.

Thank you again for the opportunity to testify in support of H.B. 285.



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HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Tuesday, February 12, 2018, 9:20 AM, Conference Room 309  
HB 285 Relating to Public Safety

**TESTIMONY**

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

Chair Johanson and Committee Members:

**The League of Women Voters strongly supports HB 285.** This bill requires county police departments to disclose to the Legislature the identify of an officer upon that officer's suspension or discharge and amends UIPA to allow public disclosure of information about employment misconduct that results in the suspension of a police officer.

The League of Women Voters of Hawaii believes that UIPA should apply to suspensions of county 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 disclosure of the identity of, and summary information about misconduct by, a county police officer who has been suspended but not discharged for **serious** misconduct.

Thank you for the opportunity to submit testimony.



Feb. 12, 2019

Rep. Aaron Ling Johanson  
House Committee on Labor and Public Employment  
State Capitol  
Honolulu, HI 96813

Re: HB 285

Rep. Johanson and Committee Members:

We support this bill, which would allow disclosure of the names of disciplined police officers in annual reports by the police departments to the Legislature and the public. This would put such officer discipline on a par with that of other disciplined public employees.

Such disclosure will go a long way to assuring the public that the minority of bad officers will be held accountable. Its trust is important because of police responsibility due to their powers.

This seemed to be the case before the 1980s, when the Honolulu Police Commission would routinely list on agendas the names of officers to be disciplined under the Sunshine Law.

We hope the committee will help end years of secrecy about disciplined officers' identities.

Sincerely,

Stirling Morita  
President, Hawaii Chapter SPJ

**HB-285**

Submitted on: 2/11/2019 8:12:15 AM

Testimony for LAB on 2/12/2019 9:20:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Support	No

## Comments:

Passage may provide an extra layer of accountability for police officers. Being that the vast majority of police officers respect and honor their "Oath of Office," this will not have an affect on them. Not so, for the very small group of officers that frequensly make the wrong decisions, thereby jeopardizing the reputation and good standing of their respective police departments.



**LATE**

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Thank you for considering OIP’s testimony and suggested amendment.



Hawai'i

LATE

Committee: Committee on Labor & Public Employment  
Meeting Date/Time: Tuesday, February 12, 2019 9:20 a.m.  
Place: Conference Room 309  
Re: Testimony of the ACLU of Hawai'i in support of H.B. 285,  
Relating to Public Safety


Dear Chair Johanson, Vice Chair Eli, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes in support of H.B. 285, which requires county police departments to disclose the identity of police officers upon the officer's suspension or discharge.

Police transparency and accountability are not only necessary to public trust in the police but they are also integral to public safety and the protection of civil rights and liberties. Presently, obtaining the disciplinary records of county police officers often requires protracted and costly litigation with potentially uncertain results. See *Peer News LLC v. City & County of Honolulu*, 376 P.3d 1 (Haw. 2016) (holding that under current law, "[d]isclosure of the [county police disciplinary] records is appropriate only when the public interest in access to the records outweighs [the] privacy interest [of the police officer].").

This bill seeks to treat county police officers on equal terms as other government employees, whose disciplinary records are more readily available to the public. See H.R.S. § 92F-14(b)(4)(B)(v) (treating disciplinary actions, except discharge, taken against "a county police department officer" differently from all other government employees for purposes of public records law). The current unequal treatment of county police officers makes little sense, because—given the extraordinary responsibility delegated to the police—the public interest in access to their disciplinary records is much stronger than that for most other government employees.

Consequently, we urge the Committee to support H.B. 285. Thank you for the opportunity to testify.

Sincerely,  
  
Mandy Fernandes  
Policy 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.*

American Civil Liberties Union of Hawai'i  
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February 11, 2019

**Testimony IN SUPPORT of HB 285  
Relating to Public Safety**

TO: Chair Aaron Johanson, Chair and Stacelynn Eli, Vice Chair and  
Members of the House Committee on Labor

FROM: Barbara Polk, on behalf of the Board of Common Cause Hawaii

Major focuses of Common Cause Hawaii are transparency and accountability in government. For these reasons, we **strongly support HB 285** that would require the release of the names of police officers who have been suspended or dismissed.

It is very important for people to trust and respect police officers, but that is difficult to do when the public lacks information on the integrity of the police. The names of the people the police arrest are made public, as are disciplinary actions against other public employees. There is no reason to exempt the police.

Over the past few years, there have been many incidents that call into question the behavior of police and the willingness of the police department to call officers to account for their misdeeds. In some cases, it appears that criminal behavior is involved in suspensions or dismissals, but those crimes are not pursued. Better information would increase the respect for police and perhaps also make police officers more careful, if their misdeed were to be reported publicly.

**Please pass HB 285.**