

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. 107 and S.R. No. 81
Requesting the Office of Information Practices to Explore a Trial
Preliminary Inclination Process for 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 and publish a preliminary inclination for 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.

While the selection of relatively easy files for mediation or other quick resolution is something OIP does already, the process proposed by this resolution, specifically writing up and publishing online a preliminary inclination, would be a slightly different way of approaching it. OIP believes this proposal would represent a tweak to what OIP already does to seek early resolution of easier cases, rather than the more dramatic departure proposed by S.C.R. 106 and S.R. 80. As such, it would be easy for OIP to implement, but would provide less new information about the effectiveness of alternative approaches to appeal resolution. As with the process proposed by S.C.R. 106 and S.R. 80, **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.**

OIP is happy to undertake either the process proposed by this measure or the one proposed by S.C.R. 106 and S.R. 80. 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 select files

suitable for mediation to publish a preliminary inclination for, S.C.R. 106 and S.R. 80 would instead require OIP to randomly select appeal files to prepare short guidance for without considering their apparent suitability for mediation. 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. 106 and S.R. 80.

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 107 AND SENATE RESOLUTION 81
REQUESTING THE OFFICE OF INFORMATION PRACTICES TO EXPLORE A TRIAL PRELIMINARY INCLINATION
PROCESS FOR 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 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" (with obvious precedents) 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.

The League of Women Voters of Hawaii also supports SCR 106 and SR 80 which request a similar OIP experiment with a random sample. An appropriately sized randomly chosen sample would allow the OIP to determine whether the experimental approach is useful for "triage" with "easy" cases and also to determine whether the experimental approach is useful for "other" cases. The drawback of using a random sample is that it might take from 6 months to a year to generate statistically significant results.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
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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. 107
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. 107**.

S.C.R. 107 requests that the Office of Information Practices (OIP) experiment with preliminary inclinations for at least 10 public complaints before December 1 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.

Thank you again for the opportunity to testify in **support** of S.C.R. 107.



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