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To: House Committee on Consumer Protection and Commerce

From: Cheryl Kakazu Park, Director

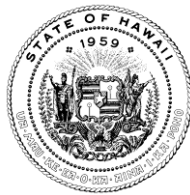
Date: February 4, 2015, 2:45 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 131
Relating to Freedom of Information

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports this bill, which would clarify that records showing a licensee’s relevant experience, trade examination results, and adequate bonding are subject to disclosure under the Uniform Information Practices Act, chapter 92F, HRS (“UIPA”).

Under the UIPA as it stands, OIP has opined that information of this sort is public because the public interest in disclosure outweighs a licensee’s significant privacy interest in information demonstrating that he or she is qualified to be licensed. *E.g.* OIP Op. Ltr. No. 91-1. However, this amendment would clarify the public status of such information by making it explicit within the statute itself. OIP therefore sees this proposal as a useful amendment to the UIPA, and recommends that this Committee pass it out.

Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
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**PRESENTATION OF THE PROFESSIONAL AND
VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 4, 2015
2:45 p.m.

**TESTIMONY ON HOUSE BILL NO. 131, RELATING TO FREEDOM OF
INFORMATION.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to submit testimony in opposition to House Bill No. 131, Relating to Freedom of Information.

The purpose of House Bill No. 131 is to clarify that records that show a licensee's relevant experience, trade examination results, and adequate bonding are subject to disclosure.

We have concerns regarding this measure, because it is unclear as to the form of disclosure required. The bill would require agencies to disclose “the record” showing that the licensee has met the license experience and examination requirements. Does this “record” include identifying the licensee’s former employers, dates of employment, individuals who provided experience certifications and references, examination grades, schools attended, and other information in which the licensee may have a significant privacy interest? If the individual is licensed, would verification of licensure be considered a record that shows the licensee has met the experience and examination requirements? If so, such information is already publicly disclosed and readily available. We feel the bill’s language is too vague, and the Department will be forced to make arbitrary decisions on what constitutes a “record.”

Furthermore, on Page 4, line 9, reference is made to “relevant trade examinations,” but the bill does not define “trade.” The Department feels the term “trade” should be clearly defined, as some of the professions that we license may not be considered “trades.”

The Department also believes that the language regarding the record of adequate bonding on Page 4, lines 10-11, is unnecessary and should be deleted, as bonding information is already available on the Department’s website.

For these reasons, the Department is opposed to this bill and respectfully requests that it be held. Thank you for the opportunity to testify on House Bill No. 131.



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**PRESENTATION OF THE PROFESSIONAL AND
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DISPENSING OPTICIANS PROGRAM

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 4, 2015
2:45 p.m.

TESTIMONY ON HOUSE BILL NO. 131, RELATING TO FREEDOM OF INFORMATION.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Doss Tannehill, Chairperson of the Dispensing Optician Advisory Committee ("Committee") of the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to provide testimony in opposition to House Bill No. 131, Relating to Freedom of Information. The purpose of this bill is to clarify that records that show a licensee's relevant experience, trade examination results, and adequate bonding are subject to disclosure.

The Committee believes that the public's interest in disclosure of experience records and trade examination results in its entirety does not outweigh the significant privacy interest of a licensee. For example, the disclosure of examination score results is a significant privacy interest to a licensee. The issuance of a license is evidence that the licensee has met all requirements, including the successful passage of the examination. Information that the public can use to make informed decisions on whether to use the services of a licensee is available by calling the Department or viewing the Department's website. This public information includes disclosure of the license number, the effective and expiration date of licensure, license status (i.e. current, valid and in good standing), and complaint history on all licensees.

The Committee also asks that the term "trade examination" be clarified. One of the requirements for licensure is the successful passage of the National Opticianry Competency Examination and the Contact Lens Registry Examination. The Committee does not consider these examinations to be trade examinations.

For these reasons, the Committee is opposed to House Bill No. 131. Thank you for the opportunity to testify.

THE CIVIL BEAT
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House Committee on Consumer Protection & Commerce
Honorable Angus L.K. McKelvey, Chair
Honorable Justin H. Woodson, Vice Chair

RE: Testimony Commenting on H.B. 131, Relating to Freedom of Information
Hearing: February 4, 2015 at 2:45 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on H.B. 131. **The Law Center strongly supports the intent of this bill, but respectfully requests that the Committee hold H.B. 131.**

H.B. 131 is not necessary. This bill only codifies the analysis by the Office of Information Practices (OIP) in Opinion 91-01. In that Opinion, OIP applied the UIPA requirement to balance privacy and public interests to determine whether disclosure of information about a licensee's required education and training would constitute a clearly unwarranted invasion of personal privacy. HRS §§ 92F-13(1), -14(a). OIP weighed (1) the licensee's significant privacy interest in "[i]nformation compiled as part of an inquiry into an individual's fitness to be granted or to retain a license," *id.* § 92F-14(b)(7), against (2) the public interest in ensuring that licensees "have fulfilled the education and training requirements imposed by law," OIP Op. No. 91-01 at 12-13. OIP concluded that the public interest in verifying a licensee's compliance with the law outweighed the privacy interests. OIP Op. No. 91-01 at 13.

H.B. 131 requires mandatory disclosure of a licensee's experience, exam compliance, and bonding to the extent required for licensure. While not all of those elements are expressly addressed in Opinion 91-01, all of them fall squarely within the intent and principles outlined in that decision. If an agency withheld such information from a requester, it has violated the UIPA even without the amendments in H.B. 131.

More specificity in the UIPA can create confusion. It is commendable that the Legislature seeks to clarify access. But where the Legislature previously has identified records for mandatory disclosure, as proposed here, agencies inevitably argue that all other records not expressly identified are confidential—contrary to the spirit and letter of the statute. Although OIP consistently has rejected those arguments, the confusion delays public access and raises the question whether the Legislature must expressly identify all records intended to be public. *E.g.*, OIP Op. No. 03-16 at 8 n.13 ("We do not

interpret [mandatory disclosure] section 92F-12(a)(14), HRS, as creating, by implication, a confidentiality provision.”). As the Senate Committee on Government Operations explained when the UIPA was originally adopted in 1988: “Rather than list specific records in the statute, at the risk of being over- or under-inclusive, your Committee prefers to categorize and rely on the developing common law.” S. Stand. Comm. Rep. No. 2580, in 1988 Senate Journal, at 1094. If the Legislature needed to codify all OIP decisions, the UIPA would add volumes to the statutory compilations.

The Law Center thus requests that this Committee hold H.B. 131. Amending the UIPA is an effective means of correcting an erroneous judicial or OIP interpretation of the Legislature’s intent. But H.B. 131 would serve only to codify an existing OIP decision as applied to one set of records. Requesters interested in those records already have adequate tools under the UIPA to enforce their right of access.

Thank you again for the opportunity to testify.