

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: March 19, 2019, 2:45 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.C.R No. 106 and S.R. No. 80
Requesting the Office of Information Practices to Explore a Trial
Appeals Resolution Process with a Randomly Chosen Selection of All
Incoming Public Appeals

Thank you for the opportunity to submit testimony on this resolution, which would request that the Office of Information Practices (OIP) prepare short non-enforceable guidance for randomly selected appeals, and report back to the Legislature regarding the effects. **The Office of Information Practices (OIP) is happy to experiment with this or other methods of alternative appeal resolution as requested by the Legislature, and thus supports this measure.**

Currently, the OIP attorney assigned to each appeal file does a preliminary assessment of the file once the agency's response has come in, both for "triage" to determine if the appeal may be quickly resolved by mediation or a straightforward decision relying on clearly applicable precedent, and to determine whether there are follow-up responses that should be obtained from the agency or the requester even if the file is not suitable for quick resolution. OIP provides the agency's response to the person who submitted the appeal upon request. In those files the assigned

attorney believes are suitable for mediation, the assigned attorney will typically contact the agency and the requester to share OIP's inclination and seek to work out an agreement; however, OIP does not necessarily provide a written preliminary inclination or publish it online as part of the process. In cases selected for mediation, if the parties do not reach agreement on all the issues, OIP will provide an enforceable written determination at a future time, as is also proposed by this measure. Between the cases OIP is able to resolve without an opinion and those it resolves with an opinion, **OIP is currently gaining ground against its backlog of pending appeal files**, helped by a lower number of incoming appeal files over the last year.

The process proposed by this resolution would be a significant departure from the way OIP currently selects cases for mediation, as it would entail taking a random selection of incoming appeal files (such as every fifth one), regardless of how voluminous the records or how complex the issues involved, and quickly issuing short, informal guidance with the hope that the parties involved will accept and follow that guidance in lieu of waiting what may be a year or more for a binding full opinion. It may be challenging to implement insofar as it may require quickly assessing and offering guidance on files involving hundreds of pages of withheld records to review, or complex and possibly novel legal issues; however, in such cases OIP believes it will be able to follow the proposed process by offering guidance based on just a representative sampling of voluminous records, and for complex or novel legal issues, a less detailed inclination rather than a thoroughly researched and explained opinion. As proposed by this measure, when any party does not wish to accept OIP's nonbinding guidance, OIP will provide a full and enforceable opinion at a later time as determined by OIP's usual policies.

Because the proposed experiment involves a random sample of cases processed in a way significantly differently from what OIP does currently, OIP believes its results will be very illuminating. As with the process proposed by S.C.R. 107 and S.R. 81, **the process proposed by this measure may turn out to decrease the amount of time required on average to resolve an appeal, it may turn out to have no significant effect, or it may turn out to increase the amount of time required on average to resolve an appeal as compared to OIP's current process.** If it turns out that offering early guidance even in the cases involving voluminous records or complex issues improves the average time required to resolve files on average, that will be important to know and OIP will be happy to adopt the practice going forward. If, on the other hand, it turns out that doing so is less time-efficient than OIP's current practice of seeking to mediate only selected cases, then OIP will at least have the knowledge that such selective mediation actually is a more efficient approach than an alternative broad approach.

OIP is happy to undertake either the process proposed by this measure or the one proposed by S.C.R. 107 and S.R. 81. However, OIP would not be able to undertake both at the same time, as their differing methodologies would conflict – while this proposal would require OIP to randomly select appeal files to prepare short guidance for without considering their apparent suitability for mediation, S.C.R. 107 and S.R. 81 would instead require OIP to select files suitable for mediation to publish a preliminary inclination for. For the same reason, OIP will not be able to continue its own current form of mediation efforts while following the process proposed by either this measure or S.C.R. 107 and S.R. 81.

Thank you for the opportunity to testify.



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SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Tuesday, March 19, 2019, 2:45 PM Hearing in State Capitol Room 225

SENATE CONCURRENT RESOLUTION 106 AND SENATE RESOLUTION 80
REQUESTING THE OFFICE OF INFORMATION PRACTICES TO EXPLORE A TRIAL APPEALS RESOLUTION
PROCESS WITH A RANDOMLY CHOSEN SELECTION OF ALL INCOMING PUBLIC APPEALS.

TESTIMONY

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

Chair Thielen and Committee Members:

The League of Women Voters of Hawaii supports SCR 106 and SR 80. An appropriately sized randomly chosen sample would allow the OIP to determine whether the experimental approach is useful for "easy" cases (with obvious precedents) and also to determine whether the experimental approach is useful for "other" cases. To allow sufficient time for the proposed experiment to generate statistically significant data, we suggest amending these resolutions to request the OIP to report preliminary findings to the 2020 Legislature and to submit a final report to the 2021 Legislature.

The League of Women Voters of Hawaii also supports SCR 107 and HR 81 which request a short-term OIP experiment and encourage selection of a non-random sample. An experiment with a non-random sample of "easy cases" would allow OIP to quickly evaluate whether "triage" is useful. The drawback of this approach is that OIP would not have data to evaluate whether the experimental approach is useful for "other" cases.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Government Operations
Honorable Laura H. Thielen, Chair
Honorable Lorraine R. Inouye, Vice Chair

RE: Testimony in Support of S.C.R. 106
Hearing: March 19, 2019 at 2:45 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 governmental transparency. Thank you for the opportunity to submit testimony **supporting S.C.R. 106**.

S.C.R. 106 requests that the Office of Information Practices (OIP) experiment with a random sample of public complaints in the search for a way to reduce the time needed to resolve those complaints. This bill reinforces the legislative intent that OIP's review be "*expeditious*, informal, and at no cost to the public."

OIP is not resolving complaints in an expeditious manner. Reviewing data from OIP, the Law Center discovered in 2017 that time taken to resolve complaints has quadrupled in recent years, fewer complaints on average are being resolved each year, and OIP's backlog is trending upward despite a downward trend in new filings. Successive reports have not shown improvement. The Law Center's three years of reports are posted at www.civilbeatlawcenter.org/resources.

When we advise members of the public regarding options for resolving UIPA or Sunshine disputes, the Law Center must explain that an appeal to OIP will take at least a year, but closer to two years or more. Some give up. Others who move forward with OIP often complain later that the information they sought is no longer useful when OIP orders disclosure. Timely access is critical.

Although a legislative resolution should not be necessary for OIP to re-examine its internal processes and seek out more efficient methods for resolving complaints, any effort in this direction would be greatly appreciated. Given the short timeframe for OIP to report under these resolutions, the Law Center would prefer S.C.R. 107.

Thank you again for the opportunity to testify in **support** of S.C.R. 106.



March 19, 2019

Sen. Laura H. Thielen
Senate Committee on Government Operations
State Capitol
Honolulu, HI 96813

Re: Senate Resolutions 80 and 81, Senate Concurrent Resolutions 106 and 107

Chairwoman Thielen and Committee Members:

The Hawaii Chapter of the Society of Professional Journalists supports any way to get the Office of Information Practices to cut its records request backlog.

Therefore, the chapter endorses SR 80 and 81 and SCR 106 and 107 – which urge OIP to try out preliminary inclinations for 10 public complaints to reduce the waiting time for the complaints to be resolved, or to experiment with a random sample of public complaints in looking for ways to handle them expeditiously.

Time is of the essence for the media and the public in many records requests, and long wait times frustrate these people.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ