

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 25, 2023

TO: The Honorable Representative Kyle T. Yamashita, Chair
House Committee on Finance

FROM: Cathy Betts, Director

SUBJECT: [HB 719 HD1](#) – RELATING TO PUBLIC RECORDS.

Hearing: February 28, 2023, 2:00 p.m.
Conference Room 308 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the measure's intent, provides comments, and defers to the other impacted Departments. However, the Department respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 7, lines 2-4) and requests an amendment to preserve the current language. DHS defers to the Office of Information Practices.

PURPOSE: The bill's purpose is to, beginning 7/1/2024, impose a cap on charges for the reproduction of certain government records; waive the cost of duplication of government records provided to requestors in an electronic format; impose a cap on charges for searching for, reviewing, and segregating records; and provide for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices. Effective 6/30/3000. (HD1).

The HD1 amended the measure:

- (1) Changing the appropriation to an unspecified amount;
- (2) Changing the effective date to June 30, 3000, to encourage further discussion; and

- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

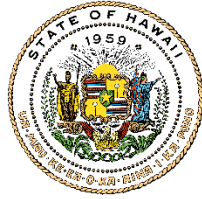
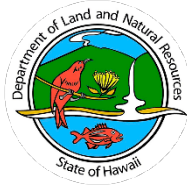
DHS supports the intent of this measure to maintain government accountability and transparency. DHS strives to respond to all government record requests per the time frame while balancing operational demands to ensure that individuals and families are also timely served by the Department. Unfortunately, the Department and its programs do not have dedicated staff or resources to respond to records requests, and time spent on responses interrupts the completion of regular duties.

Regarding reproduction costs, DHS respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 7, lines 2 -4) and requests an amendment to preserve the current language. Complex record requests often require significant coordination of program resources and staff time. Importantly, we do not assume electronic records are easier to sort or duplicate than paper records. This proposed measure to impose limitations on costs and fee waivers may have unintended consequences, such as encouraging the filing of more complex record requests that impact the critical program work unrelated to the records requests.

Thank you for the opportunity to provide comments on this measure.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
FINANCE

Tuesday, February 28, 2023
11:30 AM

State Capitol, Conference Room 308 and Via Videoconference

In consideration of
HOUSE BILL 719, HOUSE DRAFT 1
RELATING TO PUBLIC RECORDS

House Bill 719, House Draft 1 proposes to impose a cap on the amount an agency can charge for the reproduction of certain government records and on costs charged for searching, reviewing and segregating records to ensure government transparency. The bill also proposes to waive all fees for search, review and segregation of records when the public interest is served. **The Department of Land and Natural Resources (Department) offers comments and requests two amendments.**

The Department notes that in order to increase transparency, many of its records across all divisions are easily available electronically. However, converting paper to electronic documents is expensive, and requires constant maintenance and upkeep. The Department suggests that when the state Office of Information Practices (OIP) sets fees, OIP be allowed to take these expenses into account and fee waivers for the provision of electronic documents be removed (page 6, lines 10-17), particularly if the requestor can download the documents themselves. Exceptions for people with no or limited access to electronic information should be provided by rule.

This bill proposes to amend Paragraph (13) of Section 92F-42, Hawaii Revised Statutes (HRS), by explicitly directing OIP to promulgate rules that (A) limit the charge for searching for records to \$5 per fifteen minutes or fraction thereof; (B) limits the charge for review and segregation to \$7.50 per fifteen minutes; and (C) provides a waiver of fees when the public interest is served. The Department is concerned that the waiver of fees in the public interest will encourage "fishing expeditions" for people who are looking for something they can catch that matches their goals. The Commission To Improve

Standards Of Conduct has cited to concerns that departments use fees as a way to chill requests for information. In the Department's experience, this is not true. Most of the requests that the Department receives are fulfilled at very little to no charge. The Department has no problem with requests that are focused and clear. However, fishing expeditions pose special challenges and costs, which can result in staff spending days pulling records and interrupt pressing projects and timely customer service. These types of requests must be limited to ensure staff can do their work. It is untrue that these types of requests can be clarified, or that providing a schedule over time to address the requests lessens the work or time required of the agency staff. Staff would still be doing the fishing searches for one person or organization, in lieu of their regular work that benefits many and the general public.

The Department would like to provide an example:

Last year, the Department's State Historic Preservation Division (Division) received a request for everything to do with Section 6E-42, HRS, reviews, the burial council, and any external communications for the entire county of Kaua'i. The Division estimated that it would cost in excess of \$50,000 in staff time, research, segregation, scanning, and production. More importantly, the Division does not have the staff to do that amount of work, so they asked for a more specific request. The requestor declined. So, the Division noted how much the request would cost, and again asked for a more specific request. The requestor has not responded.

In providing this example, the Division notes that most of the requests they receive are clear and concise and can be fulfilled in a reasonable amount of time, and normally for free. However, staff does not have time, even on a monthly basis, to respond to the type of fishing requests described above.

These broad requests are not uncommon and are usually construed to be in the public interest. Whether or not such a broad request could be construed to be in the public interest is not the only matter to consider. The Department cannot divert its staff for such broad requests. Especially a division with a large backlog of work. The Department strives to respond to information requests in a timely manner as they come in, but it only takes one or two broad requests to quickly overwhelm the system at huge costs to the taxpayer and at a loss to those with legitimate requests. The Department suggests SECTION 3 (12) (B) (iii) be amended as follows:

Provide for a waiver of fees when the public interest would be served by the record's disclosure; provided that the waiver shall require that the search for or review or segregation of records be provided at no charge to the requester if disclosure of the record is in the public interest [~~because the disclosure is likely to contribute 15 significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest~~]; and

Waivers shall be capped annually at \$1,000.

Even with the Department's proposed amendments we expect special hardship on the Bureau of Conveyance (Bureau). Therefore, the Department respectfully asks that should this bill move forward, that it be amended to exempt the Bureau. The Bureau respectfully notes that the intent of the bill addresses accessing government records that are not readily accessible by the public as a rule. The mission of the Bureau is for the timely recording and accessibility to documents it records by all who may come into its office or access them online. The Bureau's documents are submitted by individuals

and business, primarily for their land dealings or Uniform Commercial Code filings. Government documents that get recorded are of a similar nature. All of those records are readily accessible by anyone through already established, convenient procedures and fees. Converting paper to electronic documents is expensive and requires constant maintenance and upkeep. The Bureau converted almost all of its paper documents to electronic form and charges fees that take into account the cost of conversion and implementation as well as for the staff to keep the system running and maintained. It would not be often that the Bureau's public records will offer the additional government accountability and transparency or enable a more informed citizenry for participation in government decision making.

Mahalo for the opportunity to provide comments and suggest amendments to this measure.

JOSH GREEN, M.D.
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON FINANCE

ON

HOUSE BILL NO. 719 H.D. 1

February 28, 2023

11:30 A.M.

Conference Room 308 and via Videoconference

RELATING TO PUBLIC RECORDS

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee,

H.B. 719 H.D. 1 proposes to impose a cap on charged costs for reproduction of government records, waive the cost of duplication in an electronic format, impose a cap on charges for searching, reviewing and segregating records, and provide a waiver of fees when the public interest is served.

While the ERS supports the intent of the bill, the ERS has some concerns and offers the following comments: The capping or waiving of fees typically results in an expense recovery level that is set substantially below actual expense incurred in gathering, copying and disseminating the materials. From a historical perspective, the cap has a tendency to become outdated over time, thereby invisibly increasing the level of cost subsidy by the agency. The ERS notes that the research and gathering of information for the types of requests it receives more often requires the time and effort of its highly compensated professional staff, such as investment officers and program specialists, as well as its clerical and administrative staff. The bill's proposed cap would not allow the rates to be raised enough to reflect actual average current salaries, and overtime. The statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.



Employees' Retirement System
of the State of Hawaii

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The ERS has experienced an increasing number of public requests for records, a number that is likely to increase even more if records become available at no cost to the requestor. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests in gathering and distributing such information but express a public purpose for doing so.

The complete waiver of all fees for those requests that qualify would prove burdensome for the ERS and result in a larger number of complex record requests, as there would be no incentive for the requester to limit the number or narrow such requests. Such an increase in requests would require an inordinate amount of the ERS' staff time that would detract from the ERS' other work.

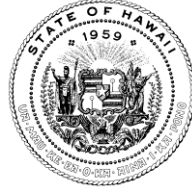
As to the proposed waiver of fees if information is "in the public interest," the bill does not provide a standard for determining when a request is "in the public interest." Nor does the bill specify who would make the determination.

H.B. 719 H.D. 1 is similar to S.B. 3252 S.D. 2 H.D. 2 C.D. 1 (2022), which was vetoed by the Governor. The ERS shares and incorporates the concerns expressed in Office of Information Practices' (OIP) testimony, dated March 16, 2022, regarding S.B. 3252.

Some of the potential unintended consequences of the proposed fee caps and waivers are that they would:

- shift more and more of the cost of providing public access to government records onto the ERS;
- encourage the filing of numerous and more complex record requests;
- slow the processing of all record requests, as well as slow the ERS' work unrelated to record requests;
- increase the ERS' need for funding to recruit, train and hire additional staff;
- reduce government efficiency as well as government transparency due to delays in processing record requests.

Thank you for this opportunity to provide testimony.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Finance
Tuesday February 28, 2023
11:30 a.m.

Conference Room 308 & Videoconference

On the following measure:
H.B. 719, RELATING TO PUBLIC RECORDS

Written Testimony Only

Chair Yamashita and Members of the Committee:

My name is Nadine Ando, and I am the Director of the Department of Commerce and Consumer Affairs (Department). The Department offers comments on this bill.

The purposes of this bill are to (1) impose a cap on charges for the reproduction of certain government records; (2) waive the cost of duplication of government records provided to requestors in an electronic format; (3) impose a cap on charges for searching for, reviewing, and segregating records; (4) and provide a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices.

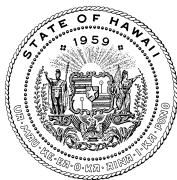
While the Department appreciates the intent of this measure to provide greater public access and transparency, it has strong concerns about several proposed amendments to Hawaii Revised Statutes (HRS) section 92-21, and the ramifications of the proposed changes upon the Department's operational functionality. In order to

protect the privacy interests of individuals whose information is included in the requested records, staff must engage in search, review, and segregation of the records. The time consuming and labor-intensive nature of these tasks are demonstrated by the definitions of “search,” “review,” and “segregation” in Hawaii Administrative Rules (HAR) section 2-71-2. Due to budgetary constraints, an agency should be permitted to charge reasonable fees for services rendered, particularly when there is no limit to the number of services which may be requested. In HAR section 2-71-1, the Office of Information Practices expressly stated that SRS fees “are not intended to obstruct public access to disclosable records but rather are intended to allow agencies to recover some costs in providing access to disclosable records upon request.” A staff person who searches, reviews, and segregates a government record is providing a necessary service and the agency is incurring costs in providing this service.

Ultimately, SRS is a time-consuming and labor-intensive task; should SRS fees for digital records or records deemed to be in service of the public interest be capped or waived, it would be costly to the Department, as requests for which the Department could not recoup costs would increase. If this measure were to take effect, the Department anticipates a potentially severe reduction in the Department’s ability to fulfill its normal functions, as it would be forced to dedicate increased amounts of its staff’s time to SRS and record production, without receiving adequate compensation in return.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE

COMMITTEE ON FINANCE

FEBRUARY 28, 2023, 11:30 AM
CONFERENCE ROOM 308 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H. B. 719 HD1

RELATING TO PUBLIC RECORDS.

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee, thank you for the opportunity to testify on H.B. 719 HD1.

The Department of Accounting and General Services (DAGS) provides **comments** on the bill and offers the following:

1. The cost of document requests at the State Archives are covered by HRS §94-4. The cost to perform research and produce documents through the archives is greater than other departments. HRS §94-4 states that the fees “for copying, certification, and other services shall be prescribed by the comptroller in direct relation to the cost of the services.” As stated in our previous testimony on this measure, we would request that a clarification be made to this proposed measure that specifically excludes the state archives from the fee structure as state in HRS §94-4.
2. DAGS has the Legislatively mandated responsibility for preserving records of permanent value per HRS94. As such, every record contained in the State Archives is

of Public Interest, hence the reason it was determined to be of permanent value. Any request for such records by the public would, therefore, fit the broad definition of 'public interest' and be subject to waivers. Given the millions of pages of materials being preserved at the Archives, the Division would quickly become inundated with requests for copies for large portions of its Kingdom, Republic, and Territorial records. The Archives division currently cannot keep up with the number of paid reproduction requests, let alone any potential increase to the number of requests. There is not enough staff at the Archives to handle large increases in public records requests or the loss in revenue that supports its operations.

3. The fee cap of \$5 per 15 minutes of search (or \$20/hour) and \$7.50/15 minutes (or \$30/hour) appears to be based on a salary schedule that presumes clerical staff will be conducting the searching. The Archives clerical staff performs front line, public facing duties, while the more complex duties of search, segregation, and redaction falls upon professional staff. As a result, this would cause a net loss for the State if the proposed fee caps are implemented at these levels.
4. It is suggested that the wording of fees for search and segregation, and redaction mirror the proposed language in 92-21 to limit the cost for search, segregation, and redaction so that the public is charged the "reasonable direct cost of performing these services and be limited to the salary of the employee providing the services and the cost of any machinery necessary to provide the requested services." The inclusion of directly incurred equipment and material costs should be included as the Archives, for instance, utilizes a photocopy machine to perform the redaction function when providing records to the public. It is suggested that all costs incurred by the providing agency should be accounted for when computing fees in response to a public request.

Thank you for the opportunity to submit testimony on this matter.

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/28/2023

Time: 11:30 AM

Location: 308 VIA VIDEOCONFERENCE

Committee: House Finance

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 0719, HD1 RELATING TO PUBLIC RECORDS.

Purpose of Bill: Beginning 7/1/2024, imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on charges for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices. Effective 6/30/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) opposes HB 719, HD1.

The Department is concerned about the administrative burden that the passage of this bill will create. The cap on charges and waiving of fees will likely lead to an increase in voluminous and complex requests that will significantly impact the current staff's ability to respond to all public records requests efficiently. The Department will need to devote additional resources and hire new staff to fulfill the statutory obligations proposed by this bill.

Thank you for the opportunity to provide testimony on this measure.

OFFICE OF INFORMATION PRACTICES

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EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: February 28, 2023, 11:30 a.m.
State Capitol, Conference Room 308

Re: Testimony on H.B. No. 719, H.D. 1
Relating to Public Records

Thank you for the opportunity to submit testimony on this bill, which would change the current minimum charge for copying government records to a maximum charge, require the Office of Information Practices (OIP) to adopt rules regarding government record copy fees, set a statutory cap to the search, review, and segregation fees that OIP is required to set by administrative rule for government record requests under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), set statutory standards and requirements for the public interest waiver OIP is also required to set by rule, and appropriate funding for two new positions for OIP. This bill was apparently based on a proposal from the Commission to Improve Standards of Conduct established by House Resolution 9 (2022). Although that Commission included government agency members with expertise in ethics and campaign financing, OIP was not part of the Commission and was not consulted by the Commission about these proposed changes to the UIPA, which OIP administers, or the new requirement for OIP to promulgate rules under both the UIPA and section 92-21, HRS, which OIP does not administer. OIP offers comments explaining the significant effect these changes would potentially have, particularly the unintended effects that may result. **OIP is in full support of the proposal for two additional positions and funding for OIP.**

Please understand that **OIP's statutory role is to be an impartial, neutral entity and not an advocate for just one side or the other.** While it is easy to support the general concept of government transparency and openness, **the actual laws that OIP administers provide for reasonable exceptions and**

involve the balancing of competing interests among many different constituencies that include the State, county, and independent agencies of varying sizes, subject matters and technical or personnel support; board member volunteers and employees subject to the Sunshine Law; non-profit advocacy groups; media representatives; private businesses; resident and non-resident record requesters; taxpayers; and the general public. Therefore, to place OIP's comments on the bill in perspective and understand the potential effects of this bill, OIP's testimony begins by providing the Legislature with objective data that all State and county agencies submit on UIPA Log Reports that OIP has been summarizing since 2015, information about the Draft Rules that OIP proposed in 2017 and are still pending, and a legal comparison of the differences between OIP's rules and the federal rules upon which the bill is partially based.

Data from Log Reports

In response to unsupported claims that UIPA record request fees are excessive, OIP would like to share the objective data, beginning with the State and county reports found on the [UIPA Record Request Log Records page](https://oip.hawaii.gov) at oip.hawaii.gov. Since 2015, OIP has been collecting data from all State and county agencies on the UIPA Record Request Logs that each agency submits to OIP. OIP summarizes all Logs into two reports: one for all State agency results and the other for all county agency results. OIP's annual UIPA Record Request Log Reports can be found on the dropdown tab for the [OIP Reports page at oip.hawaii.gov](https://oip.hawaii.gov).

Similar to past results, the FY 2022 reports for the [State](#) and [county](#) agencies show that **overall, the typical record request was granted in whole or in part and completed in 8 work days from the date of the request; that 87.8% (1,891) of requesters to State agencies and 85.1% (1,897) of requesters to county agencies paid nothing for their completed requests; and that most payments were made by for-profit entities.** Only 262 (12.2%) of State requesters paid any amount, with 93 paying less than \$5 and 112 paying \$5 to \$49.99. Only 57, or 3% of all State requesters, paid more than \$50; of the 57, at least 46 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. For the County requesters, 333 requesters paid any amount, with 136 paying less than \$5 and 98 paying between \$5 to 49.99. Only 99, or 5% of all County requesters, paid more than \$50; of the 99, at least 68 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. Of all 4,383 State or county requesters whose requests were completed in FY 2022, only 3 paid more

than \$1,000, with the highest amount of \$2,690 paid by a commercial aviation company. Thus, **most fees and costs are being paid by for-profit entities, and not by individual requesters.**

The FY 2022 reports were also consistent with prior years' data showing that **the relatively few complex record requests take more than twice as long to fulfill as the typical request, yet the disproportionately higher fees and costs they incur are not being paid by such requesters.** Although complex record requests constitute 6% of State requests, they account for 18% of the gross fees and costs incurred by State agencies, of which only 6% was ultimately paid by complex record requesters. For the counties, complex record requests constitute 11% of UIPA record requests and 27% of total gross fees and costs, only 12% was actually paid by complex record requesters.

Whether all taxpayers should bear the State and county agencies' costs of record requests, or the actual requesters themselves, is a policy question for the Legislature to address. Please keep in mind, too, that the UIPA does not generally allow for distinctions between requesters who are residents or nonresidents of Hawaii, or between nonprofit and for-profit entities.

Note, too, that the Log data shows that **record requesters under Hawaii's UIPA are receiving their records much faster than under the federal Freedom of Information Act (FOIA).** While UIPA requests are typically fulfilled in about 8 working days, the average federal FOIA request often takes hundreds of days, if not years, for resolution. *See e.g.,* The FOIA Project, Agency FOIA Backlogs and Processing Times at <https://foiaproject.org/request-chart/> .

OIP's 2017 Draft Rules

As required by the UIPA, OIP's rules set forth fees and costs that agencies may charge for record requests and provides for fee waivers. Section 92F-42(18), HRS, requires OIP to "adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served[.]" Pursuant to this legislative mandate, OIP adopted chapter 2-71, Hawaii Administrative Rules (HAR) in 1999. For the past 24 years, OIP has not raised the fees set in its administrative rules at \$2.50 per 15 minutes to

search for responsive records, and \$5 per 15 minutes to review and segregate records.

The [Impact Statement](#) for chapter 2-71, HAR, notes the purpose of the search, review, and segregation fees is to allow agencies to recoup some costs in responding to requests for records rather than having to provide these services entirely at taxpayers' expense. The fees for search, review, and segregation are not intended to obstruct public access to disclosable government records, so they do not exceed the actual costs in providing the services.

In 2017, OIP drafted new rules and solicited public comments on them. The Draft Rules, OIP's slides and PowerPoint presentations, clarifications, updates, and public survey, comments and results, are posted [Rules page](#) at oip.hawaii.gov. Although OIP sought public input in developing the rules, OIP has not yet proceeded to a formal public hearing and rulemaking as the Draft Rules remain under review by the Attorney General's office.

Because OIP had not increased search, review, and segregation fees for nearly two decades and had never adopted rules setting fees for personal record requests, the Draft Rules proposed an increase in fees based on 2017 data for the salary ranges of clerical staff that would likely do the search function and of supervisory and executive managerial positions that would likely do the review and segregation of records. Thus, the Draft rules proposed an increase from \$2.50 to \$7.50 per 15-minute increment for search fees and from \$5.00 to \$15.00 per 15-minute increment for review and segregation fees. These increased fees, however, were intended to be offset by a substantial increase in the fee waiver from \$30 per request (or \$60 for public interest waivers) to \$400 per year to keep record requests free for most people. The \$400 proposed fee waiver was calculated based on Log data of the average number of hours that it takes State and county agencies to search for, review, and segregate record requests. **Even with an increase in the Draft Rules' fees, OIP estimated that the \$400 fee waiver for everyone would have allowed any requester to annually make approximately 5 typical requests, 13 personal record requests, or one complex record request to the same agency in a year, without having to pay fees. Reasonable fees, however, are necessary to act as a safeguard against abuse by those who would engage in manifestly excessive interference with an agency's normal operations, such as by making repeated, voluminous, or frivolous requests.**

OIP recognizes that average government salaries have increased in the past six years with inflation and collective bargaining costs. Depending on the results of this session and OIP's workload, OIP may further review and revise its Draft Rules before proceeding with the formal rulemaking process.

Note, too, that there are important other changes proposed in OIP's Draft Rules that are not under consideration in this bill, and they will still need to be addressed during the rulemaking process.

OIP's Fee Rules Differ Significantly from Federal FOIA Fees

The bill's proposed amendments, and in particular the one changing the standard for a public interest fee waiver, are inconsistent with the UIPA's existing fee structure as the proposed statutory public interest waiver standard is modeled on a small part of the substantially different and more complex fee structure under the federal FOIA. **The UIPA has a relatively simple fee structure**, with set fees for search, review, and segregation chargeable to all requesters after first applying an automatic waiver of fees for the first 1-3 hours of staff time (for all requesters) or the first 2-6 hours of staff time (for public interest requesters). **By contrast, FOIA's fee scheme**, set out in 5 U.S.C. § 552(a)(4)(A)(ii) and (iii) (attached to this testimony), **has three separate fee tiers, each applicable to a different category of requester, with the possibility of an additional waiver of some or all of the otherwise chargeable fees for requests of particularly high public interest.** The relevant FOIA fee provisions are attached to the end of this testimony.

FOIA's lowest fee tier is for educational or research institutions and "representative[s] of the news media," who are charged only for copying costs, not for search or review time. The second lowest fee tier is for anyone else making a request that is not for commercial use, such as individuals seeking their own records; requesters in that middle tier are charged for copying costs and search time but not for review time. The highest fee tier is for requests for commercial use; those requesters are charged for copying costs, search time, and review time. Thus, **FOIA's standard fees vary, depending on who is making the request and for what purpose**, and reflect Congress's assessment of the different levels of public interest served by the different types of request. Notably, FOIA's standard fees specify that representatives of the news media fall into the lowest-cost fee tier and define who qualifies as a representative of the news media – in other words,

media requests already pay no fees, only copying costs, and they need not rely on the separate public interest waiver.

But if a request falling in any one of the three fee categories is of **particularly high public interest, then the agency could waive part or all of the fees** applicable to a request in that category. FOIA sets a standard for determining when a request is of particularly high public interest, which is what this bill's proposed new public interest waiver standard is based on. **Unlike the FOIA standard, though, this bill proposes that all fees and costs must be waived whenever the standard is met, rather than giving agencies the option of a partial waiver as FOIA does.**

Thus, this bill proposes to take a small part of FOIA's fee scheme, omitting its tiered fee system that sets the default treatment for members of the media, and adopts the FOIA waiver in lieu of the UIPA's current public interest fee waiver standard. This bill would also go farther than its FOIA model because it would require waiver of all costs and fees rather than some or all costs and fees as FOIA does. It is important to note that **FOIA's public interest provision covers only requests of unusually elevated public interest and was never designed to apply to all media requests automatically**, since the news media are already in a low fee category by default. **Because this bill uses FOIA's public interest waiver, which applies only to a disclosure that "is not primarily in the commercial interest," outside of its intended context, the bill runs the risk of excluding for-profit media under the UIPA, which has an entirely different fee structure than FOIA.**

OIP's existing fee rules under the UIPA were deliberately designed to be less complex than FOIA's, and rather than having different categories of requesters all of whom pay different types of fees, the existing public interest fee waiver provides an expanded fee waiver for the relatively broad variety of requests that serve the public interest as set out in the existing fee rules. The UIPA's existing public interest fee waiver does not require a full waiver of all fees and costs, as this bill proposes, but then again neither does FOIA's actual public interest fee waiver (unlike this proposal). Further, agencies often do waive more fees and costs than required for media requests, such as by waiving all fees for search, review, and segregation time and charging only copy costs. **Thus, OIP views the proposed new public interest fee waiver standard as being not only unnecessary, but likely to exclude requesters from for-profit media**

organizations who are included under the UIPA's current public interest fee waiver standard, as further discussed below.

Additionally, a drastic change from the UIPA's simple fee structure to a variant of the more complicated federal FOIA structure would **require either the Legislature or OIP to change other aspects of the UIPA rules, OIP to develop extensive new training materials, and the agencies to learn and apply the new rules. And, as noted above, there may new and lengthy delays in fulfilling UIPA record requests under the new rules, as portended by the sometimes years-long delays by federal agencies in fulfilling FOIA requests.**

Comments on Proposed Bill

1. Statutory Cap on Fees

The proposed statutory cap of \$5 per 15 minutes for search and \$7.50 per 15 minutes for review, and segregation fees agencies may charge for staff time spent in responding to a record request is higher than the rate currently allowed by OIP's rules of \$2.50 and \$5.00, respectively. However, the current charges adopted in 1999 were intended to be close to the average salary rate for employees likely to be responsible for search, review, and segregation under the UIPA, and were based on a 1996 survey of state and county salaries. In other words, **the current fees are already 27 years out of date and do not reflect current salaries for the government employees doing the work.**

OIP's Draft Rules would address attempt to account for a quarter century of inflation by raising search fees to \$7.50 and review and segregation fees to \$15 per 15 minutes, **but the bill's proposed caps of \$5 and \$7.50, respectively, would not allow the rates to be raised enough to reflect the 2017 average current salaries, or collective bargaining increases and inflation since then. Over time, the statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.** In effect, this would change the statutory authorization for search, review, and segregation fees from a way for government to mostly recoup the salary cost of employee time spent on larger requests to an increasingly nominal charge, with the agencies bearing the lion's share of the cost of even the largest and most complex record requests. **The statutory fee cap also operates as an unfunded State mandate that must be paid out of the counties' coffers.**

2. Public Interest Fee Waiver

This bill would also change the standard for a public interest waiver of fees under the UIPA. The UIPA public interest waiver is currently set by rule at \$60, double the automatic waiver for all requesters and representing 3-6 hours of staff time. Thus, for larger requests that meet the public interest standard agencies are still allowed to charge for search, review, and segregation time beyond what is covered by the waiver. **This bill would make the public interest waiver a complete waiver of all fees, no matter how large the request might be. The bill would also change the standards for what qualifies as a public interest request to be in one way narrower and in another way broader.**

The UIPA standards for a public interest waiver are currently that (1) the record pertains to the operation or activities of an agency (without considering its relative public importance), (2) it is not readily available in the public domain, and (3) the requester has the primary intention and actual ability to widely disseminate the information to the public. This bill would narrow the first of those, requiring the record to “contribute significantly to public understanding” of agency operations or activities, but would remove the remaining two: **the proposed waiver would apply to information already widely available to the public, and would apply to a requester with no intention or ability to publicly share the information. It would, moreover, add a requirement that the request NOT be “primarily in the commercial interest.” This requirement is one that OIP specifically considered, and rejected, in adopting its current rule regarding public interest waivers, so as to not exclude news media representatives.** As OIP’s Impact Statement on the then-draft rules stated, “news media representatives will almost always have commercial interests. Therefore, to exclude news media representatives from a fee waiver because of those commercial interests is counterproductive to supporting the public interest in a free flow of information held by the government. Consequently, the proposed rule does not require an agency to determine that the disclosure of information is not primarily in the commercial interest of the requester.”

OIP believes the change in standard for what qualifies as a public interest request would thus exclude for-profit news media representatives, but not a non-profit media company or bloggers, and the change would not necessarily increase the general public’s access to information about the operation of government. At the same time, it would apply to a much narrower category of information, requiring the requester to establish that the

information would “contribute significantly to public understanding” of agency operations rather than simply being about agency operations. It seems likely that this new standard would apply to a different pool of requests than the current standard, but it is not clear whether it will end up representing an increase or a decrease in requests meeting that standard. Either way, **the Legislature must decide whether the complete waiver of all fees for those requests that qualify would actually increase transparency, or instead would have the opposite effect and ultimately detract too much from agencies’ core work for the public as it would result in a larger number of complex record requests because there would be no financial incentive for the requester to narrow such a request.**

Overall, the Legislature may want to consider the potential unintended consequences of the proposed fee caps and waivers this bill, which may be to:

- encourage the filing of more complex record requests;
- eliminate the current fee waiver for representatives of for-profit media companies;
- slow the processing of all record requests as well as of the agency’s work unrelated to record requests;
- increase the agencies’ need for more personnel, funding and time to recruit, train and hire additional personnel to fulfill record requests and to learn to apply the new rules;
- reduce government efficiency as well as government transparency due to delays in processing record requests and increased costs to legitimate media representatives, resulting in less news coverage;
- require ongoing legislative amendments to the UIPA to address unintended consequences and matters previously handled by administrative rules, including the possibility of providing for longer agency response deadlines; and
- the financial impact of unfunded State mandates upon the counties.

3. Copy Fees

As to the proposed amendment of **section 92-21, HRS**, authorizing agencies to charge copy fees for government records, **this statute is not part of the UIPA** but OIP is frequently asked about its application to UIPA requests. The statute currently sets a minimum copy charge of \$.05/page, but does not prohibit agencies from charging more. Since OIP’s rules allow an agency to charge “other lawful fees”

in addition to the search, review, and segregation fees set out by the rules, OIP has generally advised that the minimum copy charge is a lawful fee for the purpose of the rules, and if an agency has adopted administrative rules setting a higher per-page charge, that higher charge is also a lawful fee. **This proposal would cap copy charges at \$.25/page, and thus would primarily affect those agencies that have adopted administrative rules setting a higher per-page charge.**

The proposed new requirement in section 92-21 for OIP to adopt rules setting copy fees for specific types of records is more problematic. OIP has no jurisdiction over section 92-21, and OIP's powers and authority do not include the authority to set copy fees for other agencies. Thus, **this requirement would leave OIP responsible for adopting rules interpreting a section of law that it has no jurisdiction over.**

4. Appropriation and New Positions for OIP

OIP appreciates the recognition in this bill that the additional work rulemaking and dispute resolution resulting from this bill will require two new positions and funding for OIP, for which the H.D. 1 has a blank amount but a recommendation in the Committee Report for an appropriation of \$185,000. **OIP's personnel are already severely strained with their current workload,** which has seen a doubling of requests for its Attorney of the Day services over the past year, an extensive overhaul of its training materials, and interim legislative work, as OIP continues to work on its backlog of appeals that increased with the loss of half its experienced personnel during the past two years of the COVID pandemic. **OIP today is doing over twice as much work with half the people and funding that it had 29 years ago.** In FY 1994, when it administered the only UIPA, OIP had 15 positions and an allocation of \$827,537, which would be \$1,591,384 today if adjusted for inflation. In FY 2022, when it administered both the UIPA and Sunshine Law and saw a doubling of its informal inquiries from the prior year, OIP had only 8.5 positions and an allocation of \$752,721.

Whether or not this bill passes, OIP will need the additional staff and funding to fulfill its increasing workload, including other updates to its rules. Indeed, an appropriation of \$300,000 to fund two new positions and raise existing salaries to parity with similar government positions would be justified and OIP respectfully requests that the positions and funding be included in the State's operating budget on an ongoing basis.

5. Effective Date

The H.D. 1 has a defective date. OIP notes that should this bill pass, the appropriation and positions need to go into effect immediately, while providing a delayed effective date for OIP to make the necessary changes to the copying costs and fee structure. OIP will need sufficient time to hire new people, draft new rules, have rules reviewed by the Attorney General's office before going to public hearing, receive the Governor's approval of the final rules, and develop new training materials so that agencies can be educated as to the final rules. Moreover, the changes called for in this bill do not address all of the revisions proposed in OIP's 2017 Draft Rules, which include the question of how to discourage requests that cause manifestly excessive interference with an agency's functions. Thus, a **two- or three-year delay in the effective date for sections 2 and 3 of the bill would be most realistic.**

In summary, despite its laudable intention to increase government transparency and accountability, **this bill could have the opposite effect** as it shifts more and more of the cost of providing public access to government records onto the State and county agencies that respond to record requests and it may have the unintended consequences of increasing complex requests, slowing response times, increasing government and media costs, decreasing media coverage, and requiring ongoing legislative changes. OIP hopes that this comprehensive testimony has set out the various potential effects these changes could have, so that the Legislature can be fully informed in making its decision on this bill.

Thank you for considering OIP's testimony.

ATTACHMENT: Relevant Portion of FOIA Rules

The full text of 5 U.S.C. section 552 is available at <https://www.law.cornell.edu/uscode/text/5/552> . Subsections 552(a)(4)(A)(ii) and (iii), which set out the standard FOIA fee scheme, are set out below (emphasis added):

5 U.S.C. § 552(a)(4) (A)

(ii) Such agency regulations shall provide that—

- (I) fees shall be limited to reasonable standard charges for document search, duplication, and review, **when records are requested for commercial use;**
- (II) fees shall be limited to reasonable standard charges for document duplication **when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media;** and
- (III) **for any request not described in (I) or (II),** fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, **the term “a representative of the news media” means** any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

JOSH GREEN, M.D.
GOVERNOR



LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 719, H.D. 1

February 28, 2023
11:30 a.m.
Room 308 and Videoconference

RELATING TO PUBLIC RECORDS

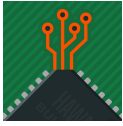
The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 719, H.D. 1: 1) changes the current minimum charge for copying government records to a maximum charge; 2) requires the Office of Information Practices (OIP) to adopt rules regarding government record copy fees; 3) sets a statutory cap to the search, review, and segregation fees that OIP is required to set by administrative rule for government record requests under Chapter 92F, HRS, the Uniform Information Practices Act (UIPA); 4) sets statutory standards and requirements for the public interest waiver OIP is also required to set by rule; and 5) appropriates funding for two new positions for OIP.

While B&F supports the intent of making public records available for a reasonable fee to promote government accountability and transparency, we share the concern of many other testifiers that hard ceilings or statutory caps on fees are not appropriate, as departments and agencies are not budgeted to be able to absorb the unpredictable costs of responding to complex UIPA requests. B&F also notes that any dollar amount ceiling or cap will eventually become outdated as costs increase over time.

Thank you for your consideration of our comments.

No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, Hawaii 96813



Testimony of
Ryan Kawailani Ozawa
Publisher, Hawaii Bulletin
Founder, Hawaii Hui LLC / Kilinahe Foundation

Before the
COMMITTEE on FINANCE
Hawaii State Capitol in Conference Room 308
Thursday, February 28, 2023

HB719 — Relating to Public Records

Rep. Kyle T. Yamashita, Chair; Rep. Lisa Kitagawa, Vice Chair; and members of the COMMITTEE on FINANCE:

I am submitting this testimony to express my **SUPPORT WITH COMMENTS** of **HB719** relating to Public Records.

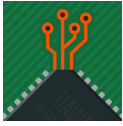
Government transparency is not cheap. But it is priceless.

I don't need to tell you how tenuous trust in government is today, nor how tumultuous the media industry has come—let alone the unfolding disaster that is social media.

It is more important than ever that citizens be able to “go to the source” and have reliable and affordable access to current and complete government records. Too often, reproduction costs allowed for by outdated, hardcopy-centric law have been used as a poison pill to discourage public record requests. This measure allows a reasonable amount of document production for those few agencies or requestors that rely on paper.

And while it's conceivable that producing electronic records can require some specialized software and skills, most of the time we are looking at a cut-and-paste scenario. I am confident most government agencies will not be unduly burdened by providing one of the government's core constituent services.

To ensure that these requests are handled promptly and efficiently and not adversely affected by duplicate requests, I would also recommend that lawmakers consider requiring that all public



records requests and the records prepared in response be **published to a public online repository**. Hawaii does, after all, have an open data law (HB632/Act 263 in 2013), and ostensibly maintains an open data portal. Why not post public record requests and responses for all interested parties, rather than have multiple agencies and individuals request the same record set?

Even without this refinement, HB719 is an important improvement to Hawaii's model public records laws and deserves your support.

Thank you for your consideration.



HOUSE COMMITTEE ON FINANCE

Tuesday, February 28, 2023, 11:30 am, State Capitol Room 308 & Videoconference

HB 719, HD1

Relating to Public Records

TESTIMONY

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

Chair Yamashita, Vice Chair Kitagawa, and Committee Members:

The League of Women Voters of Hawaii strongly supports HB 719, HD1.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Finance
Honorable Kyle T. Yamashita, Chair
Honorable Lisa Kitagawa, Vice Chair

RE: Testimony Supporting H.B. 719 H.D. 1, Relating to Public Records
Hearing: February 28, 2023 at 11:30 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 **strongly supporting** H.B. 719 H.D. 1.

State and county agencies maintain government records **for the people of Hawai`i**. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai`i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

The Legislature *unanimously* adopted a similar bill in 2022. After Governor Ige's veto, the Commission to Improve Standards of Conduct further refined the proposal with extensive input from government agencies and the public. The Commission's proposal as introduced in H.B. 719 addresses any legitimate agency concerns and upholds the fundamental principle that the public deserves to know what its government is doing.

This proposal is one of three critically necessary public records changes identified by 30 entities in a coalition letter by media outlets and community organizations to Governor Green. The Governor has embraced the proposal. *E.g., Patti Epler, Let the Sunshine In: The Winds of Change May Be Starting to Blow in an Otherwise 'Dark Time', Honolulu Civil Beat (Jan. 31, 2023).*

This bill has an appropriately limited scope. It only applies when someone requests access to the people's records *for the purpose of educating the general public about operations and activities of our government*. In those limited circumstances, cost should not be an obstacle. An individual's public record request educates one person, but a public interest request typically educates thousands of people in Hawai`i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and

publishing information about government operations. When the agency charges too much, the general public is left in the dark.

For example, reporters and watchdog activists have written articles *sourced from public records* on the State's pension burdens, the deficiencies in DHHL's or DLNR's revocable permit systems, the discipline or exoneration of law enforcement officers for the death or assault of a citizen, the delays at DCCA in disciplining physicians, and even the cost of public records. Public discussion of these concerns about government operations – informed by access to government records – has led to reform in every instance.

Excessive secrecy contributes to the public's distrust of government. When a requester has the ability to use government records to educate the general public about how our government operates, that leaves less room for agency corruption and incompetence. So when an agency claims that it will share **the people's records** with a public interest requester only if paid thousands of dollars for access, the public may legitimately ask: What is the agency hiding?

In recent discussions with the Department of the Attorney General, the Law Center would support language that does not change the public interest waiver, but provides additional clarity regarding the relevant factors for agencies to consider. The proposed language further incorporates into the statute the factors used by the federal Freedom of Information Act, which is the model for public interest waiver.

*Supported amendment to HRS § 92F-42(13)(B)(iii) [new language **bolded**]:*

- (iii) Provide for a waiver of fees when the public interest would be served by the record's disclosure; provided that the waiver shall require that the search for or review or segregation of records be provided at no charge to the requester if disclosure of the record is in the public interest because the disclosure is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Factors to be considered when determining if the disclosure would serve the public interest include, but are not limited to:
- (a) the subject of the request;
 - (b) the informative value of the information to be disclosed;
 - (c) the contribution to an understanding of the subject by the general public likely to result from disclosure;
 - (d) the significance of the contribution to public understanding;
 - (e) the existence and magnitude of a commercial interest; and
 - (f) the primary interest in disclosure; and

Thank you again for the opportunity to testify in support of H.B. 719 H.D. 1.



Feb. 28, 2023

Kyle T. Yamashita
House Finance Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 719, HD1

Chairman Yamashita and Committee Members:

We like this bill, which caps fees on reproduction of government documents and search fees for educating the public, and removes fees for records in electronic format.

Copying costs and search fees can be a big ticket item for the news media and public interest organizations that educate the public about its government. Many times the costs and deter or greatly delay reporters and groups from pursuing the documents, and the public is the victim because it doesn't get the articles.

The loss of revenue is small when compared to the interest these records can generate – and have made – in revealing issues to the public.

We highly endorse this measure.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ



Feb. 28, 2023

11:30 a.m.

VIA VIDEOCONFERENCE

Conference Room 308

To: House Committee on Finance

Rep. Kyle T. Yamashita, Chair

Rep. Lisa Kitagawa, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB719 HD1— RELATING TO PUBLIC RECORDS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to commend the Legislature for considering this bill, [HB719 HD1](#), which touches on a significant problem encountered in open-records requests: the use of high search and reproduction costs as a method to discourage the pursuit of Uniform Information Practices Act requests.

Specifically, the bill would impose a cap on fees for reproduction of public records as well as on the searching, reviewing and segregating of such records.

In addition, the bill provides for a waiver of costs for duplication of records in electronic format; and provides for a waiver of fees when the public interest is served.

As an educational research organization and public watchdog group, the Grassroot Institute of Hawaii often uses open-records requests to shine the light of transparency on the inner workings of government. Our UIPA requests run the gamut, from requests for records of budget and financial documents to requests for details of the plans for the Honolulu rail project.

In the course of our work, we have seen that some government agencies are more forthcoming than others, and that there are varying interpretations of the public interest fee waiver. Thus,

some agencies will waive all costs associated with the search — as the statute clearly intended — while others will use the waiver as a “discount” of sorts, reducing but not waiving the search and reproduction fees.

On occasion, an agency will quote such a high fee requirement that accessing the requested records becomes an impossibility for the average person — or even a researcher or journalist.

For example, in 2021, the Grassroot Institute requested three years of administrative forfeiture records from the state Office of the Attorney General. As this was part of an effort to research and report on asset forfeiture in Hawaii, we requested a waiver in the public interest. The AG’s Office quoted a total cost of \$2,190. This included a \$60 “fee waiver” because the request was in the public interest; only \$10 was related to reproducing records.

On another occasion, we requested communications between the governor’s office and certain agencies regarding the COVID-19 emergency — a nearly identical request to one filed by The Associated Press. The office quoted a total cost of \$342,876 for the request, which included a \$60 “fee waiver” because the request was in the public interest.

One might suggest that this request was too broad, in which case, it would have been more in keeping with the intent of the open-records law for the agency to discuss with us a way to narrow the request, as other agencies often do, rather than producing a cost quote intended to avoid any disclosure at all.

All of which is to say, HB719 should be praised for seeking to eliminate reproduction charges for digital records and capping the fees for reproduction of physical copies.

However, we would like to suggest the inclusion of a public interest waiver for fees related to the reproduction of physical records. Many agencies have switched entirely to electronic record keeping, but the public interest extends to historical records and should not be constrained.

Nor should agencies be provided with loopholes that would enable them to use the cost of physical copies, or transferring physical records to electronic format, as a way to discourage requests.

In addition, this bill provides for a public interest waiver of fees related to search, review and segregation of records. This is a laudable addition to the law that would go a long way toward addressing the use of fees as an obstruction to open-records requests. It is often through sky-high search and review costs that agencies are able to discourage open-records requests, and this waiver is the most important element of the current bill.

We do have one concern: the increase in the search, review and segregation costs, which are currently [set](#) by the state Office of Information Practices at \$2.50 per 15-minute increment of searching time and \$5 per 15-minute increment of review and segregation time.

We urge you to cap those costs at the current rate rather than increasing them to \$5 and \$7.50, respectively. Alternatively, we suggest that the Legislature remain silent on the search and review costs, leaving them to OIP to determine via rule, rather than setting the cost via legislative action.

We understand the desire to discourage nuisance requests or abuse of the open-records law, but agencies should not be able to avoid disclosure of public records through the use of high fees.

There are other avenues available to help address an overbroad request or “fishing expeditions,” such as a dialogue about reducing the scope of a request, delayed fulfillment of the request, and guidance from the state Office of Information Practices, among others.

In summary, HB719 has the potential to improve transparency and open government in our state by strengthening the public interest element of the law.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

HB-719-HD-1

Submitted on: 2/26/2023 6:24:09 PM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Henry Curtis	Life of the Land	Support	Remotely Via Zoom

Comments:

Aloha

Life of the Land supports this bill

Access to govt records is critical

Mahalo

Henry Curtis

Executive Director



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

February 27, 2023

**The Honorable Rep. Kyle T. Yamashita, Chairman
The Honorable Rep. Lisa Kitagawa, Vice Chairman
House Committee on Finance**

**From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945**

In STRONG SUPPORT of HB 719 HD1, Relating to Public Records

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 991, capping charges for reproducing, searching, reviewing, and segregating public records and waiving costs under certain conditions.

Access to the public's public records shouldn't depend on how much money you make. A member of the public with less ability to pay shouldn't be treated differently than a wealthier one.

Responding to public records requests doesn't take away from a government employee's job. It is, in fact, part of the job.

The numerous clerks employed at all levels of state and local government are charged with responding to public records requests as part of their job duties. The advent of electronic document and data management systems has actually made that job easier compared to the old days when paper files had to be retrieved from physical storage.

Public records belong to the people, not the government. The people already pay the taxes that support the workers who process the public records requests, the computers and software where the records reside and buildings that contain them.

Mahalo nui for considering HB 719 SD1.

HB-719-HD-1

Submitted on: 2/27/2023 9:56:47 AM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kat Brady	Community Alliance on Prisons	Comments	Written Testimony Only

Comments:

Community Alliance on Prisons supports HB 719 HD1 that caps the cost of government records.

Transparency, Accessibility, and Accountability are the hallmarks of a democracy. When the public is denied information, trust is eroded.

Please pass HB 719 HD1! Mahalo nui,

Kat Brady



holomua

COLLABORATIVE

OUR MISSION

To support and advance public policies that make Hawai'i affordable for all working families.

OUR VISION

Collaborative, sustainable, and evidence-based public policies that create a diverse and sustainable Hawai'i economy, an abundance of quality job opportunities, and a future where all working families living in Hawai'i can thrive.

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HolomuaCollaborative.org

Committee: House Committee on Finance
Bill Number: HB 719, HD1 Relating to Public Records
Hearing Date and Time: February 28, 2023 at 11:30am (Room 308)
Re: Testimony of Holomua Collaborative in support

Aloha Chair Yamashita, Vice Chair Kitagawa, and Committee Members:

We write in support of HB 719, HD1, Relating to Public Records. The purpose of HB 719, HD1 is to impose a cap on charges for the reproduction of certain government records; waive the cost of duplication of government records provided to requestors in an electronic format; impose a cap on charges for searching for, reviewing, and segregating records; and provide for a waiver of fees when the public interest is served by a record's disclosure. It also appropriates funds for positions in the office of information practices.

When the Commission to Improve Standards of Conduct (the "Commission") recommended this bill, they were building upon a previous bill (SB 3252) that was unanimously passed by the State Legislature last year. The only reason that bill is not currently law is because it was vetoed by Governor Ige. Since then, the Commission has addressed the concerns that were raised in his veto message, with the chair and vice chair of the Commission noting their attempts to strike a proper balance, including specific references to federal statutes to assist with interpretation.¹

It's important to note the limited scope of HB 719. A key feature of the bill is the waiver of fees. Critically, this waiver of fees applies only "when the public interest would be served by the record's disclosure." This limitation is crucial because organizations making public interest requests are a fraction of all the requests made statewide. Indeed, public interest requests are roughly 5% of requests each year.² In other words, 95% of records requests made of government agencies simply will not be impacted by this bill.

In addition, entities that make public interest requests are typically motivated to work with government agencies to adjust or narrow their requests in order to receive the information they need in a timely fashion. Whether it is the Sierra Club requesting information about Red Hill or the Star-Advertiser asking for information about the progress of the rail line, it is not in these organizations' interests to ask—and stubbornly stick by—overbroad and burdensome requests. It is often *because* they are making requests in the public interest that they are interested in partnering with the agencies to make the requests as easy as possible to answer.

¹ The Civil Beat Editorial Board Interview: The Standards Commission's Dan Foley and Robert Harris, December 4, 2022 (<https://www.civilbeat.org/2022/12/the-civil-beat-editorial-board-interview-the-standards-commissions-dan-foley-and-robert-harris/>).

² "Public Records Are Our Records," The Civil Beat Law Center for the Public Interest (<https://www.civilbeatlawcenter.org/sb3252/>).



As its final report noted, an essential goal of the Commission was to provide recommendations that would help restore public trust in government and increase the level of transparency in its operations. HB 719 is a clear example of this and we are proud to support it.

As part of Holomua’s mission, we aim to build cross-sector collaborative support to work alongside our appointed leaders and elected government partners to co-create viable, sustainable solutions that benefit all working families in Hawai‘i. We believe policies that help improve government functions, and public confidence in government, further that goal. We appreciate the opportunity to testify.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Josh Wisch', is written over a light blue horizontal line.

Josh Wisch
President & Executive Director

HB-719-HD-1

Submitted on: 2/25/2023 5:06:57 PM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB719 HD1.

HB-719-HD-1

Submitted on: 2/26/2023 3:37:26 PM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Bianca Isaki	Individual	Support	Written Testimony Only

Comments:

Aloha Representatives,

Thank you for the opportunity to submit testimony strongly supporting H.B. 719 H.D. 1. State and county agencies maintain government records for the people of Hawai`i. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai`i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

Yours,

Bianca Isaki

HB-719-HD-1

Submitted on: 2/27/2023 12:52:37 PM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Hunter Heavilin	Individual	Support	Written Testimony Only

Comments:

As an individual who has requested yet been unable to pay the high fees for government records before, I know how difficult it can be to afford the cost of accessing public documents. Therefore, I strongly support this bill that imposes a cap on charges for certain government records and waives the cost of duplication of government records provided in an electronic format. This is an important step in ensuring that the public has access to government records without being financially burdened.

By making government records more accessible and affordable, HB719 will help promote transparency, accountability, and trust in government institutions, benefiting both the public and government officials alike. This recognizes that access to public records is not only important for individuals but also for the greater good. Therefore, I urge the passage of this bill and the appropriation of funds for positions in the office of information practices.

HB-719-HD-1

Submitted on: 2/27/2023 2:01:48 PM

Testimony for FIN on 2/28/2023 11:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Christine Trecker	Individual	Support	Written Testimony Only

Comments:

I'm a Civil Beat reader who appreciates their in-depth, fact-based articles on the workings of our local government. There should be no barriers, including financial, to Civil Beat or other entities accessing public government records. I urge you to support HB 719!