

HB-719-HD-1

Submitted on: 3/16/2023 9:40:51 AM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daniel Foley	Testifying for Commission to Improve Standards of Conduct	Support	Remotely Via Zoom

Comments:

Dear Mr. Chairman and members of the Government Operations Committee,

As Chair of the Commission to Improve Standards of Conduct, I support HB 719, HD 1, which would impose a cap on charges for reproduction of certain government records, waive the cost of duplication of government records provided to requestors in electronic format, impose a cap on charges for searching for , reviewing and segregating records and provide for a waiver of fees when the public interest is served by record disclosure. See Commission's December 1, 2022 Final Report at page 27.

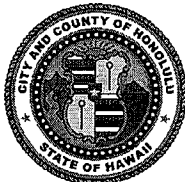
A similar bill was supported by the Commission and passed by the Legislature last regular session (SB 3252, SD2, HD 2, CD 1) and vetoed by the Governor. Report at page 10. The Commission has attempted to address concerns raised by the Governor in this bill.

Mahalo, Judge Daniel Foley (ret.)

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



HAKU MILLES, P.E.
DIRECTOR

BRYAN GALLAGHER, P.E.
DEPUTY DIRECTOR

March 16, 2023

The Honorable Angus L.K. McKelvey, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Government Operations
The Senate
State Capitol, Conference Room 225 & Video Conference
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey, Vice-Chair Gabbard, and Members:

SUBJECT: House Bill No. 719 HD1
Relating to Public Records

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 719 HD1. The purpose of the bill is to:

- (1) Impose a cap on charges for the reproduction of certain government records;
- (2) Waive the cost of duplication of government records provided to requestors in an electronic format;
- (3) Impose a cap on charges for searching for, reviewing, and segregating records;
- (4) Provide for a waiver of fees when the public interest is served by a record's disclosure; and
- (5) Appropriate funds for two permanent positions within the office of information practices.

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

The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Government Operations
March 16, 2023
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This bill would be expected to increase the frequency and scope of requests and the resources required to respond to those requests. In addition, DDC is concerned that the bill would:

- Encourage the filing of more complex record requests;
- Eliminate the current fee waiver for media representatives;
- Slow the processing of all record requests as well as of the agency's work unrelated to record requests;
- Increase the agencies' need for more funding to recruit, train and hire additional personnel;
- Reduce government efficiency as well as government transparency due to delays in processing record requests and increased costs to legitimate media representatives, resulting in less news coverage; and
- Require ongoing legislative amendments to the Uniform Information Practices Act (UIPA) to address unintended consequences and matters previously handled by administrative rules, including the possibility of providing for longer agency response deadlines.

Based on the above considerations, DDC respectfully **opposes** House Bill No. 719 HD1.

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

Sincerely,



Haku Milles, P.E., LEEP AP
Director

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
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info@civilbeatlawcenter.org

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

RE: Testimony Supporting H.B. 719 H.D. 1, Relating to Public Records
Hearing: March 21, 2023 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 government transparency. Thank you for the opportunity to submit testimony **strongly supporting** H.B. 719 H.D. 1.

State and county agencies maintain government records **for the people of Hawai`i**. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai`i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

The Legislature *unanimously* adopted a similar bill in 2022. After Governor Ige's veto, the Commission to Improve Standards of Conduct further refined the proposal with extensive input from government agencies and the public. The Commission's proposal as introduced in H.B. 719 addresses any legitimate agency concerns and upholds the fundamental principle that the public deserves to know what its government is doing.

This proposal is one of three critically necessary public records changes identified by 30 entities in a coalition letter by media outlets and community organizations to Governor Green. The Governor has embraced the proposal. *E.g.*, Dan Nakaso, *First 100 Days Will Lead to Bigger Solutions, Green Says*, Honolulu Star-Advertiser (Mar. 16, 2023); Patti Epler, *Let the Sunshine In: Gov. Josh Green Says He's Already Taking Steps to Make Hawaii Government More Open*, Honolulu Civil Beat (Mar. 6, 2023); Patti Epler, *Let the Sunshine In: The Winds of Change May Be Starting to Blow in an Otherwise 'Dark Time'*, Honolulu Civil Beat (Jan. 31, 2023).

This bill has an appropriately limited scope. It only applies when someone requests access to the people's records *for the purpose of educating the general public about operations and activities of our government*. In those limited circumstances, cost should not be an obstacle. An individual's public record request educates one person, but a public

interest request typically educates thousands of people in Hawai`i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and publishing information about government operations. When the agency charges too much, the general public is left in the dark.

For example, reporters and watchdog activists have written articles *sourced from public records* on the State's pension burdens, the deficiencies in DHHL's or DLNR's revocable permit systems, the discipline or exoneration of law enforcement officers for the death or assault of a citizen, the delays at DCCA in disciplining physicians, and even the cost of public records. Public discussion of these concerns about government operations – informed by access to government records – has led to reform in every instance.

Data provided by state and county agencies indicates that all public interest requesters in FY 2022 paid a total of \$810.42 in copying costs and \$3,230.80 in search, review, and segregation (SRS) fees. To the extent that agencies labeled the requests with the identity of the requester – which agencies are not required to do – it appears that Civil Beat paid \$2,532.49 in total copying costs and SRS fees in FY 2022. Star Advertiser paid \$293.75; Hawaii News Now paid \$183.75; KHON paid \$111.25; and a variety of nonprofits, media outlets, and unidentified others paid the remainder. These numbers show how small the impact would be on the government fisc – as compared to the significant public benefit in government accountability.

The general public's ability to understand what is going on in government should not depend on having an entity like Civil Beat willing to pay for government records. Other media outlets and nonprofit organizations struggling with shrinking budgets will have far greater ability to pursue matters of public concern if estimated fees are not an obstacle to obtaining basic information to verify and understand government operations. A robust landscape of organizations seeking to educate the public about government is good for everyone in Hawaii.

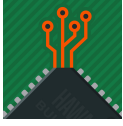
Excessive secrecy contributes to the public's distrust of government. When a requester has the ability to use government records to educate the general public about how our government operates, that leaves less room for agency corruption and incompetence. So when an agency claims that it will share **the people's records** with a public interest requester only if paid thousands of dollars for access, the public may legitimately ask: What is the agency hiding?

In recent discussions with the Department of the Attorney General, the Law Center would support language that does not change the public interest waiver, but provides additional clarity regarding the relevant factors for agencies to consider. The proposed language further incorporates into the statute the factors used by the federal Freedom of Information Act, which is the model for public interest waiver.

*Supported amendment to HRS § 92F-42(13)(B)(iii) [new language **bolded**]:*

- (iii) Provide for a waiver of fees when the public interest would be served by the record's disclosure; provided that the waiver shall require that the search for or review or segregation of records be provided at no charge to the requester if disclosure of the record is in the public interest because the disclosure is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Factors to be considered when determining if the disclosure would serve the public interest include, but are not limited to:
- (a) the subject of the request;
 - (b) the informative value of the information to be disclosed;
 - (c) the contribution to an understanding of the subject by the general public likely to result from disclosure;
 - (d) the significance of the contribution to public understanding;
 - (e) the existence and magnitude of a commercial interest; and
 - (f) the primary interest in disclosure; and

Thank you again for the opportunity to testify in support of H.B. 719 H.D. 1.



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

Before the
COMMITTEE on GOVERNMENT OPERATIONS
Hawaii State Capitol in Conference Room 225
3:00 p.m. HST on Thursday, March 21, 2023

HB719 — Relating to Public Records

Senator Angus L.K. McKelvey, Chair; Senator Mike Gabbard, Vice Chair; and Members of the Committee on Government Operations:

I am submitting this testimony to express my **SUPPORT WITH COMMENTS** on **HB719** relating to Public Records.

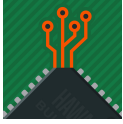
Government transparency is not cheap. But it is priceless.

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 (HB632/Act 263 in 2013), 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 set of records?

Even without this refinement, HB719 is an important improvement to Hawaii's model public records laws and deserves your support.

Thank you for your consideration.



Big Island Press Club

Since 1967, protecting the public's right to know

Big Island Press Club
P.O. Box 1920
Hilo, Hawaii 96721

CONTACT:
mphilips@bigislandpressclub.org

March 20, 2023

To: Senate Committee on Government Operations

From: Michael Phillips, President, Big Island Press Club

In SUPPORT of HB 719 HD1 Relating to Public Records

The Big Island Press Club, Hawaii's oldest press club, is in strong support of HB 719 HD1 relating to "Public Records."

Since 1967, the Big Island Press Club has been protecting the public's right to know. Serving as a watchdog for openness and credibility for Hawaii Island, we believe government agencies exist to aid the people in the formation and conduct of public policy. Providing reasonable access to public records is essential to keeping the public informed and educated while promoting the democratic process.

A bill similar to HB 719 was supported by the Legislature and passed during the last regular session (SB 3252, SD2, HD2, CD1). Unfortunately, Former Governor Ige vetoed the measure.

Just last week, the Big Island Press Club celebrated Freedom of Information Day. The March 16 holiday is the birthday of James Madison who was widely regarded

as the father of the U.S. Constitution and the leading advocate of openness in government among our founding fathers. To celebrate the day each year, the Big Island Press Club announces a winner of its meritorious Torch of Light Award to an individual or entity for illuminating the public's right to know. The Big Island Press Club also awards a Lava Tube dishonor to those that don't encourage good communication and/or create processes or policies that keep people in the dark.

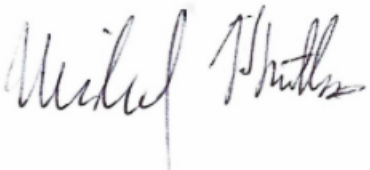
This year, the Big Island Press Club awarded the "dishonor" of the Lava Tube award to Governor Ige for vetoing last year's legislation which would have capped fees for access to public records and would have required audio or video recordings of public board meetings be maintained as a public record and posted.

In his veto message, Governor Ige said, "agencies may be forced to prioritize responding to record requests over the agencies' primary functions." However, responding to public records requests doesn't take away from a government employee's job –in fact, it is their job.

The Commission to Improve Standards of Conduct further refined last year's efforts, addressing any legitimate agency concerns in the initial draft of HB 719. We believe passing this bill upholds the fundamental principle that the public deserves to know what its government is doing and does so in a way not to burden the press and the public with excessive fees and restrictions.

With that said, we wholeheartedly support SB 719 HD1 and your efforts to restore reasonable access to government and their work with the public to support citizen involvement in government decision-making. Thank you for the opportunity to testify on this important matter.

Signed,

A handwritten signature in black ink, appearing to read "Michael Phillips". The signature is written in a cursive, flowing style.

Michael Phillips
President, Big Island Press Club



March 21, 2023

Angus McKelvey
Senate Government Operations Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 719, HD1

Chairman McKelvey and Committee Members:

We like this bill, which caps fees on reproduction of government documents and search fees for educating the public, and removes fees for records 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 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



SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Tuesday, March 21, 2023, 3 pm, State Capitol Room 225 & Videoconference
HB 719, HD1

Relating to Public Records

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii strongly supports HB 719, HD1. UIPA fees should be waived for all reasonable UIPA requests by the news media and public interest groups.

Thank you for the opportunity to submit testimony.



Hawai'i

Committee: Senate Committee on Government Operations
Hearing Date/Time: Tuesday, March 21, 2023 at 3:00 p.m.
Place: Via videoconference
Conference Room 325
State Capitol
415 South Beretania Street
Re: *Testimony of the ACLU of Hawai'i in Support of H.B. 719 H.D. 1
Relating to Government Services Relating to Public Records*

Dear Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") is a non-partisan, non-profit organization dedicated to preserving the principles of our constitutional democracy, including open and accountable government. We strongly support **H.B. 719 H.D. 1** which imposes a cap on the costs charged for the reproduction of certain government records and provides a waiver of fees when the public interest is served by a record's disclosure.

The proposed measure, which is similar to a bill unanimously adopted by the Legislature last year, *balances legitimate agency concerns and recognizes the fundamental principle of the public's right to access public records in a free society.*

The charging of excessive fees is a complaint that the ACLU of Hawai'i often hears from public records requesters. This complaint is consistent with the Office of Information Practice's own data showing that nearly all fees for public records are paid for by for-profit requesters.

The right to access public records means little if agencies can put them beyond the financial reach of most requesters. Fulfilling requests like this should be part of a public body's core mission, not a money-making venture. Consequently, the cap on costs will reduce the likelihood of public interest requesters from abandoning their requests when the agency quotes a fee estimate beyond what is affordable.

H.B. 719 H.D. 1 also proposes to waive fees when the public interest is served by a record's disclosure. As noted in a letter from the Office of Information Practices to the ACLU of Hawai'i dated November 30, 2011, the "public interest in inherently served by the 'free flow of information through the news media channels which broadly transmit or disseminate information to the public' and that 'the criteria for this waiver was intended to be broad enough to encompass requesters such as non-profit organizations, public interest media groups, community

Chair McKelvey and Senate Committee on Government Operations
March 21, 2023 3PM
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newsletters, etc., so long as the requester can show ‘the primary intention and the actual ability to widely disseminate information from the government to the general public at large.’”¹

Please support this measure to promote transparency and the public’s right to know. A healthy, vital democracy requires no less. Thank you for the opportunity submit testimony in support of **H.B. 719 H.D. 1.**

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota
Policy Director
ACLU of Hawai‘i
cshiota@acluhawaii.org

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

¹ https://www.acluhi.org/sites/default/files/field_documents/11-30-11-letter-from-oip-to-aclu-re-fee-waivers-in-public-interest.pdf

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COMMITTEE ON GOVERNMENT OPERATIONS

Sen. Angus McKelvey, Chair

Sen. Mike Gabbard, Vice Chair

Tuesday March 21, 2023

Room 225 & Videoconference

3:00 PM

STRONG SUPPORT FOR HB 719 HD1 - PUBLIC RECORDS

Aloha Chair McKelvey, Vice Chair Gabbard and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 3,981 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 - 24.4% of the male imprisoned population² - of Hawai`i’s imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in strong support of HB 719 HD1 that imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on charges for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure and appropriates funds for positions in the office of information practices.

State and county agencies maintain government records for the people of Hawai`i. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is

¹ Department of Public Safety, End of Month Population Report, February 28, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28_George-King.pdf

² Why are 24.4% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room here: Halawa is at 75%; Halawa Special Needs Facility is at 60%; Kulani is at 44%; Waiawa is at 53% of operational capacity.

happening in Hawai`i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

The Legislature unanimously adopted a similar bill in 2022. After Governor Ige's veto, the Commission to Improve Standards of Conduct further refined the proposal with extensive input from government agencies and the public. The Commission's proposal as introduced in H.B. 719 addresses any legitimate agency concerns and upholds the fundamental principle that the public deserves to know what its government is doing.

This proposal is one of three critically necessary public records changes identified by 30 entities in a coalition letter by media outlets and community organizations to Governor Green. The Governor has embraced the proposal. E.g., Patti Epler, *Let the Sunshine In: The Winds of Change May Be Starting to Blow in an Otherwise 'Dark Time'*, Honolulu Civil Beat (Jan. 31, 2023).

This bill has an appropriately limited scope. It only applies when someone requests access to the people's records for the purpose of educating the general public about operations and activities of our government. In those limited circumstances, cost should not be an obstacle. An individual's public record request educates one person, but a public interest request typically educates thousands of people in Hawai`i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and publishing information about government operations.

When the agency charges too much, the general public is left in the dark.

"Open access to public records is a cornerstone of American democracy. Such access is central to electing and monitoring public officials, evaluating government operations, and protecting against secret government activities. Open access recognizes that citizens have a right to obtain data that their tax dollars have been spent to create or collect. The value of this essential infrastructure, however, extends far beyond government. Its benefits are so numerous and diverse that they impact virtually every facet of American life, to the extent that we frequently take the benefits for granted."³

Examples of the Essential Role of Open Public Records

There have been numerous efforts over the last two years to document the essential role that public records play in the U.S. Many of these efforts have been lead by the members of the Individual Reference Services Group ("IRSG").⁴

³ Fred H. Cate and Richard J. Varn, *The Public Record: Information Privacy and Access -A New Framework for Finding the Balance* (1999).

⁴ Information on the IRSG can be found at <http://www.irsg.org>

"The Public Record: Information Privacy and Access" lists the following "essential roles" played by open public records:

1. Access to public record information provides an important foundation for U.S. capital markets, the most vibrant in the world. The ability to grant credit speedily and appropriately depends on ready access to information about consumers collected in part from the public record. As a result, even major financial decisions are often made in a matter of minutes or hours, instead of weeks or months, as in the case in most other countries. Finally, public records have helped democratize finance in America, meaning that many economic opportunities are based on what you have done and can do instead of who you are and who you know.

2. This country's open public record system significantly reduces the cost of credit because the information that credit decisions depend upon, drawn in part from the public record, is assembled routinely and efficiently, rather than being recreated for each credit decision. As a result, American consumers save \$100 billion a year because of the efficient and liquidity that information makes possible.

3. Journalists rely on the public record every day to gather information and inform the public about crimes, judicial decisions, legislative proposals, government fraud, waste, and abuse, and countless other issues.⁵

4. Law enforcement relies on public record information to prevent, detect, and solve crimes. In 1998, the FBI alone made more than 53,000 inquiries to commercial on-line databases to obtain a wide variety of "public source information." According to Director Louis Freeh, "Information from these inquiries assisted in the arrests of 393 fugitives wanted by the FBI, the identification of more than \$37 million in seizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."

Community Alliance on Prisons urges the committee to support a vibrant democracy by passing this bill capping the cost of access to public records that we have paid for with our tax dollars.

Mahalo nui for allowing CAP to present this testimony!

⁵ The European Union's Green Paper reached a similar conclusion. Indeed, the "lack of transparency" (as it is called in Europe) of public records is seen as one of the main reasons for the wholesale resignation of the European Union Commission due to the fraud found to have been involved at the highest levels of government.



holomua

COLLABORATIVE

OUR MISSION

To support and advance public policies that make Hawai'i affordable for all working families.

OUR VISION

Collaborative, sustainable, and evidence-based public policies that create a diverse and sustainable Hawai'i economy, an abundance of quality job opportunities, and a future where all working families living in Hawai'i can thrive.

BOARD MEMBERS

Jason Fujimoto
Meli James, *Board Chair*
Micah Kāne
Brandon Kurisu
Mike Mohr
Brad Nicolai
Mike Pietsch

ADVISORY COMMITTEE

Josh Feldman
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Alicia Moy
Ed Schultz

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Page 1 of 2

Committee: Senate Committee on Government Operations
Bill Number: HB 719, HD1 Relating to Public Records
Hearing Date and Time: March 21, 2023 at 3:00pm (Room 225)
Re: Testimony of Holomua Collaborative in support

Aloha Chair McKelvey, Vice Chair Gabbard, and Committee Members:

We write in support of HB 719, HD1, Relating to Public Records. The purpose of HB 719, HD1 is to impose a cap on charges for the reproduction of certain government records; waive the cost of duplication of government records provided to requestors in an electronic format; impose a cap on charges for searching for, reviewing, and segregating records; and provide for a waiver of fees when the public interest is served by a record's disclosure. It also appropriates funds for positions in the office of information practices.

When the Commission to Improve Standards of Conduct (the "Commission") recommended this bill, they were building upon a previous bill (SB 3252) that was unanimously passed by the State Legislature last year. The only reason that bill is not currently law is because it was vetoed by Governor Ige. Since then, the Commission has addressed the concerns that were raised in his veto message, with the chair and vice chair of the Commission noting their attempts to strike a proper balance, including specific references to federal statutes to assist with interpretation.¹

It's important to note the limited scope of HB 719. A key feature of the bill is the waiver of fees. Critically, this waiver of fees applies only "when the public interest would be served by the record's disclosure." This limitation is crucial because organizations making public interest requests are a fraction of all the requests made statewide. Indeed, public interest requests are roughly 5% of requests each year.² In other words, 95% of records requests made of government agencies simply will not be impacted by this bill.

In addition, entities that make public interest requests are typically motivated to work with government agencies to adjust or narrow their requests in order to receive the information they need in a timely fashion. Whether it is the Sierra Club requesting information about Red Hill or the Star-Advertiser asking for information about the progress of the rail line, it is not in these organizations' interests to ask—and stubbornly stick by—overbroad and burdensome requests. It is often *because* they are making requests in the public interest that they are interested in partnering with the agencies to make the requests as easy as possible to answer.

¹ The Civil Beat Editorial Board Interview: The Standards Commission's Dan Foley and Robert Harris, December 4, 2022 (<https://www.civilbeat.org/2022/12/the-civil-beat-editorial-board-interview-the-standards-commissions-dan-foley-and-robert-harris/>).

² "Public Records Are Our Records," The Civil Beat Law Center for the Public Interest (<https://www.civilbeatlawcenter.org/sb3252/>).



As its final report noted, an essential goal of the Commission was to provide recommendations that would help restore public trust in government and increase the level of transparency in its operations. HB 719, HD1 is a clear example of this and we are proud to support it.

As part of Holomua’s mission, we aim to build cross-sector collaborative support to work alongside our appointed leaders and elected government partners to co-create viable, sustainable solutions that benefit all working families in Hawai‘i. We believe policies that help improve government functions, and public confidence in government, further that goal. We appreciate the opportunity to testify.

Sincerely,

A handwritten signature in blue ink that reads 'Josh Wisch'. The signature is fluid and cursive, with a horizontal line underneath the name.

Josh Wisch
President & Executive Director



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

March 18, 2023

**The Honorable Sen. Chairman Angus L.K. McKelvey, Chairman
The Honorable Sen. Mike Gabbard, Vice Chairman
Senate Committee on Government Operations**

**From: Nancy Cook Lauer, publisher, All Hawaii News
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In STRONG SUPPORT of HB 719 HD1, Relating to Public Records

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 991, capping charges for reproducing, searching, reviewing and segregating public records and waiving costs under certain conditions.

Access to the public's public records shouldn't depend on how much money you make. A member of the public with less ability to pay but still a need to access records shouldn't be treated differently from a wealthier one.

Responding to public records requests doesn't take away from a government employee's job. It is, in fact, part of the job.

The numerous clerks employed at all levels of state and local government are charged with responding to public records requests as part of their job duties. The advent of electronic document and data management systems has actually made that job easier compared to the old days when paper files had to be retrieved from physical storage.

Public records belong to the people, not the government. The people already pay the taxes that support the workers who process the public records requests, the computers and software where the records reside and buildings that contain them.

Mahalo nui for considering HB 719 SD1.

HB-719-HD-1

Submitted on: 3/19/2023 11:59:14 AM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am in full support. For too long the public has been unable to access public record without paying an exorbitant fee. This will level the playing field as is warranted.

I agree with most of the recommendations of the Commisison to Improve Standard of Conduct, especially as they will improve trust in government.

HB-719-HD-1

Submitted on: 3/17/2023 5:53:25 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stephen T Hazam	Individual	Support	Written Testimony Only

Comments:

Please SUPPORT HB719 HD1. This will promote more transparency in government.

HB-719-HD-1

Submitted on: 3/15/2023 7:22:38 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

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

Comments:

I support this Bill, provided that it is amended to an effective date in the near future.

HB-719-HD-1

Submitted on: 3/15/2023 10:14:28 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB719 HD1.

HB-719-HD-1

Submitted on: 3/20/2023 9:15:44 AM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

I am submitting testimony in strong support of HB719 HD1. Government records are the public's property and should be made accessible to all. Transparency in government is of utmost importance so barriers to obtaining public records should be removed wherever possible. Thank you.

HB-719-HD-1

Submitted on: 3/20/2023 12:14:03 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair McKelvey, Vice Chair Gabbard and Committee Members,

My name is Carolyn Eaton and I am a registered voter in Hawai‘i. I strongly support this bill and urge your support for it too. Open access to public records for the public interest is critical to American democracy. Our State should not rely on fees and charges for underwriting necessary positions in the record-keeping agencies. Efficient response to requests for public records, followed by the records themselves, should be the norm, when the public interest is served,

Mahalo for your consideration of my thoughts on this issue.



March 21, 2023

3 p.m.

VIA VIDEOCONFERENCE

Conference Room 225

To: Senate Committee on Government Operations

Sen. Angus L.K. McKelvey, Chair

Sen. Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB719 HD1— RELATING TO PUBLIC RECORDS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to commend the Legislature for considering this bill, [HB719 HD1](#), which touches on a significant problem encountered in open-records requests: the use of high search and reproduction costs as a method to discourage the pursuit of 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; and provides for a waiver of fees when the public interest is served.

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

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

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

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

For example, in 2021, the Grassroot Institute requested three years of administrative forfeiture records from the state Office 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, HB719 should be praised for seeking to eliminate reproduction charges for digital records and capping the fees for reproduction of physical copies.

However, we would like to suggest the inclusion of a public interest waiver for fees related to the reproduction of physical records. Many agencies have switched entirely to electronic record keeping, but the public interest extends to historical records and should not be constrained.

Nor should agencies be provided with loopholes that would enable them to use the cost of physical copies, or transferring physical records to electronic format, as a way to discourage requests.

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 that 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 open-records requests, 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 are currently [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 OIP 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, HB719 has the potential to improve transparency and open government in our state by strengthening the public interest element of the law.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii