

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: House Committee on Housing

From: Cheryl Kakazu Park, Director

Date: March 21, 2019, 10:35 a.m.
State Capitol, Conference Room 423

Re: Testimony on H.C.R. No. 127 and H.R. No. 117
Requesting the Department of Labor and Industrial Relations to
Convene and Interagency Enforcement Task Force to Combat Illegal
Activities Related to the Construction and Operations of “Monster
Homes” in the State.

Thank you for the opportunity to submit testimony on this bill, which would request the Department of Labor and Industrial Relations to convene an Interagency Enforcement Task Force (Task Force) regarding monster homes. The Office of Information Practices (OIP) takes no position on the proposed Task Force, but **is recommending deletion of the clause allowing the group to hold closed meetings under section 92-5, HRS, part of the Sunshine Law. The proposed exemption is unnecessary and would in any case be ineffective.**

OIP has previously held that a group created by resolution is generally not a “board” subject to the Sunshine Law. To be a “board,” a group must be “created by constitution, statute, rule, or executive order,” and creation by nonbinding resolution does not satisfy that requirement as it is not equivalent to creation by statute. OIP Op. Ltr. No. 08-02 at 3-7. Thus, it is unlikely that the group called for by this resolution would be subject to the Sunshine Law in the first place.

Even if the group were subject to the Sunshine Law, the provision allowing it to hold closed meetings pursuant to section 92-5, HRS, would be ineffective for two reasons: (1) it is not actually an exemption from the usual requirement to hold open meetings since all it appears to do is to recognize that the Sunshine Law allows holding closed meetings for the limited purposes listed in section 92-5, and (2) a resolution that a board was exempt from some part of the Sunshine Law would be legally ineffective in any case because a resolution, which is not legally binding, would not override statutory requirements such as those set out in the Sunshine Law.

Thus, the proposed Sunshine Law exemption is likely unnecessary, and would be ineffective. OIP recommends that to avoid confusion, this Committee should amend the resolution by deleting the proposed exemption (at bill page 5 lines 19-21).