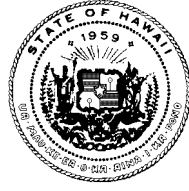


DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 22, 2022

TO: The Honorable Representative Mark M. Nakashima, Chair  
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 2303 – RELATING TO THE UNIFORM INFORMATION PRACTICES ACT.**

Hearing: February 24, 2022, 2:30 p.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this measure and provides comments.

**PURPOSE:** The bill clarifies the Legislature's intent regarding internal deliberative and pre-decisional materials of government agencies. Specifies that certain deliberative and pre-decisional materials that are a direct part of a government agency's internal decision-making process are not subject to disclosure if the disclosure of such materials would impair the agency's ability to make sound and fair decisions, but only to the extent that the impairment outweighs public interest in disclosure. Effective 7/1/2112. (HD1) The HD1 amended the measure by defecting the effective date and making technical amendments.

This measure proposes a balance of the competing public interests of promoting effective decision-making processes by government agencies and making government records available for review by all. The additional deliberative process exception would allow agencies to withhold certain deliberative and pre-decisional records where the potential impairment of the agency's ability to make sound and fair decisions outweigh the

public interest in disclosure. The proposed measure represents a reasonable balance between the public's ability to access government information and agencies' ability to diligently discuss varying policies and consider possible effects of such tentative decisions that may change numerous times before issuing a final agency decision.

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

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 HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

**ON**

**HOUSE BILL NO. 2303 H.D.1**

**February 24, 2022**

**2 PM.**

**Conference Room 325, via Videoconference**

**RELATING TO THE UNIFORM INFORMATION PRACTICES ACT.**

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

H.B. 2303 H.D. 1 proposes that certain deliberative and pre-decisional materials that are a direct part of a government agency's internal decision-making process are not subject to disclosure if the disclosure of such materials would impair the agency's ability to make sound and fair decisions, but only to the extent that the impairment outweighs public interest in disclosure. The ERS staff would like to provide comments in support of H.B. 2303 H.D. 1.

H.B. 2303 H.D. 1 would reinstate the deliberative process privilege in UIPA matters, with a balancing test of the government's interest in confidentiality vs. the public interest in disclosure. It would apply to requests for public disclosure of pre-decisional and deliberative memoranda and correspondence transmitted within or between government agencies, such as staff recommendations, notes, drafts, and internal memoranda exchanging ideas, opinions, and editorial judgments before a decision or policy is finalized and made public.



**Employees' Retirement System**  
of the State of Hawaii

City Financial Tower • 201 Merchant Street, Suite 1400 • Honolulu, Hawaii 96813-2980  
Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>

The policy underlying the deliberative process privilege has been described as follows:

The privilege has a number of purposes: it serves to assure that subordinates within an agency will feel free to provide the decisionmaker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action.

*Coastal States Gas Corp. v. Dept of Energy*, 617 F.2d 854, 866 (D.C.Cir.1980). "Disclosure of these documents would potentially chill the necessary discourse which must occur for the government to make well educated and rational decisions". *Aland v. Mead*, 2014 WY 83, 69, 327 P.3d 752, 771 (Wyo. 2014).

The ERS agrees with the dissent in *Peer News LLC v. City & Cty. of Honolulu*, 143 Hawaii 472 (2018) ("*Peer News*"), that the deliberative process privilege should be recognized.

(1) The dissent states that it appears that the legislative history underlying the UIPA does not actually indicate that the legislature clearly intended to omit the deliberative process privilege from the UIPA. *Peer News*, 143 Hawaii at 498.

(2) The dissent proposes a test that would "balance the government's interest in confidentiality with the public's interest in disclosure." *Peer News*, 143 Hawaii at 490.

As proposed in H.B. 2303, the legislature should codify the deliberative process privilege and adopt a balancing test. See *Chester Water Auth. v. Pennsylvania Dept of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1113 (Pa. 2021) (stating that "a balancing of the aim to promote the free exchange of deliberative communications against the Law's overarching policy of openness is required. It is the General Assembly's prerogative, however, to conduct the necessary balancing.")

Other states have codified the deliberative process privilege in their public records statutes. See, e.g., Pennsylvania, 65 Pa. Stat. Ann. § 67.708 ("internal, pre-decisional deliberations of an agency ... or any research, memos or other documents used in the pre-decisional deliberations"); Michigan, Mich. Comp. Laws Ann. § 15.243(m) ("Communications and notes within a public body or between public bodies of an advisory nature ..."); Washington, Wash. Rev. Code Ann. § 42.56.280 ("Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended ..."); South Dakota, S.D. Codified Laws § 1-27-1.7 ("Drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended ...").

Courts in other states have recognized competing public and governmental interests and have applied a balancing test in applying the deliberative process privilege. See *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018) ("Public officials may assert this privilege and withhold documents when public disclosure would deter the

open exchange of opinions and recommendations between government officials. ... [T]he court balances the public's interest in disclosure against the agency's interest in confidentiality"); *Bukowski v. City of Detroit*, 478 Mich. 268, 275, 732 N.W.2d 75, 79 (2007) ("the trial court must engage in the balancing test and determine if the public interest in encouraging frank communication clearly outweighs the public interest in disclosure"). See also *City of Colorado Springs v. White*, 967 P.2d 1042, 1054 (Colo. 1998) (cited by Dissent in *Peer News*).

Requiring disclosure of all discussions and perspectives during a deliberative process would inhibit free discussion within government agencies, including alternative views. The balancing test is a reasonable alternative to unfettered disclosure and would weigh the interests of the government and the public.

The ERS Board of Trustees strongly supports H.B. 2303 H.D.1 and encourage its passage.

Thank you for this opportunity to testify.

# 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 & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 24, 2022, 2:00 p.m.  
State Capitol, Conference Room 325 and Via Videoconference

Re: Testimony on H.B. No. 2303, H.D. 1  
Relating to the Uniform Information Practices Act

---

Thank you for the opportunity to submit testimony on this bill, which would clarify the Legislature's intent to allow agencies to withhold certain deliberative and pre-decisional records where the potential impairment of the agency's ability to make sound and fair decisions outweighs the public interest in disclosure. The Office of Information Practices (OIP) leaves the question of the Legislature's intent to the Legislature to determine, but offers comments on the history of the "deliberative process privilege" that formerly allowed agencies to withhold such materials from public disclosure under the Uniform Information Practices Act, chapter 92F, HRS (UIPA) and the effect that restoration of a form of that privilege would have on agencies' ability to freely and frankly discuss options in the course of making decisions and on public access to deliberative materials.

**Based on the Federal Freedom of Information Act (FOIA), caselaw, and the UIPA's own legislative history, for nearly 30 years the Office of Information Practices recognized the "deliberative process privilege" (DPP) as a form of the UIPA's exception to disclosure for records whose disclosure would frustrate a legitimate government**

**function, section 92F-13(3), HRS.** In 2018, though, the **Hawaii Supreme Court overturned** that interpretation in a close 3-2 decision in Peer News LLC v. City and County of Honolulu, 143 Haw. 472, 431 P.3d 1245 (2018).

Interestingly, the majority and dissenting opinions in Peer News both relied upon the “plain language” of the UIPA and its legislative history, yet reached entirely opposite conclusions. OIP has extensively analyzed both opinions in a [March 2020 Hawaii Bar Journal article](#) as well as its [online analysis](#) including an [attachment of supporting documents](#), which are posted on the Opinions page of OIP’s website at <https://oip.hawaii.gov/laws-rules-opinions/opinions/>. These documents examine **key legislative history, including a 1983 court decision interpreting the law upon which the UIPA was based, that was not presented to or considered by the Hawaii Supreme Court in the Peer News case. The missing legislative history would have made clear that the Legislature that adopted the UIPA in 1988 intended to leave it to OIP and the courts to balance competing interests to determine whether disclosure would be required in grey areas and unanticipated cases, which is what this bill would do.**

Although the attorney who represented the successful appellant in the Peer News case asserts that the “world has not fell apart” in the three years since the decision, so too did the world survive during the 30 prior years that the DPP was recognized and refined by OIP. **Contrary to the abuse feared by opponents, the DPP had been constrained by no less than ten OIP opinions and had been narrowly construed by OIP to be consistent with the need for efficient government operations while preventing the privilege from swallowing the UIPA’s requirement to form and implement public policy as openly as possible.** (See [OIP’s Analysis](#) at pages 15-17 and [OIP Opinion](#)

[Number 95-24](#) at pages 21-22, both accessible via [OIP's Opinions page](#) on OIP's website at oip.hawaii.gov.)

The DPP did not automatically protect from disclosure all records simply because they are labeled “drafts” or because they were determined to be “predecisional and deliberative,” and OIP’s opinions over time had significantly limited the DPP’s application. For example, the DPP could not be used to withhold purely factual portions of a report (OIP Op. Ltr. No. 90-11), or portions of a draft document that were substantially discussed at a public meeting where the DPP had been waived (OIP Op. Ltr. No. 91-22). **OIP also implicitly recognized the need to balance competing interests to avoid having the DPP swallow the UIPA’s disclosure requirements** in later opinions, such as OIP Opinion Letter No. 95-24. Even the appellant in Peer News cited this opinion and argued that “OIP also has indicated support for the deliberative process privilege as a ‘qualified privilege’ that requires balancing against the public interest in disclosure” and “the need to balance the public interest in disclosure falls squarely within the Legislature’s intent.” Although the dissenting opinion in Peer News urged the court to explicitly adopt a balancing test, the majority rejected the DPP altogether.

**The current Legislature has the opportunity to return to the original intent of the UIPA by leaving it to OIP and the courts to carefully weigh competing interests in grey areas and unanticipated cases. The bill would recognize the evolution of the DPP over three decades by OIP and would expressly create a balancing test that would further limit the ability of agencies to withhold predecisional and deliberative material from disclosure.** The effect of this bill would be to restore agencies’ ability to withhold some deliberative material, but **only when the impairment to the agency’s ability to reach sound and fair decisions outweighs the public interest in**



**disclosure.** Thus, while this proposal would representation a limitation of public access to agencies' internal deliberative records, it would also benefit agencies by allowing them to avoid opening up their internal deliberations on prospective decisions when doing so would harm the agency's ability to make good decisions more than it would benefit the public access interest.

OIP believes this approach represents a reasonable balance between agencies' ability to have some room to fully and frankly discuss proposed policies or tentative decisions outside the glare of publicity, and the public's ability to have access to such materials when the public interest is equal to or stronger than the potential harm to the agency. Ultimately, it is for this Legislature to say whether the balanced approach set forth in this proposal better represents its intent than the 2018 Hawaii Supreme Court decision that completely eliminated the ability for an agency to argue that disclosure of requested records would frustrate its ability to reach sound and fair decisions.

Thank you for considering OIP's testimony.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
**TESTIMONY BY CRAIG K. HIRAI**  
**DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE**  
**TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**  
**ON**  
**HOUSE BILL NO. 2303, H.D. 1**

**February 24, 2022**  
**2:00 p.m.**  
**Room 325 and Videoconference**

**RELATING TO THE UNIFORM INFORMATION PRACTICES ACT**

The Department of Budget and Finance (B&F) supports House Bill (H.B.) No. 2303, H.D. 1. This measure amends Section 92F-13, HRS, to except drafts, internal memoranda and correspondence, and certain other deliberative and pre-decisional materials produced by government agencies from disclosure requirements under the Uniform Information Practices Act if such disclosure would impair the government agency's ability to make sound and fair decisions to an extent that outweighs the public interest in disclosure of government records.

B&F believes that this measure effectively balances the competing public interests of promoting effective decision-making processes by government agencies, and the availability of government records for review by all. B&F notes that the deliberative process privilege proposed in H.B. No. 2303, H.D. 1, is appropriately limited to only the extent necessary to protect an agency's ability to come to a fair decision.

Thank you for the opportunity to provide testimony in support of this bill.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • INTERNET: [www.honoluluupd.org](http://www.honoluluupd.org)



RICK BLANGIARDI  
MAYOR

RADE K. VANIC  
INTERIM CHIEF

OUR REFERENCE **JAT-DNK**

**February 24, 2022**

**The Honorable Mark M. Nakashima, Chair  
and Members  
Committee on Judiciary and Hawaiian Affairs  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813**

**Dear Chair Nakashima and Members:**

**SUBJECT: House Bill No. 2303, H.D. 1, Relating to the Uniform Information Practices Act**

I am Joseph Trinidad, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2303, H.D. 1, Relating to the Uniform Information Practices Act.

Agencies must be able to discuss and debate issues freely and internally when attempting to make sound and fair decisions. Decision makers, advisors, and employees must be unencumbered by worries that opinions they express may be used against them or taken out of context if internal memoranda, drafts, or other deliberative/pre-decisional material are publicly disclosed. The same reasons the exception already exists for draft working papers of legislative committees holds true for other agencies as well.

The HPD readily embraces that transparency is essential to positive police community relationships. As part of the daily law enforcement operations, such as when a critical incident occurs, the HPD will continue to try to release as much information about it as possible, and as soon as possible, so that the community will not feel that information is being purposefully withheld from them.

The Honorable Mark M. Nakashima, Chair  
and Members  
Committee on Judiciary and Hawaiian Affairs  
February 24, 2022  
Page 2

Nonetheless, at the various levels of internal decision making, from the patrol watches to the senior leadership, requiring disclosure of all discussions and perspectives during a deliberative process would inhibit free discussion within the HPD to include alternative views. The balancing test is a reasonable alternative to unrestricted disclosure and would weigh the interests of the HPD and the public.

Thank you for the opportunity to testify.

Sincerely,



Joseph A. Trinidad, Major  
Records and Identification Division

APPROVED:



Rade K. Vanic  
Interim Chief of Police

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 & Hawaiian Affairs  
Honorable Mark M. Nakashima, Chair  
Honorable Scot Z. Matayoshi, Vice Chair

**RE: Testimony Opposing H.B. 2303 H.D. 1,  
Relating to Uniform Information Practices Act**  
Hearing: February 24, 2022 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 governmental transparency. Thank you for the opportunity to submit testimony **opposing H.B. 2303 H.D. 1.**

According to Congress, in reference to the deliberative process privilege: “Some have taken to calling it the ‘withhold it because you want to’ exemption. . . . The deliberative process privilege is the most used privilege and the source of the most concern regarding overuse.” H.R. Rep. No. 114-391 at 10. Congress has been steadily working to scale back the existence of the deliberative process privilege under the federal Freedom of Information Act. It is the height of government secrecy for the Legislature to consider enacting an exception to public records that is universally reviled by the public in every other jurisdiction in the United States where it exists.<sup>1</sup>

The privilege is so abused in other jurisdictions because, except final reports, virtually everything that government agencies do is deliberative and thus subject to the privilege. Records that Hawaiʻi agencies previously withheld under the deliberative process privilege included: departmental budget requests; agency recommendations regarding publicly discussed permit applications; DOTAX forecasts regarding general fund tax revenues; audit recommendations; evaluations of overall agency performance; formal inter-departmental comments on the proposed sale of park land; consultant reports; and revenue estimates regarding proposed legislation.

Nothing justifies adopting a deliberative process privilege to protect such documents. To the extent that there are legitimate reasons to withhold documents, other exceptions already exist, and as the Hawaiʻi Supreme Court recognized, notes and drafts are still protected from disclosure. *Peer News LLC v. City & County of Honolulu*, 143 Hawaiʻi 472, 480 n.15, 431 P.3d 1245, 1253 n.15 (2018). Also acknowledging the concerns over disclosing the identity of specific government employees in internal discussions, the

---

<sup>1</sup> Many jurisdictions – besides Hawaiʻi – do not have the deliberative process privilege.

Hawai`i Supreme Court explained that the employees' identities may be redacted "if their privacy interests outweigh the public's interest in disclosure" because disclosure "may expose specific individuals to negative consequences." *Id.*

For over three years, agencies have not had authority to invoke a deliberative process privilege. The world has not fell apart. Agencies have continued to operate. Unless and until agencies can identify documents that properly should be withheld, but cannot be withheld under the UIPA exceptions absent a deliberative process privilege, this bill is unsound and regressive.

Thank you again for the opportunity to testify **opposing** H.B. 2303 H.D. 1.



HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
Thursday, February 24, 2022, 2 pm, State Capitol Room 325 & Videoconference  
HB 2303, HD1

Relating to the Uniform Information Practices Act

**TESTIMONY**

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Nakashima and Committee Members:

The League of Women Voters of Hawaii strongly opposes HB 2303, HD1. The League is not aware of any public harm from expanded public access to “pre-decisional or deliberative” government records after the Supreme Court Peer News ruling. And the League is not aware of any evidence that government agency decisions were more “sound or fair” prior to the Supreme Court Peer News ruling.

HB 2303, HD1 would give agencies discretion to deny a public request for a government record by alleging in writing that the record is “pre-decisional” and disclosure would “impair the agency’s ability to make sound and fair decisions . . . to the extent that such impairment outweighs the public interest in disclosure.” No further explanation would be required when an agency denied an UIPA request.

Prior to the Supreme Court Peer New ruling, most agencies routinely denied public requests for “pre-decisional or deliberative” government records. If HB 2303, HD1 is enacted, most agencies would resume their former practice. Theoretically the public could file lawsuits requesting Hawaii courts to determine that the “public interest in disclosure” of specific “pre-decisional” government records outweighed the risk that disclosure would “impair” agency decisions. However, the cost and duration of litigation would discourage most lawsuits. Theoretically the public could file administrative appeals requesting OIP to determine that the “public interest in disclosure” of specific “pre-decisional” government records outweighed the risk that disclosure would “impair” agency decisions. However, because of OIP’s backlog of unresolved UIPA appeals, administrative appeals would be a waste of time.

Thank you for the opportunity to submit testimony.



Feb. 24, 2022

Rep. Mark Nakashima  
House Judiciary and Hawaiian Affairs Committee  
State Capitol  
Honolulu, HI 96813

Re: House Bill 2303, HD1

Chairman Nakashima and Committee Members:

We ask you to shelve this bill.

Its broad wording could lead to less transparency in government by allowing officials the use of the deliberative process privilege. Basically, it would allow officials to withhold whatever they wanted to by citing this exemption because government officials could claim that everything they do is deliberative.

We do not believe there has been a showing by the bill's supporters that their actions are hampered by the 2018 Hawaii Supreme Court decision eliminating arguments by an agency that disclosure of records would frustrate its ability to reach decisions.

Thank you for your attention,

Stirling Morita  
President  
Hawaii Chapter SPJ



Statement Before The  
**HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

Thursday, February 24, 2022

2:00 PM

Via Video Conference and Conference Room 325

in consideration of  
**HB 2303, HD1****RELATING TO THE UNIFORM INFORMATION PRACTICES ACT.**

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary &amp; Hawaiian Affairs Committee

Common Cause Hawaii submits testimony in opposition to HB 2303, HD1, which (1) clarifies the legislature's intent regarding internal deliberative and pre-decisional materials of government agencies and (2) specifies that certain deliberative and pre-decisional materials that are a direct part of a government agency's internal decision-making process are not subject to disclosure if the disclosure of such materials would impair the agency's ability to make sound and fair decisions, but only to the extent that the impairment outweighs public interest in disclosure.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization focused on upholding the core values of our representative democracy through advocating for a government that is ethical, transparent, and accountable to the people of Hawaii and not special interests.

The purpose of the Uniform Information Practices Act, Hawaii Revised Statutes (HRS) Chapter 92F, is to open government processes to public scrutiny and participation, which are the only viable and reasonable methods of protecting the public's interest. HRS § 92F-2. This means interpreting narrowly the exceptions for when government records may not be disclosed. HB 2303, HD1 would expand those exceptions, which contradicts the intent of HRS Chapter 92F.

For this reason, Common Cause Hawaii is testifying in opposition to HB 2303, HD1. If you have any questions, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: [\(808\) 927-1214](tel:8089271214) / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative Mark Nakashima, Chair

Representative Scot Matayoshi, Vice Chair

Thursday, February 24, 2022

2:00 PM

### **HB 2303 HD1 - STRONG OPPOSITION TO GOVERNMENT SECRECY**

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,052 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety or the corporate vendor on any given day. We are always mindful that 1,111 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is shocked that the legislature would entertain a bill like this in light of the recent indictments of 2 Hawai'i legislators and that emulates the dysfunctional U.S. Congress.

Hawai'i has used this process to chill public scrutiny of departmental budgets, agency recommendations regarding permit applications (please note the problems with Honolulu's Department of ~~Planning~~ Permitting and Permitting), audit recommendations and evaluations of agency performance, revenue estimates regarding proposed legislation, etc.

Information about deaths of people who die in the 'care and custody' of the state has been denied - despite the fact that other jurisdictions publish this information on their websites. Hawai'i's government has denied this public information about a death in a publicly-funded institution to hide public scrutiny.

The Public has been denied information that had been publicly available - even the Governor's schedule is secret! Why would the Governor hide his schedule showing the persons or entities with whom he meets unless he has something to hide? Accessing government information has been a real challenge for those citizens who respect democracy.

**A VIBRANT DEMOCRACY DEMANDS PARTICIPATION.** Please don't move the government and public information even further away from the people. **Please practice democracy and HOLD THIS BILL.** Mahalo for this opportunity to testify.

*Every thing secret degenerates, even the administration of justice;  
nothing is safe that does not show it can bear discussion and publicity. - Lord Acton*



February 24, 2022

2 p.m.

VIA VIDEOCONFERENCE

Conference Room 325

**To: House Committee on Judiciary & Hawaiian Affairs**

**Rep. Mark M. Nakashima, Chair**

**Rep. Scot Z. Matayoshi, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: HB2303 HD1 — RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB2303 HD1](#), which would exempt “drafts, internal memoranda and correspondence, and other deliberative and pre-decisional materials that are a direct part of an agency's internal decision-making process” from Hawaii’s open records law, the Uniform Information Practices Act.

We have grave concerns about this bill, which would create a loophole by which state agencies could evade records requests.

HB2303 would frustrate the intent of the state’s transparency laws intended to ensure accountability and discourage corruption by making government actions and deliberations available to the public.

As a research and government watchdog organization, the Grassroot Institute is well-acquainted with the mechanisms employed by government agencies to avoid disclosure. Based on that experience, we can attest to the fact that the exception created by this bill is ripe for abuse and would give agencies leeway to withhold nearly anything under the claim of “deliberative

process.” Moreover, it would encourage agencies to conduct key government functions in a way that could shield them from disclosure.

There is a minor effort to limit this deliberative exception, but the language of the bill is vague in its attempt to balance government agency interest against public disclosure, almost suggesting that the two interests are equal.

If government agencies are concerned about privacy or disclosures that obstruct their ability to carry out their duties, there already are exceptions in the law that would address such issues.

Given the need to restore public trust in Hawaii’s government, we believe that more transparency, not less, is the best route forward.

Under the circumstances, it would be a mistake to create a UIPA exception that would allow government agencies to hide their decision-making process from the public.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent  
Executive Vice President  
Grassroot Institute of Hawaii

**HB-2303-HD-1**

Submitted on: 2/22/2022 5:18:31 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nancy Davlantes	Individual	Oppose	No

Comments:

**From the bill's description** "Specifies that certain deliberative and pre decisional materials that are a direct part of a government agency's internal decision—making process are *not subject to disclosure if the disclosure of such materials would impair the agency's ability to make sound and fair decisions, but only to the extent that the impairment outweighs public interest in disclosure.*"

That sentence provides a loophole big enough to drive a truck through and an open invitation to any agency wanting to keep its deliberations out of the public eye. This attempt must be relegated to the dustbin of all attempts to prevent the transparency the public need and demands.

**HB-2303-HD-1**

Submitted on: 2/22/2022 5:48:15 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Patricia Blair	Individual	Oppose	No

Comments:

Openness is essential.

**HB-2303-HD-1**

Submitted on: 2/23/2022 12:37:11 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Todd Yamashita	Individual	Oppose	No

## Comments:

Good government runs on transparency. Especially right now when some Hawaii lawmakers are eroding the trust of the public, moreso than ever we need to advocate for transparency on all levels of government. Please do not pass this bill

**HB-2303-HD-1**

Submitted on: 2/23/2022 7:32:45 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Malia Daraban	Individual	Oppose	No

Comments:

Aloha,

I greatly oppose this Bill, there should be transparency, without transparency this leads to corruption and Illegal actions, all the more so this is Bill should not pass with the current standing of our government and corruption charges and leading to heavy public mistrust.



TO: Members of the Committee on Judiciary & Hawaiian Affairs

FROM: Natalie Iwasa, CPA, CFE  
808-395-3233

**LATE**

HEARING: 2 p.m. Tuesday, February 24, 2022

SUBJECT: HB 2303, HD1, Uniform Information Practices Act – **OPPOSED**

Aloha Chair Nakashima and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB 2303, HD1, which would exclude from public disclosure internal memoranda, correspondence and certain other documents that are a direct part of an agency's internal decision-making process.

I **oppose** this bill.

Given the recent revelations of corruption within the legislature and ongoing investigation related to the Kealohas, the public deserves more transparency in government, not less.

Please vote **"no"** on HB 2303, HD1.