

Statement Before The  
**SENATE COMMITTEE ON GOVERNMENT OPERATIONS**Thursday, March 24, 2022  
3:00 PM  
Conference Room 016 and Videoconferencein consideration of  
**SCR 192 / SR 185****REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS.**

Chair MORIWAKI, Vice Chair DELA CRUZ, and Members of the Senate Government Operations Committee

Common Cause Hawaii supports SCR 192 / SR 185 requesting the office of information practices to convene a working group to develop a recommendation for a statutory standard for the treatment of deliberative and predecisional agency records.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through transparency and accountability reforms efforts that increase civic engagement and public participation in our democratic processes.

Common Cause Hawaii appreciates the convening of “interested stakeholders to consider whether there is consensus on the appropriate balance between transparency and deliberative process for effective agency decision-making in Hawaii, and to recommend a new statutory standard that balances the various agency and public interests”. See SCR 192 at page 2, lines 13-18, SR 185 at page 2, lines 10-15.

Further, Common Cause Hawaii would welcome the opportunity to be part of “a working group [convened by Office of Information Practices] to develop a consensus on language for a new UIPA exception for agency records that are deliberative and pre—decisional which reasonably balances the public's interest in disclosure against the potential harm to the agency's ability to fully consider and make sound and informed decisions”. See SCR 192 at page 2, lines 24-28, SR 185 at page 2, lines 19-24.

As a nonprofit interested in increasing government transparency and accountability, Common Cause Hawaii hopes to add value to a working group established by SCR 192 / SR 185.

Thank you for the opportunity to testify in support of SCR 192 / SR 185. If you have any questions, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



March 24, 2022

Sen. Sharon Y. Moriwaki  
Senate Government Operations Committee  
State Capitol  
Honolulu, HI 96813

Chair Moriwaki and Committee Members:

Re: SR 185/SCR 192

We support these two measures and ask you to recommend that the Civil Beat Law Center be represented in the working group.

The issue of deliberative process is far too complex to work out in one bill during a legislative session.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Government Operations  
Honorable Sharon Y. Moriwaki, Chair  
Honorable Donovan M. Dela Cruz, Vice Chair

**RE: Testimony Commenting on S.R. 185, Requesting the Office of Information Practices to Convene a Working Group to Develop a Recommendation for a Statutory Standard for the Treatment of Deliberative and Predecisional Agency Records**

Hearing: March 24, 2022 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting on S.R. 185**.

The Law Center would appreciate the opportunity to work collaboratively with government agencies “with the goal of developing a consensus” on public access to deliberative government records. Enacting the deliberative process privilege would be a disaster for Hawai‘i because that doctrine is excessively secretive and prone to abuse by government agencies. To the extent that there are legitimate concerns about disclosure of deliberative records, however, the Law Center is willing to explore solutions targeted at those concerns while respecting the public’s right to know how its government operates, including deliberations.

Thank you again for the opportunity to provide comments on S.R. 185.



SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
Thursday, March 24, 2022, 3 pm, State Capitol Room 016 & Videoconference  
SCR 192 & SR 185

REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO  
DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF  
DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS

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

Chair Moriwaki and Committee Members:

The League of Women Voters of Hawaii would appreciate the opportunity to participate in an OIP working group to make recommendations concerning public access to deliberative and pre-decisional government records. Our perspective is that early, informed, public involvement in government deliberations usually leads to better outcomes and more consensus than secretive, top-down “Decide, Announce, Defend” government decisions.

Thank you for the opportunity to comment.



March 24, 2022

3 p.m.

VIA VIDEOCONFERENCE

Conference Room 016

**To: Senate Committee on Government Operations**

**Sen. Sharon Y. Moriwaki, Chair**

**Sen. Donovan M. Dela Cruz, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: SCR192/SR185 — REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SCR192](#) and [SR185](#), which propose the creation of a working group to develop the language of a deliberative process exemption from Hawaii's open-records law, the Uniform Information Practices Act.

We have grave reservations about any effort to establish a deliberative process exemption to the UIPA. Our concern is that such an exemption would be little more than a loophole by which state agencies could evade records requests.

This would frustrate the intent of the state's transparency laws, which are meant to ensure accountability and discourage corruption by making government actions and deliberations available to the public.

As a research and government watchdog organization, the Grassroot Institute is well-acquainted with the mechanisms employed by government agencies to avoid disclosure. Based on that experience, we can attest to the fact that the exception would give agencies leeway to withhold

nearly anything under the claim of “deliberative process.” Moreover, it would encourage agencies to conduct key government functions in a way that could shield them from disclosure.

Though the working group is meant to find some compromise between the duty to disclose and the agencies’ desire to withhold documents they deem “predecisional,” the inherent conflict between those interests as well as the ambiguity of the “deliberative process” guarantees more challenges and disputes. After all, most of the work done by government agencies is deliberative in nature and everything but a final decision or report can be classified as “predecisional.”

From the point of view of a government watchdog organization, the deliberative exemption guarantees that requests to certain agencies will turn into endless battles over what, if anything, must be disclosed to the public. It is not hard to imagine that some state agencies already notorious for their lack of openness will abuse the deliberative exemption to avoid fulfilling UIPA requests.

If government agencies are concerned about privacy or disclosures that obstruct their ability to carry out their duties, there already are exceptions in the law that would address such issues. There is nothing remarkable about the deliberative process in itself that warrants special treatment.

Given the need to restore public trust in Hawaii’s government, we believe that more transparency, not less, is the best route forward.

The Legislature is currently seeking ways to improve its own transparency and accountability to the people of Hawaii. This is no time to exempt government agencies from that same responsibility.

Under the circumstances, it would be a mistake to create a UIPA exception that would allow government agencies to hide their decision-making process from the public.

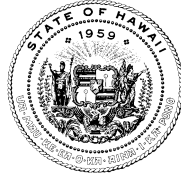
Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent  
Executive Vice President  
Grassroot Institute of Hawaii

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**LATE**

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
HEARING ON MARCH 24, 2022 AT 3:00PM VIA VIDEOCONFERENCE

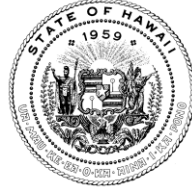
**SCR 192/SR 185 REQUESTING THE OFFICE OF INFORMATION PRACTICES TO  
CONVENE A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A  
STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND  
PREDECISIONAL AGENCY RECORDS**

March 24, 2022

Aloha Chair Moriwaki, Vice Chair Dela Cruz, and members of the Committee:

The Department of Hawaiian Home lands (DHHL) supports these resolutions requesting the Office of Information Practices to convene a working group to develop a recommendation for a statutory standard for the treatment of deliberative and predecisional agency records.

Thank you for your consideration of our testimony.



**LATE**

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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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  
Senate Committee on Government Operations  
Thursday, March 24, 2022  
3:00 PM  
Conference Room 016 & Videoconference**

**On the following measure:  
SR 185 REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE  
A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY  
STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL  
AGENCY RECORDS**

**WRITTEN TESTIMONY ONLY**

Chair Moriwaki and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs' (Department). The Department supports this resolution.

The purpose of this resolution is to request the Hawaii Office of Information Practices convene a working group to develop a recommendation for a statutory standard for the treatment of deliberative and predecisional agency records.

The Department must have the ability to have candid and thorough internal reviews to make informed policy decisions. Providing clarity regarding the handling of deliberative and predecisional records will greatly assist the Department in fulfilling its responsibilities.



Thank you for the opportunity to testify on this resolution.

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 S.C.R. 192 / S.R. 185,  
RELATING TO  
REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A  
WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY  
STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL  
AGENCY RECORDS

PRESENTATION TO THE COMMITTEE ON GOVERNMENT OPERATIONS

BY

MAJOR GENERAL KENNETH S. HARA  
ADJUTANT GENERAL  
DIRECTOR OF THE HAWAII EMERGENCY MANAGEMENT AGENCY  
AND HOMELAND SECURITY ADVISOR

March 24, 2022

Chair Moriwaki, Vice Chair Dela Cruz, and Members of the Committees on Government Operations.

I am Major General Kenneth Hara, Adjutant General, Director of the Hawaii Emergency Management Agency and Homeland Security Advisor.

The Department of Defense (DOD) provides written testimony in **SUPPORTS** of SCR 192 / SR 185.

SCR 192 / SR 185 seeks to have the Office of Information Practices (OIP) convene a working group to develop and recommend a statutory standard for the treatment of deliberative and pre-decisional agency records. This is in response to the Peer News case which called into question the ability to use the deliberative process privilege (DPP) to withhold producing internal documents sought through a UIPA request.

While our department has not been subject to a situation requiring the turn over of draft documents, internal memos (where there are discussions relating to decisions), or other internal communications that could impede the free flow of communication within our department, we do support the idea that it is in the interest of the public and government to allow frank discussion between employees and officers to fully vet proposed policies or tentative decisions at an internal level, outside public view. This is necessary in order to express views that may not be incorporated into a final decision, but are needed to get to the final decision.

Additionally, we support convening a working group to develop a consensus on language for a new UIPA exception for agency records that are deliberative and pre-decisional which

reasonably balances the public's interest in disclosure against the potential harm to the agency's ability to fully consider and make sound and informed decisions.

Thank you for this opportunity to provide testimony in support of SCR 191 / SR 185.

MG Kenneth S. Hara, [kenneth.s.hara@hawaii.gov](mailto:kenneth.s.hara@hawaii.gov); 808-672-1211

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

**LATE**

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON  
GOVERNMENT OPERATIONS  
MARCH 24, 2022  
3:00 P.M.

STATE CAPITOL, CONFERENCE ROOM 016 AND  
VIA VIDEOCONFERENCE

SENATE CONCURRENT RESOLUTION NO. 192  
AND SENATE RESOLUTION NO. 185  
REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A  
WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY  
STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL  
AGENCY RECORDS.

Chairperson Moriwaki and Members of the Committees:

Thank you for the opportunity to testify on Senate Concurrent Resolution No. 192 and Senate Resolution No. 185, which request the Office of Information Practices (OIP) to convene a working group to develop a consensus on language for a new Uniform Information Practices Act, chapter 92F, HRS (UIPA), develop an exception for deliberative and pre-decisional records, and to report the group's findings and recommendations to the Legislature. The Department of Agriculture ("Department") supports this resolution, defers to OIP regarding the formation of a working group, and offers a comment.

The Department recognizes the need to balance an agency's ability to reach sound and fair decisions through candid expression of ideas with the public's interest in disclosure of government decision making and records for transparency. The proposed working group would be an effective forum for deliberating about and devising a new exception for deliberative and pre-decisional records that would reflect a reasonable balance of viewpoints of the various competing interests. While any form of exception



to UIPA would represent a limitation of public access to agencies' internal deliberative records, developing a reasonable exception would enable agencies to function effectively by having frank internal discussions and making sound decisions.