

DAVID Y. IGE  
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STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
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April 2, 2022

TO: The Honorable Representative Sylvia Luke, Chair  
House Committee on Finance

FROM: Cathy Betts, Director

SUBJECT: **SB 3252 SD2 HD1 – RELATING TO PUBLIC RECORDS.**

Hearing: April 5, 2022, 1:30 p.m.  
Via Videoconference, State Capitol

**POSITION:** The Department of Human Services (DHS) appreciates the intent of the measure, provides comments, and defers to other impacted Departments. The Department respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 4, lines 13 to 14) and requests an amendment to preserve the current language.

**PURPOSE:** The purpose of the bill is to impose a cap on the costs charged 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 costs charged for searching for, reviewing, and segregating digital records. Provides for a waiver of fees when the public interest is served by a digital record's disclosure. Effective 7/1/2050. (HD1) The SD1 amended the measure by

"clarifying that reproduction costs will not be charged for producing documents provided to requestors in electronic format if the agency maintains those documents in an electronic format; however, requestors shall be charged for documents requested that are not maintained in electronic format and must be manually faxed or scanned into an electronic format." STAND. COM. REP. NO. 2367

The HD1 amended the measure by:

- (1) Removing language that waived the production costs for the first one hundred pages of certain government records if disclosure was in the public's interest;
- (2) Specifying that the cap on costs charged for searching for, reviewing, and segregating government records applies to digital government records; 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.

The unfortunate reality is that the Department and its programs do not have dedicated staff or resources to respond to records requests; time spent on responses interrupts the completion of regular duties. Notably, DHS is actively trying to fill vacant positions and rebuild the Department's workforce. In response to the severe general fund shortfall in 2020 due to the pandemic, the executive hiring freeze from April 3, 2020, through July 30, 2021, prevented the recruitment and filling of most remaining vacancies, and the 2020 Legislature defunded more than 300 positions. In this session's budget, DHS requests appropriations to restore 100 positions and add 36 new positions to address departmental and program needs. Importantly, as of March 11, 2022, DHS is actively recruiting 295 positions.

Complex record requests often require significant coordination of program resources and staff time. Importantly, we do not assume that 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. Respectfully, regarding reproduction costs, DHS opposes the deletion of "labor cost for search and actual time for reproducing" (page 4, lines 13 to 14) and requests an amendment to preserve the current language.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3252, S.D. 2, H.D. 1, RELATING TO PUBLIC RECORDS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Tuesday, April 5, 2022 **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 308 and Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Stella M.L. Kam, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

Among other things, section 3 of this bill amends section 92F-42(14), Hawaii Revised Statutes (HRS), to require the Office of Information Practices (OIP) to adopt administrative rules capping the fees charged by agencies when responding to requests for digital records under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA). The bill caps the fee for searching for digital records at "\$5 per fifteen minutes or fraction thereof", which is equal to \$20 per hour, and for reviewing and segregating digital records at "\$7.50 per fifteen minutes or fraction thereof", which is equal to \$30 per hour. This bill also requires agencies to waive all search, review, and segregation fees when the disclosure of the digital records is in the public interest, i.e., when the records are likely to shed light on governmental operations or activities, and the request "is not primarily in the commercial interest."

The Department opposes section 3 of this bill because the fee caps it mandates do not always reflect the true costs of an agency responding to a records request and the different fee rates for digital records (as opposed to paper records) may create additional confusion and delay. First, we note that requesters rarely specify that they want an agency to search only for digital records. Requesters typically ask the agency to search for all records, paper or digital, that pertain to the specific subject area or the keywords that they are seeking. Section 3 of this bill would require agencies to estimate fees at different rates, depending upon whether the records are maintained by the

agency in digital or paper format. Applying two different fee rates would cause significant confusion for agencies particularly when the responsive records are in mixed formats.

Second, setting rates by statute that are far below the hourly rates of the average State employee would increase the agency's financial costs in responding to UIPA requests and likely would result in agencies requesting increased budget funds or personnel positions to respond to the costs of the UIPA requests. As an example, the average hourly salary of a clerk, secretary, or legal assistant might range from \$24.51 to \$30.44, which is \$10.44 more than the rate specified by this bill, and that does not include overtime rates, which are higher and which might have to be used to fulfill some requests in a timely manner. In addition, many requests may require specialized knowledge such as engineering, scientific, accounting, or legal, to identify and review the documents requested, further increasing agency costs, and deputy attorneys general are assigned to locate and review documents for requests made to our own Department, as well as assist in the review of documents pursuant to requests made to other State agencies. For example, UIPA requests to our Department are assigned to deputy attorneys general for response. The Department's responsibilities consist primarily of advice and counsel to executive, legislative, and judicial branch client agencies and the representation of those client agencies in administrative and judicial proceedings. The majority of the Department's records contain information that is protected from disclosure as attorney work product and/or also protected under the well-recognized attorney-client privilege. Accordingly, responding to UIPA requests requires deputy attorneys general to review the records to determine whether the records are privileged or otherwise protected.

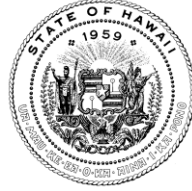
Some of the UIPA requests our Department receives are voluminous, requesting all records within the Department that contain specified keywords (sometimes as many as 15 keywords) over a period of three to four years. To properly respond to such a request, the assigned deputy attorney general must estimate how many employees within the Department could possibly have responsive documents with those keywords for that time period. Depending on the keywords and the time period specified, the

number of employees who have responsive records could easily exceed 20-30 employees, mostly attorneys. For this reason, the estimated amount of time spent searching, reviewing, and segregating can be significant depending on the breadth of the request. Often, many requesters are unclear exactly what they are searching for and thus will draft the broadest request possible, hoping that they will receive some records that meet their needs.

Our third concern is the bill's requirement that search, review, and segregation fees must be waived when the public interest would be served by disclosure of the requested digital records. Under the waiver provision, the public interest is served when the disclosure of the digital record is "likely to contribute significantly to public understanding of the operations or activities of the government" and "is not primarily in the commercial interest."

We note that arguably all government records, by their nature, may be contended to be "likely to contribute significantly to public understanding" of the government's operations or activities. In addition, it is likely that all UIPA requesters will assert that they are making their request as individuals rather than as representatives of an employer in order to evade the fees. If all UIPA requesters qualify for the complete fee waiver, they might be motivated to draft overly broad requests since there is no cost impact to request more documents than is necessary. The imposition of fees incentivizes requesters to make a cost-benefit analysis and tailor their request or narrow their request to only relevant documents that are truly desired. Notwithstanding the disruption to government operations, agencies would not be able to recoup any of the associated costs of responding to UIPA requests, even those requests that take many hours and even days of employees' time to respond.

For the above reasons, we respectfully ask the Committee to hold this bill.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
PARTMENT OF COMMERCE AND CONSUMER AFF**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Finance  
Tuesday April 5, 2022  
1:30 p.m.  
Conference Room 308 and Videoconference**

**On the following measure:  
S.B. 3252, S.D. 2, H.D.1, RELATING TO PUBLIC RECORDS**

Chair Luke and Members of the Committee:

My name is Shelley Choy, testifying on behalf of Ahlani Quiogue, the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional Vocational Licensing (PVL) Division. The Department has concerns with this bill and offers comments.

The purposes of this bill are to: (1) impose a cap on the charged costs for the reproduction of certain government records; (2) waive the cost of duplication of government records in an electronic format; (3) impose a cap on charged costs for searching, reviewing, and segregating records; and (4) provide a waiver of fees when the public interest is served by a digital record's disclosure.

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. Should search, review, and segregation (SRS) fees for duplication of digital records or production of records in service of the public interest be waived, it would likely be very costly to government agencies, as requests requiring extensive searches and the production of a voluminous number of records are very likely to be tailored as coming from individuals and organizations seeking records to serve the public interest. The Department appreciates the amendments to this measure, which would require the Office of Information Practices to create rules for digital record production and public interest record waivers, in hopes that such rules would provide needed clarity, and prevent anticipated tailoring of requests.

While proponents of fee reductions or fee waivers may argue that SRS fees discourage requesters or deny access to government records, the fees are not proven to be unreasonable. 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.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
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**

**SENATE BILL NO. 3252 S.D. 2 H.D. 1**

**April 5, 2022**

**1:30 P.M.**

**Conference Room 308 and via Videoconference**

**RELATING TO PUBLIC RECORDS**

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

S.B. 3252 S.D.2 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



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of the State of Hawaii

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rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.

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's staff time that would detract from the ERS's 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.

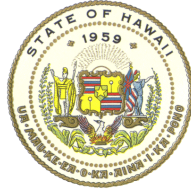
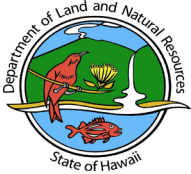
The ERS shares and incorporates the concerns expressed in Office of Information Practices' (OIP) prior testimony, including the failure of current fees to reflect current salaries, changes in standard for a public interest waiver of fees under the UIPA, and ambiguity in the bill about the cost of producing documents in electronic format.

The OIP's list of potential unintended consequences applies to the ERS. In particular, the proposed fee caps and waivers are likely to:

- 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's work unrelated to record requests;
- increase the ERS's 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.

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Tuesday, April 5, 2022  
1:30 PM**

**State Capitol, Conference Room 308 and Via Videoconference**

**In consideration of  
SENATE BILL 3252, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO PUBLIC RECORDS**

Senate Bill 3252, Senate Draft 2, 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. It 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) opposes this measure and offers the following comments.**

With regard to Section 2, fees for reproduction of documents, the Department supports the SD2 language waiving copying charges for the first 100 pages for public interest requests. Currently, there is no public interest waiver for the reproduction of documents. The Department currently charges 50 cents per copy to recoup cost for staff time, paper, and wear and tear on the copy machine, as allowed under current law. The bill proposes to cap charges at 25 cents, half of the current charges. This will not allow the department to recoup its costs, and we expect labor costs to rise over time. The Department would prefer to no cap on maximum fees for reproduction so we can continue to recoup our costs to copy documents, including the copying of electronic files, and instead use the waiver to allow easier access for public interest requests. This will also decrease the administrative overhead required when money is exchanged. The Department notes that the HD1 was changed to accommodate the State Archives concerns. However, the State Archives has its own fee schedule in Section 3-20-9, Hawaii Administrative Rules. As the language of Section 92-2, Hawaii Revised Statutes (HRS), states "except as otherwise provided by law . . ." we suggest that normal research in the archives does not fall under this Chapter.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
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

With regard to SECTION 3, Section 92F-42 (14), HRS, the Department is concerned that the limits fees for searches of digital records will not allow the Department to recoup its costs. Currently, the Office of Information Practices allows the Department to charge \$10 and \$20 respectively. Where it is faster to search for digital records, we expect costs to be lowered even without lower pricing.

The proposed Paragraph (14) of Section 92F-42, HRS, allows for a waiver of all fees for searching, reviewing or segregating digital documents requested in the public interest. This will increase the amount of time staff spend performing this function. Most requests for Department documents that require searching, reviewing or segregating are in the public interest. For example, if a private landowner contests a board decision to deny a permit allowing a seawall, any information related to this case is in the public interest, as the public has interest in the protection of beach access and associated questions with the long-term protection of infrastructure built close to the shore. Additionally, certain members of the public will have interest in eminent domain issues and public versus private property rights. Because the department only issues permits where there is public interest in land use issues, most, if not all Uniform Information Practices requests are in the public interest. While it is sometimes faster and easier to search electronic documents, it still takes time and staff effort.

Public interest requests requiring search, review and segregation tend to be very broad, which means that they are time consuming and have no clear boundaries on what the requestor is seeking. The current practice is for the Department to estimate costs for broad requests and provide this information to the requestor. This tends to incentivize requestors to more narrowly focus their requests, while still allowing them to request the information they need. Without a fee for these broad requests, staff time searching, reviewing and segregating documents will increase, as well as costs for copying more documents. **The Department requests that the bill be amended to limit the fee waiver to 100 pages, this should adequately address legitimate public interest and discourage requestors from making overly broad requests.** It will also lower administrative overhead, as mentioned above. Alternatively, the Legislature could consider providing funds to pay for additional staff to address broader requests as well as potentially more requests made in the public interest.

Thank you for this opportunity to comment on this measure.

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: April 5, 2022, 1:30 p.m.  
State Capitol, Conference Room 308 and Via Videoconference

Re: Testimony on S.B. No. 3252, S.D. 2, H.D. 1  
Relating to Public Records

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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 under section 92-21, Hawaii Revised Statutes (HRS). It would also amend chapter 92F, HRS, the Uniform Information Practices Act (UIPA), to set a statutory cap to the search, review, and segregation fees that the Office of Information Practices (OIP) is required to set by administrative rule for government record requests and it would also establish new statutory standards and requirements for the public interest waiver that OIP has allowed. **OIP offers comments explaining the substantial effects these changes would have, particularly the unintended effects that may result, and suggests amendments to the bill.**

OIP does not administer section 92-21, but will briefly explain how this bill would amend that section.

## **OIP's Current Rules and Results**

The UIPA requires OIP to adopt rule setting forth fees that an agency may charge for processing record requests. The fees are not intended to obstruct

access to disclosable records, but are intended to allow agencies to recover some costs in providing access upon request. When the UIPA was first adopted in 1988, HSCR 342-88 (1988) had this discussion of fees (referring to the HD 1):

**Your Committee amended this subparagraph to permit reasonable charges for the cost of record search, review and segregation of non-disclosable information from the record prior to disclosure. The new language also requires that rates shall be set by rules promulgated by the Office of Information Practices.** It is the intent of your Committee that such charges for search, compilation, and segregation shall not be a vehicle to prohibit access to public records. It is the further intent of your Committee that the Office of Information Practices move aggressively against any agency that uses such charges to chill the exercise of first amendment rights. Your Committee also added new language to allow waiver of these charges when such action serves the public interest.

(Emphasis added.) Thus, as the legislative history of this bill recognized, the original intent of the UIPA was to have fees and waivers set by OIP rules that were not intended to obstruct access to disclosable records or chill the exercise of first amendment rights, but are intended to allow agencies to recover some costs in providing access upon request.

Based on employee salaries at the time, OIP's administrative rules adopted in 1999 allow agencies to charge fees of \$2.50 per 15 minutes (i.e., \$10/hour) for search time and \$5.00 per 15 minutes (i.e., \$20/hour) for review and segregation time. There is a fee waiver of \$30, which is doubled to \$60 for requests that are widely disseminated in the public interest. Costs are governed by agency rules and HRS section 92-12, not OIP.

Since 2014, OIP has been tracking the results of UIPA record requests, including fees and costs incurred, chargeable, and paid, through the UIPA Record Request Log that all State and county agencies are supposed to submit to OIP. OIP would like to share key results of FY 2021 State and county reports, which OIP

summarized in reports that are posted on the [UIPA Record Request Log Records page](#) at oip.hawaii.gov. Overall, the data shows that the typical record request to State and county agencies was granted in whole or in part, and was completed in less than 8 work days from the date of the request; 90% (1,708) of requesters to State agencies and 84% (1,610) of requesters to county agencies paid nothing for their completed requests; and no requester paid \$1,000 or more in fees and costs.

The FY 2021 reports were consistent with the prior years' data showing that most fees and costs are being paid by for-profit entities, and not by individual requesters. Additionally, the data showed that complex record requests constitute 6-16% of all requests but have resulted in processing times that were 2-3 times longer in FY 2021 and 5 to 9 times longer in FY 2020 compared to typical record requests, thus accounting for a disproportionately high percentage of the gross fees and costs incurred by agencies, but which were only partially paid by requesters.

Based on the data, it appears that the bill's premise does not reflect the experience of 84-90% of all requesters who are getting their record requests free and on time. Therefore, **the purpose section should be amended to provide for a more balanced perspective and recognize OIP's rule-making efforts** as described below.

#### OIP's Draft Rules

In 2017, OIP drafted new rules that were intended to address increased costs to agencies, while keeping record requests free for most individual record requests. Due to inflation of employee salaries over the decades, the draft rules proposed an increase in fees to \$7.50 per 15 minutes (i.e., \$30/hour) for search and \$15 per 15 minutes (i.e., \$60/hour) for review and segregation, and

substantially increased the fee waiver to \$400 per year per requester to keep record requests free for most requesters. OIP provided the draft rules for initial public comment and a survey in 2017 and made some changes based on the comments received. Draft rules were then submitted to the Attorney General's office for review in 2018, where they remain pending. The draft rules, explanatory materials, and survey results are posted on OIP's Rules page at <https://oip.hawaii.gov/laws-rules-opinions/rules/>.

OIP notes that its draft rules also proposed a new tool for agencies to address, in rare instances, requesters whose cumulative requests are sufficiently large and frequent that the requests create a manifestly excessive interference with an agency's ability to perform its primary functions. Currently, an agency can respond to a single large request incrementally and spend a reasonable amount of search, review, and segregation time on it to produce a new response increment every month.

**If the issue is not a single large request but instead a very large number of requests from one individual, the current incremental disclosure rule does not apply, so agency resources have been overwhelmed and regular work interrupted.** While rare, it has happened to many agencies in the past, including a former Governor, that an individual has made numerous, unreasonable requests that excessively interfered with agencies' ability to perform their primary functions. It is also possible more than one requester to coordinate various smaller requests to stay under the current fee waivers and to have their requests responded to more quickly because the incremental disclosure rules would not apply, even though the various requests essentially amount to one voluminous, complex request that would interfere with the agency's regular work. To prevent abuse and allow agencies to respond in a

reasonable manner, OIP's draft rules would allow an agency to combine the requests together to respond to them incrementally, rather than being obligated to treat each one as separate requests that must be responded all at once under the UIPA's shorter timeline.

Since the statutorily set fee cap for digital record requests proposed by this bill would exacerbate the challenges agencies face in dealing with large requests and frequent requesters, as many agencies noted in their testimony for this bill, **OIP would recommend this Committee also add a statutory authorization for agencies to combine requests together to respond to incrementally when needed to prevent manifestly excessive interference with agency functions.**

#### **Comments on Bill's Proposals**

The bill proposes a statutory cap that agencies can charge of \$5 per 15 minutes for search (i.e., \$20/hour) and \$7.50 per 15 minutes (i.e., \$30/hour) for review and segregation of digital records. These rates, however, are not much higher than the current charges that were based on a 1996 survey of state and county salaries of employees likely to be responsible for search, review, and segregation under the UIPA. **With the current fees already 26 years out of date, the bill's cap would not accurately reflect current salaries for the government employees doing the work, who are not only clerical workers but also include supervisory, executive, professional employees, and attorneys.**

Although the bill proposes to limit the capped fees only to search, review, and segregation of "digital records," **the fact that records are increasingly retained in digital form might save search time, but this does not reduce the time that experienced agency staff, program specialists,**



**supervisors, executives, professionals, and attorneys must spend to carefully review and redact confidential, personal, or proprietary information before disclosing the record. Further, having different fees for time spent on digital records versus time spent on all other records would create an additional challenge** for agencies in providing the required notice to a requester of estimated fees to fulfill a request, as agencies would now have separately to estimate how much time was expected to be spent working on digital records and how much on non-digital records.

**The bill’s proposed cap on fees, together with the complete waiver of all fees for requests made in the “public interest” and “not primarily in the commercial interest,” would encourage requesters to make more numerous and complex record requests requiring extensive agency time and effort.** As the Log data shows, most of the complex requests are currently being made by for-profit companies or non-profit organizations, not individual requesters. Because the UIPA does not limit its rights only to Hawaii residents, **the fee caps and waivers also apply to nonresident individuals and business who pay no taxes** to support the salaries of our State and county employees whose regular work may be deferred to fulfill what could be voluminous and complex record requests. Moreover, **nothing in the bill would allow agencies relief from repeated, frivolous, or excessive requests that unreasonably interfere with agency operations or are intended to harass the agency.**

**The proposed fee waiver differs significantly from what OIP currently allows** as it would not be limited to information that is not readily available in the public domain, and the requester does not need to have the primary intention and actual ability to widely disseminate the information to the public.

**Does this mean that the bill's proposed fee waiver would allow any student or individual claiming a public interest to essentially have an agency do the research and work for free, even though it is already readily available on the agency's website, or even when the requester has no intent or ability to widely disseminate the information to the public?** Additionally, the bill would add a requirement that the request not be "primarily in the commercial interest," which is something that OIP specifically considered, and rejected, in adopting its current rule regarding public interest waivers, so as to not exclude news media representatives. **Would the bill allow only a nonprofit news organization to qualify for the fee waiver, but not apply to for-profit news organizations or independent free-lance reporters? The new waiver language proposed in the bill will probably result in new legal challenges that will take time to resolve.**

The fee waiver change would not necessarily increase the general public's access to information about the operation of government, and it would apply to a narrower category of information. The bill would require 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, **OIP is concerned that the complete waiver of all fees for those requests that qualify as being in the public interest could be burdensome for agencies and result in a larger number of complex record requests, as there would be no incentive for the requester to narrow such a request to avoid requiring an inordinate amount of agency staff time that could**

**detract from the agency's other work.** As agencies receive more and larger record requests, **the public will suffer** as the agencies' own work will be delayed and adversely impacted while agency personnel work to fulfill complex record requests **and agencies will require additional appropriations and personnel.**

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

- encourage the filing of more complex and voluminous record requests;
- encourage the filing of more numerous record requests that are not subject to the current incremental disclosure rules;
- eliminate the fee waiver for for-profit or free-lance media representatives, but waive fees only for non-profit media representatives who are not acting primarily in the commercial interest;
- slow the processing of all UIPA record requests as well as of the agency's work unrelated to record requests;
- reduce government efficiency as well as government transparency due to delays in processing record requests as agencies resolve more complex requests;
- increase the agencies' need for more funding to recruit, train and hire additional personnel; and
- require ongoing legislative amendments to the UIPA to increase fee caps and to address unintended consequences and matters previously handled by administrative rules,

**including the possibility of providing for longer agency response deadlines.**

As noted in the previous section, **this Committee could reduce existing problems and ameliorate some of the unintended adverse consequences of this bill by removing the fee caps and waiver requirements and instead adding a statutory authorization** for agencies to combine requests together to respond to incrementally when needed to prevent manifestly excessive interference with agency functions. To do so, **bill section 3 could be** amended to instead propose a new section in part II of the UIPA that would **allow agencies to consolidate digital record requests from an individual whose requests and other actions have been causing manifestly excessive interference with the agency's functions**, as follows:

When an agency reasonably determines that a requester's requests and other actions under this chapter are causing or have caused manifestly excessive interference with the agency's discharge of its other lawful responsibilities, it may consolidate all requests for digital government records from the requester, including any requests made in the future, and respond to such consolidated requests on an incremental basis as set forth in rules adopted by the office of information practices; provided that within 10 working days of receiving each new request the agency shall acknowledge it and advise the requester of its consolidation with the requester's other outstanding requests."

**Rather than trying to address all unintended consequences and other thorny details in an inflexible statute during the limited time remaining this session, the Legislature may want to allow OIP to continue**

**to address them through the rulemaking process** over the next year when additional comments can be received from the public and affected agencies.

**Copying Charges Under HRS Section 92-21**

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 waive all copy fees for public interest requests, and thus would primarily affect those agencies that have adopted administrative rules setting a higher per-page charge.**

**Need for Additional Appropriations and Later Effective Date**

In summary, this bill would have the effect of shifting more and more of the cost of providing public access to government records onto the government agencies that respond to record requests and may have the unintended consequences of slowing response times, increasing government and media costs, decreasing media coverage and government transparency, and requiring ongoing legislative changes. OIP notes that the Government Reform Committee requested the Committee on Finance to consider appropriating funds in this bill to establish ten full-time equivalent staff positions in the Hawaii State Archives. **If this Committee decides as a policy matter to shift the costs to government, then it should similarly consider funding additional positions for all state**

**and county agencies to hire full-time UIPA officers and staff to fulfill their responsibilities that will likely expand under the bill.**

**In any event, and whether or not amendments are made by this bill, OIP will need two new positions and appropriations to finish its administrative rules for UIPA record requests, which require more work and public hearings before they can be adopted. Rulemaking is a time-intensive process that will involve all OIP attorneys and staff to do, which will detract from its other work. Even after the rules are revised, OIP would likely see an increase in the inquiries and disputes that arise from any changes, which will add to OIP's growing backlog. OIP's backlog has already doubled over the past two years due to the loss of almost half its small staff and the delays in receiving appropriations and administrative approvals to fill the vacancies. Although it was recently able to fill its last vacancy, OIP is still training four new staffmembers hired over the past year. Additionally, OIP is now facing increased numbers of formal and informal requests for assistance and would like to digitize its records, which would then limit her ability to work on backlogged appeals, training, and other matters. Thus, OIP will require additional appropriations and positions for one staff attorney, one legal assistant, equipment, and operating expenses (including rule publication costs) in the total amount of \$185,000.**

**Finally, OIP requests that it be given sufficient time to fill the new positions, obtain the Attorney General's review of the rules, and complete the rulemaking hearings and process, so the effective date of the bill should be no earlier than January 1, 2024.**

Thank you for considering OIP's testimony.

DAVID Y. IGE  
GOVERNOR



KENNETH S. HARA  
MAJOR GENERAL  
ADJUTANT GENERAL

STEPHEN F. LOGAN  
BRIGADIER GENERAL  
DEPUTY ADJUTANT GENERAL

STATE OF HAWAII  
**DEPARTMENT OF DEFENSE**  
OFFICE OF THE ADJUTANT GENERAL  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

TESTIMONY ON SENATE BILL SB3252 SD2 HD1  
A BILL RELATING TO RELATING TO PUBLIC RECORDS

PRESENTATION TO  
THE HOUSE COMMITTEE ON FINANCE

BY  
MAJOR GENERAL KENNETH S. HARA  
ADJUTANT GENERAL AND DIRECTOR OF STATE EMERGENCY MANAGEMENT AGENCY

April 4, 2021

Chair Sylvia Luke, Vice Chair Kyle T. Yamashita, and Members of the House Committee on Finance.

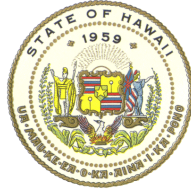
I am Major General Kenneth S. Hara, State Adjutant General and the Director of the Hawaii Emergency Management Agency. I am testifying in **OPPOSITION** of Senate Bill SB3252 SD2 HD1.

The current version of this measure limits the department's ability to recoup fees associated with UIPA requests. Often, the requests ask for data that encompasses periods of time that are both digital and hard copy. These requests may also need to be handled after normal business hours that the department is responsible for its internal overtime. This measure compounds our already increased costs.

Thank you for the opportunity to testify on SB3252 SD2 HD.

If you have any questions or need additional information to our response, please contact our Administrative Services Officer, Rusty Spray at (808) 330-7744 or at [rusty.spray@hawaii.gov](mailto:rusty.spray@hawaii.gov)

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Tuesday, April 5, 2022  
1:30 PM**

**State Capitol, Conference Room 308 and Via Videoconference**

**In consideration of  
SENATE BILL 3252, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO PUBLIC RECORDS**

Senate Bill 3252, Senate Draft 2, 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. It 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) opposes this measure and offers the following comments.**

With regard to Section 2, fees for reproduction of documents, the Department supports the SD2 language waiving copying charges for the first 100 pages for public interest requests. Currently, there is no public interest waiver for the reproduction of documents. The Department currently charges 50 cents per copy to recoup cost for staff time, paper, and wear and tear on the copy machine, as allowed under current law. The bill proposes to cap charges at 25 cents, half of the current charges. This will not allow the department to recoup its costs, and we expect labor costs to rise over time. The Department would prefer to no cap on maximum fees for reproduction so we can continue to recoup our costs to copy documents, including the copying of electronic files, and instead use the waiver to allow easier access for public interest requests. This will also decrease the administrative overhead required when money is exchanged. The Department notes that the HD1 was changed to accommodate the State Archives concerns. However, the State Archives has its own fee schedule in Section 3-20-9, Hawaii Administrative Rules. As the language of Section 92-2, Hawaii Revised Statutes (HRS), states "except as otherwise provided by law . . ." we suggest that normal research in the archives does not fall under this Chapter.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
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



With regard to SECTION 3, Section 92F-42 (14), HRS, the Department is concerned that the limits fees for searches of digital records will not allow the Department to recoup its costs. Currently, the Office of Information Practices allows the Department to charge \$10 and \$20 respectively. Where it is faster to search for digital records, we expect costs to be lowered even without lower pricing.

The proposed Paragraph (14) of Section 92F-42, HRS, allows for a waiver of all fees for searching, reviewing or segregating digital documents requested in the public interest. This will increase the amount of time staff spend performing this function. Most requests for Department documents that require searching, reviewing or segregating are in the public interest. For example, if a private landowner contests a board decision to deny a permit allowing a seawall, any information related to this case is in the public interest, as the public has interest in the protection of beach access and associated questions with the long-term protection of infrastructure built close to the shore. Additionally, certain members of the public will have interest in eminent domain issues and public versus private property rights. Because the department only issues permits where there is public interest in land use issues, most, if not all Uniform Information Practices requests are in the public interest. While it is sometimes faster and easier to search electronic documents, it still takes time and staff effort.

Public interest requests requiring search, review and segregation tend to be very broad, which means that they are time consuming and have no clear boundaries on what the requestor is seeking. The current practice is for the Department to estimate costs for broad requests and provide this information to the requestor. This tends to incentivize requestors to more narrowly focus their requests, while still allowing them to request the information they need. Without a fee for these broad requests, staff time searching, reviewing and segregating documents will increase, as well as costs for copying more documents. **The Department requests that the bill be amended to limit the fee waiver to 100 pages, this should adequately address legitimate public interest and discourage requestors from making overly broad requests.** It will also lower administrative overhead, as mentioned above. Alternatively, the Legislature could consider providing funds to pay for additional staff to address broader requests as well as potentially more requests made in the public interest.

Thank you for this opportunity to comment on this measure.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

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

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

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 3252, S.D. 2, H.D. 1

**April 5, 2022**  
**1:30 p.m.**  
**Room 308 and Videoconference**

RELATING TO PUBLIC RECORDS

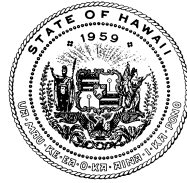
The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 3252, S.D. 2, H.D. 1.

S.B. No. 3252, S.D. 2, H.D. 1, imposes a cap on the charged costs for the reproduction of certain government records; waives the cost of duplication of government records in an electronic format; imposes a cap on charged costs for searching, reviewing, and segregating records; and provides for waiver of fees when the public interest is served.

While B&F appreciates the intent of this measure, B&F notes that it is not clear how a department would implement this measure's standards and provisions.

Thank you for your consideration of our comments.

DAVID Y. IGE  
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, MD  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to HB1549 HD1  
RELATING TO PUBLIC RECORDS.**

REP. SYLVIA LUKE, CHAIR  
HOUSE COMMITTEE ON FINANCE

Hearing Date: April 5, 2022

Room Number: 308 & Video

1 **Fiscal Implications:** General fund appropriation of \$500,000.

2 **Department Testimony:** The Department of Health (DOH) respectfully opposes this measure  
3 and requests deferral. Access to public records is essential for a healthy democracy but this  
4 measure purports to be a solution for a problem that does not impact most of the public.

5 Per testimony from the Office of Information Practices, approximately 88% of requests to state  
6 agencies like DOH were responded to free of charge. Furthermore, most of the requestors to  
7 whom a fee was charged were for-profit entities such as law firms. Establishing a cap on fees  
8 that does not reflect the expense of labor is a publicly funded subsidy to for-profit entities.

9 Complex requests are time-consuming and resource-intensive, and divert state employees from  
10 their daily tasks. Redaction of confidential information further intensifies the burden. In lieu of  
11 deferral of this measure, DOH respectfully recommends rule-making authority to establish and  
12 amend fees based, in part, on clear standards such as the average fee in other jurisdictions, the  
13 consumer price index, and the average hourly wage of public employees. The measure as  
14 drafted provides no rationale for the proposed fees, whereas a public hearing pursuant to chapter  
15 91 would enhance transparency and feedback beyond the life of this measure in the 31<sup>st</sup>  
16 Legislature.

17 **Offered Amendments:** N/A.

DAVID Y. IGE  
Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

JOSH GREEN  
Lt. Governor

MORRIS M. ATTA  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON FINANCE

APRIL 5, 2022  
1:30 P.M.

CONFERENCE ROOM 308 AND VIA VIDEOCONFERENCE

SENATE BILL NO. 3252, SD2, HD1  
RELATING TO PUBLIC RECORDS

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 3252, SD2, HD1. This bill imposes a cap on the costs charged for the reproduction of certain government records. Waives the cost of duplication of government records provided to requesters in an electronic format. Imposes a cap on costs charged for searching for, reviewing, and segregating digital records. Provides for a waiver of fees when the public interest is served by a digital record's disclosure. The Department strongly opposes this bill.

The Pesticides Branch routinely gets 30-60 Uniform Information Practices Act (UIPA) requests per year. The Pesticides Branch must go through each requested document thoroughly to ensure each document provided to any requester is accurately provided while protecting the confidentiality of all parties. Although many of these requests are simple and are completed under the current cost waiver, every year the branch receives dozens of requests that are initially expected to take hundreds, or possibly thousands of hours due to an overly broad request that lacks a clear or defined purpose. The Pesticides Branch staff have been working with these requesters to focus their requests, so they receive all of the pertinent information being sought while minimizing the over commitment of valuable resources and staff to the collection and



compilation of extraneous or irrelevant information. The single greatest incentive for streamlining or focusing a request for information is the potential elimination or reduction of fees for excessive time and resources for the search, segregation, and redaction of unnecessary information.

Putting a cap on this fee would be detrimental to the Pesticides branch and its already strained staff. Section 13c requires these requests “be provided at no charge to the requester of disclosure of the digital 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”. This measure neither defines the term “significantly” nor identifies how or who will determine its meaning. As a subjective standard without guidance, it could lead to different or inconsistent application by different agencies. Moreover, a cap would inadvertently incentivize the filing of requests with overly broad scopes with no balancing consideration for diversion of essential agency resources from its critical core functions.

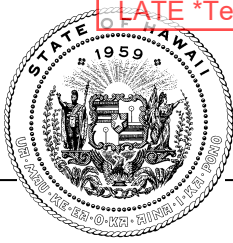
Just in the last month, the Pesticides Branch alone received four (4) requests requiring several hours of search and segregation, one of which is estimated to take 1,200 hours. Most of these claim a “public interest” waiver because they run a non-profit, local paper, or blog. While the Department has historically granted all such waivers, the Department is concerned that requiring a waiver if the disclosure is “in the public interest” will increase the volume and frequency of these requests to overly burdensome levels that will further strain the Department’s resources and staffing.

The Department appreciates the idea of the increased fees for other requesters, however, notes that since these fees go into the General Fund, rather than our special fund, any adverse impacts to the Department’s operational capabilities due to diverted staffing and resources will continue to detract from our capacity to perform core functions. Moreover, the burden of this increase will disproportionately affect individuals who only request one or two documents. The Pesticides Branch staff is almost entirely funded by special funds and those funds are earmarked for performing core functions such as enforcement, operations, maintenance, and education. By encouraging

requests for essentially unlimited documents without reasonable parameters to constrain costs, this measure could impose additional burdens on the Department that may compromise our ability to perform our responsibilities in a timely and effective manner.

The Department respectfully requests the allowance and discretion of these matters be delegated to the Office of Information Practices for rule making rather than mandated by an all-encompassing bill.

Thank you for the opportunity to testify on this measure.



LATE \*Testimony submitted late may not be considered by the Committee for decision making purposes.

**STATE OF HAWAII**  
**OFFICE OF PLANNING**  
**& SUSTAINABLE DEVELOPMENT**

**DAVID Y. IGE**  
GOVERNOR

**MARY ALICE EVANS**  
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning and Sustainable Development  
before the  
**HOUSE COMMITTEE ON FINANCE**  
Tuesday, April 5, 2022  
1:30 PM  
State Capitol, Conference Room 308

in consideration of  
**SB 3252, SD2, HD1**  
**RELATING TO PUBLIC RECORDS.**

Chair Luke, Vice Chair Yamashita, and Members of the House Committee on Finance.

The Office of Planning and Sustainable Development (OPSD) offers the following **comments with concerns** on SB 3252, SD2, HD1, which imposes a cap on the costs charged 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 costs charged for searching for, reviewing, and segregating digital records; and provides for a waiver of fees when the public interest is served by a digital record's disclosure.

OPSD appreciates the intent of this measure to provide greater transparency, but has concerns about the potential impacts of some of the proposed amendments to Chapter 92F, HRS.

The proposed caps on fees for search, review, and segregation of records, which often require professional staff to review, are set below their true costs, and would not allow an agency to fully recover the costs of responding to records requests.

OPSD also has concerns that a complete fee waiver for requests for digital records made in the public interest may encourage broader and more burdensome records requests. There would be no incentive for requestors to narrow their requests or to limit their number. Extensive staff time spent on complex requests could negatively impact an agency's efficiency and effectiveness.

In addition, the definition of "in the public interest" is not clear and, by removing the current standard of "primary intention and actual ability to widely disseminate the information to the public," may have the unintended consequence of eliminating the fee waiver for news media.

Thank you for the opportunity to testify on this measure.

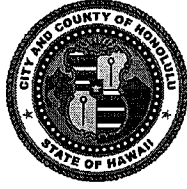




DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
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Web site: [www.honolulu.gov](http://www.honolulu.gov)

RICK BLANGIARDI  
MAYOR



ALEX KOZLOV, P.E.  
DIRECTOR

HAKU MILLES, P.E.  
DEPUTY DIRECTOR

April 1, 2022

The Honorable Sylvia Luke, Chair  
The Honorable Kyle T. Yamashita, Vice-Chair  
and Members of the Committee on Finance  
The House  
State Capitol, Conference Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke, Vice-Chair Yamashita, and Members:

SUBJECT: Senate Bill No. 3252 SD2 HD1  
Relating to Public Records

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 3252 SD2 HD1. The purpose of the bill is to:

- (1) Impose a cap on the costs charged 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 costs charged for searching for, reviewing, and segregating digital records; and
- (4) Provide for a waiver of fees when the public interest is served by a digital record's disclosure.

The existing fees for processing government record requests are much less than the costs incurred. Additionally, the staff resources expended to search, review, segregate, and redact when needed, the requested records detract from DDC's primary responsibility of efficiently executing capital improvement projects for the City and County of Honolulu within budgeted timelines. DDC does not have additional personnel to respond to Freedom of Information Act requests, so the requests are researched and prepared by existing personnel in addition to their regular duties.

The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance  
April 1, 2022  
Page 2

This bill would be expected to increase the frequency and scope of requests and the resources required to respond to those requests. DDC shares the concerns of the Office of Information Practices' (OIP) testimony, including concern that the bill would:

- Encourage the filing of more complex record requests;
- Eliminate the current fee waiver for media representatives;
- 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 funding to recruit, train and hire additional personnel;
- 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; and
- 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.

Based on the above considerations, DDC respectfully **opposes** Senate Bill No. 3252 SD2 HD1.

Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Kozlov", with a long horizontal flourish extending to the right.

Alex Kozlov, P.E.  
Director

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.gov



RICK BLANGIARDI  
MAYOR

RADE K. VANIC  
INTERIM CHIEF

OUR REFERENCE **JAT-DNK**

April 5, 2022

The Honorable Sylvia Luke, Chair  
and Members  
Committee on Finance  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 308  
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

**SUBJECT: Senate Bill No. 3252, S.D. 2, H.D. 1, Relating to Public Records**

I am Joseph A. Trinidad, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent, with reservations, of Senate Bill No. 3252, S.D. 2, H.D. 1, to promote access to government records and agency transparency.

Requests from public interest groups for information that "is likely to contribute significantly to public understanding of the operations or activities of the government" tend to be larger, complex requests. Such requests require more staffing hours, more research time, and more review time. Removing fees entirely could result in an increase in the number of records requests submitted.

The HPD shares the concern raised by the Office of Information Practices (OIP) that a complete waiver of fees for those requests that qualify as in the public interest could be burdensome for agencies and result in a larger number of complex records requests.

The HPD also supports the testimony submitted by the OIP in that the proposed waiver would apply to information already widely available to the public and would apply to the requester with no intention or ability to publicly share the information, thus resulting in redundant or unnecessary expenditures of departmental resources.

The HPD continually strives to respond to government records requests while at the same time meeting the department's operational needs in order to ensure that the general public is served by the department in a timely manner.

The Honorable Sylvia Luke, Chair  
and Members  
Committee on Finance  
April 5, 2022  
Page 2

The HPD submits this testimony in its role as an integral part of the law enforcement community and thanks you for the opportunity to testify.

Sincerely,



Joseph A. Trinidad, Major  
Records and Identification Division

APPROVED:



For

Rade K. Vanic  
Interim Chief of Police

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 Sylvia Luke, Chair  
Honorable Kyle T. Yamashita, Vice Chair

**RE: Testimony Supporting S.B. 3252 S.D. 2 H.D. 1, Relating to Public Records**  
Hearing: April 5, 2022 at 1:30 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **supporting** S.B. 3252 S.D. 2 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.

**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.

Based on the Law Center's regular studies of data regarding UIPA requests to State and county agencies, requests made by public interest organizations – which would be impacted by this proposal – account for a very small number of requests annually.

Typical of most years, in FY 2021, such public interest requests accounted for less than 5% of all requests. Thus, **this proposal will not significantly impact the government fisc, but the corollary benefit of giving the people of Hawai`i greater access to understand their government is immeasurable.**

In a random sampling of states, including Hawai`i, a March 2020 survey of public records laws found that Hawai`i agencies charged more than twice any other state in the survey. A. Jay Wagner, *Probing the People's Right to Know: A 10-State Audit of Freedom of Information Laws*, at 12. Many jurisdictions have clear statutory language that public interest requests will not be obstructed by government fees. For public interest requests, government agencies are not denying access to that single person; they are denying access to the thousands of people who would have received that information when the public interest requester disseminated it to the general public.

In addition, the proposed amendments regarding copying costs will address recurring problems where, for example, agencies attempt to charge per page fees for Excel spreadsheets that are thousands of pages when printed, but cost nothing to e-mail to the requester.

In prior testimony, absent excessive fee estimates to dissuade requesters from seeking information, agencies claim that public interest requesters will make exceptionally broad requests that will be burdensome and costly for agencies. That concern is unfounded. Requesters want *timely* access to information. If a requester makes a broad and burdensome request for voluminous records, an agency is authorized by existing law to disclose records on a month-to-month basis as its other duties permit; the deadlines for disclosure do not apply. Agencies rarely are willing to discuss ways to reduce fee estimates, so quoting tens of thousands of dollars in fees becomes an effective and complete block on public access. If agencies are required to disclose records in the public interest – it is only a matter of time – both the requester and the agency have incentives to discuss meaningful ways to narrow a request.

Also, regarding “commercial interest” as raised in agency testimony, the phrase is “*primarily* in the commercial interest”. Only OIP has ever said that news media are acting primarily in the commercial interest. In contrast, as the Senate Judiciary committee report summarized, the Freedom of Information Act standard that is adopted in this bill allows for public interest waivers for the news media. The U.S. Department of Justice explained “primarily in the commercial interest”:

For example, although newsgathering organizations usually have a commercial interest in obtaining information, the traditional process of newsgathering and dissemination by established news media organizations, as a rule, should not be considered to be “primarily” in their commercial interest; because of their established role in providing information to the general public, it ordinarily can be presumed that, if a

significant public interest has been identified, that will be the interest “primarily” served by disclosure to such organizations.

U.S. Dep’t of Justice, New Fee Waiver Policy Guidance (Jan. 1, 1987), *available at* <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>.

Lastly, OIP’s data showing that nearly all fees are paid by for-profit requesters is not surprising. Only for-profit requesters can afford the fees. Public interest requesters typically abandon requests when the agency quotes an exorbitant fee estimate.

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?

Thank you again for the opportunity to testify in support of S.B. 3252 S.D. 2 H.D. 1.



HOUSE COMMITTEE ON FINANCE

Tuesday, April 5, 2022, 1:30 pm, State Capitol Room 308 & Videoconference

SB 3252, SD2, HD1

Relating to Public Records

**TESTIMONY**

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

Chair Luke and Committee Members:

**The League of Women Voters of Hawaii supports SB 3252, SD2, HD1.** However, we request amendment of Section 3 of the bill to require agencies to waive fees and charges when less than some specific minimum \$ threshold set by OIP rules. Assessment of trivial fees and charges for minor UIPA requests wastes the public's time. If the objective is to reimburse costs, then agencies should NOT assess fees and charges for UIPA requests when potential revenues are less than potential agency costs for calculation, assessment, and collection of payment.

Thank you for the opportunity to submit testimony.





April 5, 2022

Rep. Sylvia Luke  
House Finance Committee  
State Capitol  
Honolulu, HI 96813

Re: SB 3252 SD 2 HD1

Chair Luke and Committee Members:

We support this bill.

SB 3252 SD2 HD1 would encourage public understanding of government agencies, primarily through news media, public research organizations and nonprofit organizations seeking information from government records. These disclosures would be in the public interest because researchers, reporters and nonprofit employees would be informing the public about the operations of government.

Waiving records costs when disclosure is in the public interest and capping other costs would encourage public education about government. The proposal would also discourage attempts by agencies to use high fees to frustrate news media looking to shine a light on agency operations.

Reporters have long found that the high cost of records release is a deterrent to delving into government operations. It has been noted that reporters, for the most part, work for commercial operations. But when reporters are seeking information, they are not doing so to make money, they are trying to finding out information that would inform and educate the public.

While we understand the worries stated by government agencies, we note that the salaries of employees to handle such requests are already paid for by taxes we all pay. We do not believe that this measure would make a big dent in agencies' budgets.

Thank you,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists



March 16, 2022

9 a.m.

VIA VIDEOCONFERENCE

Conference Room 309

**To: House Committee on Government Reform**

**Rep. Angus L.K. McKelvey, Chair**

**Rep. Tina Wildberger, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: SB3252 SD2 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, [SB3252 SD2 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 a Uniform Information Practices Act request — though we do have a couple of concerns we would like to see addressed.

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 Office of the Attorney General. As this was to be part of a report on asset forfeiture in Hawaii, we requested a waiver in the public interest. The Attorney General’s Office quoted a total cost of \$2,190 — only \$10 of which related to reproducing records — which included a \$60 “fee waiver” because the request was in the public interest.

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.

### **New language weakens original bill**

Unfortunately, the current version of the bill weakens its service to public interest by removing the waiver of fees for reproduction of physical copies and limiting the public interest waiver to digital records.

While many agencies have switched entirely to electronic record keeping, the public interest extends to historical records and should not be constrained. Nor should agencies be provided with loopholes that will enable them to use the cost of physical copies, or transferring physical records to electronic format, as a way to discourage requests.

We suggest that the bill clarify that waivers in the public interest are intended to apply to the search, review and segregation fees in their entirety, regardless of their format.

Moreover, we believe that the waiver of reproduction costs for the first 100 pages when the request is in the public interest is necessary to accomplish the intent of the bill.

With those additions, this bill would go a long way toward ending the use of high costs as a way to dodge record requests.

**An additional concern**

We do have one additional concern: the increase in the search, review and segregation costs, which are currently set 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.

We understand the desire to discourage nuisance requests or the 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, SB3252 SD2 HD1 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



Hawai'i

Committees: House Committee on Finance  
Hearing Date/Time: Tuesday, April 5, 2022 at 1:30 p.m.  
Place: Via Videoconference / Conference Room 308

**Testimony of the ACLU of Hawai'i in Support of S.B. 3252 SD2 HD1  
Relating to Public Records**

Dear Chair Luke, Vice Chair Yamashita, and members of the Committee:  
The American Civil Liberties Union of Hawai'i supports **S.B. 3252 SD2 HD1** that imposes a cap on the costs charged for the reproduction of certain government records.

The **charging of excessive fees** is a complaint that the ACLU of Hawai'i often hears from public records requesters. This complaint is consistent with the **Office of Information Practice's own data showing that nearly all fees for public records are paid for by for-profit requesters**. Consequently, the cap on costs will reduce the likelihood of public interest requesters abandoning their requests when the agency quotes a fee estimate beyond what is affordable.

**This measure also proposes to waive fees when the public interest is served by a record's disclosure.** As noted in a letter from the Office of Information Practices to the ACLU of Hawai'i dated November 30, 2011, the "public interest is inherently served by the 'free flow of information through the news media channels which broadly transmit or disseminate information to the public' and that **the criteria for this waiver was intended to be broad enough to encompass requesters such as non-profit organizations, public interest media groups, community newsletters, etc., so long as the requester can show 'the primary intention and the actual ability to widely disseminate information from the government to the general public at large.'**"<sup>1</sup>

Please support this measure to promote transparency and the public's right to know. Thank you for the opportunity to testify in support of **SB 3252 SD2 HD1**.

Sincerely,  
Carrie Ann Shirota  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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<sup>1</sup> [https://www.acluhi.org/sites/default/files/field\\_documents/11-30-11-letter-from-oip-to-aclu-re-fee-waivers-in-public-interest.pdf](https://www.acluhi.org/sites/default/files/field_documents/11-30-11-letter-from-oip-to-aclu-re-fee-waivers-in-public-interest.pdf)

**SB-3252-HD-1**

Submitted on: 3/31/2022 8:25:58 PM

Testimony for FIN on 4/5/2022 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I support SB3252 but find it wanting. I object to the use of defective effective dates and find that they do not serve to encourage future discussion, they are a cop out, and often end in the defeat of a bill during conference committee. The effective date should be changed to effective upon approval, not some date 28 years in the future when a good number of us will be dead.

That said, I urge you to take this important step forward in making government more transparent by making access to public records less expensive.

# RYAN KAWAILANI OZAWA

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@hawaii A row of small, black social media icons including Instagram, Twitter, YouTube, LinkedIn, Facebook, and others.

Email: hawaii@hey.com

April 1, 2022

Aloha, Rep. Sylvia Luke, Chair Rep. Kyle T. Yamashita, Vice Chair; and members of the Committee on Finance:

I am writing to express my **support** of SB3252 SD2 HD1 Relating to Public Records.

Hawaii's public records law is a critical part of ensuring a transparent and accountable government. However, as a reporter and as an independent journalist, I have often been stymied by onerous costs quoted by government agencies to compile the requested information.

While time and effort are certainly required, there is always the concern that the amounts requested are intended more as a roadblock to public affairs reporting. Especially as most requested information is stored electronically and can usually be retrieved with relatively limited effort.

Some latitude must certainly be afforded for complex or time-consuming requests, which this bill provides.

For future consideration, I would strongly recommend that all materials provided in response to any public records request be **published via a public portal or web page**. This will reduce duplicative requests, and further ensure that the information is available to everyone, not just the requestor.

Thank you very much for the opportunity to testify on this matter.



Ryan Kawailani Ozawa