



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1255, RELATING TO GOVERNMENT RECORDS.

BEFORE THE:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Tuesday, February 4, 2025 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Room 225

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

Chair McKelvey and Members of the Committee:

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

This bill would make government contractors performing services for government agencies subject to the records disclosure requirements of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (UIPA), and the state records retention requirements. Pursuant to this bill, all contracts with such contractors must include provisions requiring the contractors to comply with the UIPA and the state records retention schedules for their records related to government service performance. The contractors must also designate a custodian of government records to handle UIPA requests.

The bill requires agencies procuring government services to: (1) be responsible for their contractors' compliance with the UIPA, including overseeing their contractors' recordkeeping and responses to UIPA requests; (2) post on the agency's website a list of all contractors providing government services, including an outline of the services provided and the contractors' records subject to disclosure under this bill; and (3) submit an annual report to the Legislature of the agency's findings, recommendations, and any proposed legislation. The annual report to the Legislature must include a list of all the agency's applicable contracts from the preceding year, the type and volume of the applicable records created, received, maintained, or used by these contractors, and a

list of requests for the contractors' records received by the agency and the contractors, and the resolution to such requests.

This bill prohibits government contractors from denying requests for their records on the basis of trade secret or proprietary information, unless specifically protected by law. It also establishes civil penalties—up to \$10,000 and contract termination—for contractors who violate the recordkeeping and disclosure requirements, as determined by the Office of Information Practices (OIP).

The bill authorizes the OIP to conduct inquiries regarding contractor compliance and investigate possible violations of the proposed recordkeeping or disclosure requirements. In addition, the OIP may review and rule on, upon request, whether a contractor violated any proposed requirement.

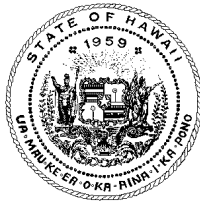
The Department is concerned that the bill's onerous records disclosure requirements and possible civil penalties imposed (including contract termination) will discourage contractors from bidding on government services contracts. Contractors are unlikely to agree to be subject to the UIPA records disclosure requirements, particularly when their proprietary, commercial, and financial information may be subject to public disclosure, potentially benefiting their competitors.

Furthermore, the bill raises constitutional due process issues under article I, section 5, of the Hawaii Constitution and the Fourteenth Amendment of the U.S. Constitution by imposing civil penalties and requiring automatic contract termination without affording contractors a right to a contested case hearing or a judicial appeal. Additionally, the bill does not identify the agency responsible for imposing and collecting these civil penalties, or where those monies collected will be deposited.

Finally, the Department believes that this bill is unnecessary because records related to government-contracted services are already subject to the UIPA's disclosure requirements imposed upon government agencies.

For the reasons set forth above, the Department respectfully requests that the Committee defer this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
*Ka 'Oihana Ho'omalua Kalaima
a Ho'oponopono Ola*
1177 Alakea Street
Honolulu, Hawaii 96813

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Pamela J. Sturz
Deputy Director
Correctional Institutions

Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

**TESTIMONY ON SENATE BILL 1255
RELATING TO GOVERNMENT RECORDS.**

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

Senate Committee on Government Operations
Senator Angus McKelvey, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, February 4, 2025, 3:05 p.m.
State Capitol, Conference Room 225 & Videoconference

Chair McKelvey, Vice Gabbard, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) opposes Senate Bill (SB) 1255, which states that it "[c]larifies that government records subject to disclosure requirements under the Uniform Information Practices Act include information that is created, received, maintained, or used by private contractors in performance of a government function outsourcing contract. Establishes requirements for parties to government function outsourcing contracts. Establishes civil penalties. Requires reports to the Legislature. Allows the Office of Information Practices to conduct inquiries regarding compliance by a private contractor and investigate possible violations."

In effect what Senate Bill 1255 does is it forces private contractors to disclose all information requested under the Uniform Information Practices Act (UIPA), even though the law allows for the withholding of information for various reasons. The bill does this because if a contractor denies a request for such information and the Office of Information Practices (OIP) finds that the denial violated UIPA, its contract with the State will be terminated and it will be subject to civil penalties of \$10,000 for each

violation. As a result, this bill encourages individuals to submit multiple requests for information under UIPA to obstruct or punish contractors, projects, or departments they object to or criticize, resulting in massive increases in workload for the agencies and OIP and making it even harder for the State to attract bids for large projects.

The bill also states that a contractor cannot deny a request for government records on basis of trade secret or other proprietary information except as determined by OIP. These parts of the bill will further discourage private contractors from working with the State, especially those outside the State, as they will have to litigate whether their internal information, products or services constitute a trade secret or proprietary information in this State.

In addition, this bill appears to violate the right of government agencies and contractors to appeal OIP opinions, as stated in Hawaii Revised Statutes section 92F-43. If the agency or contractor wins an appeal and OIP's opinion or finding is reversed, under the language of this bill its contract will still be terminated, and it will still be subject to civil penalties. Therefore, DCR opposes this measure based on the information presented above.

Thank you for the opportunity to present this testimony in opposition to SB 1255.

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: Senate Committee on Government Operations

From: Carlotta Amerino, Director

Date: February 4, 2025, 3:05 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 1255
Relating to Government Records

Thank you for the opportunity to submit testimony on this bill, which would extend the Uniform Information Practices Act (UIPA), chapter 92F, HRS, to cover records generated or used by private entities contracting with a government agency. The Office of Information Practices (OIP) offers **comments**.

Currently, the UIPA applies to records maintained by a government agency, which includes not only the records the agency keeps in its own office or computer systems, but also records it administratively maintains, i.e. records the agency is legally entitled to access even though they are in the possession of a third party. When an agency contracts with a third party to provide services that the agency would otherwise provide, it is typical for that contract to include a clause stating that the agency has the right to review the contractor's records related to the work it does for the contract. Such a contractual right to review the contractor's records means that the agency administratively maintains those records for the purpose of the UIPA, and thus the public can access those contractor records (assuming no UIPA exception applies) through a UIPA request **to the agency**.

This bill would require all government contracts to require the contractors (1) to follow state record retention schedules, and (2) to accept and respond to UIPA requests directly instead of having such requests go through the contracting agency. While the contracting agency would be responsible for overseeing and ensuring the contractor's compliance with these requirements, OIP would ultimately be empowered to both terminate the contract and charge a civil penalty of up to \$10,000 if OIP determined the contractor had violated the record retention or the disclosure requirements. The bill would also place new reporting requirements on agencies that enter into contracts and on contractors, which among other things would be required to list all records available for public requests on their website.

OIP believes that enforcement of the UIPA against government contractors is likely to be problematic. Whereas even a government agency with little direct experience of handling UIPA requests can still be expected to have some level of understanding that public accountability laws such as the UIPA exist and apply to the agency, a private business has no experience of responding to record requests coming in from the general public (as opposed to media requests for information handled by a business's public relations staff). Even for a business making a good faith effort to follow the new law, this bill would require a significant culture shift in handling inquiries from the general public, and may result in fewer contractors being willing to contract with government.

OIP also notes that although this bill calls for OIP to impose monetary civil penalties, OIP currently has no general authority to impose or collect monetary penalties for violations of the UIPA or of part I of chapter 92, the Sunshine Law, and this bill does not give OIP the power to collect and assess fines. Thus, it is not clear how OIP would be able to assess or to collect the civil penalties called for in the bill.

OIP also has no current authority over or expertise in the state's retention schedules, which fall under the purview of the Department of Accounting and General Services' Archives Division, Records Management Branch. Insofar as the bill requires enforcing record retention schedules for government contractors and assessing penalties for their failure to do so, OIP respectfully believes it is not the appropriate agency to oversee and enforce this.

While OIP supports this bill's intent to ensure that public access to records of government operations is not impaired by an agency's decision to outsource such operations to a contractor, OIP is concerned that the direct application of the UIPA to contractors will be difficult to put into practice and disputes over it will require a disproportionate amount of time, and that the proposed civil penalties lack any mechanism to be assessed or enforced. OIP respectfully suggests that this bill would not provide a workable way to improve public access to records of outsourced government functions.

Thank you for considering OIP's testimony.



Senate Committee on Government Operations

Tuesday, February 4, 2025, 3:05 PM Hearing in Conference Room 225 on
SB 1255, Relating to Government 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 supports the intent of SB 1255. Because UIPA allows public review of government records, we suggest amending (and simplifying) SB 1255 to require that all public contracts allow (or at least not prevent) full government access to contractor work products.

We understand that the University of Hawaii (UH) entered into a controversial personnel search contract which deliberately prevented disclosure of contractor work products to the UH. Non-disclosure of contract work products to the UH also shielded contractor work products from public disclosure under UIPA. In effect this UH contract seems to have pioneered a new and abusive way for public agencies to frustrate public review and comment on the performance of government contractors.



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

RE: Testimony with comments on S.B. 1255, Relating to Government Records
Hearing: February 4, 2025 at 3:05 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 S.B. 1255. We support the intent to clarify that records created under government contracts are government records subject to the Uniform Information Practices Act (UIPA). We respectfully **recommend amendments** to simplify the bill and increase its effectiveness.

S.B. 1255 would require government contractors to respond to requests for public records under UIPA. This, however, would force requesters who are wrongfully denied access to government records to seek redress from – and potentially sue – government contractors. That creates more obstacles for access than it solves. A more practical approach would be to simply require government contractors to disclose records, upon request, to the agency with which it has a contractual relationship.

S.B. 1255 would also impose State recordkeeping requirements on government contractors and require the Office of Information Practices (OIP) to police compliance with those requirements. But OIP already struggles to timely discharge its existing statutory duties. For example, although OIP was intended to be a quicker alternative to the courts for resolving UIPA and Sunshine Law disputes, it currently takes *years* on average to resolve an appeal.

Accordingly, we recommend the Committee **delete sections 2, 3, and 4** and **adopt the amendments to chapter 92F provided on the following page.**

Thank you again for the opportunity to testify with comments on S.B. 1255.



1. Add and amend chapter 92F definitions, consistent with the definitions proposed at page 4, lines 10 - 18, to clarify that records used in the performance of a government function are "government records" subject to UIPA.

§ 92F-3. General definitions. [. . . .]

"Government function" means a service, program, or activity that an agency is authorized or required by law to perform.

"Government record" means ~~[information maintained by an agency in written, auditory, visual, electronic, or other physical form]~~ any information in written, auditory, visual, electronic, or other physical form that is maintained by an agency or used in performance of a government function.

[. . . .]

"Trade secret" has the same meaning as defined in section 482B-2.

2. Add new section to chapter 92F, consistent with the obligations proposed at page 2, lines 5 - 15, to provide recordkeeping and access requirements for contractors performing a government function.

§ 92F- . Government function contracts; records retention and access requirement. Each contract with an agency to perform a government function shall expressly require the contractor to retain records in accordance with the agency's retention schedules and to provide the agency with access to all records subject to this chapter.

3. Add new subsection to section 92F-11, consistent with the language at page 3, lines 11 - 14, to clarify that protected proprietary information of a government contractor is not subject to disclosure under UIPA.

§ 92F-11. Affirmative agency disclosure responsibilities. (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours;

(c) Notwithstanding section 92F-13(3), an agency shall not deny a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information except where specifically protected by law.

[. . . .]

Feb. 4, 2025 3:05 p.m.
Hawaii State Capitol
Conference Room 225 and Videoconference

To: Senate Committee on Government Operations

Sen. Angus L.K. McKelvey, Chair

Sen. Mike Gabbard, Vice-Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY IN SUPPORT OF SB1255 — RELATING TO GOVERNMENT RECORDS

Aloha Chair McKelvey, Vice-Chair Gabbard and other Committee members,

The Grassroot Institute of Hawaii would like to offer its **support** for [SB1255](#), which would clarify that government records subject to disclosure under the Uniform Information Practices Act include information used, created, maintained or received by private contractors performing government functions pursuant to contract.

The bill would also allow the Office of Information Practices to investigate possible violations of these requirements and establish civil penalties for those violations.

We applaud this effort to eliminate the possibility of government contractors sidestepping transparency requirements.

The intent of sunshine laws is to provide public access to government decision-making and actions, especially when those actions involve the use of public funds. Allowing private contractors to avoid disclosure would frustrate this intent.

Furthermore, transparency laws help discourage government corruption and self-dealing — concerns that are often heightened in the case of government contracting.

We urge you to pass SB1255.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

SB-1255

Submitted on: 2/2/2025 2:06:32 PM

Testimony for GVO on 2/4/2025 3:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Sylvie Madison	Individual	Support	Written Testimony Only

Comments:

I am submitting this testimony in **strong support** of SB1255, which clarifies that government records subject to disclosure under the **Uniform Information Practices Act (UIPA)** include information created, received, maintained, or used by **private contractors performing government functions**. This bill is an essential step in ensuring **transparency, accountability, and public trust** when public services are outsourced to private entities.

Why This Bill is Necessary

The legislature finds that **transparency and accountability in government operations are fundamental to public trust**. The public has a right to know how taxpayer dollars are being spent and how government services are being administered—whether performed directly by government employees or by private contractors. **Transparency should not end where outsourcing begins**. Unfortunately, loopholes in current law allow **private companies to shield critical information from public disclosure**, preventing meaningful oversight and accountability.

This bill closes that loophole by ensuring that **records related to government functions remain accessible**, regardless of who performs the work. This is particularly important in areas such as:

- **Public safety and law enforcement contracts**
- **Infrastructure projects and transportation services**
- **Privatized healthcare, education, and social services**
- **Government technology and data management**

Key Benefits of This Bill

1. **Increases Transparency & Public Trust**
 - Public access to records ensures that **government contracts are awarded and executed fairly**.
 - Prevents **waste, fraud, and abuse** in government spending.
2. **Holds Contractors Accountable**
 - Contractors performing public functions must **meet the same disclosure standards as government agencies**.
 - Ensures **proper oversight of service quality and contract compliance**.
3. **Strengthens Good Governance**

- Protects against conflicts of interest and **improper outsourcing of essential government functions**.
- Ensures **lawmakers and the public can evaluate the true cost and effectiveness** of privatization efforts.

Addressing Potential Concerns

Some may argue that private companies should not be subject to government disclosure laws due to **proprietary or confidential business information concerns**. However, this bill carefully balances transparency with **legitimate business interests** by ensuring that only records **related to government functions**—not private business operations—are subject to disclosure.

Conclusion

Hawai‘i residents deserve **full transparency** when public services are outsourced. This bill guarantees that **contractors cannot operate in secrecy** when performing taxpayer-funded work. I urge this committee to **pass SB1255 without delay** to protect the integrity of public records and reinforce public confidence in our government.

Thank you for the opportunity to submit testimony in **strong support** of this important measure.

Sylvie Madison