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: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 11, 2020, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 2090, S.D. 1
Relating to Judicial Enforcement of the Uniform Information Practices Act

---

The Office of Information Practices (OIP) appreciates the opportunity to offer the following comments on this bill, which proposes to apply the "palpably erroneous" standard of appellate review to a circuit court decision. Moreover, this bill appears to bypass the Intermediate Court of Appeals (ICA) and implicitly provides for a direct appeal to the Supreme Court from circuit court decisions compelling disclosure of records under the Uniform Information Practices Act (UIPA), HRS Chapter 92F. **OIP is concerned that the wrong legal standard of review is being applied to appeals from circuit court decisions and that there will be unintended consequences that will ultimately be to the detriment of the public.**

Specifically, with respect to the standard of review, S.B. 2090, S.D. 1 proposes to amend the UIPA to require an appellate court to uphold a circuit court decision to compel the disclosure of government records unless that decision was "palpably erroneous." (Bill page 3 lines 14-16.) Any circuit court decision or portion thereof that affirms the agency's denial of access shall be reviewed "de novo." (Bill

page 3, lines 16-18.) Enforcement of a circuit court's decision is stayed upon an agency's petition to the Supreme Court to determine if that decision is "palpably erroneous." (Bill page 3, line 18 to page 4, line 1.)

The standard of review is a fundamental issue that appellate courts address in all opinions to explain how they will review the facts and law in the case being appealed and what deference, if any, they will accord to the decision being reviewed. There are different standards of review and they can be applied only to legal issues, or only to factual issues, or to both. The standard of review can also differ, depending on whether the decision has been made by a court or by an administrative agency. The two standards of review discussed in the bill are typically applied in different contexts and have stark differences, which are generally described below:

1. De novo – where the appellate court reviews the case anew and does not defer to the decision of the lower court or administrative agency. The de novo standard can be applied just to legal conclusions or to both factual findings and legal conclusions. For instance, it is typically applied by appellate courts when reviewing lower courts' orders relating to motions for summary judgment or motions to dismiss. See Molfino v. Yuen, 134 Haw. 181, 184, 339 P.3d 679, 682 (2014) (applying the de novo standard to review an ICA judgment affirming the circuit court's summary judgment order); Mott v. City and County of Honolulu, No. CAAP-18-0000867 (Haw. Ct. App., Jan. 30, 2020) (applying the de novo standard to review a circuit court's order on a motion to dismiss a complaint under the UIPA).

2. Palpably erroneous – applied by an appellate court when reviewing a decision by an administrative agency, not a decision by a lower court. Under this standard the appellate court will accord a presumption of validity to the agency's decision and will defer to it unless the court has a definite and firm conviction that a mistake has been made. Peer News LLC v. City and County of Honolulu, 138 Haw. 53, 60, 376 P.3d 1, 8 (2016).

The palpably erroneous standard of review arose out of the courts' recognition that an administrative agency has special expertise in interpreting and applying the law that governs the agency. See Peer News LLC v. City and County of Honolulu, 138 Haw. 53, 60, 376 P.3d 1, 8 (2016) (stating that "the applicable standard of review regarding an agency's interpretation of its own governing statute requires this court to defer to the agency's expertise and to follow the agency's construction of the statute unless that construction is palpably erroneous"). This is the standard that the UIPA requires all courts to apply when reviewing OIP's factual and legal determinations when an appeal is taken from an OIP decision against an agency.[1] But this is not the standard that the appellate courts should follow when reviewing a lower court's decision in a UIPA case because the lower

[1] The bill does not change the de novo standard of review when an OIP decision against a requester is appealed to the courts. This lower standard of review has been in the UIPA since its enactment and it essentially gives requesters a second chance for review by a court without requiring deference to OIP's opinion. In contrast, the UIPA originally did not give agencies the right to appeal from OIP decisions. Therefore, when the UIPA was amended to allow agency appeals from OIP decisions against them, the palpably erroneous standard of review was adopted to retain requesters' advantage and it requires the courts to defer to OIP's legal and factual determinations against agencies unless there is a definite and firm conviction that a mistake has been made. For a more thorough explanation of the UIPA changes and the palpably erroneous standard of review, see Cheryl Kakazu Park and Jennifer Z. Brooks, 2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices, 36 Univ. of Haw. L. Rev. 271 (2014), which is also posted on OIP's website at oip.hawaii.gov.

courts do not have the special expertise that OIP has in interpreting and administering the UIPA on a daily basis.

Instead, the usual standard of review by appellate courts of lower courts' decisions is the de novo standard, which does not require the appellate courts to defer to the lower courts' decisions being appealed. Civil Beat Law Center for the Public Interest, Inc. v. City and County of Honolulu, 144 Haw. 466, 474, 445 P.3d 47, 55 (2019); Peer News LLC v. City and County of Honolulu, 138 Haw. 53, 60, 376 P.3d 1, 8 (2016); Kanehele v. Maui County Council, 130 Haw. 228, 244, 307 P.3d 1174, 1190 (2013). **The de novo standard is the one that should be applied in the proposed bill because the proposed changes relate to appellate review of circuit court decisions.**

Unlike judicial review of OIP decisions interpreting and administering the UIPA or Sunshine Law, there is no rationale for the Supreme Court to defer to the lower courts' decisions by applying the palpably erroneous standard of review for UIPA cases. The lower courts deal with a wide variety of laws, but they generally do not have OIP's specialized expertise in daily administering the UIPA or Sunshine Law. Nor do the lower courts have the same resources to thoroughly analyze cases on appeal that the Supreme Court has, such as multiple staff attorneys and law clerks, the ability to do additional research and hold oral arguments, and more time to carefully consider appeals from lower court decisions.

Requiring the Supreme Court to defer to the lower courts' decisions under the palpably erroneous standard of review would not make sense and could eventually result in appellate decisions eroding that standard of review to become more similar to the de novo standard. Ironically, by lowering the palpably erroneous standard of review that currently applies only to appeals by agencies from OIP's decisions favoring a record requester, this bill's ultimate result may be

to dilute requesters' advantage and allow more agencies to win on appeal. **While this bill does not directly affect judicial review of OIP decisions at the present time, an erosion of the proposed palpably erroneous standard of review could eventually lead to the more reversals of OIP's decisions against agencies, which would be to the detriment of record requesters.**

In addition to OIP's concerns about the standard of review being applied in the bill, OIP notes that the bill appears to implicitly give an agency the right to appeal directly to the Supreme Court by automatically staying enforcement of a circuit court decision for 14 days, during which time the agency may "petition the supreme court for a determination that the circuit court's decision to compel disclosure is palpably erroneous." (Bill page 3, line 18 to page 4, line 1.) If a timely petition is filed, then enforcement of the circuit court's decision is stayed pending the Supreme Court's decision. (Bill page 4, lines 3-5.) The bill provides no time for an appeal to the ICA.

Supporters of this bill have claimed that this bill would provide for faster judicial review of UIPA cases. Current law, however, already provides for expedited review by the circuit courts of UIPA cases. HRS § 92F-15(f).

By implicitly granting direct appeals to the Supreme Court, this bill does not guarantee faster judicial resolution, may increase the wait time for other important decisions pending before the Court, leaves many questions unanswered, and could lead to additional unintended adverse consequences. For example, even after direct appeal, what time will be saved if the Supreme Court must remand the case to the circuit court to make further factual findings? What will happen if the case also involves a related Sunshine Law issue or other issue for which the law does not provide a direct appeal -- will those non-UIPA issues also be decided so that plaintiffs will be

encouraged to routinely incorporate a UIPA claim into every case in order to take advantage of the direct appeal to the Supreme Court? Will this bill encourage more litigation of UIPA cases, thereby further straining the courts' resources? What other appeals of real and important legal significance will have to be displaced or delayed by the Court to resolve appeals, even if meritless, that will be allowed by this bill?

While OIP appreciates the public's desire for faster judicial resolutions of UIPA cases, the proposed bill may actually have the opposite result due to unanticipated consequences. Moreover, the attempted speedy resolution of the relatively few cases that are currently being litigated should not come at the expense of carefully reasoned judicial review and decisions that could affect all rights and responsibilities under the UIPA. **Because of the various unintended consequences that could result, OIP urges the Legislature to give greater scrutiny to this bill.**

Thank you for considering OIP's concerns and comments.

DAVID Y. IGE
GOVERNOR

THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE SENATE COMMITTEE ON JUDICIARY
ON
SENATE BILL NO. 2090, S.D. 1

March 11, 2020
2:00 PM
Conference Room 325

RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION PRACTICES ACT

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

HRS §92F-15 currently allows persons aggrieved by a denial of access to a government record, to file a lawsuit in state circuit court to compel disclosure of the record. S.B. 2090, S.D. 1 would require that an agency in such a lawsuit must file a motion for summary judgment in support of its denial of access, no later than 30 days after service of the lawsuit. If the agency does not timely file the motion for summary judgment, the court must order immediate disclosure of the government record, except as prohibited by law.

S.B.2090, S. D. 1 would further provide that:

1) if the circuit court decides to compel disclosure, that decision should be upheld by the appellate courts unless it is found "palpably erroneous";
2) circuit court decisions affirming denial of disclosure are not upheld unless found "palpably erroneous" but are reviewed "de novo" without such an inclination toward validity;
3) a circuit court decision to compel disclosure is stayed automatically for only 14 days after entry. The agency must "petition the supreme court" arguing that the

circuit court order is "palpably erroneous" within that 14 days, or the circuit court decision is then enforceable.

4) If the agency files such a petition to the supreme court within 14 days, enforcement of the circuit court decision is stayed pending the supreme court's decision for up to 30 days after the petition is filed, but no more.

The Board of Trustees of the Employees' Retirement System (ERS) has not had the opportunity to review this bill, nor to determine their position on this legislation. The ERS staff has reviewed S.B. 2090, S.D. 1 and appreciates its intent. It finds, however, that S.B. 2090, S.D. 1 presents the following concerns:

1) It is unreasonable to require all agencies to file, within 30 days, a "motion for summary judgment" to preserve the ability to defend from a lawsuit to compel disclosure. Summary judgment requires that the movant be able to claim, in good faith, that there are no genuine issues of material fact, and that the movant is entitled to win as a matter of law. It may not be feasible for agencies to research up to two years of past records (based on the statute of limitations), conduct discovery, and otherwise prepare a "summary judgment" case within 30 days. In some cases, a motion for summary judgment may not be appropriate.
2) It is not in the public interest to rush the careful balancing of the public interest in transparency against other interests such as personal privacy and agency legitimate government functions. Such balancing is often required for proper decision-making regarding disclosure of public records.
3) The new, high "palpably erroneous" standard for review of circuit court decisions is usually applied to decisions made by administrative bodies which have specialized expertise in the subject matter. See, e.g., HRS §92F-15(b)
4) A circuit court decision is already required to be appealed to the appellate courts within 30 days. The public interest is not served by requiring agencies to hastily file petitions urging that the circuit court be found "palpably erroneous."
5) The proposed 30-day limitation on stays of enforcement of circuit court orders would deprive the appellate courts of the ability to take such time as necessary to make a fully researched and considered, and effectual appellate ruling. Once the records are required to be disclosed, consideration of any ruling otherwise may become moot.

HRS § 92F-15 (f) already requires that the currently allowed circuit court lawsuits to compel disclosure, and appeals therefrom," ... take precedence ... and shall be assigned for hearing and trial or argument at the earliest practicable date and expedited in every way."

Based on the foregoing, the ERS staff respectfully requests the Committee to hold this bill.

Thank you for this opportunity to testify.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GEN
THIRTIETH LEGISLATURE, 2020

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 2090, S.D. 1, RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION PRACTICES ACT.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 11, 2020 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Lee and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill would amend section 92F-15(c), Hawaii Revised Statutes (HRS), to require State agencies to file a motion for summary judgment within 30 days after being served with a circuit court complaint for the agency's denial of access to government records under the Uniform Information Practices Act (UIPA), chapter 92F, HRS. If the agency fails to file a motion for summary judgment within the 30-day time period, the circuit court is required to order immediate disclosure of the government record, unless the court has extended the 30-day deadline in the interest of justice. This bill also adds a new subsection (g) to section 92F-15, HRS, to provide for appeal of the circuit court decision, and would allow an agency to petition the Hawaii Supreme Court for review of the circuit court decision.

The Hawaii Constitution, article VI, section 1, specifically states that "[t]he several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with their rules." Article VI, section 7, states that "[t]he supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which have the force and effect of law."

Rule 56 of the Hawaii Rules of Civil Procedure (HRCP) sets the parameters for motions for summary judgment and the deadline for filing a motion for summary judgment is fifty days prior to trial. See HRCP Rule 56(a). This conflicts with this bill's amendment to section 92F-15(c), HRS, which would require government agencies to file a motion for summary judgment within 30 days after service in a lawsuit under the UIPA. We believe this bill is vulnerable to constitutional challenge as an encroachment of the Judiciary's powers under the Hawaii Constitution. Even if this bill survives such a challenge, a statute in direct conflict with a rule of practice and procedure in a civil case, both of which have the force and effect of law, would cause considerable confusion.

This bill also puts State agencies at a significant disadvantage. Under section 92F-15(a), HRS, there is a two-year statute of limitations for a requester who is denied access to government records. This means a two-year-old denial has to be researched and a motion for summary judgment drafted within 30 days of service of the complaint. Such a lengthy statute of limitations combined with an automatic disclosure order is unfair to the agency. This places a significant burden on the agency and the Department of the Attorney General, and has irreversible consequences, such as disclosure of information. Additionally, this bill as written could have a significant impact upon the resources of the Department of the Attorney General due to the short turnaround time to file a motion for summary judgment. The wording of this bill appears to penalize the agency by imposing a time disadvantage for the agency to develop an appropriate response to a lawsuit challenging the agency's denial of records.

In addition, this bill specifically requires the agency to file a motion for summary judgment, which is a course of litigation action that might not be appropriate given the facts of the case.

If the goal of a lawsuit filed under the UIPA is to expedite the review of the agency's actions, this bill does not accomplish this goal. For example, if an agency files a timely motion for summary judgment, but loses, the case will go to trial which could take months if the plaintiff does not file and succeed on a motion for summary judgment on all counts in the complaint.

We believe the proposed legislation's goal of expediency in a UIPA lawsuit may be accomplished by providing a process by which the court's review of an agency's denial of access to records equates to an appeal of an administrative decision, rather than a civil lawsuit. In doing so, the statute of limitations in subsection (a) would be reduced to 60 days. We have provided suggested wording to amend section 92F-15, HRS, attached to this testimony.

For the above reasons, we respectfully ask the Committee to hold this bill or pass this bill with the recommended amendments.

Attachment

"**§92F-15 Judicial enforcement.** (a) A person aggrieved by a denial of access to a government record may [~~bring~~] file an [~~action~~] application for judicial review against the agency at any time within [~~two years~~] sixty calendar days after the agency denial to compel disclosure.

(b) In [~~an action to compel disclosure~~] the review, the circuit court shall hear the matter de novo; provided that if the [~~action to compel disclosure~~] application is brought because an agency has not made a record available as required by section 92F-15.5(b) after the office of information practices has made a decision to disclose the record and the agency has not appealed that decision within the time period provided by 92F-43, the decision of the office of information practices shall not be subject to challenge by the agency in the [~~action to compel disclosure.~~] application for judicial review. Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that in an [~~action to compel disclosure~~] application for judicial review brought by an aggrieved person after the office of information practices upheld the agency's denial of access to the person as provided in section 92F-15.5(b), the opinion or ruling upholding the agency's denial of access shall be reviewed de novo. [~~The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld~~.]

(c) The application for judicial review shall be scheduled as expeditiously as practicable. It shall be conducted on the record of the agency's receipt of the request for records and subsequent denial of access to those records, the records of the office of information practices reviewing the request for records, if applicable, the record or records at issue, and briefs and oral argument. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld. The agency has the burden of proof to establish justification for nondisclosure.

(d) If the complainant prevails in an action brought under this section, the court shall assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the [~~litigation.~~] application for judicial review.

(e) The circuit court in the judicial circuit in which the request for the record is made, where the requested record is maintained, or where the agency's headquarters are located shall have jurisdiction over an [~~action~~] application for judicial review brought under this section.

(f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for [~~hearing and trial or for~~] argument at the earliest practicable date and expedited in every way.

(g) Any party aggrieved by the decision of the circuit court may appeal in accordance with part I of chapter 641 and the appeal shall be given priority."

LEAGUE OF WOMEN VOTERS®

49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

HOUSE COMMITTEE ON JUDICIARY

WEDNESDAY, MARCH 11, 2020, 2 PM, CONFERENCE ROOM 325
PUBLIC HEARING ON SB 2090, SD 1,
RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION PRACTICES ACT
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Lee and Committee Members:

The League of Women Voters of Hawaii supports SB 2090, SD 1 which clarifies judicial procedures and standards to expedite court rulings concerning public access to government records.

We believe that SB 2090, SD 1 will cut years off of judicial proceedings concerning public access to public records. The status quo is simply unacceptable.

Thank you for the opportunity to submit testimony.

Common Cause
Hawaii
Holding Power Accountable

P.O. Box 2240
Honolulu, Hawaii 96804
808.275.6275
www.commoncause.org/hi

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Wednesday, March 11, 2020
2:00 PM
State Capitol, Conference Room 325

in consideration of
SB 2090, SD1
RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION PRACTICES ACT.

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii supports SB 2090, SD1, which would provide (1) procedural requirements for judicial review of an agency's denial of access to a government record and (2) procedural requirements and standards of review upon appeal.

Common Cause Hawaii is a grassroots, nonpartisan, nonprofit organization that supports transparency in our government bodies.

SB 2090, SD1 will expedite the processing of public records disputes, which is often unnecessarily delayed to the detriment of the public. A governmental body should endeavor to promptly process public records requests and err on the side of immediate and full disclosure, as our government should be responsive and responsible to the people. SB 2090, SD1 will provide the procedural mechanisms to ensure that public records disclosures are timely made by government agencies and reviewed in accordance with this ideal.

Thank you for the opportunity to testify in support of SB 2090, SD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Judiciary
Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Supporting S.B. 2090 S.D. 1, Relating to Judicial Enforcement of the Uniform Information Practices Act
Hearing: March 11, 2020 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony in support of S.B. 2090 S.D. 1. The Law Center **strongly supports this bill because it will advance the Legislature's original intent that the Uniform Information Practices Act (UIPA) provide "timely" access to government records**.

In 1988, the Legislature stated that the public records law would "[p]rovide for accurate, relevant, timely, and complete government records." HRS § 92F-2(2). The Governor's Committee Report—which the Legislature reviewed before passing the UIPA—explained that it should be "readily apparent that unless the record is produced on a relatively contemporaneous basis, it is far less use to the public or the agency. It is also far less likely to be accurate." Report at 62.

To accomplish that objective, among other provisions, the Legislature provided that judicial enforcement of the UIPA be "expedited in every way." HRS § 92F-15(f). The Judiciary, however, has not found an effective means to achieve that statutory directive. Disputes regarding public records often languish in court for years.

This bill will provide more structure for the judicial enforcement of the UIPA consistent with the Legislature's original intent.

Thank you again for the opportunity to testify in support of S.B. 2090 S.D. 1.

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

March 10, 2020
House Judiciary Committee
From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com nclauer@gmail.com 808.781.7945

In SUPPORT of SB 2090, SD1, RELATING TO JUDICIAL ENFORCEMENT OF THE UNIFORM INFORMATION PRACTICES ACT

As we approach national Freedom of Information Day, the annual celebration of James Madison's birthday on March 16, Hawaii should rightfully be proud of its UIPA, the public records law that provides the public access to government documents.

But, as with most laws, the best of intentions can get bogged down in the implementation, and some tweaking becomes necessary. Such is the case with the state's UIPA, which has led this journalist to wait four years for a UIPA request to be filled in one case and five years in another. This has caused information important to our readers to be released too late for it to be of much use.

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 2090, SD1 recognizing that the public's right to review public records makes government more transparent, more accountable and better for everyone. But review must be timely in order for it to be as useful as envisioned by the law.

Currently, it's too easy for government officials and agencies to drag their feet and delay in fulfilling UIPA requests. Adding clarity to the process of judicial review can only improve this important legislation.

Mahalo nui for considering SB 2090, SD1.

RYAN
KAWAILANI
OZAWA

95-595 Kanamee Street, #326
Mililani, Hawaii 96789-1431
(815) 310-0808
hawaii@outlook.com
www.ryanozawa.com
@hawaii

March 10, 2020

Aloha, Rep. Chris Lee, Chair; Rep. Joy A. San Buenaventura, Vice Chair; and members of the House Committee on Judiciary:

I am writing to express my **support** of SB2090 SD1 Relating to Judicial Enforcement of the Uniform Information Practices Act.

Timely access to public records is critical to a transparent and accountable government.

As Brian Black, Executive Director of the Civil Beat Law Center, previously testified, the Legislature has already stated that judicial enforcement of the UIPA should be "expedited in every way." HRS § 92F-15(f). Unfortunately, this mandate has not been met, and public records disputes can drag on for years… by which time the public benefit of disclosure may have long since decayed.

This bill provides the Judiciary more structure for enforcement of the UIPA that is also consistent with the Legislature's original intent.

Mahalo for your consideration.

SB-2090-SD-1
Submitted on: 3/10/2020 4:19:49 AM
Testimony for JUD on 3/11/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
PL Fritz	Individual	Support	No

Comments:

I have personally experienced delays when requesting public records and support this bill because it will help to provide timely access to public records and greater government transparency. This bill would significantly shift the judicial review process from its current years-long timeframe to something that respects requesters' right to access contemporaneous records rather than old, irrelevant records.

The bill will help to provide timely access to records by requiring an agency to justify its nondisclosure promptly when challenged and file motion for summary judgment within 30 days of service of complaint; (2) sets a higher standard for an agency appeal if a circuit court judge rules that disclosure is required; and (3) sets an expedited procedure for appellate review if a circuit court judge orders disclosure.