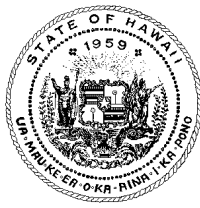


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
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a Ho'oponopono Ola*
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TOMMY JOHNSON
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Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

TESTIMONY ON HOUSE BILL 1610
RELATING TO PUBLIC RECORDS.

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Judiciary and Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 7, 2024; 2:00 p.m.
State Capitol, Conference Room 325 & via Videoconference

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) offers **comments** on House Bill (HB) 1610, which proposes to impose a cap on costs charged to reproduce certain government records. The bill further waives reproduction costs charged for the first one hundred pages if disclosure serves the public interest. Costs would also be waived if the records are provided in electronic format.

DCR has serious concerns about making the public interest waiver a complete waiver of all fees, no matter the magnitude of the request. Requests can be overly burdensome and require extensive work hours to complete. More staff or overtime would be needed for these types of requests. Hours have been spent reviewing and redacting documents. As a result, there is an impact on the budget and there may be a delay in the completion of requests. The current law provides for instances where extra hours are needed to process complex requests.

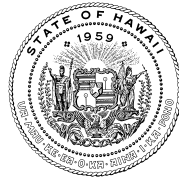
If no fees are required for burdensome requests, this may lead to an increase in the number of requests and delay the processing of all requests. This would further impact staffing and budget concerns. Currently, the only time fees are assessed is

when the documents are not readily available and would take longer than two hours to search and review.

Moreover, DCR does not agree that no fee should be imposed for electronic documents provided in the public interest, especially in the case of complex, extensive requests. Documents are not all kept electronically and may need to be converted to digital format. Even in the case of electronic documents, these need to be reviewed and, in some instances, redacted.

Thank you for the opportunity to provide **comments** on HB 1610.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'AINA



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

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

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

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

COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

FEBRUARY 7, 2024, 2:00 P.M.
CONFERENCE ROOM 325 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1610

RELATING TO PUBLIC RECORDS.

Chair Tarnas, Vice Chair Takeyama, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 1610.

The Department of Accounting and General Services (DAGS) offers **comments** on H.B. 1610 which imposes a cap on costs charged to reproduce certain government records; waive reproduction costs charged for the first one hundred pages if disclosure serves the public interest; waives costs charged to duplicate certain government records in an electronic format, imposes a cap on costs charged to search for, review, and segregate records; and provides for a waiver of fees when a record's disclosure serves the public interest.

DAGS offers the following comments:

1. The statutory responsibility for preserving, arranging, describing, and

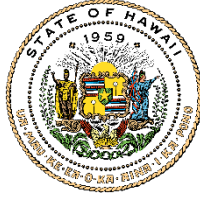
- inventorying public archives, as prescribed in Hawaii Revised Statutes (HRS) Chapter 94, rests with DAGS. We would request that this measure clarify that the intent is not to subvert Chapter 94 and that this proposed change to Chapter 92 is not applicable to documents maintained by the state archives.
2. The work performed by the state archives to preserve, arrange, describe, and inventory public archives is highly technical and specialized in nature. As such, the cost to perform research and produce documents through the archives is greater than other departments. HRS §94-4 states that the fees “for copying, certification, and other services shall be prescribed by the comptroller in direct relation to the cost of the services.” We would request that a clarification be made that specifically excludes the state archives from the fee structure as proposed in this measure.
 3. As the state archives has been the statutorily designated repository for government records since 1905, there are approximately 14,000 boxes of records preserved in the archives. These records are preserved specifically *because* they are of broad public interest due to the records protection of rights, identity, property, and the history of Hawai‘i; meaning every request for records meets the threshold of “in the public interest.” As such, disclosure requests on large scale issues could easily run into hundreds of hours of staff research and thousands of pages of materials. Locating all documents relevant to a major issue (e.g. water rights to a piece of land since the Mahele of 1848), screening and redacting personally identifiable information as required by HRS §92F, and duplicating those records would have a

devastating impact on the archives' ability to serve all other requests, as well as any public researchers coming into the archives to conduct research.

We appreciate this opportunity to provide our comments on this measure and we humbly request your support in clarifying that this measure does not relate to the work of our state archives.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

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

Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committee on
JUDICIARY AND HAWAIIAN AFFAIRS

Wednesday, February 7, 2024
2:00 PM

State Capitol Conference Room 325 and Videoconference

In Consideration of
HOUSE BILL 1610
RELATING TO PUBLIC RECORDS

House Bill 1610 imposes a cap on costs charged to reproduce certain government records, waives the reproduction costs charged for the first 100 pages if disclosure serves the public interest, waives the costs to duplicate certain records in electronic format, imposes a cap on costs charged to search for, review and segregate records. The bill also provides for a waiver of fees when a record's disclosure serves the public interest. This last item is a limiting factor in the Office of Information Practices Powers and Duties under Section 92F-42, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) opposes this bill.**

The Department notes that in order to increase transparency, many of its records across all divisions are easily available electronically. However, converting paper to electronic documents is expensive, and requires constant maintenance and upkeep. The Department suggests that when the State Office of Information Practices (OIP) sets fees, OIP be allowed to take these expenses into account and the changes to this section should be removed.

This bill proposes to amend Paragraph (13) of Section 92F-42, HRS, by explicitly directing OIP to promulgate rules that (A) limit the charge for searching for records to \$5 per fifteen minutes or fraction thereof; (B) limit the charge for review and segregation to \$7.50 per fifteen minutes; and (C) provide a waiver of fees when the public interest is served. The Department is concerned that the waiver of fees in the public interest will turn document requests into "fishing expeditions." The Commission to Improve Standards of Conduct has cited to concerns that departments use fees as a way to chill requests for information. In the Department's experience, this is not true. Most of the requests that the Department receives are fulfilled at very little to no charge. We have no problem with requests that are

focused and clear. However, we do have problems with fishing expedition requests, which can result in staff spending days or months pulling records and can interrupt operational priorities and timely customer service. We often get public interest requests from law offices suing our agency in lieu of discovery through the normal course of litigation. Arguably, these are all in the public interest. These types of requests must be limited to ensure staff can do their work.

As an example:

Two years ago, the Department's State Historic Preservation Division (Division) received a request for everything to do with HRS Section 6E-4 reviews, the Burial Council, and any external communications for the entire county of Kaua'i. The Division estimated that it would cost in excess of \$50,000 in staff time, research, segregation, scanning, and production. More importantly, the Division does not have the staff to do that amount of work, so they asked for a more specific request, which they did not receive.

These broad requests are not uncommon and can usually be construed to be in the public interest. Whether or not this request is in the public interest is not the only matter to consider. The Department cannot divert its staff for such a broad request. Especially a division with a large backlog of work. Without tools to narrow the request, and cost is a very effective tool, departments will be swamped. We note that the lack of a waiver does not stop people from requesting records, it merely ensures that that they ask for a reasonable amount of records. Should the bill not be held, we recommend a relatively high cap on a request. For example, 1,000 pages, which well exceeds the amount of a normal request.

If this bill is not held, we expect hardship on all divisions of the Department, and special hardship on the Bureau of Conveyance (Bureau). Therefore, the Department respectfully asks that should this bill move forward, that it be amended to exempt the Bureau. The Bureau respectfully notes that the intent of the bill addresses accessing government records that are not readily accessible by the public as a rule. The mission of the Bureau is for the timely recording and accessibility to documents it records by all who may come into its office or access them online. The Bureau's documents are submitted by individuals and businesses, primarily for their land dealings or Uniform Commercial Code filings. Government documents that get recorded are of a similar nature. All of those records are readily accessible by anyone through already established, convenient procedures and fees. Converting paper to electronic documents is expensive and requires constant maintenance and upkeep. The Bureau converted almost all of its paper documents to electronic form and charges fees that take into account the cost of conversion and implementation as well as for the staff to keep the system running and maintained. It would not be often that the Bureau's public records will offer the additional government accountability and transparency or enable a more informed citizenry for participation in government decision making.

Mahalo for the opportunity to provide testimony in opposition to this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 1610, RELATING TO PUBLIC RECORDS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 7, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Stella M.L. Kam, Deputy Attorney General

Chair Tarnas and Members of the Committee:

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

Section 3 of this bill amends section 92F-42(13), 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 records under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA). The bill caps the fees, per fifteen minutes, at \$5.00 for search time and at \$7.50 for review and segregation of the records. This bill also requires the OIP rules to provide a waiver of all search, review, and segregation fees when the disclosure of the records (1) serves the public interest; (2) will likely contribute significantly to public understanding of the government's operations or activities; and (3) "is not primarily in the commercial interest."

The Department opposes section 3 of this bill because the fee caps it mandates do not reflect the true costs of an agency responding to a records request. Many records requests require specialized knowledge, such as engineering, scientific, accounting, or legal (agencies often consult with their assigned deputy attorneys general), to identify, review, and segregate the records responsive to the request. Capping search, review, and segregation rates by statute that are far below the hourly rates of the average state employee responding to such records requests will increase the agency's financial costs in responding to UIPA requests, resulting in agencies

requesting increased budget funds or personnel positions to respond to the costs of responding to the UIPA requests.

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; however, there may be some responsive records that are not protected by the attorney work product or the attorney-client privilege. Responding to UIPA requests to our Department requires deputy attorneys general to review the records, to determine whether the records are privileged or otherwise protected, and to determine which records or portions of the records are not protected and must be disclosed.

Some of the UIPA requests that our Department receives are voluminous, requesting all records within the Department that contain specified keywords (sometimes as many as 15 keywords) over a span of years. To properly respond to such a request, the assigned deputy attorney general must estimate how many employees within the Department may have records containing those keywords for that time period. Depending upon the keywords and the time period specified, the number of employees who have responsive records could easily exceed 20-30 employees, mostly attorneys. The estimated amount of time spent searching for, reviewing, and segregating records can amount to hours and even days depending on the breadth of the request. Although the Department tries to work with such requesters to determine what information they are seeking and help them narrow their request accordingly, some requesters do not have a clear idea what they are searching for or are hoping to find something in the records and refuse to narrow their request.

Another concern is that section 2 of this bill would waive the first one hundred pages of copying costs and section 3 of this bill would waive all search, review, and segregation fees when the public interest would be served by disclosure of the

requested records. Under the copying cost provision and the fee waiver provision, the disclosure of the records must serve the public interest, must be likely to contribute significantly to the public's understanding of government operations or activities, and "is not primarily in the commercial interest."

Many government records, by their nature, are "likely to contribute significantly to public understanding" of the government's operations or activities. In addition, a business can easily evade the "not primarily in the commercial interest" requirement and obtain a waiver of the first one hundred pages of the copying costs and a complete fee waiver by asking their employee to request the records as an individual rather than as an employee of the business. By providing a means for all UIPA requesters to qualify for a waiver of the first one hundred pages of the copying costs and a complete fee waiver, this bill will encourage requesters to make their requests as broad as possible, resulting in disruption to government operations from requests that take many hours and even days of employees' time to respond. Agencies will be forced to request additional budget funds for personnel positions to respond to UIPA requests.

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

OFFICE OF INFORMATION PRACTICES

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

To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 7, 2024, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1610
Relating to Public Records

Thank you for the opportunity to submit testimony on this bill, which would change the current minimum charge for copying government records to a maximum charge, require the Office of Information Practices (OIP) to adopt rules regarding government record copy fees, set a statutory cap to the search, review, and segregation fees that OIP is required to set by administrative rule for government record requests under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), and set statutory standards and requirements for the public interest waiver OIP is also required to set by rule. **A version of this bill introduced last year, H.B. 719, H.D. 1, S.D. 2, is currently in conference. That version includes amendments negotiated by the interested parties and OIP would respectfully recommend that this Committee use the language of that bill as a starting point rather than going back to square one. However, OIP offers comments on H.B. No. 1610 as introduced, explaining the significant effect the changes would potentially have and, in particular, the unintended effects that may result.**

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

involve the balancing of competing interests among many different constituencies that include the State, county, and independent agencies and boards of varying sizes, subject matters and technical or personnel support; volunteer board members appointed to represent the public, and who may or may not have board employees to assist them; non-profit advocacy groups; media representatives; private businesses; government and private sector attorneys; resident and non-resident record requesters; taxpayers; and the general public. Therefore, to place OIP's comments on the bill in perspective and understand the potential effects of this bill, OIP's testimony begins by providing the Legislature with objective data that all State and county agencies submit on UIPA Log Reports that OIP has been summarizing since 2015, information about the Draft Rules that OIP proposed in 2017 and are still pending, and a legal comparison of the differences between OIP's rules and the federal rules upon which the bill is partially based.

Data from Log Reports

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

Similar to past results, the FY 2023 reports for the [State](#) and [county](#) agencies show that **the overwhelming majority of requesters continue to pay no fees or costs: 90.4% of 2,135 requesters to State agencies and 86.2% of 2,391 requesters to county agencies paid nothing for their completed requests.** Of the total 4,526 requests completed in FY 2023, only 1.8% (39) of State requesters and 3.9% (107) of county requesters paid more than \$50, and no one paid \$1,000 or more. As in years past, **most fees and costs are being paid by requesters identified as attorneys, businesses, special interest groups, media and other entities.**

The FY 2023 reports are also consistent with prior years' data showing that **the relatively few complex record requests take more than twice as long to fulfill as the typical request, yet the disproportionately higher fees and costs they incur are not being paid by such requesters.** Although complex record requests constituted 5% of State requests, they took 30 times longer than typical requests to process and accounted for 73% of the gross fees and costs incurred by State agencies, of which only 0.5% (\$542) was ultimately paid by complex record requesters in FY 2023. For the counties, complex record requests constituted 9% of UIPA record requests, took over three times as long to process compared to typical requests, and accounted for 27% of total gross fees and costs, of which only 12% (\$7,347) was actually paid by complex record requesters in FY 2023.

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

OIP believes that reasonable fees are necessary to act as a safeguard against abuse by those who would engage in manifestly excessive interference with an agency's normal operations, such as by making repeated, voluminous, or frivolous requests. If requesters did not have to pay for fees and costs, there is no incentive for them to limit their requests to the records and time period that they actually need.

On the other hand, OIP will not allow agencies to charge excessively high fees that are not justified. For example, in [OIP Op. No. 23-02](#), OIP found that the agency's initial fee estimate of over \$1 million was excessive and was not justified under the UIPA.

Note, too, that the Log data shows that **under Hawaii’s UIPA as currently structured record requesters are receiving their records much faster than under the federal Freedom of Information Act (FOIA), whose more complex fee structure and public interest waiver are inconsistent with the UIPA.** While UIPA requests are typically fulfilled in less than 9 work days, the average federal FOIA request often takes hundreds of days, if not years, for resolution. *See e.g.*, The FOIA Project, Agency FOIA Backlogs and Processing Times at <https://foiaproject.org/request-chart/> .

OIP’s 2017 Draft Rules

As required by the UIPA, OIP’s rules set forth fees and costs that agencies may charge for record requests and provides for fee waivers. Section 92F-42(18), HRS, requires OIP to “adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served[.]” Pursuant to this legislative mandate, OIP adopted chapter 2-71, Hawaii Administrative Rules (HAR) in 1999. For the past 24 years, OIP has not raised the fees set in its administrative rules at \$2.50 per 15 minutes to search for responsive records, and \$5 per 15 minutes to review and segregate records.

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

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

remain under review by the Attorney General's office. Additionally, since versions of the measure under consideration have been heard by the Legislature every year from 2022 onwards, it would be counter-productive for OIP to proceed with rulemaking when the Legislature is evidently interested in setting specific statutory standards for what OIP's rules must say, but has not yet enacted a final version of such standards.

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

OIP recognizes that average government salaries have increased in the past seven years with inflation and collective bargaining costs. OIP also recognizes the Legislature's concern that fees for UIPA requests should remain generally affordable for requesters, even if this means that agencies must subsidize a greater proportion of the cost of processing such requests out of their operational funding, and that public interest waiver amounts in particular should be larger. **Whether or not this or a similar bill becomes law, OIP expects to review and revise its Draft Rules before proceeding with the formal rulemaking process.**

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

OIP's Fee Rules Differ Significantly from Federal FOIA Fees

The bill's proposed amendments, and in particular the one changing the standard for a public interest fee waiver, are **not consistent with the UIPA's existing fee structure**. The proposed statutory public interest waiver standard is instead modeled on a small part of the substantially different and more complex fee structure under the federal FOIA. **The UIPA has a relatively simple fee structure**, with set fees for search, review, and segregation chargeable to all requesters after first applying an automatic waiver of fees for the first 1-3 hours of staff time (for all requesters) or the first 2-6 hours of staff time (for public interest requesters). **By contrast, FOIA's fee scheme**, set out in 5 U.S.C. § 552(a)(4)(A)(ii) and (iii), **has three separate fee tiers, each applicable to a different category of requester, with the possibility of an additional waiver of some or all of the otherwise chargeable fees for requests of particularly high public interest**. The relevant FOIA fee provisions are attached to the end of this testimony.

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

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

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

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

OIP's existing fee rules under the UIPA were deliberately designed to be less complex than FOIA's, and rather than having different categories of requesters all of whom pay different types of fees, **the existing public interest fee waiver provides an expanded fee waiver for the relatively broad variety of requests that serve the public interest** as set out in the existing fee rules. The UIPA's existing public interest fee waiver does not require a full waiver of all fees and costs, as this bill proposes, but then again neither does FOIA's actual public interest fee waiver (unlike this proposal). Further, agencies often do waive

more fees and costs than required for media requests, such as by waiving all fees for search, review, and segregation time and charging only copy costs. **Thus, OIP views the proposed new public interest fee waiver standard as being not only unnecessary, but likely to exclude requesters from for-profit media organizations who are included under the UIPA's current public interest fee waiver standard,** as further discussed below.

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

Comments on Proposed Bill

1. Statutory Cap on Fees

The proposed statutory cap of \$5 per 15 minutes for search and \$7.50 per 15 minutes for review, and segregation fees agencies may charge for staff time spent in responding to a record request is higher than the rate currently allowed by OIP's rules of \$2.50 and \$5.00, respectively. However, the current charges adopted in 1999 were intended to be close to the average salary rate for employees likely to be responsible for search, review, and segregation under the UIPA, and were based on a 1996 survey of state and county salaries. In other words, **the current fees are already 28 years out of date and do not reflect current salaries for the government employees doing the work.** OIP is also aware that agencies often end up with senior personnel processing record requests since they are the ones most familiar with the requested records, so **even if the fees were adjusted to account for 28 years of inflation they still would not fully account for the interruption to an agency's primary duties posed by larger or more complex requests that must be reviewed by professional or senior managerial personnel.**

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

2. Public Interest Fee Waiver

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

The UIPA standards for a public interest waiver are currently that (1) the record pertains to the operation or activities of an agency (without considering its relative public importance), (2) it is not readily available in the public domain, and (3) the requester has the primary intention and actual ability to widely disseminate the information to the public. This bill would narrow the first of those, requiring the record to "contribute significantly to public understanding" of agency operations or activities, but would remove the remaining two: **the proposed waiver would apply to information already widely available to the public, and would**

apply to a requester with no intention or ability to publicly share the information. It would, moreover, add a requirement that the request NOT be “primarily in the commercial interest.” This requirement is one that OIP specifically considered, and rejected, in adopting its current rule regarding public interest waivers, so as to not exclude news media representatives. As OIP’s Impact Statement on the then-draft rules stated, “news media representatives will almost always have commercial interests. Therefore, to exclude news media representatives from a fee waiver because of those commercial interests is counterproductive to supporting the public interest in a free flow of information held by the government. Consequently, the proposed rule does not require an agency to determine that the disclosure of information is not primarily in the commercial interest of the requester.”

OIP believes the change in standard for what qualifies as a public interest request would thus exclude for-profit news media representatives, but not a non-profit media company or bloggers, and the change would not necessarily increase the general public’s access to information about the operation of government. At the same time, it would apply to a much narrower category of information, requiring the requester to establish that the information would “contribute significantly to public understanding” of agency operations rather than simply being about agency operations. It seems likely that this new standard would apply to a different pool of requests than the current standard, but it is not clear whether it will end up representing an increase or a decrease in requests meeting that standard. Either way, **the Legislature must decide whether the complete waiver of all fees for those requests that qualify would actually increase transparency, or instead would have the opposite effect and ultimately detract too much from agencies’ core work for the public as it would result in a larger number of complex record requests because there would be no financial incentive for the requester to narrow such a request.**

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

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

3. Copy Fees

As to the proposed amendment of **section 92-21, HRS**, authorizing agencies to charge copy fees for government records, **this statute is not part of the UIPA** but OIP is frequently asked about its application to UIPA requests. The statute currently sets a minimum copy charge of \$.05/page, but does not prohibit agencies from charging more. Since OIP's rules allow an agency to charge "other lawful fees" in addition to the search, review, and segregation fees set out by the rules, OIP has generally advised that the minimum copy charge is a lawful fee for the purpose of the rules, and if an agency has adopted administrative rules setting a higher per-page charge, that higher charge is also a lawful fee. **This proposal would cap copy charges at \$.25/page, and thus would primarily affect those agencies that have adopted administrative rules setting a higher per-page charge based on their total costs of providing copies.**

4. Effective Date

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

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

ATTACHMENT: Relevant Portion of FOIA Rules

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

5 U.S.C. § 552(a)(4) (A)

(ii) Such agency regulations shall provide that—

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

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

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

JOSH GREEN, M.D.
GOVERNOR



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 JUDICIARY & HAWAIIAN AFFAIRS

ON

HOUSE BILL NO. 1610

February 7, 2024

2:00 P.M.

Conference Room 325 and via Videoconference

RELATING TO PUBLIC RECORDS.

Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

H.B. 1610 proposes to impose a cap on costs charged to reproduce certain government records, waives reproduction costs charged for the first one hundred pages if a record's disclosure serves the public interest, waives costs charged to duplicate government records in an electronic format, and impose a cap on costs charged for searching, reviewing and segregating records, and provide a waiver of fees when a record's disclosure serves the public interest.

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 expenditure including current salaries, and overtime. The statutorily capped rates would represent a smaller and



Employees' Retirement System
of the State of Hawaii

City Financial Tower • 201 Merchant Street, Suite 1400 • Honolulu, Hawaii 96813-2980
Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>

smaller share of the average salary cost of the employee time spent responding to UIPA requests.

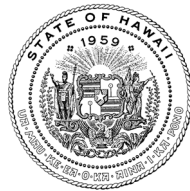
The ERS has experienced an increasing number of public requests especially for investment records, a number that is likely to increase even more if records become available at no cost to the requestor. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests in gathering and distributing such information but express a public purpose for doing so. The complete waiver of all fees for those requests that qualify would prove burdensome for the ERS and result in a larger number of complex record requests, as there would be no incentive for the requester to limit the number or narrow such requests. Such an increase in requests would require an inordinate amount of the ERS' staff time that would detract from the ERS' other responsibilities.

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" And "not primarily in the commercial interest." Nor does the bill specify who would make the determination.

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

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

Thank you for this opportunity to provide testimony.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

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

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

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

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 1610

February 7, 2024
2:00 p.m.
Room 325 and Videoconference

RELATING TO PUBLIC RECORDS

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

House Bill No. 1610: 1) imposes a cap on copy charges; 2) prohibits charging a copy charge for the first 100 pages of a request under specified circumstances; 3) prohibits a copy charge for electronic records if requested in the format in which the record is kept; 4) requires that the cost of reproducing photographs, maps, audio recording, digital or electronic records, and other physical records be set by rules adopted by the agency with custody of these items; 5) provides that reproduction cost that can be charged to a requester is the "reasonable direct cost of making the copies and be limited to the salary of the operator of the reproduction machinery as well as the cost of the machinery," eliminating the ability to charge for material cost, electricity cost, cost for certification, and other related costs; and 6) requires that rules setting forth fees and charges for searching, reviewing, or segregating records shall not exceed \$5 per 15 minutes or fraction thereof for searches, shall not exceed \$7.50 per 15 minutes or fraction thereof for review and segregation of records, and shall provide for waivers of fees under specified circumstances.

B&F would like to point out that State departments and agencies have to redirect staff and their resources to search, organize and copy documents to respond to information requests. These efforts are not inconsequential. The cap on charges and waiver requirements may adversely impact their ability to carry out their primary functions.

Thank you for your consideration of our comments.

Written Comments

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

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

Date: 02/07/2024

Time: 02:00 PM

Location: 325 VIA VIDEOCONFERENCE

Committee: House Judiciary & Hawaiian
Affairs

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 1610 RELATING TO PUBLIC RECORDS.

Purpose of Bill: Imposes a cap on costs charged to reproduce certain government records. Waives reproduction costs charged for the first one hundred pages if disclosure serves the public interest. Waives costs charged to duplicate certain government records in an electronic format. Imposes a cap on costs charged to search for, review, and segregate records. Provides for a waiver of fees when a record's disclosure serves the public interest.

Department's Position:

The Hawaii State Department of Education (Department) provides comments on HB1610.

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

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



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
House Committee on Judiciary & Hawaiian Affairs
February 7, 2024 at 2:00 p.m.

By

Carrie K. S. Okinaga

Vice President for Legal Affairs and University General Counsel
and

Kalbert K. Young

Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

HB 1610 – RELATING TO PUBLIC RECORDS

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

Thank you for the opportunity to testify on HB 1610, which imposes caps and provides for waivers for certain costs and fees associated with reproduction and disclosure of government records. The University of Hawai'i (University) notes that responding to public record requests requires considerable time and effort by government agencies, which should be permitted to recover reasonable costs and fees for that effort while promoting government transparency. The policy of shifting the costs incurred by private interests whose business model now includes paying these costs, to the public taxpayer, is problematic without concrete evidence of corresponding value to the public (vs. private interests).

Undertaking compiling, copying, formatting, or reproducing records for disclosure entails costs and pulls resources from other primary public services of departments. This bill does not recognize that departments with limited resources should be permitted the capability to recover taxpayer funds for servicing private interests, even those posed under the premise of purported specific public purposes of a private organization.

The University also respectfully notes that the administrative rules of the Office of Information Practices (Chapter 2-71 of the Hawaii Administrative Rules) currently address the allowable costs and fees associated with responding to record requests, and if necessary, adjustments through the rule-making process could be a way to address the concerns behind the introduction of this measure.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: honolulu.police.hawaii.gov

RICK BLANGIARDI
MAYOR
MEIA



ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE **CL-DNK**

February 7, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and Hawaiian
Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 1610, Relating to Public Records

I am Carlene Lau, Acting Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD appreciates the intent of House Bill No. 1610, Relating to Public Records, and has some concerns regarding the imposing of a cap on costs and the waiving of fees when a government record's disclosure serves the public interest.

While the HPD recognizes the importance of promptly addressing government record requests as part of its commitment to transparency and accountability, there are concerns that a complete waiver of fees may lead to an increase of requests from public interest groups. This could potentially overwhelm the existing system as these types of requests involve extensive research, review, and redaction to ensure that sensitive, personal information is not released to the public. These requests are usually large and complex requiring an immense amount of time and resources.

The existing fees for processing government records are already significantly less than the actual incurred cost. The expectation for the HPD to absorb the costs associated by providing additional staffing and supplies will create further strain on a pre-existing approved budget.

The Honorable David A. Tarnas
and Members
February 7, 2024
Page 2

The HPD appreciates the committee's consideration of our comments and concerns regarding House Bill No. 1610, Relating to Public Records, and thanks you for the opportunity to testify.

Sincerely,



Carlene Lau, Acting Major
Records and Identification Division

APPROVED:



Arthur J. Logan
Chief of Police



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair

RE: Comments on H.B. 1610, Relating to Public Records
Hearing: February 7, 2024 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony **with comments** on H.B. 1610. This measure amends two sections of the Uniform Information Practices Act (UIPA), Hawai`i Revised Statutes (HRS) chapter 92F, to provide limitations and waivers related to the fees and costs charged by agencies in responding to public records requests.

We strongly support the intent of making public records more accessible to the public through the imposition of reasonable caps and public interest waivers. 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.

However, efforts are underway to address this matter by way of rule-making, with the involvement of the Attorney General's office. We respectfully ask that this measure be deferred to allow rule-making efforts to continue. If those efforts fail, we would ask the Legislature to revisit this issue next session.

Thank you again for the opportunity to testify with comments on H.B. 1610.





House Committee on Judiciary & Hawaiian Affairs
Chair David A. Tarnas, Vice Chair Greg Takayama

Wednesday, February 7, 2024 2 PM Public Hearing in Conference Room 325 on
HB 1610, RELATING TO PUBLIC RECORDS

TESTIMONY

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

Chair Tarnas, Vice Chair Takayama, and Committee Members:

The League of Women Voters of Hawaii supports HB 1610.

Thank you for the opportunity to submit testimony.

Feb. 7, 2024, 2:00 p.m.
Hawaii State Capitol
Conference Room 325 and Videoconference

To: House Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice-Chair

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

RE: COMMENTS IN SUPPORT OF HB1610 — RELATING TO PUBLIC RECORDS

Aloha Chair Tarnas, Vice-Chair Takayama and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments in support of [HB1610](#), which addresses a significant problem encountered in open-records requests: the use of high search and reproduction costs as a method to discourage the pursuit of Uniform Information Practices Act requests.

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

In addition, the bill provides for a waiver of costs for duplication of records in electronic format as well as waiving the reproduction costs for the first 100 pages of a physical record if the disclosure is in the public interest. The bill also provides for a waiver of fees related to search, segregation and review when the public interest is served.

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

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

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

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

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

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

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

All of which is to say, this bill should be praised for seeking to eliminate reproduction charges for digital records, creating a public interest waiver for the first 100 pages of physical copies, and capping the fees for reproduction of physical copies.

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

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

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

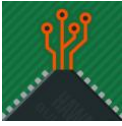
We understand the desire to discourage nuisance requests or abuse of the open-records law, but agencies should not be able to avoid disclosure of public records through the use of high fees.

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

In summary, HB1610 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 testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



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

Before the
Committee on Judiciary & Hawaiian Affairs
Conference Room 325
Wednesday, February 7, 2024

HB1610 — Relating to Public Records

Honorable Rep. David A. Tarnas, Chair; Rep. Gregg Takayama,
Vice Chair; and Members of the Committee on Judiciary &
Hawaiian Affairs (GVO):

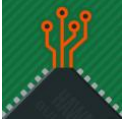
I am submitting this testimony to express my **SUPPORT WITH COMMENTS** of **HB1610** relating to Public Records.

Government transparency is not cheap. But it is priceless.

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

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

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



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

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

Even without this refinement, HB1610 is an important improvement to Hawaii's model public records laws and deserves your support.

Thank you for your consideration.



Feb. 7, 2024

David A. Tarnas
House Committee on Judiciary and Hawaiian Affairs
State Capitol
Honolulu, HI 96813

Re: House Bill 1610

Chairman Tarnas and Committee Members:

We support this bill, which is similar to HB719, which failed to emerge from conference committee last year. This bill caps fees on reproduction of government documents and search fees for serving the public interest and educating about government functions, and removes fees for records already in electronic format.

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

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

We highly endorse this measure.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ

HB-1610

Submitted on: 2/5/2024 10:03:25 PM

Testimony for JHA on 2/7/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

I STRONGLY SUPPORT THIS MEASURE.

HB-1610

Submitted on: 2/5/2024 2:31:17 PM

Testimony for JHA on 2/7/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I **oppose** tis Bill.

HB-1610

Submitted on: 2/6/2024 8:52:40 AM

Testimony for JHA on 2/7/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Judge Daniel Foley (ret.)	Individual	Support	Written Testimony Only

Comments:

Dear Mr. Chairman and members of the Judiciary and Hawaiian Affairs Committee,

As the former chair of the Commission to Improve standards of Conduct, I submit this testimony in support of HB 1610. This bill was recommended by the Commission. See Commission's December 1, 2022 Final Report at pages 10 and 27. HB 1610 would create greater transparency in government thereby increasing public trust. Citizens would no longer be denied access to information simply because they can't afford to buy it.

Respectfully submitted,

Judge Daniel Foley (ret.)