LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oip@hawaii.gov
www.hawaii.gov/oip

CATHY L. TAKASE
ACTING DIRECTOR

To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: Tuesday, March 16, 2010, 2:15 p.m.
State Capitol, Room 325

Re: Testimony on S.B. 2937, S.D. 1
Relating to Information Practices

Thank you for the opportunity to testify on S.B. 2937, S.D. 1. OIP supports this bill, which would allow OIP, upon an agency's request, to place limitations on a requester who abuses the process of making record requests under the Uniform Information Practices Act, chapter 92F, HRS (the UIPA).

The UIPA currently contains no provision that would allow an agency to not respond to a record request even where there may be a legitimate justification for not responding. From time to time, requesters use the UIPA in a manner that is clearly not consistent with the UIPA's purpose or underlying policies. These uses may be unintentional abuses of the UIPA, such as where a requester is clearly mentally ill and unable to understand that a response to a request has already been properly given.

In other instances, however, they are intentional, such as where a requester or group of requesters repeatedly make the same request to which the agency has responded or make multiple requests a day, with the primary intent to harass agency employees rather than to obtain the records in question. For example, a group of non-Hawaii resident requesters maintaining websites recently indicated their intent to harass Hawaii state agencies and officials by flooding them on the same day with the same request. A directory of the agencies and government officials, containing their various contact information, was also provided on a website.

When agencies have turned to OIP for relief, OIP has sought to assist the agencies but has advised that it has no authority to sanction them to not respond to these requests under the UIPA. This absence of relief from abuses of the UIPA results in the diversion of precious staff

resources from fulfilling other records requests by citizens seeking records consistent with the purpose of the statute as well as from carrying out core agency functions. It also diverts OIP resources, because OIP will often assist agencies in responding, then must deal with the resulting disputes without the ability to provide relief to the agency where there is a genuine pattern of abuse of the UIPA. Abuse of the UIPA also creates frustration for agency personnel which tends to erode general agency compliance to the detriment of all record requesters. This in turn generates more complaints for OIP to resolve.

This bill would address this diversion of resources and the attendant frustration felt by agency employees where there is a genuine abuse of process. The bill protects public access by setting standards to determine what constitutes an abuse of process and by not allowing the complaining agency to make the determination as to whether and to what extent a limitation on a requester's UIPA rights is warranted.

Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR OF HAWAII

CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

SB 2937SD1, RELATING TO INFORMATION PRACTICES

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

March 16, 2010, 2:15 PM

Department's Position: The Department of Health strongly supports this bill.

Fiscal Implications: No material fiscal impact.

Purpose and Justification: This measure proposes to amend Chapter 92F, Hawaii Revised Statutes, (HRS) to permit a governmental agency to request the Office of Information Practices (OIP) to place limits on record requesters whose established patterns of requests are determined to be an abuse of the process outlined in Chapter 92F, HRS. There are no current mechanisms for review of an agency's belief that a requester is abusing the public records request process defined by this statute.

For more than a year, the Department of Health has continued to receive approximately 50 e-mail inquiries a month seeking access to President Barack Obama's birth certificate in spite of the fact that President Obama has posted a copy of the certificate on his former campaign website. Hawaii is a "closed records" state, meaning that vital records are available only to those with a direct and tangible interest as defined by statute; hence, they are not subject to disclosure under public records requests.

We have been able to identify about four to six individuals who engage in a pattern of repeated requests. The time and state resources it takes to respond to these often convoluted inquiries are considerable. The responses ultimately have required the time and involvement of the Attorney

General's office and the Office of Information Practices. We believe having to respond repeatedly to essentially the same request or a variation of the request all centering on whether or not President Obama was born in Hawaii is a frivolous use of department time and resources, particularly since the outcome will not change no matter how many times we respond to these requests.

We respectfully request a facilitated passage of SB 2937SD1 which could provide the desired relief from the abuse and unnecessary burden that these vexatious requesters have placed upon the Department of Health.

Thank you for your time and consideration of this measure.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

STANLEY SHIRAKI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON JUDICIARY
TESTIMONY REGARDING SB 2937 SD 1
RELATING TO INFORMATION PRACTICES

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 16, 2010
TIME: 2:15PM
ROOM: 325

This measure creates an abuse-of-process law for vexatious requesters of public records.

The Department of Taxation (Department) **supports** this measure.

The Department strongly supports this measure because it provides government agencies with a procedural remedy to resolve instances where members of the public abuse the freedom of information laws.

Under current law, a government agency is powerless to restrain groundless or compound requests for information. Moreover, the neutral, independent agency with oversight over government records requests—the Office of Information Practices—likewise has little means of recourse over those that abuse access to government records. In the interest of ensuring an efficient and fair process regarding government records requests, some means of resolving baseless requests for information should be instituted. The Department supports this measure as one means of leveling the playing field when it comes to administrative disputes of records requests.

One suggestion the Department offers as a means of minimizing baseless requests for records is a monetary fine or other penalty if the records requester is found to be vexatious. Another alternative could be to have the government's attorneys fees paid by the vexatious requester if the government is successful in litigation. Under current law, the government is punishable but not the requester. This "one-sided" penalty against the government but not a vexatious requester is unwarranted.

The Department recommends that this measure be passed.

March 15, 2010

Dear Esteemed Members of the Hawaii House Judicial Committee,

I am submitting this testimony in opposition to SB2937 a bill introduced and passed by the HI Senate to amend HRS 92F-42 so an agency may identify a person as a "vexatious requester" that it deems as abusing Hawaii's Open Records Law as defined in HRS 92F. Furthermore, the Office of Information Practices reviews such agency complaints and has sole power to make a determination if the requester meets the "vexatious requester" criteria outlined in the proposed bill and ban the requester from making UIPA requests for a period of up to 2 years. Persons who are identified as vexatious cannot contest the OIP decision under HRS 91 nor can they appeal to the Ombudsman. The only recourse a person has is to pursue resolution through the courts.

The primary goal of this bill is to deter persons from making inquiries at the Department of Health regarding President Obama's birth records, or any inquires in regard to the general records or practices defining how the Department of Health handles vital records. Records I might add the Department is obligated to release when requested under HRS 92F-12.

I submit that this bill would be unnecessary had the DoH been forthcoming with the records that it is permissible by law to release and confirmed the veracity of the certificate posted on President Obama's website. To date, the DoH has never confirmed that the online COLB is legitimate or originated at the DoH.

On February 23, 2010, Director Fukino testified before the HI Senate Judicial and Government Operations that the Department has for over one year now, receives 50 emails per month for President Obama's birth certificate. Excerpt from Dr. Fukino's testimony:

> "....For more than a year, the Department of Health has continued to receive approximately 50 e-mail inquiries a month seeking access to President Barack Obama's birth certificate in spite of the fact that President Obama has posted a copy of the certificate on his former campaign website."

In an article published in the Honolulu Advertiser on February 19, 2010, Communications Director Okubo stated that requests for Obama's birth certificate were coming in at a rate of 40-50 requests per week. This article has since been amended to match Dr. Fukino's testimony after the incongruence was pointed out in a e-newspaper. An excerpt of the article now reads:

"But the requests for the president's birth certificate keeping coming at a rate of 40 to 50 a month, according to Health Department spokeswoman Janice Okubo, who

has been handling the requests since Obama became a serious presidential candidate in 2008."

On I am in possession of evidence that I will gladly make available to interested parties that demonstrates that neither of these statements are true.

On December 15, 2009 I submitted two UIPA requests for all UIPA requests submitted to the Department between June 1, 2008 and Present Date.

Request One: All requests and responses that contained Barack Hussein Obama II and any other known variations or aliases.

Request Two: All requests and responses for the Department's Rules, Regulations, statements of general policy, procedures, forms, the definition of the COLB "Date Filed By Registrar" and "Date Accepted By Registrar", etc.

On February 6, 2010, I received an incremental portion of my requests that spanned August 7, 2009 to November 24, 2009. The increment contained 688 pages of correspondence between the requesters and the Department. On the surface, it would appear that the Department was overrun with requests. Upon further examination and analysis, I determined that a very large percentage of the 688 page volume was back and forth correspondence or follow-up by requesters either asking for clarification or due to a lack of response from the Department in regard to their initial request.

Based on my analysis, I counted the actual number of requests received, the number of persons who submitted a request, and then categorized the requests.

Between August 7, 2009 and November 24, 2009 (roughly 16 weeks) the Department received approximately 198 UIPA requests from 61 requesters. My request clearly stated that I sought all requests and Department responses that fell within June 1, 2008 to Present Date. Either the Department withheld disclosure of UIPA requests it received and/or responded prior to August 7, 2009 or it is misrepresenting the facts to the Senate Judicial and Government Operations Committee and to the press.

The Department also misrepresented the number of requests for President Obama's birth certificate. Of the 198 requests received, only 76 fell into what I categorized as a Birth Record Related Request. These are requests for the actual birth certificate, supporting documents that may have been submitted as documentary evidence, receipts or invoices for the issuance for certified copies of the COLB. Of these 76, roughly 50% were actually for a birth certificate The remaining (112) requests fell into two other categories, requests for index data regardless of the search parameters (71) and requests for the Department's Rules, Regulations, procedures, forms policies or definitions of terminology used on the COLB (51).

There is nothing in HRS 338 or HRS 92F that prevents the Department from disclosing information identified in the latter two categories. The Department has no one to fault but its self for the overwhelming number of requests.

I have evidence that the DoH has either ignored requests, misdirected requesters or obfuscated its answers. For example, If the requester did not provide enough or clear information for the Department to act on, the standard response is "no records exist that are responsive to your request" or the "agency does not have to create or compile information" in lieu of responding that the agency needs additional information or clarification to order to respond to the request. I received several responses (none of which I might add were for President Obama's vital records or index data) such as this. I found that contrary to the responses I received that the Department is required to retain much of the information I requested in accordance with the State of Hawaii's General Records Schedule. Many of the requests received by the Department are a result of the requester performing additional research and fine tuning the request.

According to the testimony given by OIP Acting Director Cathy Takase to the Senate JGO Committee on February 23, 2010, she implies that requesters should just take the response received by an agency at face value and those who do not and submit repeat or revised requests for the same information are vexatious a.k.a. "mentally ill". A label I might add, that I take great offense to. There is no consideration in her testimony as whether or not the agency acted in good faith to research the request or to ask the requester for additional information or clarification. Under the new law, an agency can complain to the OIP that a person is "vexatious" when in reality it is a either a communication breakdown and or a lack of effort by the Department to provide a proper answer. Based on my experience thus far, it is my belief the OIP will most likely side with the agency and identifies the requester as vexatious.

I am also in possession of an email exchange between Ms. Okubo and Vital Records Supervisor in which Mr. David takes it upon himself to research the motive or as he stated the "hidden agenda" of two requesters and determined based on his findings that a response would not satisfy either request, neither of which were for President Obama's vital records. Both of these requesters have gone on record that neither received a proper response to their request or any further communication from the Department. This is the equivalent of racial profiling and an infringement of a person's civil rights to due process and equal protection under the law based their political beliefs. It is not Mr. David's responsibility to "research" requesters and make a decision to answer or not answer based on his findings.

I will note that in defense of the Department, that there were a couple of persons who sent the same request over and over again, accused the Department of

misconduct, sometimes only a day or two apart. During Dr. Fukino's testimony given to the JGO Committee, she stated that the Department has identified 4-6 vexatious requester, I undoubtedly am one of those identified as vexatious as I have made several requests (again, none for President Obama's vital records). It is not my intent to harass the Department but to obtain answers to the requests I have submitted so that I may make an informed decision or opinion of how the Department handles vital records and have a working knowledge of the terminology used.

The main theme of my requests is how the DoH applies the terminology of "Date Filed By Registrar" and/or "Date Accepted By Registrar" to the COLB. To date I have received numerous responses ranging from:

- "No records exist that are responsive to your request"
  "The agency is not required to create or compile information"
- "I do not possess the legal background to determine the evidentiary requirements"
- Consultation with State Registrar Onaka (I believe) that demonstrates these are valid terms but the DoH inexplicitly cannot explain them. Ms. Okubo unsuccessfully attempted to recall this message.
- An attempt to describe historically what occurred that contains so much ambiguity I still cannot ascertain a clear definition.

I have yet to receive a straightforward answer to a simple request. Either the terms are completely synonymous if they are then why according to Onaka (I believe), do two terms exist? All I want to know is if at some point did the DoH change the terminology and if not, under what circumstances, does the DoH apply these terms to the COLB? In the missive that Ms. Okubo sent on 1/22/10 and attempted to recall, it is clear as day that there at least a working knowledge of these terms but the DoH refuses to provide a definitive answer and has informed me that it considers the matter closed.

I submit that the definition of these terms meet the definition of a current and historical "government record" since one, the other, or both are a field in Vital Records database and are printed on certified copies of the COLB. Ms. Okubo confirmed this fact on 1/28/10 in response to a different but related UIPA request.

If this is considered vexatious and HRS 92F is amended accordingly to identify such persons, then the Hawaii UIPA law will become meaningless and will contradict its intent to promote an open, transparent and accountable government.

Excerpts from the UIPA Handbook:

"Given this direction that the UIPA be interpreted to promote open government, any doubt regarding disclosure of a record should likely be resolved in favor of access."

"The UIPA requires agencies to disclose all "government records." This term is defined broadly to include any information maintained by an agency that is recorded in any physical form."

"The OIP has interpreted "maintained" to mean information physically possessed or administratively controlled by an agency."

I urge the House Judicial Committee to please vote nay or noe or to suspend it vote until a formal investigation of the Department of Health is initiated and conducted in regard to its handling of the UIPA requests it has received. I believe the findings if an investigation conducted will favor the majority of the persons making UIPA requests. A yea or yes vote albeit in Committee or before the full House will make a mockery of the UIPA law and its intent. The amendment will in effect give agencies an out by declaring persons as vexatious. The openness, transparency and accountability of the HI government will be severely compromised if this bill is signed into law.

Thank you for allowing me the opportunity to testify before the esteemed Judicial Committee.

Kind Regards,

Debra J. Mullins

Dear Esteemed Members of the Judiciary Committee:

Having so little notice of this hearing, I have little time to do anything but submit an article that I've already posted on my blog regarding SB2937. I recommend that this bill be tabled until everyone has had a chance to look at the "Red Flags in Hawaii" article referenced herein, as well as the many pages of documentation linked to in that article, which is found at http://butterdezillion.wordpress.com/2010/01/11/red-flags-in-hawaii-2/ These are very serious claims and Hawaii's attempt to silence those calling for an investigation rather than address these serious issues is causing people across the country to seriously question the integrity of the entire system of government in Hawaii.

Finding documents (see http://www.thepostemail.com/2010/03/09/hi-director-of-department-of-health-perjures-herself-before-hi-senate-committee/) which showed that Chiyome Fukino's late testimony regarding SB2937contained an exaggeration of over 400% doesn't help ease nationwide doubts. Private citizens paid a large amount of money to reimburse Hawaii for the cost of responding to the UIPA request which revealed Fukino's inaccuracy. I would say that UIPA request was a service to Hawaii's ombudsman who will almost certainly be called upon to investigate this misconduct – a service paid for by the very people this bill attempts to silence – including a news editor who still believed we have freedom of the press in this country.

Thank you for hearing me out. May the rule of law and the United States Constitution live long and prosper in this nation and all its states.

Nellie

"Vexatious Requestor" Bill, Intended to Undo UIPA, is Response to "Red Flags"

On January 27th Hawaii State Senator Will Espero introduced SB2937 , which would add to Hawaii's existing open records law, UIPA, a provision to label as "vexatious requestors" people who exhibit 2 or more behaviors that the bill calls "abuses" of UIPA. A person labeled as a "vexatious requestor" would be denied access to government records for 2 years.

Some of the actions that would get a person into trouble deserve closer inspection. In the language of the bill:

"When the person has been working in concert with another person to make requests, including making identical requests, both persons' requests may be considered as part *of* the person's pattern of conduct.

> People working together to make requests would actually reduce the number of requests since only one person needs to ask instead of them all.
>
> And there are perfectly valid reasons to make identical requests. For instance, a record confirmed as existing at one point could be requested later, to see if the

required retention time had run out – which would indicate when the record came into existence. And asking the same request serves as cross-examination to eliminate any questions of whether a clerical error or misunderstanding had occurred.

What this part seems to find troubling is actually called in the Bill of Rights "the right of the people to peacably assemble", or "freedom of association". People have the right to be able to work with others to find answers. There are other, more reasonable steps that can be taken to keep a group from being able to "spam" an agency to a standstill. More on that later. Blacklisting people because they practice the First Amendment right of association is a bit extreme – as well as unconstitutional.

-(2) Splitting requests to avoid or minimize fees;

The DOH at one point illegally changed their fees so that it costs $7.50 for a person to receive from the DOH index data such as "Smith, Joe, male, birth" another $7.50 to get "Smith, Joseph, male, birth", and another $7.50 to get "Smith, Joseph P, male, birth". Index data is required to be available to the public and has never cost anything. Because the rule change also requires index data requests to be done through snail-mail this measure will cause MORE – not less – work for the DOH. This is a punitive rule change that was not effected through the legally-required process.

-(4) Requests for records submitted for a purpose other than obtaining access to the records, including nuisance value or harassment;

This would undo a hard and fast rule of interpretation for UIPA currently: the reason for the request cannot impact how an agency responds. (See the UIPA Manual , page 12).

One of the ways a person gets information is by finding out the existence of a record. Where the record's existence is not protected from disclosure, its very existence is a piece of information that is supposed to be available to the public. This change would punish a person for making requests in order to find out if a record exists. This gives government bureaucrats permission to pretend to read minds and punish those who they suspect of thinking the wrong thing. Again, there are better ways to reduce the potential for harassment.

-(5) Institution of proceedings under this chapter, including appealing requests or submitting complaints or investigation requests, without a reasonable ground, or to accomplish an objective unrelated to the purpose of the proceedings;

This punishes a person for asking whether their request was answered properly – the chief reason for the Office of Information Practice's very existence. (See HRS 92F-41 and 92F-42) One of OIP's statutory jobs is to encourage public

comment and involvement in the interest of keeping government accountable, but this point punishes requestors for scrutinizing government.

(6) Abandonment of requests when the fee is not waived, and the request is for a purpose other than obtaining access to the records

If we give up after finding out it's going to cost $200 to find out what name the DOH means when they say "President Obama", it means we don't deserve access to any government records – according to this point.

-(7) Requests that only marginally promote the public interest in disclosure under this chapter, including requests focused on an agency's handling of the requester's own requests or correspondence.

The reference to "marginally promote the public interest in disclosure" is bitter irony because government disclosure is required under UIPA if there is a SCINTILLA of public interest in disclosure. See OIP Opinion Letters 01-03 (p 6), 92-15 (p. 4), and 94-15 (p. 4) This reference is intended to undo that standard for disclosure.

And the "agency's handling" cuts to the chase of the whole bill. The agency's handling is not to be questioned. But that is the primary reason for even having open records laws: to keep government honest. Under this bill, a person acting in accordance with the purpose of UIPA is to be denied the rights given by UIPA.

This bill is a badly-concealed attempt to undo UIPA.

So why did this bill come up? Will Espero introduced this bill on January 27, 2010 – 2 weeks after I published "Red Flags in Hawaii", a blog post using official UIPA responses and government publications to expose unethical and criminal behavior on the part of Hawaii government officials. I had requested an investigation from every government entity I could contact in Hawaii and in that blog post I published their refusals to investigate. I documented the breaches of laws and rules.

Instead of giving me the investigation I requested, they hurried to write a bill that would undo UIPA so no more "vexatious requestors" could expose the corruption in their own government.

On Thursday, Feb 18th, 2010 a hearing was scheduled for the following Tuesday. The next day the Honolulu Advertiser printed an article about persistent requests to the Department of Health, mentioning Espero's bill. On Feb 23 a hearing was held regarding the bill.

There were three people who testified at the hearing: Acting OIP Director, Cathy Takase; Ombudsman Robin Matsunaga, and Alice Hall, Acting President and CEO of the quasi-governmental Hawaii Health Systems Corporation. Takase testifying makes

sense because in the bill the OIP would make the determination that a person was a "vexatious requestor". Matsunaga testifying makes sense because the Ombudsman would have the power to overturn the determination. But Alice Hall takes a little more explaining.

The Hawaii Health Systems Corporation is the company that oversees most of the hospitals in Hawaii. DOH Director, Chiyome Fukino, sits on the board of directors of that Corporation. This bill was tailor-made to address the requests Fukino's DOH office had received, so Fukino was obviously involved in the crafting of this bill. That she supports this bill is self-evident. But to draw in the HHSC is significant

Why? Because when Leo Donofrio stated on his blog that he was going to ask then-OIP Director Paul Tsukiyama to initiate disciplinary proceedings against Fukino for ethics breaches, Tsukiyama accepted an offer **one week later** for a prestigious and influential position in the HHSC. In my blog I suggested that Fukino had used her influence on the Board of Directors of the HHSC to offer Tsukiyama the job in order to keep him from initiating disciplinary proceedings against her.

In fact, all 3 people who testified at this hearing were themselves (or represented groups who were) subjects of the investigation I requested – in a letter I sent on January 4, 2010 to all members of the Hawaii House and Senate, as well as to the governor and lieutenant governor.

This bill was introduced by Senator Espero 23 days after I requested an investigation from Hawaii legislators and 14 days after I went public with the documentation for my claims. Look at #5 above. Requests for an investigation are definitely singled out as behavior that will get a person black-listed.

The timing and the testimony by the otherwise-unlikely CEO of HHSC lead me to believe that this bill is targeting me – and specifically because of the blog post in which I dared to go public with my request for an investigation and the reasons and documentation to support why I think an investigation is needed.

The testimony given by these 3 women was very interesting. OIP Director Cathy Takase strongly supports the bill in order to protect agencies from people who are too "mentally ill" to realize their request has already been answered. (Note: labels of mental illness have always been used to dispose of people questioning government actions). Ombudsman Robin Matsunaga doesn't want the power to overturn OIP's "vexatious requestor" determinations. Alice Hall supports the bill.

Only one senator voted to protect the intent and effectiveness of Hawaii's open records law, UIPA.

I propose a better way to handle legitimate requests while decreasing the potential for harassment from the public:

1) Make sure that the DOH (or other agency) has the legally-required documentation about their procedures and makes it available to the public online.

2) Make sure that the DOH (or other agency) understands what their own Administrative Rules mean – and follow the proper procedure to change outdated terminology and procedures.

3) Make all authorized index data – including data intended to be grandfathered in as public index data when UIPA was passed in 1988 – available in a searchable database online.

4) Send immediate notice that an e-mailed UIPA request has been received so that there is no question of whether e-mails have been "lost". This would have eliminated a lot of my requests – one of which was sent SEVEN TIMES before Okubo acknowledged that she got it. I didn't want to be a nag, but I've had requests to both DOH and OIP that were "lost" so I waited 20 days to hear back only to find that they hadn't been received.

5) Use Glomar responses only when they are appropriate, and don't try to hide a Glomar response by making mutually-exclusive claims on the "Notice to Requestor" form. These responses only confuse the requestors and result in multiple requests having to be made just to clear the smoke.

6) Answer questions. This isn't required by law but answering one question is a lot easier than having to find all documents about a certain subject and sending them all.

7) Be truthful in all statements. For instance, HRS 338-18(a) does not forbid all disclosures. It forbids disclosures that are NOT AUTHORIZED BY LAW OR ADMINISTRATIVE RULES. If the rules authorize disclosure, disclosure is not forbidden.

8) Don't allow the DOH Director to illegally hide the Administrative Rules for 2 years when lots of people are asking about them and requesting to see them.

9) Stop the punitive rule changing. Requiring index data requests to be done by snail-mail and charging $7.50 for "Joe Smith, male, birth" is not saving anybody any work at the DOH office. It is ADDING work. The purpose is transparent: to punish people for asking for what they are authorized to receive.

10) Don't spend over a year saying that law prohibits you from saying what is on a birth certificate and then all of a sudden make a press release saying what's on a birth certificate without saying why you're now suddenly able to do what you said was prohibited.

TO: STATE OF HAWAII
SENATE COMMITTEE ON GOVERNMENT AND JUDICIAL AFFAIRS

FROM: GERARD RONDEAU

DATE: MARCH 15, 2010

RE: SB2937

While I am not a resident of Hawaii, I have been following the above proposal closely and believe it is a violation of the First Amendment right of U.S. Citizens to ask redress from their government if information which should be public has been withheld. It is also a contradiction of your own UIPA law which guarantees public disclosure of many government records.

I note that the effective date of the bill is 2050. My suspicions are that you are trying to fool the public into thinking that there is nothing to be afraid of due to this very distant date, but you actually intend to change that to make it effective this year.

The Office of Information Practices should not have been allowed to testify regarding the bill, as it would be the agency designated to label certain persons "vexatious requesters." This certainly seems like a blatant conflict of interest to me.

If passed, this bill will be open to substantial legal challenges, which I understand in Hawaii are very commonplace. The constitutionality of such a measure is very questionable. Your laws allow people to ask for government records, so if a person is troublesome, a letter from the appropriate agency should suffice. There is no need to pass a law to shield state officials from anything.

If the issue is Obama's records, then ask Obama himself to release them so that people will stop asking for them. That is the real problem.

Gerard R. Rondeau

karamatsu1-Kenji

From: Frank B. Freeland [frankfreeland@yahoo.com]
Sent: Monday, March 15, 2010 2:05 PM
To: JUDtestimony
Subject: SB No. 2937 S.D. 1 "Vexatious Requestor" Bill

There has been much public controversy concerning whether the great state of Hawaii has responded to lawful requests with full and complete information.
Such controversy is avoidable and certainly does not speak well for Hawaii, a state widely known for its warm and inviting hospitality.

Recommend SB 2937 be amended to include provision that
1) repeated requests be allowed with no penalty until such time as the requested agency provides a legally required full and complete response; and,
2) the Office of Information Practices shall determine whether any agency response is a) legally required and b) whether any agency response is full and complete prior to taking adverse action against any requestor.

Thank you.

Hello,

To Whom it may concern,

Just today I was made aware of a proposed bill, SB2937, intended to allow the identification of any "vexatious requesters".

Please consider this communication my testimony and opinion regarding this proposed bill.

It does seem arrogant to me, a regular citizen, an American, that such a bill would be constructed at all. If persons have to worry that they may be deemed "vexatious", there exists no true access to even the records, rules,and documents that have always been public.

This seems such a strange time in America that it would even enter the mind of any lawmaker to create a such a trap. For it is precisely that. A trap designed to catch persons who wish to seek answers.

Why pass such a bill? What is the true reason behind passing this thing that is intended to target such a minuscule number of Americans? This is perhaps one of the single most unconstitutional laws that I have ever heard of, and every single individual involved in constructing and passing this action should feel a deep sense of shame at the injustice they are doing to their own countrymen.

This is a huge overreaction, overreach of power, and an abuse of the public, for clearly this is created to label persons seeking to do research - as troublemakers, instead of simply what they are - researchers. Even grouped with folks that may be somewhat demanding or unaware of how to make requests for information from PUBLIC Departments, which exist to serve the PUBLIC, it is still such a minuscule group of people that at best, this proposed bill is an attempt to block the American citizens access to PUBLIC information held at PUBLIC locations, which are supported and paid for by the tax dollars of all American citizens.

I personally have only made a single request to the Department of Health in Honolulu. It went unanswered. It was not a request for a record, it was a request for clarification on if an appointment would be necessary if an individual visited in person to look up some dozens of names. I sent the request to two email addresses there at the DoH, because the "general question" email sent back an "out of office" reply.

I received no personal response at all. My inquiry was never answered. I don't know if that was their way of informing me that an appointment was not necessary.....you can be the judge. Based on that non-response to a completely benign question, I can empathize with the American citizens who are seeking answers and not finding them. Their recourse would then be...what? To become a "vexatious requester"?

This bill, simply put, is a glaring abuse of power built to protect one department of government from inquires that they do not care to address.

I implore you to reconsider signing this thing into law. After all, the taxpayers do support these government offices and should have full access to what is available under the law, they have a right, every right, to expect this.

Thank you for taking the time to hear my concerns and point of view.

Sincerely,

Gizella Bovair

parlorcitytrade@aol.com

HOUSE COMMITTEE ON JUDICIARY
SB 2937, RELATING TO INFORMATION PRACTICES
Testimony of Hortense Bird
Private Citizen
March 15, 2010

Position on SB2937: Oppose.

One of the original motivations for SB2937 is the alleged large amount of records requests that have been received by the Hawaii Department of Health (DOH) concerning the vital records of Barack Hussein Obama II. It appears to many citizens that the DOH has been deliberately providing incomplete, misleading, and erroneous information in response to some requests. This has made it necessary for citizens to make subsequent requests just to clear up the confusion.

In her testimony to the Senate Committee on Judiciary and Government Operations concerning SB2937, Dr. Chiyome Fukino, the director of the DOH has stated "For more than a year, the Department of Health has continued to receive approximately 50 e-mail inquiries a month seeking access to President Barack Obama's birth certificate in spite of the fact that President Obama has posted a copy of the certificate on his former campaign website." If this statement is true, then the birth certificate of President Barack Obama has been made public and there is no longer any privacy concern that would prevent the DOH from releasing the birth certificate upon request. In so doing, the DOH would not have 50 e-mail inquiries a month and the prime motivation for the existence of SB2937 will be gone. The only reason that the DOH is getting so many requests is that they refuse to release a copy of a record that they themselves say has already been made public. This makes no sense at all. I urge you to read the testimony of Dr. Fukino to the Senate Committee dated February 23, 2010 and check this for yourself. I would also ask that you enter her testimony into the record.

UIPA laws were passed because government agencies have a strong tendency to try to keep their records private when, for the proper functioning of government, they should be publicly accessible. SB2937 is just another government agency reaction against the spirit and intent of UIPA. Don't pass SB2937 into law. It will be abused by government agencies to help them hide records. This is a negative outcome for the general public seeking to shed light on government activities. It is bad public policy.

Sincerely,

Hortense Bird.

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 16, 2010 6:14 AM
To: JUDtestimony
Cc: s_e_olson@yahoo.com
Subject: Testimony for SB2937 on 3/16/2010 2:15:00 PM

Testimony for JUD 3/16/2010 2:15:00 PM SB2937

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Dr. Shari Olson
Organization: Individual
Address: 584 E 16th Ave Longmont, CO
Phone: 303-359-5054
E-mail: s_e_olson@yahoo.com
Submitted on: 3/16/2010

Comments:
It is unbelievable that a state with such a well-intentioned, but already abused, system for providing government records to its citizens is actively working to make those records even more difficult for citizens to obtain.

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 16, 2010 8:29 AM
To: JUDtestimony
Cc: kingskid@elpasotel.net
Subject: Testimony for SB2937 on 3/16/2010 2:15:00 PM

Testimony for JUD 3/16/2010 2:15:00 PM SB2937

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Kathleen Gotto
Organization: Individual
Address:
Phone:
E-mail: kingskid@elpasotel.net
Submitted on: 3/16/2010

Comments:
Kathleen Gotto, March 16, 2010

Re: SB 2937/SD1; Section 1, Chapter 92F, Hawaii Revised Statutes, proposed new section 92F-A Abuse of Process

The proposed new section appears to be nothing more than a thinly-veiled attempt by the State of Hawaii to deprive an individual access to information provided for under current UIPA rules. It essentially allows the subjective decision of OIP "that a person is a vexatious requester if it determines that the person has established a pattern of conduct that amounts to an abuse of a process set forth under this chapter.", yet provides no objective measurement to define such a person and no due process for such person to refute the charge of vexatious requester.

To make matters even worse (or laughable) the "crime" of being declared a vexatious requester even comes with a punishment of having this label designated to such person for up to two years from the date of the determination by the office of information practices. Why doesn't Hawaii just go a step further and decree a "VR" be branded on the back of such criminals? This SB 2937 will make Hawaii the laughing stock of the civilized world.

SB 2937/SD1 is arbitrary, capricious, and just plain ridiculous. Trying to "criminalize" or punish requestors simply for asking for release of UIPA information truly makes Hawaii look more like a pineapple republic out in the middle of the Pacific, rather than one of the 50 united states of America!

The real remedy to the problem Hawaii perceives to have by lawful requests for releasable information under UIPA, is to simply be honest, display integrity, uphold the rules now in place, and provide requestors all releasable information requested. That would take care of any "vexatious" requests, now wouldn't it? Scrap SB 2937/SD 1, abide by your current laws and avoid even more embarrassment for your state.

(One final comment: Since the effective date of SB 2937/SD 1 is January 1, 2050 for SD1, why on earth are you even bringing this to your legislature 40 years in advance of such date??

What part of this Bill is to be effective immediately, and what part is to be effective 40 years from now?)

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 16, 2010 9:44 AM
To: JUDtestimony
Cc: ginny.murdoch@hotmail.com
Subject: Testimony for SB2937 on 3/16/2010 2:15:00 PM

Testimony for JUD 3/16/2010 2:15:00 PM SB2937

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Ginny Murdoch
Organization: Individual
Address:
Phone:
E-mail: ginny.murdoch@hotmail.com
Submitted on: 3/16/2010

Comments:
The Honolulu Star reported on July 28, 2009, "The issue is not likely to go away, and Hawaii state Sen. Will Espero said he would introduce legislation next year to have birth certificates declared public records. Espero (D, Ewa-Honouliuli-Ewa Beach) said the Obama fuss has raised questions about public and private records and says it would be in the state's interest to have open public record of births."