



Feb. 17, 2022

9:30 a.m.

VIA VIDEOCONFERENCE

**To: Senate Committee on Judiciary**  
**Senator Karl Rhoads, Chair**  
**Senator Jarrett Keohokalole, Vice Chair**

**From: Grassroot Institute of Hawaii**  
**Ted Kefalas, Director of Strategic Campaigns**

RE: SB2916 — RELATING TO EMERGENCY POWERS

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB2916](#), which would prohibit the governor or mayor from suspending requests for public records or vital statistics during a declared state of emergency.

Transparency is the best way to ensure accountability in governance. This bill makes it clear that the government's responsibility to the people does not take a hiatus in an emergency.

Those who are concerned that this proposal would hinder government agencies from carrying out their duties in an emergency need not worry. Hawaii's [open-records statute](#) already addresses that possibility by providing flexibility to agencies that require an extended time to respond, as in a delay caused by an emergency. Thus, any suspension of open-records laws by the governor or mayors is unnecessary and redundant.

Early in the COVID-19 emergency, Gov. David Ige suspended Hawaii's open-records and sunshine laws — an extreme response that was not taken by any other state.

Not only did his action raise questions about the health rationale for the suspension, but it also undermined public trust in the workings of government at a time when that trust was needed more than ever.

In our policy brief "[Lockdowns Versus Liberty](#)," we looked at how the state's emergency-management law could be reformed in light of the lessons learned during the COVID-19 lockdowns. One of the points made was that government transparency is even more important in times of emergency, since a lack of accurate information about government decision-making can lead to a loss of public trust.

Open government is not only at the core of our constitutional principles, it is also essential to uphold public faith in the decision-making of our leaders and the democratic process.

We understand that the executive needs leeway to handle an emergency as needed, but that is not a carte blanche to suspend laws because they are merely inconvenient. Instead, government actions during an emergency should be narrowly tailored to demonstrate a connection between the actions and the protection of public health or safety.

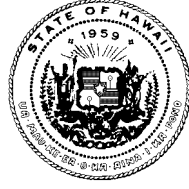
Hawaii's experience with the COVID-19 lockdowns has raised important questions about the scope of executive power under the state's emergency-management statute. This bill, if enacted, would be a good start toward protecting civil rights and open government during an emergency.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii

DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 15, 2022

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **SB 2916 – RELATING TO EMERGENCY POWERS**

Hearing: Thursday, February 17, 2022, 9:30 a.m.  
Via Videoconference, State Capitol

**POSITION:** The Department of Human Services (DHS) understands the intent and offers comments.

**PURPOSE:** The purpose of the bill is to prohibit the Governor or the mayor from suspending requests for public records or vital statistics during a declared state of emergency.

The suspension of the Uniform Information Practice Act (UIPA) per the Governor's emergency proclamations during the COVID-19 pandemic was necessary for DHS to pivot its processes and service delivery quickly and provide necessary and updated information to the public, staff, and contracted providers. Without the suspension, DHS would not have been able to meet the UIPA response times that would lead to additional administrative processes.

The Department experienced historic and dramatic increases in the number of applications for benefits when COVID-19 impacted Hawaii in March 2020. Pre-COVID-19, DHS served 1 in 4 Hawaii residents; by late 2020, 1 in 3 Hawaii residents accessed one or more DHS programs. These caseloads remain at historic highs while we begin to rebuild our workforce following the Legislature's defunding of more than 300 positions in 2020 and the Executive

freezing hires until the summer of 2021, steps taken to address the severe reduction in general fund revenue.

From a resource perspective, DHS has only one public information officer (PIO) who leads the Department's internal and external communications. The PIO also participates in the emergency management joint information center during emergency incidents.

In addition to many questions from new applicants and current recipients as most DHS services shifted to a telework environment, DHS addressed numerous inquiries about federal program waivers, new federal stimulus programs and uses of additional funds, access to personal protective equipment, how services would manage the COVID-19 mitigation strategies in the context of child care, homeless shelters, foster care emergency shelters, domestic violence shelters, and in DHS statewide offices.

The PIO engaged in public outreach with news media and regularly updated the DHS website during this time. Researchers and community advocates made numerous inquiries to track child abuse and neglect reporting trends and the increase in Supplemental Nutrition Assistance Program (SNAP) and financial assistance applications when stay-at-home orders began. Also, DHS experienced an increase in the number of inquiries received from information brokers tracking Requests For Proposal dates, winning proposals, and score sheets from winning contracts.

Nonetheless, DHS diligently tracked information requests and gathered records to ensure responses to all requests. Before COVID-19 proclamations, DHS received approximately 20-30 UIPA requests per fiscal year. In state fiscal year (SFY)21, DHS received over 60 UIPA requests, and many were complex multi-layered requests. There was a 260% increase in UIPA requests comparing SFY19 to SFY21. The public's requests on the impacts of COVID-19 continue to come in, and from current analysis, the number of requests received thus far may surpass SFY21.

Lastly, if the measure passes as is, DHS will require additional staff dedicated to responding to UIPA and other requests for information, especially during emergencies.

Thank you for the opportunity to testify on this bill.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 17, 2022, 9:30 a.m.  
State Capitol, Via Videoconference

Re: Testimony on S.B. No. 2916  
Relating to Emergency Powers

---

---

Thank you for the opportunity to submit testimony on this bill, which would prohibit the Governor or a Mayor from suspending requests for public records or vital statistics during a declared state of emergency. The Office of Information Practices (**OIP**) **takes no position** on this bill because it is a policy decision for the Legislature to determine what limit, if any, is appropriate for the Governor's use of emergency powers. However, to assist the Legislature in making this decision, OIP offers comments regarding how the two and a half month full suspension of the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), and subsequent suspension for over a year of the UIPA's deadlines, affected record requesters, agencies, and OIP's own work.

On March 16, 2020, the UIPA was temporarily suspended in its entirety by Governor Ige, and that suspension was subsequently extended until May 31, 2020. Because the UIPA was suspended in its entirety, OIP's powers and duties found in part IV of chapter 92F, HRS, were also suspended during that time, including OIP's power to accept and issue determinations on UIPA appeals.

On May 5, 2020, with the Governor's Seventh Supplementary Proclamation for COVID-19 (see Exhibit H on pages 73-75), OIP's powers and duties found in part IV of the UIPA were restored, except that the UIPA and OIP's rules were "suspended to the extent they contain any deadlines for agencies, including deadlines for the OIP, relating to requests for government records and/or complaints to OIP." The partial suspensions of the Sunshine Law and UIPA were continued for more than a year, through August 5, 2021.

### **Effect Upon UIPA Cases**

During the two and a half months the UIPA was fully suspended, OIP could not accept UIPA appeals, even on record requests made and denied prior to March 16, but instead had to inform would-be appellants to wait and ask again after the suspension was lifted. While OIP averaged over 17 new UIPA related cases a month in the first 9 months of FY 2020, it opened no new cases from March 16 to May 5, 2020 and only 4 new UIPA related cases per month for the remainder of FY 2020.

OIP was also unable to issue opinions during the time its powers were suspended. Nevertheless, OIP continued to advise agencies and the public primarily through correspondence and email due to the COVID-19 restrictions in effect at that time. OIP also continued to work on appeal files and prepare opinions for later issuance. In fact, OIP ended FY 2020 with its lowest backlog formal cases (67) in a decade, thanks to the hard work of its experienced team who worked throughout the government shutdown.

With the substantial restoration of its powers and duties in May 2020, OIP was able to issue opinions again and open certain new cases. However, **OIP still could not accept appeals based on causes of action dependent on alleged violations of the portions of the UIPA that were suspended and**

**therefore not in effect**, such as an agency's failure to respond to or denial of a record request made while the UIPA was fully suspended, or an agency's failure to make a timely response to a record request made while the UIPA's deadlines were suspended. Moreover, because they still were not required to follow the deadlines for responses to OIP's inquiries, **OIP was unable to compel agencies to provide the substantive response required by OIP's appeal rules and necessary for OIP to resolve the appeal.** Although agencies are theoretically required to provide this response, for more than a year **the suspension of deadlines made it optional to provide the response that OIP needs before it can resolve a case.**

While UIPA deadlines were suspended, many agencies nonetheless continued to respond to newly opened appeals even without the spur of an enforceable deadline, but other agencies did not respond until after the UIPA was fully restored in August 2021 and OIP was able to once again enforce UIPA deadlines. While deadlines were suspended, OIP was obviously unable to resolve those appeals for which the agency had not responded, though it was able to focus its work instead on those appeals that were ripe for resolution. Once deadlines were restored, agencies' delayed responses were in many cases based on events from a year or more previously, during which time recollections had faded.

During the year and a half that the UIPA was first fully and then partially suspended, some agencies continued to respond to public UIPA requests but others took advantage of the suspension to put off answering indefinitely. The media reported on some unanswered UIPA requests of particularly high public interest, while many other unanswered requests were of interest only to the requester. The UIPA's purpose, however, is to give the public access to government records regardless of whether the request is of high public interest or specifically of

interest mainly just to the requester, and for many requesters the UIPA did not fulfill that purpose during its year and half long suspension.

### **Conclusion**

In conclusion, OIP saw a definite impact to record requesters, agencies, and OIP's own operations during the year and a half that the UIPA was first fully and then partially suspended, but cannot attribute the impact solely to the Governor's suspension proclamations or to the statewide shutdown's impacts on agency staffing and operations and the public's reactions. OIP recognizes that any limitation on the Governor's power to suspend the UIPA in whole or in part is a **policy call for the Legislature** to make.

Thank you for considering OIP's 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

Senate Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Jarrett Keohokalole, Vice Chair

**RE: Testimony Supporting S.B. 2916, Relating to Emergency Powers**  
Hearing: February 17, 2022 at 9:30 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 **supporting** S.B. 2916.

The public records law serves a fundamental role even in emergencies. In crisis, we must reaffirm, not abandon our most basic democratic principles. When government boldly declares that it will hide information and conceal decision-making, rumor, innuendo, and special interests thrive, while democracy withers.

Suspension of the public records law for emergencies is unnecessary because the rules that govern record requests already provide flexibility for agencies to address other priorities.<sup>1</sup> The two week deadline for an initial response may be extended two more weeks for an agency “to avoid an unreasonable interference with its other statutory duties and functions” or for a “natural disaster or other situation beyond the agency’s control.” HAR §§ 2-71-13(c), -15(a). And if response would be burdensome within that extended period, disclosure may occur in monthly batches to accommodate other priorities. *Id.* § 2-71-15(b).

Thank you again for the opportunity to testify in **support** of S.B. 2916.

---

<sup>1</sup> Hawai`i agencies do not consistently respond in compliance with the administrative deadlines in any event. For example, a recent national audit of various states found that only a third of agencies contacted in Hawai`i responded within the administrative deadlines. A. Jay Wagner (Marquette University), *Probing the People’s Right to Know: A 10-State Audit of Freedom of Information Laws* (Mar. 2020).

**Hawaii***Holding Power Accountable*Statement Before The  
**SENATE COMMITTEE ON JUDICIARY**

Thursday, February 17, 2022

9:30 AM

Via Videoconference

in consideration of

**SB 2916****RELATING TO EMERGENCY POWERS.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii provides written comments on SB 2916, which prohibits the governor or the mayor from suspending requests for public records or vital statistics during a declared state of emergency.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through promoting ethics, accountability, and transparency in our democratic form of government.

When the COVID-19 pandemic first impacted Hawaii, Governor Ige partially suspended the Sunshine Law (HRS Chapter 92) and completely suspended the public records law (HRS Chapter 92F). See Supplementary Proclamation Related to the COVID-19 Emergency dated March 16, 2020 [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG\\_COVID-19-Supplementary-Proclamation-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG_COVID-19-Supplementary-Proclamation-signed.pdf) (retrieved Feb. 4, 2022). By Governor Ige's Seventh Emergency Proclamation, guidance was provided for the Sunshine Law to allow for remote meetings, but the public records law was still suspended "to the extent they contain any deadlines for agencies, including deadlines for the OIP, relating to requests for government records and/or complaints to OIP." See Seventh Supplementary Proclamation Related to the COVID-19 Emergency dated May 5, 2020 [https://governor.hawaii.gov/wp-content/uploads/2020/05/2005024-ATG\\_Seventh-Supplementary-Proclamation-for-COVID-19-distribution-signed-1.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/05/2005024-ATG_Seventh-Supplementary-Proclamation-for-COVID-19-distribution-signed-1.pdf) at Exhibit H (retrieved Feb. 4, 2022). The public records law was suspended through the Twenty-First Proclamation Related To The COVID-19 Emergency dated June 7, 2021, which expired August 6, 2021. See [https://governor.hawaii.gov/wp-content/uploads/2021/06/2106080-ATG\\_21st-Emergency-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2021/06/2106080-ATG_21st-Emergency-Proclamation-for-COVID-19-distribution-signed.pdf) (retrieved Feb. 4, 2022). The Sunshine Law continues to be impacted by the pandemic. On December 29, 2021, Gov. Ige issued an Emergency Proclamation Related To Sunshine Law In-Person Meetings, which will expire February 28, 2022, suspending only that portion of the law requiring at least one physical meeting location to be open to the public. See [https://governor.hawaii.gov/wp-content/uploads/2021/12/2112177-ATG\\_Emergency-Proclamation-Related-to-Sunshine-Law-In-Person-Meetings-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2021/12/2112177-ATG_Emergency-Proclamation-Related-to-Sunshine-Law-In-Person-Meetings-distribution-signed.pdf) (retrieved Feb. 4, 2022). The remainder of the Sunshine Law is currently in effect. *Id.*

These actions are why Hawaii is known to have adopted the most extreme open records limits during the ongoing pandemic. See <https://www.usnews.com/news/best-states/hawaii/articles/2021-03-15/hawaii-adopts-most-extreme-open-records-limits-amid-pandemic> (retrieved Feb. 4, 2022).

During regular times and especially during these pandemic times, it is vitally important that the people be able to have access to their government and know that their government is functioning properly and in the best interest of the people. Without being able to request public records and timely receive them for over one year, government is shutoff from public oversight and accountability, which are necessary for a functioning



democracy. HRS Chapter 92F, the public records law, should not be suspended, if we are to have any trust and confidence in our government. HRS Chapter 92F and our Sunshine Law, which properly allows for remote meetings, should also not be suspended by any governor without thorough justification and unless absolutely necessary and for the minimum time necessary.

Thank you for the opportunity to provide comments on SB 2916. If you have questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



**SB-2916**

Submitted on: 2/12/2022 9:25:17 PM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Levana Lomma	Testifying for For Our Rights	Support	No

Comments:

Prohibiting the suspension of open records laws is vital to maintaining government transparency and thus ensuring greater public trust in government. We offer our testimony in SUPPORT of this bill. Mahalo.

Levana Lomma,

CEO and President, For Our Rights



SENATE COMMITTEE ON JUDICIARY  
Thursday, February 17, 2022, 9:30 am, Videoconference  
SB 2916  
Relating to Emergency Powers

**TESTIMONY**

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

Chair Rhoads and Committee Members:

**The League of Women Voters of Hawaii supports SB 2916.** Authorizing the Governor or a county mayor to deny public access to government records does not protect either public health or public safety.

Thank you for the opportunity to submit testimony.



### **Kokua Council**

The **Kokua Council** is one of Hawaii's oldest advocacy groups. Kokua Council seeks to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves.

**Senate  
Committee on Judiciary  
Thursday, February 17, 2022  
9:30 a.m.**

To: Chair Senator Karl Rhoads  
Re: SB2916, Relating to Emergency Powers

Aloha Chair Rhoads, Vice-Chair Keohokalole, and Members of the Committee,

I am Lila Mower, president of Kokua Council which advocates, informs, and educates to improve laws, policies, and practices that impact the well-being of kupuna, their families, and our community.

Kokua Council **supports SB2916** to disallow government agencies from denying access to public information and to ensure that government processes are open to public scrutiny to facilitate public participation and to promote government accountability, even during periods of emergency.

The public has a right to know what our government is doing, what business is being transacted, and how our tax dollars are being used. This right is basic to good representative governance.

Recent occurrences involving Hawaii's government officials and employees have eroded already damaged public trust. To rebuild that trust, it is the government's responsibility to facilitate proactive communication with the public and to improve access to public information, as well as other corrective acts.

Kokua Council does our part, too, actively engaging in advocacy at the Legislature and other government offices and agencies, on behalf of our community.

Mahalo for the opportunity to testify on this measure.



February 17, 2022

Sen. Karl Rhoads  
Senate Judiciary Committee  
State Capitol  
Honolulu, HI 96813

Re: SB 2916

Chair Rhoads and Committee Members:

We support this measure, which would bar the governor from suspending public records requests during emergencies.

State law already provides for delays in responses to records requests.

It could be a problem if the governor restricts records requests because release of information is many times very important during times of emergencies.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists

**SB-2916**

Submitted on: 2/13/2022 2:22:56 AM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kimeona Kane	Individual	Support	No

Comments:

Aloha nui,

Keep public trust at the core of decision making. Do not allow for an option to withhold information for the public. Be transparent in all things.

Mahalo nui,

Kimeona Kane



**SB-2916**

Submitted on: 2/15/2022 10:28:27 PM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dale A. Head	Individual	Support	No

Comments:

Aloha Judiciary Committee:

I SUPPORT passage of SB2916 as it was hasty to prohibit release of public information to the public. That made no sense, and, the Covid19/Sars Virus problem could be with us for decades.

**SB-2916**

Submitted on: 2/16/2022 11:01:50 AM

Testimony for JDC on 2/17/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Nikos Leverenz	Individual	Support	No

Comments:

Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

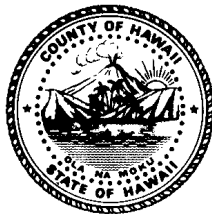
I am writing in **strong support** of SB 2196, which would prohibit the governor or a mayor from suspending requests for public records or vital statistics during a declared state of emergency.

The ongoing COVID-19 pandemic demonstrates the necessity of making information available to the Legislature, the media, and the general public.

Disclosure is essential to ensuring public trust and confidence in executive branch functions, particularly during states of emergency.

Mahalo for the opportunity to provide testimony.

REBECCA VILLEGAS  
Council Member  
District 7, Central Kona



PHONE: (808) 323-4267  
FAX: (808) 323-4786  
EMAIL: [Rebecca.villegas@hawaiicounty.gov](mailto:Rebecca.villegas@hawaiicounty.gov)

## HAWAI'I COUNTY COUNCIL

West Hawai'i Civic Center, Bldg. A  
74-5044 Ane Keohokalole Hwy. Kailua-Kona, Hawai'i 96740

February 16, 2022

### TESTIMONY OF REBECCA VILLEGAS COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL ON SB 2916, RELATING TO EMERGENCY POWERS

Committee on Judiciary  
Thursday, February 17, 2022 at 9:30am

Aloha Chair Rhoads and Members of the Committee:

My testimony is submitted in my individual capacity as a member of the Hawai'i County Council and Chair of the Hawai'i County Council Climate Resilience and Natural Resource Management Committee.

I support SB 2916, a measure which prevents the future suspensions on the acquisition of critical public records.

Open access to public records is a cornerstone of our democracy. Such access is central to electing and monitoring public officials, evaluating government operations, holding leaders accountable, vindicating our rights, and making informed decisions about our democracy. Allowing people to seek and receive public documents serves as a critical tool for fighting corruption, enabling citizens to more fully participate, making governments more efficient, encouraging investment, and helping persons exercise their fundamental human rights.

For the reasons stated above I urge the Committee on Judiciary to support this measure as well. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

A handwritten signature in black ink, appearing to read "Rebecca Villegas".

Rebecca Villegas  
Council Member, Hawai'i County Council