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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 9, 2023, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 991
Relating to Public Records

Thank you for the opportunity to submit testimony on this bill, which would change the current minimum charge for copying government records to a maximum charge, require the first hundred pages copied to be at no charge to certain requesters, set a statutory cap to the search, review, and segregation fees that OIP is required to set by administrative rule for government record requests under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), and set statutory standards and requirements for the public interest waiver OIP is also required to set by rule. OIP offers comments explaining the significant effect these changes would potentially have, particularly the unintended effects that may result.

Please understand that **OIP's statutory role is to be an impartial, neutral entity and not an advocate for just one side or the other.** While it is easy to support the general concept of government transparency and openness, **the actual laws that OIP administers provide for reasonable exceptions and involve the balancing of competing interests among many different constituencies** that include the State, county, and independent agencies, board member volunteers and employees subject to the Sunshine Law, non-profit advocacy groups, media representatives, private businesses, resident and non-resident record requesters, taxpayers, and the general public. Therefore, to place OIP's comments on the bill in perspective and understand the potential effects of this bill, OIP's testimony begins by providing the Legislature with objective data that all State and county agencies submit on UIPA Log Reports that OIP has been summarizing since 2015, information about the Draft Rules that OIP proposed in 2017 and are still

pending, and a legal comparison of the differences between OIP's rules and the federal rules upon which the bill is partially based.

Data from Log Reports

In response to unsupported claims that UIPA record request fees are excessive, OIP would like to share the objective data, beginning with the State and county reports found on the [UIPA Record Request Log Records page](#) at oip.hawaii.gov. Since 2015, OIP has been collecting data from all State and county agencies on the UIPA Record Request Logs that each agency submits to OIP. OIP summarizes all Logs into two reports: one for all State agency results and the other for all county agency results. OIP's annual UIPA Record Request Log Reports can be found on the dropdown tab for the [OIP Reports page at oip.hawaii.gov](#).

Similar to past results, the FY 2022 reports for the [State](#) and [county](#) agencies show that **overall, the typical record request was granted in whole or in part and completed in 8 work days from the date of the request; that 87.8% (1,891) of requesters to State agencies and 85.1% (1,897) of requesters to county agencies paid nothing for their completed requests; and that most payments were made by for-profit entities.** Only 262 (12.2%) of State requesters paid any amount, with 93 paying less than \$5 and 112 paying \$5 to \$49.99. Only 57, or 3% of all State requesters, paid more than \$50; of the 57, at least 46 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. For the County requesters, 333 requesters paid any amount, with 136 paying less than \$5 and 98 paying between \$5 to 49.99. Only 99, or 5% of all County requesters, paid more than \$50; of the 99, at least 68 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. Of all 4,383 State or county requesters whose requests were completed in FY 2022, only 3 paid more than \$1,000, with the highest amount of \$2,690 paid by a commercial aviation company. Thus, **most fees and costs are being paid by for-profit entities, and not by individual requesters.**

The FY 2022 reports were also consistent with prior years' data showing that **the relatively few complex record requests take more than twice as long to fulfill as the typical request, yet the disproportionately higher fees and costs they incur are not being paid by such requesters.** Although complex record requests constitute 6% of State requests, they account for 18% of the gross fees and costs incurred by State agencies, of which only 6% was ultimately paid by

complex record requesters. For the counties, complex record requests constitute 11% of UIPA record requests and 27% of total gross fees and costs, only 12% was actually paid by complex record requesters.

Whether all taxpayers should bear the State and county agencies' costs of record requests, or the actual requesters themselves, is a policy question for the Legislature to address. Please keep in mind, too, that the UIPA does not allow for distinctions between requesters who are residents or nonresidents of Hawaii.

OIP's 2017 Draft Rules

As required by the UIPA, OIP's rules set forth fees and costs that agencies may charge for record requests and provides for fee waivers. Section 92F-42(18), HRS, requires OIP to "adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served[.]" Pursuant to this legislative mandate, OIP adopted chapter 2-71, Hawaii Administrative Rules (HAR) in 1999. For the past 24 years, OIP has not raised the fees set in its administrative rules at \$2.50 per 15 minutes to search for responsive records, and \$5 per 15 minutes to review and segregate records.

The [Impact Statement](#) for chapter 2-71, HAR, notes the purpose of the search, review, and segregation fees is to allow agencies to recoup some costs in responding to requests for records rather than having to provide these services entirely at taxpayers' expense. The fees for search, review, and segregation are not intended to obstruct public access to disclosable government records, so they do not exceed the actual costs in providing the services.

In 2017, OIP drafted new rules and solicited public comments on them. The Draft Rules, OIP's slides and PowerPoint presentations, clarifications, updates, and public survey, comments and results, are posted [Rules page](#) at oip.hawaii.gov. Although OIP sought public input in developing the rules, OIP has not yet proceeded to a formal public hearing and rulemaking as the Draft Rules remain under review by the Attorney General's office.

Because OIP had not increased search, review, and segregation fees for nearly two decades and had never adopted rules setting fees for personal record requests, the Draft Rules proposed an increase in fees based on 2017 data for the

salary ranges of clerical staff that would likely do the search function and of supervisory and executive managerial positions that would likely do the review and segregation of records. Thus, the Draft rules proposed an increase from \$2.50 to \$7.50 per 15-minute increment for search fees and from \$5.00 to \$15.00 per 15-minute increment for review and segregation fees. These increased fees, however, were intended to be offset by a substantial increase in the fee waiver from \$30 per request (or \$60 for public interest waivers) to \$400 per year to keep record requests free for most people. The \$400 proposed fee waiver was calculated based on Log data of the average number of hours that it takes State and county agencies to search for, review, and segregate record requests. **Even with an increase in the Draft Rules' fees, OIP estimated that the \$400 fee waiver for everyone would have allowed any requester to annually make approximately 5 typical requests, 13 personal record requests, or one complex record request to the same agency in a year, without having to pay fees.**

Reasonable fees, however, are necessary to act as a safeguard against abuse by those who would engage in manifestly excessive interference with an agency's normal operations, such as by making repeated, voluminous, or frivolous requests.

OIP recognizes that average government salaries have increased in the past six years with inflation and collective bargaining costs. Depending on the results of this session and OIP's workload, OIP may further review and revise its Draft Rules before proceeding with the formal rulemaking process.

Note, too, that there are important other changes proposed in OIP's Draft Rules that are not under consideration in this bill, and they will still need to be addressed during the rulemaking process.

OIP's Fee Rules Differ Significantly from Federal FOIA Fees

The proposed amendments, and in particular the one changing the standard for a public interest fee waiver, are inconsistent with the UIPA's existing fee structure as the proposed statutory public interest waiver standard is modeled on a small part of the substantially different and more complex fee structure under the federal Freedom of Information Act (FOIA). The UIPA has a relatively simple fee structure, with set fees for search, review, and segregation chargeable to all requesters after first applying an automatic waiver of fees for the first 1-3 hours of staff time (for all requesters) or the first 2-6 hours of staff time (for public interest requesters). By contrast, FOIA's fee scheme, set out in 5 U.S.C. § 552(a)(4)(A)(ii) and (iii) (attached to this testimony), has three separate fee tiers, each applicable to

a different category of requester, with the possibility of an additional waiver of some or all of the otherwise chargeable fees for requests of particularly high public interest. The relevant FOIA fee provisions are attached to the end of this testimony.

FOIA's lowest fee tier is for educational or research institutions and "representative[s] of the news media," who are charged only for copying costs, not for search or review time. The second lowest fee tier is for anyone else making a request that is not for commercial use, such as individuals seeking their own records; requesters in that middle tier are charged for copying costs and search time but not for review time. The highest fee tier is for requests for commercial use; those requesters are charged for copying costs, search time, and review time. Thus, FOIA's standard fees vary, depending on who is making the request and for what purpose, and reflect Congress's assessment of the different levels of public interest served by the different types of request. Notably, FOIA's standard fees specify that representatives of the news media fall into the lowest-cost fee tier and define who qualifies as a representative of the news media – in other words, media requests already pay no fees, only copying costs, and they need not rely on the separate public interest waiver.

But if a request falling in any one of the three fee categories is of **particularly high** public interest, then the agency could waive part or all of the fees applicable to a request in that category. FOIA sets a standard for determining when a request is of particularly high public interest, which is what this bill's proposed new public interest waiver standard is based on. **Unlike the FOIA standard, though, this bill proposes that all fees must be waived whenever the standard is met, rather than giving agencies the option of a partial waiver as FOIA does.**

Thus, this bill proposes to take a small part of FOIA's fee scheme, omitting its tiered fee system that sets the default treatment for members of the media, and adopts the FOIA waiver in lieu of the UIPA's current public interest fee waiver standard. This bill would also go farther than its FOIA model because it would require waiver of all fees rather than some or all costs and fees as FOIA does. It is important to note that **FOIA's public interest provision covers only requests of unusually elevated public interest and was never designed to apply to all media requests automatically**, since the news media are already in a low fee category by default. **Because this bill uses FOIA's public interest waiver, which applies only to a disclosure that "is not primarily in the commercial**

interest,” outside of its intended context, the bill runs the risk of excluding for-profit media under the UIPA, which has an entirely different fee structure than FOIA.

OIP’s existing fee rules under the UIPA were deliberately designed to be less complex than FOIA’s, and rather than having different categories of requesters all of whom pay different types of fees, the existing public interest fee waiver provides an expanded fee waiver for the relatively broad variety of requests that serve the public interest as set out in the existing fee rules. The UIPA’s existing public interest fee waiver does not require a full waiver of all fees, as this bill proposes, but then again neither does FOIA’s actual public interest fee waiver (unlike this proposal). Further, agencies often do waive more fees and costs than required for media requests, such as by waiving all fees for search, review, and segregation time and charging only copy costs. **Thus, OIP views the proposed new public interest fee waiver standard as being not only unnecessary, but likely to exclude requesters from for-profit media organizations who are included under the UIPA’s current public interest fee waiver standard,** as further discussed below.

Additionally, a drastic change from the UIPA’s simple fee structure to a variant of the more complicated federal FOIA structure would **require either the Legislature or OIP to change other aspects of the UIPA rules, OIP to develop extensive new training materials, and the agencies to learn and apply the new rules. Moreover, there may new and lengthy delays in fulfilling UIPA record requests under the new rules,** as portended by the sometimes years-long delays by federal agencies in fulfilling FOIA requests. *See e.g.,* The FOIA Project, Agency FOIA Backlogs and Processing Times at <https://foiaproject.org/request-chart/#cbp,dhs-hq,dhs-ice,dhs-uscis,air-force,dod-army,navy>.

Comments on Proposed Bill

1. Statutory Cap on Fees

The proposed statutory cap of \$5 per 15 minutes for search and \$7.50 per 15 minutes for review, and segregation fees agencies may charge for staff time spent in responding to a record request is higher than the rate currently allowed by OIP's rules. However, the current charges adopted in 1999 were intended to be close to the average salary rate for employees likely to be responsible for search, review, and segregation under the UIPA, and were based on a 1996 survey of state and county

salaries. In other words, **the current fees are already 27 years out of date and do not reflect current salaries for the government employees doing the work.**

OIP's Draft Rules would address attempt to account for a quarter century of inflation by raising search fees to \$7.50 and review and segregation fees to \$15 per 15 minutes, **but the bill's proposed cap would not allow the rates to be raised enough to reflect the 2017 average current salaries. Over time, the statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.** In effect, this would change the statutory authorization for search, review, and segregation fees from a way for agencies to mostly recoup the salary cost of employee time spent on larger requests to an increasingly nominal charge, with the agencies bearing the lion's share of the cost of even the largest and most complex record requests. The statutory fee cap also operates as an unfunded State mandate that must be paid out of the counties' coffers.

2. Public Interest Fee Waiver

This bill would also change the standard for a public interest waiver of fees under the UIPA. That standard is currently set by rule at \$60, double the automatic waiver for all requesters and representing 3-6 hours of staff time. Thus, for larger requests that meet the public interest standard agencies are still allowed to charge for search, review, and segregation time beyond what is covered by the waiver. **This bill would make the public interest waiver a complete waiver of all fees, no matter how large the request might be. The bill would also change the standards for what qualifies as a public interest request to be in one way narrower and in another way broader.**

The UIPA standards for a public interest waiver are currently that (1) the record pertains to the operation or activities of an agency (without considering its relative public importance), (2) it is not readily available in the public domain, and (3) the requester has the primary intention and actual ability to widely disseminate the information to the public. This bill would narrow the first of those, requiring the record to "contribute significantly to public understanding" of agency operations or activities, but would remove the remaining two: **the proposed waiver would apply to information already widely available to the public, and would apply to a requester with no intention or ability to publicly share the information. It would, moreover, add a requirement that the request NOT**

be “**primarily in the commercial interest.**” This requirement is one that OIP specifically considered, and rejected, in adopting its current rule regarding public interest waivers, so as to not exclude news media representatives. As OIP’s Impact Statement on the then-draft rules stated, “news media representatives will almost always have commercial interests. Therefore, to exclude news media representatives from a fee waiver because of those commercial interests is counterproductive to supporting the public interest in a free flow of information held by the government. Consequently, the proposed rule does not require an agency to determine that the disclosure of information is not primarily in the commercial interest of the requester.”

OIP believes the change in standard for what qualifies as a public interest request would thus **exclude for-profit news media representatives, but not a non-profit media company or bloggers, and would not necessarily increase the general public’s access to information about the operation of government.** At the same time, it would apply to a much narrower category of information, requiring the requester to establish that the information would “contribute significantly to public understanding” of agency operations rather than simply being about agency operations. It seems likely that this new standard would apply to a different pool of requests than the current standard, but it is not clear whether it will end up representing an increase or a decrease in requests meeting that standard. Either way, **the Legislature must decide whether the complete waiver of all fees for those requests that qualify would actually increase transparency, or instead would have the opposite effect and ultimately detract too much from agencies’ core work for the public as it would result in a larger number of complex record requests because there would be no financial incentive for the requester to narrow such a request.**

Overall, the Legislature may want to consider the **potential unintended consequences** of the proposed fee caps and waivers this bill, which may be to:

- encourage the filing of more complex record requests;
- eliminate the current fee waiver for representatives of for-profit media companies;
- slow the processing of all record requests as well as of the agency’s work unrelated to record requests;

- increase the agencies' need for more personnel, funding and time to recruit, train and hire additional personnel to fulfill record requests and to learn to apply the new rules;
- reduce government efficiency as well as government transparency due to delays in processing record requests and increased costs to legitimate media representatives, resulting in less news coverage;
- require ongoing legislative amendments to the UIPA to address unintended consequences and matters previously handled by administrative rules, including the possibility of providing for longer agency response deadlines; and
- create adverse financial impacts on the counties due to unfunded State mandates.

3. Copy Fees

As to the proposed amendment of section 92-21, HRS, authorizing agencies to charge copy fees for government records, this statute is not part of the UIPA but OIP is frequently asked about its application to UIPA requests. The statute currently sets a minimum copy charge of \$.05/page, but does not prohibit agencies from charging more. Since OIP's rules allow an agency to charge "other lawful fees" in addition to the search, review, and segregation fees set out by the rules, OIP has generally advised that the minimum copy charge is a lawful fee for the purpose of the rules, and if an agency has adopted administrative rules setting a higher per-page charge, that higher charge is also a lawful fee. **This proposal would cap copy charges at \$.25/page, and thus would primarily affect those agencies that have adopted administrative rules setting a higher per-page charge.**

The bill would also require the first hundred pages to be provided free of charge to public interest requesters, using the same standard to define public interest requests as the bill proposes for the UIPA. This would add to the costs borne by government agencies for such requests.

4. Appropriation and New Positions for OIP

Unlike the version of this bill passed out of the Legislature last year as S.B. 3253, S.D. 2, H.D. 2, C.D. 1, this bill does not include the appropriation for two new positions and \$185,000 in annual funding for OIP in recognition of the additional work rulemaking and dispute resolution resulting from this bill will require. **OIP's personnel are already severely strained with their current workload, which**

has seen a doubling of requests for its Attorney of the Day services over the past year, an extensive overhaul of its training materials, and interim legislative work, as OIP continues to work on its backlog of appeals that increased with the loss of half its experienced personnel during the past two years of the COVID pandemic. **OIP today is doing over twice as much work with half the people and funding that it had 29 years ago.** In FY 1994, when it administered the only UIPA, OIP had 15 positions and an allocation of \$827,537, which would be \$1,591,384 today if adjusted for inflation. In FY 2022, when it administered both the UIPA and Sunshine Law and saw a doubling of its informal inquiries from the prior year, OIP had only 8.5 positions and an allocation of \$752,721. **Whether or not this bill passes, OIP will need the additional staff and funding to fulfill its increasing workload, including other updates to its rules.**

5. Effective Date

This bill's effective date of July 1, 2023 is clearly not sufficient for OIP to draft new rules, have rules reviewed by the Attorney General's office before going to public hearing, receive the Governor's approval of the final rules, and develop new training materials so that agencies can be educated as to the final rules. Moreover, the changes called for in this bill do not address all of the revisions proposed in OIP's 2017 Draft Rules, which include the question of how to discourage requests that cause manifestly excessive interference with an agency's functions. **A two- or three-year delay in the effective date for section 3 of the bill would be more realistic.**

In summary, despite its laudable intention to increase government transparency and accountability, **this bill could have the opposite effect** as it shifts more and more of the cost of providing public access to government records onto the State and county agencies that respond to record requests and it may have the unintended consequences of increasing complex requests, slowing response times, increasing government and media costs, decreasing media coverage, and requiring ongoing legislative changes. OIP hopes that this comprehensive testimony has set out the various potential effects these changes could have, so that the Legislature can be fully informed in making its decision on this bill.

Thank you for considering OIP's testimony.

ATTACHMENT: Relevant Portion of FOIA Rules

The full text of 5 U.S.C. section 552 is available at <https://www.law.cornell.edu/uscode/text/5/552> . Subsections 552(a)(4)(A)(ii) and (iii), which set out the standard FOIA fee scheme, are set out below (emphasis added):

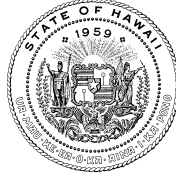
5 U.S.C. § 552(a)(4) (A)

- (ii) Such agency regulations shall provide that—
 - (I) fees shall be limited to reasonable standard charges for document [search](#), duplication, and review, **when records are requested for commercial use**;
 - (II) fees shall be limited to reasonable standard charges for document duplication **when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the [news](#) media**; and
 - (III) **for any request not described in (I) or (II)**, fees shall be limited to reasonable standard charges for document [search](#) and duplication.

In this clause, **the term “a representative of the [news](#) media” means any [person](#) or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.** In this clause, the term “[news](#)” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “[news](#)”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of [news](#) delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be [news](#)-media entities. A freelance journalist shall be regarded as working for a [news](#)-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
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WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON GOVERNMENT OPERATIONS

S. B. 991

FEBRUARY 9, 2023, 3:00 PM
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL
RELATING TO PUBLIC RECORDS.

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee on Government Operations, thank you for the opportunity to testify and provide comments on S.B. 991. The Department of Accounting and General Services (DAGS) offers the following comments:

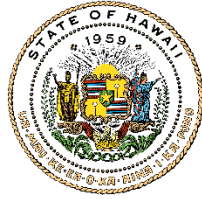
1. The statutory responsibility for preserving, arranging, describing, and inventorying public archives, as prescribed in Hawaii Revised Statutes (HRS) Chapter 94, rests with DAGS. We would request that this measure clarify that the intent is not to subvert Chapter 94 and that this proposed change to Chapter 92 is not applicable to documents maintained by the state archives.
2. The work performed by the state archives to preserve, arrange, describe, and inventory public archives is highly technical and specialized in nature. As

such, the cost to perform research and produce documents through the archives is greater than other departments. HRS §94-4 states that the fees “for copying, certification, and other services shall be prescribed by the comptroller in direct relation to the cost of the services.” We would request that a clarification be made to this proposed measure that specifically excludes the state archives from the fee structure as state in HRS §94-4.

We appreciate this opportunity to provide our comments on this measure and we humbly request your support in clarifying that this measure does not impact or relate to the work of our state archives.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
GOVERNMENT OPERATIONS

Thursday, February 9, 2023
3:00 PM

State Capitol, Conference Room 225 and Via Videoconference

In consideration of
SENATE BILL 991
RELATING TO PUBLIC RECORDS

Senate Bill 991 proposes to impose a cap on the amount an agency can charge for the reproduction of certain government records and on costs charged for searching, reviewing and segregating records to ensure government transparency. It also proposes to waive all fees for search, review and segregation of records when the public interest is served. **The Department of Land and Natural Resources (Department) opposes this measure for the reasons below.**

The Department believes that if the Office of Information Practices set rules for the implementation of Chapter 92F, Hawaii Revised Statutes (HRS), then much of the issues in this bill could be resolved.

This bill proposes to cap the cost of copying public records at 25 cents and making electronic copies free. The Department notes that in order to increase transparency, many of its records across all divisions are easily and freely available electronically. For example, meeting minutes, and more recently, meeting summaries and recordings for most of the Department's Boards and Commissions are available on the Department's website and can be downloaded for free. However, converting paper to electronic documents is expensive, and requires constant maintenance and upkeep of the programs that store these documents. The Department believes that it should be able to charge for electronic copies as well as paper copies, if retrieval of an electronic copy is not already available on the Department's website. The waiver of fees for the first 100 pages for copying requests that serve the public interest will address most of the needs of this group.

This bill also proposes to amend Paragraph (13) of Section 92F-42, HRS, by explicitly directing the Office of Information Practices (OP) to promulgate rules that (A) limit the charge for searching for records to \$5 per fifteen minutes or fraction thereof; (B) limits the charge for review and segregation to \$7.50 per fifteen minutes; and (C) provides a waiver of fees when the public interest is served. The Department is concerned that the waiver of fees in the public interest will encourage “fishing expeditions” for people who are looking for something they can catch that matches their goals. The Commission to improve standards of conduct has cited to concerns that departments use fees as a way to chill requests for information. In the Department’s experience, this is not true. Most of the requests that the Department receives are fulfilled at very little to no charge. We have no problem with requests that are focused and clear. However, we do have problems with fishing expedition requests, which can result in staff spending days pulling records and can interrupt pressing projects and timely customer service. These types of requests must be limited to ensure staff can do their work.

The Department would like to provide an example:

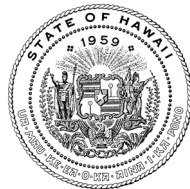
Last year, the Department’s State Historic Preservation Division (Division) received a request for everything to do with Section 6E-42, HRS, reviews, the burial council, and any external communications for the entire county of Kaua‘i. The Division estimated that it would cost in excess of \$50,000 in staff time, research, segregation, scanning, and production. More importantly, the Division does not have the staff to do that amount of work, so they asked for a more specific request, which they haven’t received.

These broad requests are not uncommon and can usually be construed to be in the public interest. Whether or not this request is in the public interest is not the only matter to consider. The Department cannot divert its staff for such a broad request. Especially a division with a large backlog of work. Without tools to narrow the request, and cost is a very effective tool, departments will be swamped. Thus, we ask that this bill be held.

If this bill is not held, we expect hardship on all divisions of the Department, and special hardship on the Bureau of Conveyance (Bureau). Therefore, the Department respectfully asks that should this bill move forward, that it be amended to exempt the Bureau. The Bureau respectfully notes that the intent of the bill addresses accessing government records that are not readily accessible by the public as a rule. The mission of the Bureau is for the timely recording and accessibility to documents it records by all who may come into its office or access them online. The Bureau’s documents are submitted by individuals and business, primarily for their land dealings or Uniform Commercial Code filings. Government documents that get recorded are of a similar nature. All of those records are readily accessible by anyone through already established, convenient procedures and fees. Converting paper to electronic documents is expensive and requires constant maintenance and upkeep. The Bureau converted almost all of its paper documents to electronic form and charges fees that take into account the cost of conversion and implementation as well as for the staff to keep the system running and maintained. It would not be often that the Bureau’s public records will offer the additional government accountability and transparency or enable a more informed citizenry for participation in government decision making.

Mahalo for the opportunity to provide testimony in opposition to this measure.

JOSH GREEN, M.D.
GOVERNOR



LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
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
Ka 'Oihana Mālama Mo'ohelu a Kālā
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

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
SENATE BILL NO. 991

February 9, 2023
3:00 p.m.
Room 225 and Videoconference

RELATING TO PUBLIC RECORDS

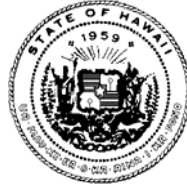
The Department of Budget and Finance (B&F) offers the following comments on Senate Bill (S.B.) No. 991.

S.B. No. 991: 1) imposes a cap on the charged costs for the reproduction of certain government records; 2) waives reproduction costs for the first 100 pages if disclosure is in the public's interest; 3) waives the cost of duplication of government records in an electronic format; 4) imposes a cap on charged costs for searching, reviewing, and segregating records; and 5) provides for a waiver of fees when the public's interest is served.

While B&F appreciates the intent of this measure, B&F notes that it is not clear how a department would implement this measure's standards and provisions.

Thank you for your consideration of our comments.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

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

February 5, 2023

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

FROM: Cathy Betts, Director

SUBJECT: **SB 991 – RELATING TO PUBLIC RECORDS**

Hearing: February 9, 2023, 3:00 p.m.
Conference Room 225 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure, provides comments, and defers to the other impacted Departments. However, the Department respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 4, line 21 to page 5, line 1) and requests an amendment to preserve the current language.

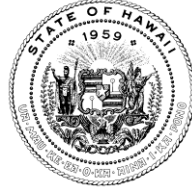
PURPOSE: The bill's purpose is to impose a cap on the costs charged for the reproduction of certain government records. Waives the reproduction costs charged for the first one hundred pages if a record's disclosure serves the public interest. Waives the duplication costs of government records provided to requestors in an electronic format. Imposes a cap on costs charged for searching for, reviewing, and segregating records. Provides for a waiver of fees when the public interest is served by a record's disclosure. Effective 7/1/2023.

DHS supports the intent of this measure to maintain government accountability and transparency. DHS strives to respond to all government record requests per the time frame

while balancing operational demands to ensure that individuals and families are also timely served by the Department. Unfortunately, the Department and its programs do not have dedicated staff or resources to respond to records requests; time spent on responses interrupts the completion of regular duties.

Regarding reproduction costs, DHS respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 4, line 21 to page 5, line 1) and requests an amendment to preserve the current language. Complex record requests often require significant coordination of program resources and staff time. Importantly, we do not assume electronic records are easier to sort or duplicate than paper records. This proposed measure to impose limitations on costs and fee waivers may have unintended consequences, such as encouraging the filing of more complex record requests that impact the critical program work unrelated to the records requests.

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



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Government Operations
Thursday February 9, 2023
3:00 p.m.
Conference Room 225 & Videoconference**

**On the following measure:
S.B. 991, RELATING TO PUBLIC RECORDS**

Chair McKelvey and Members of the Committee:

My name is Nadine Ando, and I am the Director of the Department of Commerce and Consumer Affairs (Department). The Department has concerns with and offers comments on this bill.

The purposes of this bill are to (1) impose a cap on costs charged to reproduce certain government records; (2) waive reproduction costs charged for the first one hundred pages if disclosure serves the public interest; (3) waive costs charged to duplicate certain government records in an electronic format; (4) impose a cap on costs charged to search for, review, and segregate records and; (5) provide for a waiver of fees when a record's disclosure serves the public interest

While the Department appreciates the intent of this measure to provide greater public access and transparency, it has strong concerns about several proposed amendments to Hawaii Revised Statutes (HRS) section 92-21, and the ramifications of the proposed changes upon the Department's operational functionality. In order to

protect the privacy interests of individuals whose information is included in the requested records, staff must engage in search, review, and segregation of the records. The time consuming and labor-intensive nature of these tasks are demonstrated by the definitions of “search,” “review,” and “segregation” in Hawaii Administrative Rules (HAR) section 2-71-2. Due to budgetary constraints, an agency should be permitted to charge reasonable fees for services rendered, particularly when there is no limit to the number of services which may be requested. In HAR section 2-71-1, the Office of Information Practices expressly stated that SRS fees “are not intended to obstruct public access to disclosable records but rather are intended to allow agencies to recover some costs in providing access to disclosable records upon request.” A staff person who searches, reviews, and segregates a government record is providing a necessary service and the agency is incurring costs in providing this service.

Ultimately, SRS is a time-consuming and labor-intensive task; should SRS fees for digital records or records deemed to be in service of the public interest be capped or waived, it would be costly to the Department, as requests for which the Department could not recoup costs would increase. If this measure were to take effect, the Department anticipates a potentially severe reduction in the Department’s ability to fulfill its normal functions, as it would be forced to dedicate increased amounts of its staff’s time to SRS and record production, without receiving adequate compensation in return.

Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.police.org



RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE

JAT-DNK

February 9, 2023

The Honorable Angus L.K. McKelvey, Chair
and Members
Committee on Government Operations
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

SUBJECT: Senate Bill No. 991, Relating to Public Records

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

The HPD has the following concerns regarding Senate Bill No. 991, Relating to Public Records.

Requests from public interest groups for information that contribute to the public's understanding of governmental operations or activities tend to be larger and more complex. Such requests require more staffing hours, research, and review time. The removal of fees could result in an increase in the number of record requests received by our agency.

In 2022, the Office of Information Practices raised these concerns and submitted testimony that stated a complete waiver of fees for requests that would serve the public interest could be burdensome on the agencies and result in a larger number of complex record requests. The waiver would apply to information already available to the public and a requestor may not have the intention or ability to publicly share the information. This may result in redundant and unnecessary expenditure of departmental resources.

The Honorable Angus L.K. McKelvey, Chair
and Members
Committee on Government Operations
Page 2
February 9, 2023

The HPD suggests removing the proposed Section 3, Section 92F-42, Powers and duties of the office of information practices, Subsection (13) (C), of this bill and continuing to assess the permitted fees for these requests.

The HPD appreciates the committee's consideration of our comments regarding Senate Bill No. 991, Relating to Public Records, and thanks you for the opportunity to testify.

Sincerely,



Joseph A. Trinidad, Major
Records and Identification Division

APPROVED:



Arthur J. Logan
Chief of Police



JOSH GREEN, M.D.
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 GOVERNMENT OPERATIONS

ON

SENATE BILL NO. 991

**February 9, 2023
3 P.M.**

Conference Room 225 and via Videoconference

RELATING TO PUBLIC RECORDS

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

S.B. 991 proposes to impose a cap on charged costs for reproduction of government records, waive the cost of duplication in an electronic format, impose a cap on charges for searching, reviewing and segregating records, and provide a waiver of fees when the public interest is served.

While the ERS supports the intent of the bill, the ERS has some concerns and offers the following comments: The capping or waiving of fees typically results in an expense recovery level that is set substantially below actual expense incurred in gathering, copying and disseminating the materials. From a historical perspective, the cap has a tendency to become outdated over time, thereby invisibly increasing the level of cost subsidy by the agency. The ERS notes that the research and gathering of information for the types of requests it receives more often requires the time and effort of its highly compensated professional staff, such as investment officers and program specialists, as well as its clerical and administrative staff. The bill's proposed cap would not allow the rates to be raised enough to reflect actual average current salaries, and overtime. The



Employees' Retirement System
of the State of Hawaii

statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.

The ERS has experienced an increasing number of public requests for records, a number that is likely to increase even more if records become available at no cost to the requestor. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests in gathering and distributing such information but express a public purpose for doing so.

The complete waiver of all fees for those requests that qualify would prove burdensome for the ERS and result in a larger number of complex record requests, as there would be no incentive for the requester to limit the number or narrow such requests. Such an increase in requests would require an inordinate amount of the ERS's staff time that would detract from the ERS's other work.

As to the proposed waiver of fees if information is "in the public interest," the bill does not provide a standard for determining when a request is "in the public interest." Nor does the bill specify who would make the determination.

S.B. 991 is similar to SB3252 SD2 HD2 CD1 (2022), which was vetoed by the Governor. The ERS shares and incorporates the concerns expressed in Office of Information Practices' (OIP) testimony, dated March 16, 2022, regarding SB3252.

Some of the potential unintended consequences of the proposed fee caps and waivers are that they would:

- shift more and more of the cost of providing public access to government records onto the ERS;
- encourage the filing of numerous and more complex record requests;
- slow the processing of all record requests, as well as slow the ERS's work unrelated to record requests;
- increase the ERS's need for funding to recruit, train and hire additional staff;
- reduce government efficiency as well as government transparency due to delays in processing record requests.

Thank you for this opportunity to provide testimony.



February 9, 2023

3 p.m.

VIA VIDEOCONFERENCE

Conference Room 225

To: Senate Committee on Government Operations

Sen. Angus L.K. McKelvey, Chair

Sen. Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: SB991 — RELATING TO PUBLIC RECORDS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to commend the Legislature for considering this bill, [SB991](#), which touches on a significant problem encountered in open-records requests: the use of high search and reproduction costs as a method to discourage the pursuit of Uniform Information Practices Act requests.

Specifically, the bill would impose a cap on fees for reproduction of public records as well as on the searching, reviewing and segregating of such records.

In addition, the bill provides for a waiver of costs for duplication of records in electronic format as well as waiving the reproduction costs for the first 100 pages of a physical record if the disclosure is in the public interest. The bill also provides for a waiver of fees related to search, segregation and review when the public interest is served.

As an educational research organization and public watchdog group, the Grassroot Institute of Hawaii often uses open-records requests to shine the light of transparency on the inner workings of government. Our UIPA requests run the gamut, from requests for records of budget and financial documents to requests for details of the plans for the Honolulu rail project.

In the course of our work, we have seen that some government agencies are more forthcoming than others, and that there are varying interpretations of the public interest fee waiver. Thus, some agencies will waive all costs associated with the search — as the statute clearly intended — while others will use the waiver as a “discount” of sorts, reducing but not waiving the search and reproduction fees.

On occasion, an agency will quote such a high fee requirement that accessing the requested records becomes an impossibility for the average person — or even a researcher or journalist.

For example, in 2021, the Grassroot Institute requested three years of administrative forfeiture records from the state Office of the Attorney General. As this was part of an effort to research and report on asset forfeiture in Hawaii, we requested a waiver in the public interest. The AG’s office quoted a total cost of \$2,190. This included a \$60 “fee waiver” because the request was in the public interest; only \$10 was related to reproducing records.

On another occasion, we requested communications between the governor’s office and certain agencies regarding the COVID-19 emergency — a nearly identical request to one filed by The Associated Press. The office quoted a total cost of \$342,876 for the request, which included a \$60 “fee waiver” because the request was in the public interest.

One might suggest that this request was too broad, in which case, it would have been more in keeping with the intent of the open-records law for the agency to discuss with us a way to narrow the request, as other agencies often do, rather than producing a cost quote intended to avoid any disclosure at all.

All of which is to say, SB991 should be praised for seeking to eliminate reproduction charges for digital records, creating a public interest waiver for the first 100 pages of physical copies, and capping the fees for reproduction of physical copies.

In addition, this bill provides for a public interest waiver of fees related to search, review, and segregation of records. This is a laudable addition to the law and would go a long way toward addressing the use of fees as an obstruction to open-records requests. It is often through sky-high search and review costs that agencies are able to discourage requesters, and this waiver is the most important element of the current bill.

We do have one concern: the increase in the search, review and segregation costs, which are currently [set](#) by the state Office of Information Practices at \$2.50 per 15-minute increment of searching time and \$5 per 15-minute increment of review and segregation time.

We urge you to cap those costs at the current rate rather than increasing them to \$5 and \$7.50, respectively. Alternatively, we suggest that the Legislature remain silent on the search and review costs, leaving them to OIP to determine via rule, rather than setting the cost via legislative action.

We understand the desire to discourage nuisance requests or abuse of the open-records law, but agencies should not be able to avoid disclosure of public records through the use of high fees. There are other avenues available to help address an overbroad request or “fishing expeditions,” such as a dialogue about reducing the scope of a request, delayed fulfillment of the request, and guidance from the state Office of Information Practices, among others.

In summary, SB991 has the potential to improve transparency and open government in our state by strengthening the public interest element of the law.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Honolulu, HI 96813

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

RE: Testimony Supporting S.B. 991, Relating to Public Records
Hearing: February 9, 2023 at 3:00 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 **supporting** S.B. 991.

State and county agencies maintain government records **for the people of Hawai'i**. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai'i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

This bill has an appropriately limited scope. It only applies when someone requests access to the people's records *for the purpose of educating the general public about operations and activities of our government*. In those limited circumstances, cost should not be an obstacle. An individual's public record request educates one person, but a public interest request typically educates thousands of people in Hawai'i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and publishing information about government operations. When the agency charges too much, the general public is left in the dark.

For example, reporters and watchdog activists have written articles *sourced from public records* on the State's pension burdens, the deficiencies in DHHL's or DLNR's revocable permit systems, the discipline or exoneration of law enforcement officers for the death or assault of a citizen, the delays at DCCA in disciplining physicians, and even the cost of public records. Public discussion of these concerns about government operations – informed by access to government records – has led to reform in every instance.

Based on the Law Center's regular studies of data regarding UIPA requests to State and county agencies, requests made by public interest organizations – which would be impacted by this proposal – account for a very small number of requests annually.

Typical of most years, in FY 2021, such public interest requests accounted for less than 5% of all requests. Thus, **this proposal will not significantly impact the government fisc, but the corollary benefit of giving the people of Hawai`i greater access to understand their government is immeasurable.**

In a random sampling of states, including Hawai`i, a March 2020 survey of public records laws found that Hawai`i agencies charged more than twice any other state in the survey. A. Jay Wagner, *Probing the People's Right to Know: A 10-State Audit of Freedom of Information Laws*, at 12. Many jurisdictions have clear statutory language that public interest requests will not be obstructed by government fees. For public interest requests, government agencies are not denying access to that single person; they are denying access to the thousands of people who would have received that information when the public interest requester disseminated it to the general public.

In addition, the proposed amendments regarding copying costs will address recurring problems where, for example, agencies attempt to charge per page fees for Excel spreadsheets that are thousands of pages when printed, but cost nothing to e-mail to the requester.

In last year's testimony, absent excessive fee estimates to dissuade requesters from seeking information, agencies claim that public interest requesters will make exceptionally broad requests that will be burdensome and costly for agencies. That concern is unfounded. Requesters want *timely* access to information. If a requester makes a broad and burdensome request for voluminous records, an agency is authorized by existing law to disclose records on a month-to-month basis as its other duties permit; the deadlines for disclosure do not apply. Agencies rarely are willing to discuss ways to reduce fee estimates, so quoting tens of thousands of dollars in fees becomes an effective and complete block on public access. If agencies are required to disclose records in the public interest – it is only a matter of time – both the requester and the agency have incentives to discuss meaningful ways to narrow a request.

Also, regarding “commercial interest” as raised in agency testimony, the phrase is “*primarily* in the commercial interest”. Only OIP has ever said that news media are acting primarily in the commercial interest. In contrast, as the Senate Judiciary committee report summarized, the Freedom of Information Act standard that is adopted in this bill allows for public interest waivers for the news media. The U.S. Department of Justice explained “primarily in the commercial interest”:

For example, although newsgathering organizations usually have a commercial interest in obtaining information, the traditional process of newsgathering and dissemination by established news media organizations, as a rule, should not be considered to be “primarily” in their commercial interest; because of their established role in providing information to the general public, it ordinarily can be presumed that, if a

significant public interest has been identified, that will be the interest “primarily” served by disclosure to such organizations.

U.S. Dep’t of Justice, New Fee Waiver Policy Guidance (Jan. 1, 1987), *available at* <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>.

Lastly, OIP’s data showing that nearly all fees are paid by for-profit requesters is not surprising. Only for-profit requesters can afford the fees. Public interest requesters typically abandon requests when the agency quotes an exorbitant fee estimate.

Excessive secrecy contributes to the public’s distrust of government. When a requester has the ability to use government records to educate the general public about how our government operates, that leaves less room for agency corruption and incompetence. So when an agency claims that it will share **the people’s records** with a public interest requester only if paid thousands of dollars for access, the public may legitimately ask: What is the agency hiding?

Although S.B. 991 provides better relief for the public in terms of costs for public records, the Law Center has no objection to this Committee amending S.B. 991 consistent with the proposal advanced by the House Commission to Improve Standards of Conduct. *See* H.B. 719. The Commission proposal retains the most critical amendments to protect the public’s right of access.

Thank you again for the opportunity to testify in support of S.B. 991.



Feb. 9, 2023

Angus McKelvey
Senate Government Operations Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 991

We like this bill, which caps fees on reproduction of government documents and search fees for educating the public and can waive fees for actions in the public interest, and similarly caps and removes fees for records in electronic format.

Copying costs and search fees can be a big expense for the news media and public interest organizations that educate the public about its government. Many times the costs and deter or greatly delay reporters and groups from pursuing the documents, and the public becomes the victim because it doesn't get the articles or the resulting reports.

The loss of revenue is small when compared to the interest these records can generate – and have made – in revealing issues to the public.

SB 991 is a good bill, but we prefer HB719, which contains the proposal by the House Commission to Improve Standards of Conduct and retains amendments to protect the public's right of access.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ



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

February 5, 2023

**The Honorable Senator Angus L.K. McKelvey, Chairman
The Honorable Senator Mike Gabbard, Vice Chairman
Senate Committee on Government Operations**

**From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945**

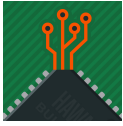
In STRONG SUPPORT of SB 991, Relating to Public Records

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 991, capping charges for reproducing, searching, reviewing, and segregating public records and waiving costs under certain conditions.

Access to the public's public records shouldn't depend on how much money you make. A member of the public with less ability to pay shouldn't be treated differently than a wealthier one.

Public records belong to the people, not the government. The people already pay the taxes that support the workers who process the public records requests, the computers and software where the records reside and buildings that contain them.

Mahalo nui for considering SB 991.



Testimony of
Ryan Kawailani Ozawa
Publisher, Hawaii Bulletin
Founder, Hawaii Hui LLC / Kilinahe Foundation

Before the
COMMITTEE on GOVERNMENT OPERATIONS
Hawaii State Capitol in Conference Room 225
Thursday, February 9, 2023

SB991 — Relating to Public Records

Honorable Senator Angus L.K. McKelvey, Chair; Senator Mike Gabbard, Vice Chair; and Members of the Committee on Government Relations (GVO):

I am submitting this testimony to express my **SUPPORT WITH COMMENTS** of **SB991** relating to Public Records.

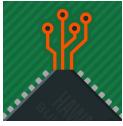
Government transparency is not cheap. But it is priceless.

I don't need to tell you how tenuous trust in government is today, nor how tumultuous the media industry has come—let alone the unfolding disaster that is social media.

It is more important than ever that citizens be able to “go to the source” and have reliable and affordable access to current and complete government records. Too often, reproduction costs allowed for by outdated, hardcopy-centric law have been used as a poison pill to discourage public record requests. This measure allows a reasonable amount of document production for those few agencies or requestors that rely on paper.

And while it's conceivable that producing electronic records can require some specialized software and skills, most of the time we are looking at a cut-and-paste scenario. I am confident most government agencies will not be unduly burdened by providing one of the government's core constituent services.

To ensure that these requests are handled promptly and efficiently and not adversely affected by duplicate requests, I would also recommend that lawmakers consider requiring that all public



records requests and the records prepared in response be **published to a public online repository**. Hawaii does, after all, have an open data law, and ostensibly maintains an open data portal. Why not post public record requests and responses for all interested parties, rather than have multiple agencies and individuals request the same record set?

Even without this refinement, SB991 is an important improvement to Hawaii's model public records laws and deserves your support.

Thank you for your consideration.



SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Thursday, February 9, 2023, 3 pm, State Capitol Room 225 & Videoconference
SB 991

Relating to Public Records

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii support SB 991.

Thank you for the opportunity to submit testimony.

SB-991

Submitted on: 2/3/2023 11:01:29 AM

Testimony for GVO on 2/9/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

SB-991

Submitted on: 2/4/2023 2:10:33 PM

Testimony for GVO on 2/9/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tiffany Edwards Hunt	Individual	Comments	Written Testimony Only

Comments:

I support any and all efforts toward government transparency. Journalists need access to public information. I appreciate efforts to waive any fees for copying costs if the request pertains to matters of public interest. Please support journalists and know that this is a very challenged profession. There are plenty of independent journalists that cannot afford exorbitant copying costs from government agencies. I do appreciate the release of electronic docs to save paper, but I would not want this to be the only option for those who are dedicated to the public's right to know. Too many government agencies dissuade journalists' search for truth by charging outrageous fees. Please support the public's right to know. Mahalo.

SB-991

Submitted on: 2/6/2023 2:56:42 AM

Testimony for GVO on 2/9/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Robin Miyajima	Individual	Support	Written Testimony Only

Comments:

Public records need to be more accessible. That's why I fully support the cap on the fees to access them, and why I support this bill.

SB-991

Submitted on: 2/7/2023 9:33:03 PM

Testimony for GVO on 2/9/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Vivek Pathela	Individual	Support	Written Testimony Only

Comments:

Support

SB991 Related to Public Records

Testimony IN SUPPORT, with Amendments

Corinne Solomon, Oahu Resident

Thank you for the opportunity to submit testimony in support of SB991.

Hawaii is known to have some of the highest public records fees in the nation:
<https://www.civilbeat.org/2013/10/hawaiis-public-records-high-fees-are-keeping-public-information-secret/>

I **fully support** waiving the cost to duplicate records available in electronic format.

Charging the public to print hard copies of electronic records or charging to send electronic copies is used as a deterrent to the public for sending public records requests.

I have experienced this repeatedly when requesting records from the Elections Office and the Honolulu City Clerk.

For example, in 2022 I paid the Honolulu City Clerk's office **\$78 for a hard copy of an electronic excel file**. I had to pick this up in person. Luckily, I have access to reliable transportation and not suffering from mobility issues.

The same records request to the Hawaii County clerk resulted in an electronic record which was emailed to the requester at no cost.

In 2021 I sent a public records request to the Office of Elections regarding email communications. This request returned a total of 22 emails, **for which I paid the OE over 100\$**, part of this charge was for segregation.

These are just two examples of many that I have experienced in the past 2 years.

This is highway robbery and citizen intimidation from our public officials!

There are still concerns with this bill:

1. *SB991 reads, "(I) Impose a cap on costs charged to reproduce **certain** government records;"*

"Certain government records" needs to be clearly defined, as it can be loosely interpreted and applied as a workaround to the fee cap and let our government agencies commit the same highway robbery they do now.

2. The searching and segregating fees in SB991 are still too high.

SB991 reads:

- *“(A) Set forth fees not exceeding \$5 per fifteen minutes or fraction thereof for the search for the record;*
- *(B) Set forth fees not exceeding \$7.50 per fifteen minutes or fraction thereof for the review and segregation of the record;”*

This is \$12.50 per 15 minutes and \$50 per hour. This is not on par with the majority of the other states, where the majority of them do not even have these fees. https://ballotpedia.org/How_much_do_public_records_cost

Recommendation:

Eliminate the fees associated with search and segregation.