

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Carlotta Amerino, Director

Date: March 18, 2025, 3:05 p.m.
State Capitol, Conference Room 225

Re: Testimony on H.B. No. 131
Relating to Research

Thank you for the opportunity to submit testimony on this bill, which would authorize government agencies to disclose nonpublic records to a researcher for a research purpose under chapter 92F, HRS, the Uniform Information Practices Act, chapter 92F, HRS (UIPA). The Office of Information Practices (OIP) **supports** this bill.

This bill will resolve an existing inconsistency in the UIPA. Currently, OIP is required by section 92F-42(14), HRS, to adopt rules setting forth uniform standards for disclosure of records for research purposes, but there is no statutory authorization of research requests for OIP to implement via rules. The UIPA's substantive provisions instead set a general "any person" standard for record disclosure. Members of the public are all equally entitled to access government records as a general rule, so an agency cannot disclose a record to some members of the public but withhold it from others.

Agencies are specifically authorized to disclose nonpublic records in only two situations, as set out in the UIPA. First, under part III of the UIPA, when an individual requests records "about" him or her those are his or her "personal

records” and the standard exceptions to government record disclosure cannot be used to deny access (although there are exemptions to personal record disclosure in section 92F-22, HRS, that can apply). Second, under section 92F-19, HRS, an agency can share nonpublic records with another government agency in specified circumstances without waiving its ability to withhold those records from the general public.

This bill will add a third situation in which agencies are authorized to disclose nonpublic records without waiving their ability to withhold them from the general public under the UIPA: agencies would now be able (but still not required) to disclose nonpublic records to a researcher for research purposes.

Because this amendment will provide the missing statutory authorization for agencies to disclose nonpublic records to researchers, OIP will now be able to implement that authorization through the adoption of rules in the future. However, the clear statutory authorization also means that agencies will not need to wait for OIP to adopt rules before they can disclose records to researchers; instead, agencies that wish to disclose nonpublic records to researchers can begin doing so once the new provision comes into effect. OIP can then assess based on the agencies’ experience handling research record requests what part of the process needs further guidance or uniform standards, and propose rules as needed to address those areas. OIP supports this bill, and respectfully requests that this Committee pass it out.

Thank you for considering OIP’s testimony.



UNIVERSITY OF HAWAII SYSTEM
‘ŌNAEHANA KULANUI O HAWAII

LATE

Legislative Testimony
Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Government Operations
March 18, 2025, at 3:05 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 131 – RELATING TO RESEARCH

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

The University of Hawai'i (University) respectfully submits testimony in opposition to HB 131 as presently drafted. This bill creates another exception to the privacy protections and protections of government's ability to function provided under HRS § 92F-13 (Government records; exceptions to general rule).¹ While government transparency is clearly an important goal, concern for privacy protections and government operations and efficiency warrant careful consideration before advancing this measure.

HB 131 provides definitions of "research" and "researcher" that are so overly broad and subject to abuse by "researchers" that the "exception" it provides could swallow the whole of HRS 92F-13, which protects everything from personal privacy interests, to drafts maintained by agencies the disclosure of which would frustrate legitimate government function, to the draft working documents of legislative committees. The

¹ HRS §92F-13, provides as follows:

Government records; exceptions to general rule. This part shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

choice to characterize requestors of information as “researchers” tries to pretend that such requests are to meet some specialized purpose other than to request 92F public records. The bill should more adequately define what is “non-commercial” use or objective so that government agencies can validate the applicability of the requestor(s). The bill, which broadly defines “researcher” to include entities such as “news media, nonprofit organization[s], or other similar organization[s],” is silent as to who pays the costs for compiling and anonymizing the data, and does not provide any protections against abuse of such “research” requests. HRS Chapter 92F currently provides for a balancing of legitimate government functions and privacy interests, and in the name of “research,” HB 131 would severely compromise this balance.

Specifically with respect to privacy and government operations concerns, while the bill defines “research purpose” as involving aggregate or anonymous information, this presumes the government agencies will be required to redact protected information, since no government agencies could turn over sensitive or identifiable data to an outside entity, including news media, and “trust” that that entity will redact and /or anonymize sensitive data in compliance with applicable State and federal laws pertaining to sensitive records. As just one example, existing federal laws, such as the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), impose strict safeguards for the handling and reporting of sensitive data. The University has established robust policies and procedures to govern the use of institutional data for research, consistent with State and federal laws. The University designed these policies to protect privacy and ensure compliance with legal standards.

Please note that even the ability of State agencies to research the records of other State agencies is restricted, requiring the requesting agency to honor the “same restrictions on disclosure of the records as the originating agency.” HRS Section 92F-19(b). HB 131 imposes no such obligations on the purported “researcher.”

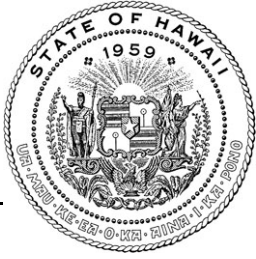
In addition, and given the above presumption that it will be government agencies which will need to do the necessary aggregation and anonymization, HB 131 appears to require compilations be done by the government agencies, in direct conflict with HRS Section 92F-11(c) which plainly states that “an agency shall not be required to prepare a compilation or summary of its records.” HB 131’s provisions as written will conflict with these established frameworks, creating operational uncertainty and exposing the University and other State agencies to legal challenge.

While the University recognizes the value of research in advancing public knowledge and informing policy, HB 131 raises significant operational and privacy concerns that require further examination. The absence of clear definitions of “research” and “research purposes”, the lack of safeguards that comply with federal and State laws, the inability to reconcile HB 131 with the legal framework set forth in HRS Chapter 92F, and the substantial operational challenges associated with implementing the bill underscore the need for caution.

If the Committee agrees with the above concerns, one suggested modification to the bill would be to delete the words “Notwithstanding section 92F-13,” and have the new provision read, “An agency may disclose government records to a researcher for a research purpose.”

In addition, given the concerns of the additional public resources that would be required by the contemplated compilations and redactions, we would respectfully request additional appropriations be made to the budgets of State agencies given the cost implications of this bill. In the alternative, this new provision should not go into effect until OIP issues rules addressing the above concerns, including defining “researcher” and “research purpose,” to prevent cost-shifting from private entities to public agencies to do compilations and redactions for private purposes, that the current law does not require.

Thank you for the opportunity to provide testimony.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKAI

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

JAMES KUNANE TOKIOKA
DIRECTOR

DANE K. WICKER
DEPUTY DIRECTOR

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Statement of
JAMES KUNANE TOKIOKA
Director
Department of Business, Economic Development, and Tourism
before the
Senate Committee on Government Operations

Tuesday, March 18, 2025
3:05 PM
State Capitol, Conference Room 225

In consideration of
HB131
RELATING TO RESEARCH.

Chair McKelvey, Vice Chair Gabbard, and members of the Committee.

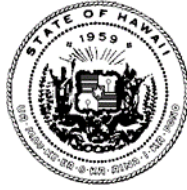
The Department of Business, Economic Development and Tourism (DBEDT) offers comments regarding HB131, which allows agencies to disclose government records to researchers for certain research purposes. DBEDT has resident and business confidentiality and other concerns about the requirement of providing non-public data to researchers for the following reasons:

1. The requirement will greatly reduce the survey response rate and thus increase the cost of survey projects. For all of the surveys DBEDT has been conducting, we promise the individual respondent data will be kept confidential and only aggregate statistics will be released. If individual data, even without personal information, can be released to researchers, willingness to respond to surveys will be greatly reduced. To get the same sample size, we would need to send out more surveys and costs would increase significantly.
2. Labor survey data is collected by DBEDT in collaboration with the U.S. Bureau of Labor Statistics, which funds the related surveys. There are federal regulations to protect the confidentiality of respondent data.
3. Surveys are often conducted by hiring private research firms. Different companies employ different methodologies to collect data. Releasing data to the public may affect the companies' proprietary rights.

4. If this bill passes, we will need to assist the requestor with data cleaning, and this may involve contracts which would increase costs.
5. Researchers use data differently and the research produced may lead to results that do not accurately represent the area of analysis. For example, with survey data, there are weighting procedures that are based on Hawaii's demographic characteristics. If these procedures are not followed correctly, it could lead to misleading conclusions.
6. We recommend that data from DBEDT be aggregated as well to protect the confidentiality of the data. DBEDT also has the research capability and is happy to provide the type of research needed from the requestors.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 17, 2025

TO: The Honorable Senator Angus L.K. McKelvey, Chair
Senate Committee on Government Operations

FROM: Ryan I. Yamane, Director

SUBJECT: **HB 131 – RELATING TO RESEARCH.**

Hearing: March 18, 2025, 2:00 p.m.
Conference Room 225 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments and requests clarification. DHS agrees with the concerns of the Department of Land and Natural Resources and the University of Hawaii.

PURPOSE: Allows agencies to disclose government records to researchers for certain research purposes.

DHS appreciates that the proposal does not mandate agencies to disclose government records to researchers for certain purposes. The current law allows DHS to provide information to requesters who identify themselves as researchers. The proposed new section in Section 1 does not provide DHS with any additional authority to disclose additional information that otherwise would fall under the exceptions to disclosure per section 92F-13, Hawaii Revised Statutes (HRS). DHS remains bound by state and federal law regarding records that can be released, to whom, and in what circumstances. Amongst others, section 346-10, HRS, lays out the state law regarding the release of applicant and recipient information.

The new definitions in Section 2 are ambiguous, and it is unclear what "non-commercial" includes or whether it is in the public interest. It is also unclear as to how "non-commercial" will be

determined or the duration that the research remains “non-commercial.” Additionally, whether intended or not intended to result in reidentifying individuals, the permissible uses and safeguards that lay out duties and responsibilities when sharing information that could result in reidentifying individuals are still required. Computing power has changed significantly where algorithms can match information, resulting in reidentification; safeguards and responsibilities would need to be negotiated and enforceable.

DHS requests clarification on whether the requester will be required to attest to the “non-commercial purpose” of the research and clearly articulate the purpose of the research. Understanding the research purpose or question would help determine if the information requested would assist with the research.

We are also concerned that these proposed changes will increase the number of requests for information. Information requests have increased dramatically since the COVID-19 pandemic and Maui Wildfires without any additional resources or tools to assist the department with its review and response. Specifically, there were:

- (19) FY2019 – (39) FY2020 – increase 105%,
- (39) FY2020 – (64) FY2021 – increase 64%,
- (64) FY2021 – (92) FY2022 – increase 43%,
- (92) FY2022 – (54) FY2023 – decreased 41%, and
- (54) FY2023 – (123) FY2024 – increase 127%.

Lastly, if the measure proceeds, DHS is interested in a requirement that any resulting research based on government records be made available to the releasing department free of charge to inform our services or program efficiencies or be released for the public’s general edification.

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

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

LATE

JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

March 18, 2025

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Mike Gabbard, Vice Chair, and
Members of the Senate Committee on Government Relations

Date: Tuesday, March 18, 2025
Time: 3:05 p.m.
Place: Conference Room 225, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

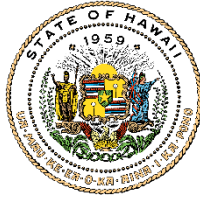
Re: H.B. 131 RELATING TO RESEARCH

The DLIR **offers comments** on this measure to allow agencies to disclose government records for certain purposes notwithstanding §92F-13 (exceptions). This measure authorizes the disclosure of nonpublic records, which could effectively make the records open to public access. Moreover, the DLIR is concerned it will lead to significant increases in requests and requiring staff resources to comply. The U.S. DOL does not generally provide funds within federal grants to support UIPA requests.

If enacted, the department would still be bound by the terms and conditions of federal contracts as well as state and federal laws regarding certain information it gathers. Notably, the U.S. Department of Labor requires strict confidentiality of Unemployment Insurance (UI) information and adherence to the Congressional mandate that UI information is used only for the purpose for which it is directed.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621
HONOLULU, HAWAII 96809

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

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHANE
DEPUTY DIRECTOR - WATER

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

**Testimony of
DAWN N.S. CHANG
Chairperson**

**Before the Senate Committee on
GOVERNMENT OPERATIONS**

**Tuesday, March 18, 2025
3:05 PM**

State Capitol Conference Room 225 and Videoconference

**In Consideration of
HOUSE BILL 131
RELATING TO RESEARCH**

House Bill 131 creates a section under Chapter 92F, Hawaii Revised Statutes (HRS), that “notwithstanding 92F-13,” allows for the disclosure of government records to a researcher for research purposes. **The Department of Land and Natural Resources (Department) offers the following comments.**

HRS §92F-13 allows for exceptions to the general rule that government records should be open and available to the public. There are only five situations in which an agency may decide not to release documents, all which DLNR finds to be reasonable:

- 1) If disclosure would be an unwarranted invasion of personal privacy.
- 2) If the record pertains to a judicial or quasi-judicial action to which the State or a county is a party, but only to the extent that the records are not discoverable.
- 3) Release of the record would frustrate legitimate government functions.
- 4) Records that are protected under state or federal law.
- 5) Draft legislative records.

The inclusion of “notwithstanding” language in House Bill 131 could undermine these existing exceptions, effectively making all records open to public access, including those requested by researchers. If the intention is to facilitate access to records for research purposes, this bill may not be necessary, as current law already balances public access with privacy and operational concerns.

If this bill moves forward, DLNR is concerned that it will increase requests for information,

require staff to ensure that the requestor meets the definition of a researcher, require additional time to review documents and should we deny the request, cause additional challenges.

To address these concerns, the Department suggests that the definition of “researcher” be limited to persons affiliated with an educational or research institute, museums or non-profit institutions. The Department also recommends that any implementation of this measure include funding for at least one additional full-time position (1 FTE) for each affected department to manage the increased responsibilities caused by this bill.

Mahalo for the opportunity to provide comments on House Bill 131.

March 18, 2025, 3 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 HB131 — RELATING TO RESEARCH

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

The Grassroot Institute of Hawaii would like to offer its comments in **support** of [HB131](#), which would allow the state Office of Information Practices to develop more effective rules governing the disclosure of government records for research purposes.

This bill is a much-needed amendment to existing open-records law that would allow a more uniform approach to the disclosure of records for research purposes.

The state Uniform Information Practices Act allows for the expanded disclosure of information for research purposes, but the OIP has indicated that it requires explicit statutory authority to make those rules. This means that research-based organizations are unable to fully access the data held by government agencies.

As an educational research organization and public watchdog group, the Grassroot Institute of Hawaii often uses open-records requests in its analysis of government policy. 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.

We have found that government agencies have access to large amounts of data that could be used in the development of studies that would inform local policymaking. However, without full access to that data,

researchers are limited in their ability to carry out such studies. Meanwhile, government agencies with access to this data might lack the resources, interest or mandate to make full use of it for research purposes.

Allowing researchers greater access to government data would be a win-win for policymakers, creating more avenues for useful, data-driven projects at little cost to taxpayers.

It is important to emphasize that the expanded disclosure envisioned by this bill would apply to only those who fit the definition of a “researcher,” and that “research purpose” is also narrowly defined.

Moreover, the OIP will certainly refine the rules of disclosure for research, adding necessary provisions for confidentiality, security and related matters. This should address any remaining concerns about the effect of expanded disclosure for researchers.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



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

RE: Testimony in Support of H.B. 131, Relating to Research
Hearing: March 18, 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 in **strong support** of H.B. 131. This bill amends chapter 92F of the Hawai'i Revised Statutes (HRS) to clarify the Office of Information Practices' (OIP) authority to create uniform rules for disclosure of records for research purposes, and has the support of OIP.

The Legislature recognized in 1989 that disclosing government records for research purposes serves an important public purpose, and delegated rule making authority to OIP for such disclosures. *E.g.*, HRS § 92F-42(15) (authorizing OIP to adopt rules governing the disclosure of records for research purposes); H. Stand. Comm. Rep. No. 1288 (bill "instructs [OIP] to adopt rules pertaining to the disclosure of records for research purposes."); Test. of the State Attorney General on S.B. 1799 (Feb. 21, 1989) at 7 ("the bill adds specific authority for [OIP] to adopt rules setting forth uniform standards for disclosure of records for research purposes in order that legitimate research is not jeopardized by the new laws.").

OIP, however, views the existing language under HRS § 92F-42(15) as insufficient authorization to create rules for disclosure of records to researchers beyond the level of access available to the general public. This construction denies the public of the benefit the Legislature intended to create decades ago by affording researchers *greater* access to government records than the general public.

Government agencies often have massive amounts of data but do not always have sufficient expertise or resources to use that data. Researchers in the public and private sector often have the expertise or resources, but lack sufficient access to the government's data to draw meaningful conclusions. H.B. 131 bridges that gap, consistent with the original intent of section 92F-42(15).



Senate Committee on Government Operations

March 18, 2025

Page 2

This measure is the first step in a long road toward ensuring more consistent access to government data for researchers. That, in turn, will promote government improvement through data-driven decision-making.

Thank you again for the opportunity to testify in support of H.B. 131.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
GOVERNMENT OPERATIONS**

**HB 131
Relating to Research**

Tuesday, March 18, 2025
3:05 pm
State Capitol, Conference Room 225

James Abraham
Associate General Counsel
Hawaiian Electric

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

My name is James Abraham and I am submitting testimony on behalf of Hawaiian Electric offering comments on HB 131, Relating to Research, with a proposed amendment.

Hawaiian Electric appreciates the intent of the bill to support transparency in public records and aid entities conducting research using such records. However, any framework for disclosing government records, which may include private parties' confidential information submitted to a government agency, must recognize and balance the need to protect confidential, proprietary, and trade secret information. As an example, in its oversight role, the Public Utilities Commission (PUC) may require certain confidential critical infrastructure information to be filed under seal to balance the need for the PUC to understand Hawaiian Electric's operations with the need to protect such information from public disclosure to prevent any bad actors from using such sensitive information to harm the community by impairing the electric grid. This information is generally not disclosed under the Uniform Information Practices Act due to the exceptions from disclosure provided in HRS § 92F-13. A major concern with the current form of this bill is

the inclusion of the phrase “Notwithstanding section 92F-13” on page 1, lines 4-5, which appears to exempt a broadly defined group of “researchers” from this longstanding limitation on disclosure.

In order to afford proper protection to confidential information, Hawaiian Electric respectfully requests that the Committee strike the language “Notwithstanding section 92F-13” on page 1, lines 4-5 to clarify that the disclosure of government records will still retain confidentiality protections.

Hawaiian Electric appreciates the Committee’s consideration of its comments and proposed amendment to HB 131. Thank you for this opportunity to testify.