

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 14, 2023, 3:10 p.m.  
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 1564  
Relating to Public Records

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Thank you for the opportunity to submit testimony on this bill, which would create a statutory requirement that a copy of a government record be provided in the format requested, but only when that format is already available. The Office of Information Practices (OIP) **offers comments and a proposed amendment to ensure the bill does not unintentionally impede access to public records.**

OIP administers the Uniform Information Practices Act (UIPA), chapter 92F, HRS. OIP has previously held that the UIPA requires an agency to provide a public record in the format requested whenever it can readily do so without unreasonable interference with the agency's functions, not just when the agency already maintains the record in that format. OIP Op. Ltr. No. 04-16. This proposal would amend the separate copy fee statute, section 92-21, HRS, to require an agency to provide a copy of a record in the format requested "provided that the format requested is available." A public request for government records is made under the UIPA, and OIP's rules set out deadlines and other requirements for processing the request, such as what fees a requester can be charged for an agency's

time spent in searching for the records and reviewing and segregating non-public information as required. **Copy charges for the requested records are separately set by section 92-21, HRS, which OIP does not administer. However, this proposed amendment to the copy fee section addresses an area also covered under the UIPA.**

This proposal is presumably intended to support a requester's right to receive copies of records in the requested format. OIP is concerned, though, that it would have the **unintended consequence of limiting that right to only apply when the records already exist in the requested format**, rather than whenever they can readily be converted without unreasonable interference with the agency's functions as OIP has found the UIPA to require. For instance, an agency could point to this proposal to justify not providing a requested print-out of a record maintained only in electronic form, or not scanning paper records to provide a requested electronic version.

To ensure that the proposal is a statutory confirmation of the right to receive records in the format requested rather than a limitation of that right, OIP **recommends an amendment to specify that records must be provided in the format requested either when already available in that format or when they can be readily converted without unreasonable interference with the agency's functions.** Specifically, OIP recommends that the end of sentence concluding on bill page 1, lines 11-12, be amended to read as follows:

. . . reproducing such copy [-] ; provided that either the format requested is available or the agency can readily convert the record to the format requested without unreasonable interference with the agency's functions.

Thank you for considering OIP's testimony.

THE CIVIL BEAT  
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Senate Committee on Government Operations  
Honorable Angus L.K. McKelvey, Chair  
Honorable Mike Gabbard, Vice Chair

**RE: Testimony Commenting on S.B. 1564, Relating to Public Records**  
Hearing: February 14, 2023 at 3:10 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.B. 1564**.

The bill proposes to make public records available in the format specified by the requester if available in that format. *This bill is unnecessary.* The Office of Information Practices has long held that agencies must disclose records in the format specified by the requester if the agency maintains the record in that format. *E.g.*, OIP Op. No. 90-35 at 3.

The Law Center has, on occasion, encountered an agency that provided records in a format other than the one requested (even though the agency had the requested format available). Those occasions were all resolved quickly with a brief discussion and reference to the OIP precedent.

Thank you again for the opportunity to comment on S.B. 1564.

**SB-1564**

Submitted on: 2/13/2023 8:46:26 AM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
julie schaus	Individual	Support	Written Testimony Only

Comments:

I support SB1564

the public should not be charged fees for documents

**SB-1564**

Submitted on: 2/13/2023 1:25:56 AM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Scott Shedko	Individual	Support	Written Testimony Only

Comments:

I support this bill. Copies of all public records should be easily and readily available to the public in the format requested. Also, costs should not be a factor discouraging anyone from accessing or obtaining these records.

Thank you!

**SB-1564**

Submitted on: 2/9/2023 7:47:44 PM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

**SB-1564**

Submitted on: 2/10/2023 12:17:16 AM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jennifer Cabjuan	Individual	Support	Written Testimony Only

Comments:

Support this bill please

**SB-1564**

Submitted on: 2/12/2023 4:56:49 PM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
tania victorine	Individual	Support	Written Testimony Only

Comments:

Requestor should have access to PUBLIC records in any format available.



**LATE**

**SB-1564**

Submitted on: 2/14/2023 12:18:19 PM

Testimony for GVO on 2/14/2023 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Keikilani Ho	Individual	Support	Written Testimony Only

Comments:

There shouldn't be an issue to receive PUBLIC records in the format of our choice if our preference already exists. I have received public records in the past that had been obviously missing important information as if they were doctored so that we do not see information we intended to look for. The lack of transparency creates distrust between the citizens and the government.