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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
Honolulu, Hawaii 96813

TESTIMONY ON SENATE BILL 2686
RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION
OF CERTAIN PUBLIC SERVANTS

Before the Senate Committee on Judiciary

Thursday, February 15, 2024; 9:30 a.m.

State Capitol Conference Room 016 & Videoconference

Testifier(s): Laura Maeshiro

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Department of Law Enforcement offers **comments** on Senate Bill 2686 to the extent that this bill seeks to amend chapter 801G, H.R.S.

The DLE is in strong support of adding provisions to protect the personal information of public servants, and to do so in appropriate sections throughout the H.R.S. However, the amendment in Section 4, starting on page 10, should be placed in another chapter. Section 4 adds a structure into chapter 801G that is markedly different from the self-contained Address Confidentiality Program (ACP). Adding this section in chapter 801G will cause confusion to applicants, program participants, and others involved in the ACP.

Chapter 801G is statutorily structured as a stand-alone program, aptly titled "Address Confidentiality Program." The ACP is an established, nationally recognized program that provides a substitute mailing address for participants who are in fear of being found by their abusers. The program authorizes participants to request state and county agencies to use a substitute address in place of their actual residential, work, or school address. The purpose of the ACP is to prevent participant's actual location from being disclosed through agency records or databases, which may otherwise be public

information. DLE will issue an authorization card to participants of the program to present to agencies to request the substitute address be used. With some exceptions, the agencies must accept the substitute address. Because the agencies do not have the participant's actual address, they will use the substitute address for any postal mail to the participant. The DLE will receive that mail and forward the mail to the participant's actual location.

Every section in chapter 801G sets requirements and procedures specifically for the ACP program. This includes eligibility requirements, mandatory victim services organization involvement, specific application processes, and requirements for state and county agencies. The program requires that victim services organizations and the DLE review the applicant for eligibility. A participant requesting a state or county agency to use the substitute address must be authorized by the DLE.

In contrast to the proposed amendment, ACP eligibility is limited to survivors of domestic violence, sexual assault, or stalking offenses, regardless of their status as a public servant. The main purpose of the amendment appears to allow the public servant to submit cease and desist type letters and to seek civil remedies if that fails. See page 11, lines 10-19. Unlike the ACP participant, the public servant does not need authorization from a government entity to pursue their protection, such as submitting letters to individuals or entities, or to obtain civil relief from the courts. Given there is no direct connection to the ACP program, it should be clearly separated to avoid confusion.

A proposed solution would be to place this provision into another section of the H.R.S. by creating a new chapter 801H, or other appropriate letter designation.

If the intent is to incorporate this provision as *part of* the Address Confidentiality Program (ACP), we respectfully ask to reconsider keeping it separate, for the reasons stated.

Thank you for the opportunity to submit comments on this bill.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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DEPUTY DIRECTOR - WATER

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CONSERVATION AND RESOURCES
ENFORCEMENT
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
JUDICIARY

Thursday, February 15, 2024
9:30 AM
State Capitol, Conference Room 016

In consideration of
SENATE BILL 2686
RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN
PUBLIC SERVANTS

Senate Bill 2686 proposes to exempt certain personal information of public servants from government records that are subject to disclosure under the State's Uniform Information Practices Act. The bill also establishes protection for public servants that prohibits upon written request from the public servant, any person or organization from disclosing certain personal information. The bill further establishes a misdemeanor offense of unlawful publication of personal information that prohibits any person or organization from knowingly disclosing protected personal information of public officials with the intent to cause reputational harm, emotional injury or bodily injury. **The Department of Land and Natural Resources (Department) offers the following comments and concerns.**

This bill recognizes the need to protect personal information in light of recent high-profile crimes that have been committed with the use of such information. However, for some State agencies and in particular, for the Bureau of Conveyance (BOC), the mechanisms and/or funds for such mechanisms to redact select personal information from electronic documents are not available. Likewise, for some State agencies like the BOC who also have a Public Reference Room that offers access to hard copy documents, the cost and resources needed to locate and redact select personal information from this media would be untenable. The bill also requires this protection process to be voluntary on the part of the covered person or their representative by providing a "written request" without specifying how this process should work, what forms if any would be used and how the public servant would deliver this request for confirmation of its receipt. These

deficiencies may lead to litigation and expose the State to legal action for damages, including attorney's fees and costs.

For the BOC, the bill includes an exemption providing that all our document information, including the protected personal information, can be provided to title companies. But for all others, this may lead to unintended consequences should the BOC be required to redact protected personal information or publicly available content that many other businesses and financial institutions would otherwise rely on for tasks such as processing loan or credit approvals.

The Department would recommend that other states enacting such laws be consulted for "best practices" so that the State of Hawaii can create model legislation that can be implemented successfully and not result in unintended consequences for the affected public servants as well as other entities that depend on the accuracy and completeness of State documents and information. In the case of Minnesota, similar legislation started with the need to protect victims of domestic violence that resulted in a program called "Safe at Home". A key part of the developing, coordinating and improving that program that addressed protecting personal information amongst other provisions, was the establishment of a state office that became the lead so that a comprehensive effort could be orchestrated with all the key stakeholders.

Mahalo for the opportunity to comment on this measure.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 15, 2024, 9:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2686
Relating to the Disclosure of Personal Information of
Certain Public Servants

Thank you for the opportunity to submit testimony on this bill, which would create a confidentiality provision within the Uniform Information Practices Act (UIPA) for government information that could expose government workers or officials and their family members to harassment, threats, or violence; and would require organizations including government agencies, within 72 hours of a request, to take down from the internet any personal information relating to a government worker or official or their family members and ensure that no information regarding them is disclosed in the future. While the Office of Information Practices (OIP) recognizes the importance of this bill's intent to address the rise in threats against government employees and officials, **OIP has concerns regarding the proposed method of doing so in this bill, which would place an overly broad confidentiality provision in the UIPA itself, and create a separate confidentiality requirement that conflicts with the UIPA and is likely to be challenging to unworkable in practice.**

The proposed confidentiality requirement outside the UIPA, section 801G-___, HRS, appears to apply not only to nongovernmental persons or organizations, but also to government agencies: Section 801G-1, HRS, which sets out definitions, does not include a definition of person or organization and so does not exclude government agencies from being organizations subject to the requirements. The new statute would require confidentiality for, among other things, “home address and any property ownership information” and “property tax records.” The UIPA, however, mandates public disclosure without exception for “[l]and ownership, transfer, and lien records, including real property tax information and leases of state land.” HRS § 92F-12(a)(5). **Thus, there would always be a conflict between the new law’s requirement that property ownership information and property tax records be confidential upon request, and the UIPA’s existing requirement that property ownership information and property tax records be public.**

Other conflicts would likely arise between the new law’s confidentiality requirement and the UIPA’s mandate in section 92F-12(a), HRS, that the following listed information be made public without exception:

- The name and address must be public without exception for borrowers from state and county loan programs and (if the home address also serves as a business address) of persons holding licenses or permits, which could sometimes include government employees or officials or their family members;
- Minutes of public meetings are required to be public without exception, and especially when in the form of a recording or transcript,

those could include passing references to the name or school of someone's child or a spouse's employer, which would conflict with this bill's requirement to keep confidential upon request.

- A government employee's name, position, and information about the employing agency is public without exception, which, when two government employees are married, would conflict with this bill's requirement that a spouse's employer and employer address be kept confidential upon request.

OIP is also concerned that implementation of section 801G-___, HRS, would at best be a **serious practical challenge, and at worst unworkable, for government agencies**. It is not always obvious what documents on an agency's website might have an employee's direct work address listed as a contact, or a bit of personal information about a new or departing employee, including a reference to a family member. While the proposed law would require that a request "specify what protected personal information shall be maintained as private," it does not require specifying which specific documents on a website include that information. Thus, on 72-hours notice, which could include a weekend or holiday, an agency would be required to look at everything it may have put on its website over the years – old newsletters, meeting minutes, correspondence, press releases, submissions of one sort or another – and find any passing references to an employee's child or spouse, or instances where the employee's direct work number was listed as being the contact person, or any other form of protected personal information, and must remove or redact all those documents.

The agency would further need to take steps to ensure that no request for records, even records that would normally be fully public, would be responded to in

the future without first checking whether any of the requested records contains a reference to the employee or family member who has requested confidentiality. The proposed law specifies that a removal request is valid until further notice or the requester's death, so it appears agencies would have to keep an ongoing confidentiality list to refer to whenever they respond to a UIPA request.

OIP also has substantive and technical concerns regarding bill section 3, which sets out a proposed new confidentiality statement to be placed in the UIPA. The UIPA is a disclosure law and except for the government records listed in section 92F-12 that are required to be public without exception, the UIPA provides that government records are public unless one of the UIPA's exceptions applies. Those exceptions are phrased as permissive, not mandatory; an agency may withhold records falling under an exception but the UIPA does actually not require doing so. One of the UIPA's exceptions authorizes withholding records when another law makes those records confidential, but even in that case it would be the confidentiality law, not the UIPA exception, that actually required nondisclosure. **This bill, however, would create a confidentiality provision within the UIPA itself that would require, rather than allow, confidentiality for certain records. As such, it is inconsistent with the UIPA's scheme and purpose, and is also confusing** in that it is stated as an exception to the UIPA's existing exceptions to disclosure (by stating on page 9, line 16 that it applies "[n]otwithstanding subsection (a)"). Normally an exception to an exception to a disclosure requirement would be a situation in which information that could otherwise be withheld under the exception must instead be disclosed, but in this case the exception-to-the-exception mandates confidentiality rather than disclosure,

and thus confusingly implies that the UIPA's exceptions to disclosure are actually disclosure requirements.

In addition to the technical issues with the UIPA provision's placement and wording, **OIP is concerned that the proposed new confidentiality provision set out in bill section 3 is overly broad**, as it is explicitly not limited to "protected personal information" and instead would require agencies to withhold **any** government information that, if disclosed, would expose government officers or employees or their families to harassment, threats, or violence. As this Committee is probably well aware, government agencies sometimes take actions and make decisions that anger people, and the publication or public announcement of those decisions or actions exposes the agency staff to harassment and threats. OIP has been on the receiving end of such threats, as have many other government agencies, but OIP does not believe it would be appropriate for OIP or any other government agency to refuse to disclose its decisions or actions to the public to avoid exposing its staff to harassment and threats. As written, **this broad confidentiality mandate would require agencies to withhold any information about their activities that could result in harassment, threats, or violence, thus imposing upon the general public a large price to pay in lost government accountability for the bad behavior of a few.**

If this Committee wishes to move this measure, **OIP would respectfully recommend that the following amendments be made, beginning with the deletion of bill sections 2 and 3, which amend the UIPA.** OIP would further recommend that proposed section 801G-__(a) be amended at bill page 10 line 10 to **add the following proviso: ". . . and their family; provided that a person or organization shall not include a government agency."** Alternatively, if it is

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this Committee's intent for the provision to apply to government agencies, OIP would recommend that this Committee **increase the time allowed for agencies to search for and remove from their websites any proscribed information**, and to prevent conflicts with the UIPA, would further recommend amending proposed section 801G-__(d) to **add a new category that is not subject to the new law** as follows:

“(7) Records made public under section 92F-12.”

Thank you for considering OIP's testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2686, RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN PUBLIC SERVANTS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 15, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark S. Tom, Deputy Attorney General, or
Stella Kam, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (the Department) provides the following comments on this bill and suggested amendments.

The purposes of the bill are to classify certain personal information held by all state and county government agencies as exempt from disclosure by government under chapter 92F, Hawaii Revised Statutes (HRS), and to create the offense of unlawful publication of personal information that prohibits the disclosure of personal information by a person or organization that intends to cause harm to a public official.

Section 5 of the bill proposes to add a new section titled "unlawful publication of personal information" to chapter 711, HRS, on page 15, line 19, to page 16, line 12. This section lacks the requisite definitions for enforcement of this new criminal offense. Specifically, the terms "organization", "disclose", and "protected personal information" are all defined by new section 801G- (e), HRS, "[f]or the purposes of this section", as proposed to be added to chapter 801G, HRS, by section 4 of this bill, on page 10, line 1, to page 15, line 18, but those terms are not defined in the proposed new section 711- , HRS, and are not defined in section 711-1100, HRS, the definitions section in chapter 711. The Department suggests either including the definition of each term, respectively, by reference "as defined in section 801G- ", or placing those definitions in section 711-1100. The term "public official" will need to be specifically defined in section 711-

1100 or in the new offense section and should be crafted by the Committee based on the protected class this new offense aims to protect. The term "post", on page 16, line 2, will need to be defined in section 711-1100 or be replaced with "post or display" and referenced to the definition set out in section 801G- , by including the wording "as defined in section 801G- ".

Due to the varied and unpredictable nature of the harm or injury that could be encompassed by this offense, the Department suggests replacing "cause reputational harm, emotional injury, or bodily injury that is likely to occur, or threatening to cause bodily injury to that individual" with "harass, annoy, or alarm that individual" on page 16, lines 5-7. Accordingly, with the removal of that wording, the proviso on page 16, lines 9-12, establishing a class C felony for the commission of actual harm, should be deleted. The existing offense in section 707-716(1)(c), HRS, of terroristic threatening in the first degree against a public servant continues to address conduct causing greater harm to public servants. Although conduct resulting in actual bodily injury to a public servant cannot be addressed in this bill due to the limitation to the "disclosure" subject expressed in the bill's title, the Committee could address this type of conduct in another bill by amending section 707-711, HRS, assault in the second degree, to create a protected class involving "public officials" or "public servants" as defined in section 710-1000, HRS.

The Department also notes that section 3 of the bill proposes to amend section 92F-13, HRS, to add a new subsection (b), on page 9, lines 16-20, to prohibit agencies from disclosing "government information" that would subject a public servant or their family or household members to harassment, threats, or violence. Arguably, this new subsection has the effect of requiring agencies to withhold all government records identifying any government information, since disclosure of any government information could potentially expose a public servant or any family member or household member of the public servant to harassment, threats, or violence, thereby exposing government agencies or individuals to criminal prosecution. Clarification of the types of "government information" that should be considered to narrow the types of government records that should be withheld would be desirable.

In addition, it would be helpful to clarify whether this proposed new subsection (b) would allow agencies to withhold the government records presumptively made public in section 92F-12(a), HRS, such as land records containing home addresses, building permit information, water consumption records, and names, addresses, and occupations of borrowers in state and county programs.

We also suggest inserting a comma between "harassment" and "threats" as a technical amendment on page 9, line 20.

Thank you for the opportunity to submit our comments and suggested amendments for this bill.



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second Legislature
2024 Regular Session**

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, February 15, 2024, 9:30 a.m.
State Capitol
Conference Room 016 & Videoconference

WRITTEN TESTIMONY ONLY

by:
Thomas J. Berger
Staff Attorney for the Hawai'i Supreme Court

Bill No. and Title: Senate Bill No. 2686, Relating to the Disclosure of Personal Information of Certain Public Servants.

Purpose: Exempts certain personal information of public servants from government records that are subject to disclosure under the State's Uniform Information Practices Act. Establishes within the State's Address Confidentiality Program protection for public servants that prohibits upon written request from the public servant or representative any person or organization from disclosing certain personal information. Establishes the offense of unlawful publication of personal information that prohibits any person or organization from knowingly disclosing protected personal information of public officials with the intent to cause reputational harm, emotional injury, or bodily injury. Takes effect 9/1/2024.

Judiciary's Position:

The Judiciary strongly supports the intent of this bill. The Judiciary assuredly shares the Committee's concerns about the safety of public servants, and the pressing need for this legislation is detailed in the preamble of SB 2686. In a nutshell, the internet and advancement in



technologies has made access to certain government records nearly instantaneous. But the downside to this ease of access is that bad actors can take advantage of this information to harm public servants and their families.

Respectfully, we urge the Committee to consider the Judiciary's package legislation SB 2379. I will now highlight a few differences between SB 2379 and the instant measure.

First, SB 2379 covers a much narrower group of public servants. See SB 2379 at 4:10-5:17. In contrast, the instant bill covers all current and past employees of the State, and more. SB 2686 at 13.

Second, SB 2379 provides the public with continued access to the subject-government records but with redactions made to the protected personal information of the covered public servants and their families. See SB 2379 at 9:7-16. For example, under SB 2379 the government record with the home address of the covered public servant could still be provided but with the actual home address and other location information fully redacted. Id. In contrast, the instant bill is unclear as to whether it would provide a similar redact-and-disclose process.

In addition, we would note that federal protections for the removal of personal information of federal judges from the internet were recently enacted. Those provisions provided a starting point for the drafting of SB 2379. On December 16, 2022, the United States Congress passed the Daniel Anderl Judicial Security and Privacy Act as part of H.R. 7776, and on December 23, 2022, President Biden signed the bill enacting Public Law No: 117-263 (the Federal Act).¹ The passage was covered extensively by the press.² But the federal legislation only applies to federal judges and their immediate family. It does not apply to state judges. Under the Federal Act any covered information posted on the internet about a federal judge (essentially location information such as a home address) is subject to removal. There is no requirement that the content posted include a threat. In sum, the Federal Act creates a notice-and-removal process whereby a person, business, or association that posts covered information of the federal judge has 72 hours to remove the information after receiving a written request for removal. If the information is not removed, the civil remedies in the Federal Act include declaratory and injunctive relief, as well as penalties and damages.

In conclusion, the Judiciary would like to thank the Committee and its staff for the substantial work and efforts put into this matter, and would respectfully urge the Committee to consider the provisions in the Judiciary's package legislation in SB 2379.

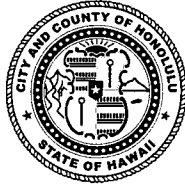
¹ See <https://www.congress.gov/bill/117th-congress/house-bill/7776>

² See e.g., <https://www.reuters.com/world/us/judicial-security-measure-clears-us-congress-part-defense-bill-2022-12-16/>.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
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DEPUTY DIRECTOR
HOPE PO'O

February 14, 2024

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Judiciary
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads, Vice-Chair Gabbard and Committee Members:

SUBJECT: Testimony Expressing Concerns to Senate Bill 2686 (2024)
Hearing: February 15, 2024 at 9:30 a.m., Room 016 and via
Videoconference

The City and County of Honolulu ("City") appreciates the opportunity to testify and provide comments on Senate Bill 2686 ("SB 2686"), relating to the disclosure of personal information of certain public servants.

The City acknowledges that in recent news reports, there have been an alarming trend of increased hostility, threats, and violence nationwide towards government officials, political candidates, and public employees. The City further supports efforts to decrease such incidents by preventing the unnecessary disclosure of personal information of current government officials and employees. However, the City has serious concerns with SB 2686.

On page 9, SB 2686 proposes to add subsection (b) in Section 92F-13, Hawaii Revised Statutes ("HRS"), which states:

(b) Notwithstanding subsection (a), no government information including but not limited to protected personal information, which if disclosed would expose a public servant or any family member or household member of a public servant to harassment threats, or violence, shall be disclosed.

HRS Chapter 92F does not require the requestor who is seeking the disclosure of government records to reveal the purpose of or reasons for the request. Because there is no such requirement, government agencies would not know if the disclosure of government records in response to a 92F request "would expose a public servant or any family member or household member of a public servant to harassment threats, or violence, . . ." Because a

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Judiciary
February 14, 2024
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requestor has no obligation to disclose the reason for the request for government records or reveal whether he or she has any ill will to a public servant, or the public servant's family member or household member, a government agency in receipt of a 92F request cannot foresee the consequences of a requestor's use or dissemination of information contained in the government records to third parties who may bear ill intent towards a public servant, his or her family or household members.

Moreover, proposed Section 801G-__(c) in SB 2686 could be interpreted to create strict civil liability for an inadvertent disclosure of "protected personal information" in responding to a 92F request. Such provision will, in turn, expose government agencies to frequent litigation and unprecedented liability for monetary damages, and require the State and the counties to redirect and reprioritize resources in the defense of such claims.

Therefore, consideration should be given to amending SB 2686 to eliminate the recovery of civil damages against government agencies and to delete proposed subsection (b) to HRS § 92F-13.

On pages 14-15, in proposed HRS § 801G-__(e), SB 2686 proposes to define "protected personal information" to include "property tax records," which is overly inclusive. Real property records include not only the name of the owner and the site address, but also includes non-personal information such as assessments and taxes levied, description and historical information of the land and improvements, and comparable sales information, among other factual information of real property, which should not be exempt from disclosure. By broadly including "property tax records" in the definition of "protected personal information" without limitation, SB 2686 would frustrate the City's efforts to promote transparency in the manner in which real property is assessed and taxed.¹

HRS § 92F(a)(5) provides that real property tax records must be disclosed. However, under the definition of "protected personal information," the entire property tax record would be exempt from disclosure upon the receipt of a written request by a covered person. The City posits that there should be a balance between protecting certain personal information of covered persons and the policy favoring government transparency and accountability. The City suggests that the definition of "protected personal information" be amended from the blanket "property tax records," to "the covered person's name and address(es) contained in property tax records."

The City also requests the inclusion of another exclusion relating to administrative hearings and appeals in HRS § 806G-__(d) on pages 12 and 13. For example, HRS § 91-9.5 and Section 8-12.7(i) provide for the publication of notice of hearings for contested hearings and

¹ The City's real property tax information webpage, which can be accessed at <https://www.qpublic.net/hi/honolulu/search.html>, does not have a name search function. The general public may only search by tax map key or address. Taxpayers, the real estate, banking and mortgage industries utilize the City's real property tax information webpage for tax appeals, real estate transactions and financing transactions, respectively.


The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
and Members of the Committee on Judiciary
February 14, 2024
Page 3

tax appeals. The prohibition from publishing the covered person's names in the notices of hearing may result in the deprivation of the right to due process – notice and opportunity to be heard.

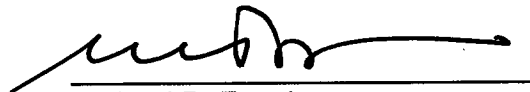
Finally, in light of the seventy-two (72) hour compliance period, the City further suggest adding language that would allow (but not necessarily require) affected government agencies to establish procedures or rules describing the method of delivery and the type of information necessary to ensure that protected personal information being redacted or cloaked is in fact of the covered person making the request. As an example, the real property tax office would need the tax map keys of all of the covered person's real property, but the provision of a tax map key would not assist the motor vehicle and drivers' licensing division in identifying the correct covered person or his/her family members. Furthermore, such procedures or rules may also require the covered person to update his or her records when circumstances change, such as a change in ownership of records, or name change (marriage or divorce).

Thank you for the opportunity to provide testimony, and for your attention to the City's concerns regarding SB 2686.

Sincerely,


Andrew T. Kawano
Director

APPROVED:


Michael D. Formby
Managing Director



Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair

**RE: Testimony in Opposition to S.B. 2686, Relating to the Disclosure of
Personal Information of Certain Public Servants.**

Hearing: February 15, 2024 at 9:30 a.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to respectfully submit testimony **in opposition to** of S.B. 2686.

We respectfully suggest reworking this measure to focus it more on curbing the malicious public display of protected personal information and less on limiting public access to information. In this regard, a possible solution to address “doxing” (publishing private identifying information on the internet with the intent to cause harm), without interfering with legitimate access and use of government information, is simply to reduce or eliminate electronic access to certain records, while maintaining in-person access. This straightforward approach, one of “practical obscurity,” is already employed by some federal courts and could help strike the necessary balance between these competing interests.

We strongly support the intent to protect personal information from being used to harass or threaten individuals. This protection, however, should not be limited to just one class of individuals (government employees), as proposed here. There are many individuals who face legitimate risks of doxing. As written, for example, S.B. 2686 would entitle a public school teacher to protection, but not a teacher at a private school.

The biggest problem with this bill is the creation of a new exception to the public records law that has a significant potential for misuse. The proposed UIPA exception broadly encompasses all “government information” *not limited to* “protected personal information,” and the latter term is not narrowly defined to serve a legitimate interest. This exemption could be construed, for example, to justify withholding personnel information that is of legitimate public concern – like a critical performance audit of a high-level government official – under the guise of potential harassment.

Existing law already provides robust UIPA exemptions that address the intent of S.B. 2686 – including exemptions for privacy (including information that “if disclosed would



create a substantial and demonstrable risk of physical harm to an individual”) and frustration of a legitimate government function. HRS § 92F-13(1) and -13(3); HRS § 92F-14(b)(10). In other words, protected personal information is *not* being disclosed through UIPA public records requests. *E.g.*,

https://www.uscourts.gov/sites/default/files/statement_of_judge_roslynn_mauskopf_december_2021_0.pdf; https://techpolicy.sanford.duke.edu/wp-content/uploads/sites/4/2023/07/Sherman-Justin_WrittenTestimony_MA_Legislature.pdf. We thus ask that Section 2 and Section 3 of this measure be deleted.

Several key terms are overly broad or undefined:

- The definition of protected personal information “includes” a wide range of information for which legitimate uses abound. It includes, for example, the identity of a judge’s partner and that partner’s employer. Currently, judicial disclosures include the identity of the partner and the partner’s employer. (An exemplar is attached.) This allows for public scrutiny of information needed to identify actual and perceived judicial conflicts of interest. And it includes the “direct telephone number to a covered person’s private office or chambers,” which creates practical problems for persons who have a legitimate need for this information (such as litigants, attorneys, and others interested in access to the courts).
- The definition of family includes former roommates and romantic partners. This is far broader than analogous federal judicial security legislation – the Daniel Anderl Judicial Security and Privacy Act of 2021 – which limits the definition to immediate family (spouse, child, parent, or other familial relative whose permanent residence is the same).
- “Post or display” broadly includes “communicating to another.”
- Although we support the intent of Section 5 to create the offense of unlawful publication of protected personal information, the terms “reputational harm” and “emotional injury” are subjective and undefined. There is significant potential for abuse if the threat of criminal penalties is used to suppress information that is critical of government officials and may cause them “reputational harm” or “emotional injury” but in no way threatens their safety.

Senate Committee on Judiciary
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Additionally, to allow for legitimate news reporting and mitigate potential chilling effects on the press, we suggest adding a “newsworthiness” exception to the civil and criminal prohibitions proposed by Section 4 and 5. As an example, S.B. 2379 (2024) permits the “display on the internet of the protected personal information of a covered person or their family if the information is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.”

Thank you again for the opportunity to testify in opposition S.B. 2686.



February 14, 2024

SIIA Written Testimony on HI SB 2686

We are writing to express the Software & Information Industry Association’s (SIIA’s) opposition to SB 2686 because of its First Amendment shortcomings. SIIA is a trade association representing roughly 375 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information; creators of software and platforms used by millions worldwide; and companies specializing in data analytics and information services. Our mission is to protect the three prongs of a healthy information environment essential to that business: creation, dissemination and productive use.

When California considered its signature consumer privacy law, the original version would have violated the First Amendment because it prevented entities from collecting, processing, and disseminating certain types of publicly available information (PAI). This is because the Supreme Court has made clear that “the creation and dissemination of information is speech for First Amendment purposes.” A state may not infringe these rights to protect a generalized interest in consumer privacy. These speech-related concerns were raised by SIIA and others, and since then, every piece of enacted privacy legislation provides an exemption for PAI as well as statutory exemptions to enable critical public functions. Without that language, these privacy laws would be facially unconstitutional.

SB 2686 has the same basic defects. A vibrant, free-flowing public domain where people can obtain accurate, timely information is essential to a functioning democracy and enables a variety of important activities. As drafted, SB 2686 would produce unintended and unworkable policy outcomes.

Personal information is disclosed pursuant to authorizations in federal law for a number of important reasons, including fraud prevention, legal compliance and enforcement of illegal activity, as part of loans, credit, and other financial transactions. All types of government employees have personal lives outside of their employment where personal information is used during the course of securing a loan, buying a car, or getting insurance. Personal information is also shared by companies with government entities for the purposes of child support enforcement, tax evasion, benefits assessment, and a host of other reasons including retirement benefit outreach to beneficiaries, health alerts, and constituent outreach.

Failing to exempt PAI in SB 2686 threatens to undermine all of these societally beneficial uses. As explained above, this approach is a marked departure from comparable privacy laws and creates implementation challenges – including lacking exemptions for legal compliance, fraud prevention, GLBA, HIPAA, DPPA, and FCRA-regulated data. In addition, the approach to PAI in the bill renders it content discriminatory, and thus unconstitutional. Protection of privacy is a legitimate legislative priority, but must be balanced against constitutionally guaranteed speech

interests. We thank you very much for your consideration, and would be happy to discuss any of these issues further with you, if helpful.

Respectfully submitted,

Anton van Seventer
Counsel, Privacy and Data Policy
Software & Information Industry Association





COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: February 14, 2024
To: Members of the Hawaii Legislature
Re: **Comments on SB 2686 (the Bill)**

Who We Are

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your state. Collectively, CSPRA members alone employ over 75,000 persons across the U.S. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars and employs millions of people. Our economy and society depend on value-added information and services that includes public record data for many important aspects of our daily lives and work, and we work to protect those sensible uses of public records.

The Bill Raises Substantial Public Records and Constitutional Issues

As the Bill is so broad in its coverage and the amount of time to respond to the Bill so short; we will only offer a summary of our conclusions rather than a more detailed redlining of the bill. We have been working extensively on this topic and have prepared a detailed report on a better approach to increasing the safety of public employees and reducing the risk of harm in a more effective and comprehensive way. We would be happy to share that paper and research if there is interest. Our summary of conclusions is as follows:

- Limiting access to the address data on public facing websites has practical, cost, public oversight, and free speech implications.
- Redacting addresses is not an effective way to address the rising threats against public servants and amounts to “security theater” rather than real increases in security and reduction of risks.
- Batch requests of what can be thousands of requests submitted by third parties cannot be validated as being legitimately sent by the subject of a record and addressed within databases within 72 hours.
- The actual intent to perpetrate or incite the harms of harassment, violence, emotional distress, and the like needs to be an element of any crime.

- A more thorough study and planning process to address threats to public employees is needed and should be done before passing legislation.

We Support Limiting the Bill to Publication with the Intent to Harm If the Bill Advances

If the legislature decides to move ahead before a thorough study and planning process is completed as noted above, we suggest limiting the Bill to what is in Section 5 and limiting that to publication and not making mere disclosure a crime at this time. There are so many needs for disclosing the data for various lawful and valuable purposes. A more complete exemption list and informed consent process is needed before criminalizing mere disclosure on a non-public website or service.

Public Records Help Provide Essential and Valuable Services to State Residents, Businesses, and Government

We want to take this opportunity to point out that many persons and entities access and add value to the records they receive from public sources. They use these public records for a variety of personal, socially desirable, and essential civic and governmental purposes. On our website www.cspra.org we have an infographic and video that summarizes the benefits and uses of public information in the everyday lives of state residents and businesses. You will see that the information in the public record is foundational to many important life events and transactions of your state's residents and its public employees.

Protect Legal and Beneficial Uses of Public Records

Information is so intricately embedded in so many aspects of life and commerce that it is difficult to predict all the ways a change in information policy will affect various people, products, services, uses, and government functions. CSPRA has tracked such policies over the last three decades and we often see many unintended consequences of limits on access and use of public records. This often results in a long list of frequently revised exceptions. The root cause of such unintended consequences is the attempt to limit access to public records and public information rather than focusing on bad actors and acts that the society wants to regulate.

Thank you for your consideration of our input.

Richard J. Varn
Executive Director
Coalition for Sensible Public Records Access

San Antonio, TX
Email: cspra@cspra.org
Cell : (515) 229-8984

A non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, commercial, and societal benefit.



Senate Committee on Judiciary
Chair Karl Rhoads, Vice Chair Mike Gabbard

Thursday, February 15, 2024, 9:30 am Public Hearing in Conference Room 016 on
SB 2686, RELATING TO DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN
PUBLIC SERVANTS

TESTIMONY

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

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii opposes SB 2686.

SB 2686 prohibits disclosure of government information that might incite or facilitate harassment, threats, or violence against public servants, their families, or their households. Under SB 2686,

... no government information including but not limited to protected personal information, which if disclosed would expose a public servant or any family member or household member of a public servant to harassment threats, or violence, shall be disclosed.

The League supports disclosure of government information under Sec. 84-17, Sec. 92F-12, and Sec. 92F-14(a), HRS, regardless of whether disclosure might incite bad public behavior. However, the League would also support amendment of Sec. 92F-14(b)(10), HRS, and adoption of rules, to clarify which "protected personal information" should be redacted so as not to facilitate harassment, threats, or violence.

Thank you for the opportunity to submit testimony.

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 JUDICIARY
ON
SENATE BILL NO. 2686

February 15, 2024

9:30 A.M.

Conference Room 016 and VIA Videoconference

RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN
PUBLIC SERVANTS.

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

S.B. 2686 proposes to exempt certain personal information of public servants from government records that are subject to disclosure under the State's Uniform Information Practices Act (UIPA). The Employees' Retirement System (ERS) Board of Trustees supports this bill.

The ERS believes it is crucial to have protections for public servants to have the right to not disclose or make publicly available content that includes personal information of themselves and their family.

The proposal would ensure the privacy, security, health and safety of public servants, including members, employees, retirees, and the Board of Trustees of the ERS.

Thank you for the opportunity to provide testimony on SB2686.



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>



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

TechNet Southwest | Telephone 505.402.5738
915 L Street, Suite 1270, Sacramento, CA 95814
www.technet.org | @TechNetSW

February 13, 2024

Senator Karl Rhoads
Chair, Committee on Judiciary
Hawai'i State Capitol, Room 228
Honolulu, HI

RE: SB 2686 (Rhoads) – Personal information

Dear Chair Rhoads and Members of the Committee,

TechNet submits this letter in respectful opposition to SB 2686, which would greatly expand prohibitions on the disclosure of personal information of past or present public employees and their family.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet understands and supports the intent of protecting public servants and their families from harassment and abuse. We have concerns that this bill would have unintended consequences for beneficial disclosures of this type of information necessary for participation in modern society.

In contrast to prohibiting the public posting of personal information of judges, as other bills introduced this session do, SB 2686 goes further to prohibit the "*disclosure*" of personal information related to a past or present public employee or their family by a person or organization. This is an enormous class of people as you only need to be a family member, roommate, or have had a dating relationship with a past or present government employee or have worked for a government agency or board in some capacity yourself to restrict sharing or even transfer of your personal data.

Personal information can be disclosed pursuant to authorizations in federal law for many important reasons, including fraud prevention, legal compliance and enforcement of illegal activity. Government employees have personal lives outside of their employment where transfer of personal information is necessary for identity

verification as part of a financial transaction, securing a loan, buying a car, or getting insurance.

Personal information is also shared by companies with government entities for the purposes of child support enforcement, tax evasion, benefits assessment, and a host of other mundane reasons including retirement benefit outreach to beneficiaries, health alerts, and constituent outreach.

This bill would prohibit these types of important disclosures without critical exemptions recognized in other state and federal privacy laws. We suggest pursuing legislation that protects public officials from harassment and abuse directly, without incorporating the underlying issues with disclosure of data already regulated by federal law or used for the purposes of legal compliance or fraud prevention that are present in SB 2686 as currently drafted.

Thank you for your consideration. If you have any questions regarding our position please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dylan Hoffman', written in a cursive style.

Dylan Hoffman
Executive Director for California and the Southwest
TechNet



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-Second Legislature, State of Hawaii
The Senate
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

February 15, 2024

S.B. 2686 — RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN PUBLIC SERVANTS.

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2686 which exempts certain personal information of public servants from government records that are subject to disclosure under the State's Uniform Information Practices Act and establishes within the State's Address Confidentiality Program protection for public servants that prohibits upon written request from the public servant or representative any person or organization from disclosing certain personal information and establishes the offense of unlawful publication of personal information that prohibits any person or organization from knowingly disclosing protected personal information of public officials with the intent to cause reputational harm, emotional injury, or bodily injury.

Today, public servants are faced with unnecessary scrutiny and harassment by the community for just doing their job. With the use of social media, personal and sensitive information can spread like wildfire on platforms/pages that attract thousands of viewers. A lot of public servants are already underpaid and overworked and at some point, may have to contend with physical, verbal, or cyber harassment. Not only do these negative actions effect their jobs, but also their personal lives – including their family and mental health. No human-being, let alone an average 'line-worker' should have their personal information blasted online without their consent or be physically harassed at their home for just earning a humble paycheck. It's inappropriate, unacceptable, and not right. We appreciate the intent of this measure because it protects the personal information of public servants. It also establishes penalties for bad actors who spread personal information online. We are optimistic that preventing the leakage of personal information will ease anxiety for public servants who fear that the nature of their job may result in unexpected personal attacks.

Thank you for the opportunity to provide testimony in support of S.B. 2686.

Respectfully submitted,

Randy Perreira
Executive Director



February 14, 2024

Senator Karl Rhoads
Chair, Committee on Judiciary
Hawai'i State Capitol, Room 228
Honolulu, HI 96813

RE: Amendment Request – Senate Bill 2686

Dear Chair Rhoads and Members of the Committee:

On behalf of RELX, a world-leading provider of technology solutions that support the government, insurance, and financial services industries, I would like to start by expressing support for the primary goal of Senate Bill 2686 which seeks to provide greater protections for public officials in response to recent threats and inappropriate communications targeted towards these individuals.

We have not had concerns with similar legislative measures considered by this committee in both the 2022 and 2023 legislative sessions that likewise sought to address this troubling issue by prohibiting public postings of personal information with the intent to intimidate, threaten injury, or harm a covered party or their immediate family. However, we must raise objections to a new provision in Senate Bill 2686 not included in previous measures which would establish broad restrictions on “disclosure” of personal information that run afoul of First Amendment protections of the public and the press with regard to government records, as well as conflict with existing federal sectoral privacy laws that currently authorize disclosure of personal information in compliance with permissible purposes outlined in the federal implementing statutes and subsequent regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), the Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (GLBA), and the federal Driver’s Privacy Protection Act (DPPA).

We believe that narrowly tailored amendments as suggested below to address the scope of the bill and clearly identify the class of persons to be covered including public servants and their immediate family will improve the bill by ensuring that conflicts with existing privacy laws related to disclosure of personal information are resolved and prevent unintended consequences that could inadvertently impact individuals outside of their government employment when they are participating in activities that require transfer of personal data such as making a financial transaction, authenticating their identity, or purchasing insurance.

By differentiating between an activity that would result in personal information becoming publicly available and thus available for bad actors to utilize, and one that is authorized by federal law or commenced to protect individuals acting in the economy such as for fraud prevention and anti-money laundering purposes, the bill can strike the appropriate balance to protect public servants from targeted threats, while ensuring such officials and their family can participate normally in regular economic transactions central to daily life.

Further, these amendments ensure that state and local agencies will continue to be able to receive personal information from businesses and non-profits with regard to the administration of government programs which require personal

information for investigations related to child support enforcement, foster youth placement, tax evasion, beneficiary outreach to retirees, and entitlement assistance program eligibility.

We appreciate your thoughtful consideration of the proposed amendments which align with recognized exemptions in federal and state privacy laws and welcome a continued dialogue with your office on this important legislation.

Sincerely,

London Biggs

London Biggs
Director, State Government Affairs - West
RELX

Mock-up for Review. **Black Font** is existing law. **Green font is proposed language of S.B. 2686 amending existing law.** **Black Font with Yellow Highlighting** is RELX amendment language to be added. **Red Font** is RELX amendment language striking bill language.

SECTION 2. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

(1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;

(2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section [~~92F-13(1);~~] 92F-13(a)(1);

(3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;

(4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;

(5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;

(6) Results of environmental tests;

(7) Minutes of all agency meetings required by law to be public;

(8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;

(9) Certified payroll records on public works contracts except social security numbers and home addresses;

(10) Regarding contract hires and consultants employed by agencies:

(A) The contract itself, the amount of compensation;

(B) The duration of the contract; and

(C) The objectives of the contract,

except social security numbers and home addresses;

(11) Building permit information within the control of the agency;

(12) Water service consumption data maintained by the boards of water supply;

(13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;

(14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-639, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;

(15) Information collected and maintained for the purpose of making information available to the general public; and

(16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public."

SECTION 3. Section 92F-13, Hawaii Revised Statutes, is amended to read as follows:

"§92F-13 Government records; exceptions to general rule. (a) This part shall not require disclosure of:

(1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

(2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that [~~such~~] the records would not be discoverable;

(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;

(4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and

(5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

(b) Notwithstanding subsection (a), no government information including but not limited to protected personal information, which if disclosed would expose a public servant or any family

member or household member of a public servant to harassment threats, or violence, shall be disclosed."

SECTION 4. Chapter 801G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§801G- Publication and disclosure of public servants' personal information;

restrictions. (a) Except as otherwise provided in subsection (d), upon receipt of a written request from a covered public servant, a person or organization shall not ~~disclose or~~ make publicly available content that includes the protected personal information of the covered public servant and their **immediate** family. After a person or organization has received a written request, the person or organization shall:

(1) Remove the protected personal information from the Internet within seventy-two hours;

(2) Ensure that the protected personal information is not made available on any website or subsidiary website controlled by that person or organization; ~~and~~

~~(3) Not distribute, give, or transfer the protected personal information to any other person or organization through any medium.~~

(b) A written request pursuant to this section shall be valid if the covered public servant or a ~~representative of the covered~~ public servant's employer submits a request in writing directly to a person or organization; provided that the covered public servant has given written consent ~~to the representative~~. A written request shall specify what protected personal information shall be maintained as private. A written request is valid until the covered public servant provides the person or organization with written permission to release the protected personal information, or until the covered public servant's death.

(c) If a person or organization violates this section, the covered public servant or **immediate** family member whose protected personal information is made public as a result of the violation may bring an action seeking damages as well as injunctive or declaratory relief in any court of competent jurisdiction. If the court finds in the plaintiff's favor and or grants injunctive or declaratory relief, the person or organization responsible for the violation shall be required to pay the costs and reasonable attorney's fees of the covered public servant or their **immediate** family.

(d) This section shall not apply to:

(1) Protected personal information that the covered public servant or family member voluntarily publishes on the Internet after the effective date of this chapter;

(2) Records pertaining to property presumed abandoned pursuant to chapter 523A, the Uniform Unclaimed Property Act;

(3) Information subject to disclosure pursuant to a court order;

(4) Filings made pursuant to chapter 490, the Uniform Commercial Code, and recorded judgments;

(5) Copies of recorded instruments affecting title to real property that contain protected personal information that are provided by the bureau of conveyances to a title insurance company that has requested to access the record in its ordinary course of business; and

~~(6) Records a government agency provides to any other government entity pursuant to this chapter; provided that this paragraph shall not provide an exemption for persons or organization to disclosure information.~~

(6) Publicly available information that is lawfully made available from federal, state, or local government records; or information that a person or organization has a reasonable basis to believe is lawfully made available to the general public through widely distributed media

(7) Protected health information that is collected by a covered entity or business associate governed by the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and regulations adopted under that Act and codified as 45 C.F.R. parts 160 and 164, and additional information collected by a covered entity, to the extent the covered entity maintains such information in the same manner as protected health information

(8) Personal information collected, maintained, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et seq.*

(9) Personal information collected, maintained, sold, or disclosed pursuant to the Driver's Privacy Protection Act, 18 U.S.C. § 2721,

(10) An activity that is subject to 15 U.S.C. 1681 (Fair Credit Reporting Act) that involves the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency; a furnisher of information, who provides information for use in a consumer report, or by a user of a consumer report, to the extent the information is used as authorized under 15 U.S.C. 1681 (Fair Credit Reporting Act);

(11) Personal information collected, maintained, sold or disclosed for purposes of compliance with federal, state, or local laws, rules, or regulations;

(12) Personal information collected, maintained, sold or disclosed to prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any activity that is illegal under Hawaii state law or federal law; preserve the integrity or security of systems; or investigate, report, or prosecute those responsible for any such action that is illegal under Hawaii state law or federal law.

(e) For purposes of this section:

"Covered public servant" means:

(1) Any person employed or retired, appointed, or volunteering for the State or any of its political subdivisions or agencies;

(2) Members of boards and commissions who are appointed and confirmed pursuant to section 26-34, and other individuals including volunteers who are responsible for or assisting with government responsibilities;

(3) Any active, formerly active, or retired justice of the United States Supreme Court, judge of the United States Court of Appeals, or judge or magistrate judge of the United States District Court or United States Bankruptcy Court, provided the person resides in the State.

~~"Disclose" means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, post, publish, distribute, circulate, disseminate, present, exhibit, advertise, or offer by any means including but not limited to electronic transmission and on any medium including but not limited to the Internet.~~

"Immediate Family" means spouses or reciprocal beneficiaries, ~~former spouses or former reciprocal beneficiaries, persons who have a child in common,~~ parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons

~~who have or have had a dating relationship~~ siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or legal guardians.

"Government agency" means any department, division, board, commission, public corporation, or other agency or instrumentality of the State or any county.

"Home" means a permanent residence and any secondary residences affirmatively identified by the covered public servant but does not include a work address or investment property.

"Organization" means an association or entity including a charitable, religious, or nonprofit organization; for-profit organization; or business entity, formed for a specific purpose.

"Protected personal information" includes a home address and any property ownership information; contact information including but not limited to a home telephone number, cellular phone number, and direct telephone number to a covered person's private office or chambers; personal email address; directions to the covered public servant's or a family members' home; photograph of a covered public servant's or a family members' home that legibly displays the address or otherwise identifies the location; photograph of a covered public servant's or family member's vehicle that legibly displays the vehicle license plate number; the names and locations of schools and day care facilities attended by the children of the covered public servant; identity of children of the covered public servant that are under the age of eighteen; voter registration information; the contents of any application for absentee voter's ballots; property tax records; and the name and address of the employer of any family member.

"Publicly available content" means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person or entity, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a request pursuant to chapter 92F.

"Post or display" means to communicate to another or to otherwise make available to the general public."

SECTION 5. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§711- Unlawful publication of personal information. (a) No person or organization shall knowingly disclose or post protected personal information including but not limited to the home address or telephone number of any public official with the intent to cause reputational harm, emotional injury, or bodily injury that is likely to occur, or threatening to cause bodily injury to that individual.

(b) A violation of this section is a misdemeanor; provided that a violation of this section that results in the actual reputational harm, emotional injury, or bodily injury of the public official or the public official's spouse or child, is a class C felony."

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on September 1, 2024.



Randy Perreira
President

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The Thirty-Second Legislature
The Senate
Committee on Judiciary

Testimony by
Hawaii State AFL-CIO

February 15, 2024

TESTIMONY ON SB2686 – RELATING TO THE DISCLOSURE OF PERSONAL INFORMATION OF CERTAIN
PUBLIC SERVANTS

Chair Rhoads, Vice Chair Gabbard, and members of the committee:

The Hawaii State AFL-CIO is a federation of 74 affiliate labor organizations who represent over 68,000 union members within the State of Hawaii. The Hawaii State AFL-CIO serves its affiliates by advocating for workers and their families before the state legislature and other branches of state and county government.

The Hawaii State AFL-CIO **supports** SB2686, which addresses the critical need to safeguard the personal information of public servants. In recent years, there has been a disturbing rise in acts of violence and harassment targeting elected officials, judges, and other public servants, both locally and nationwide. These individuals, entrusted with important decision-making functions, are increasingly vulnerable to threats and attacks, jeopardizing their safety and well-being.

This bill takes proactive measures to protect public servants and their families by exempting certain personal information from government records subject to disclosure under the State's Uniform Information Practices Act. Furthermore, the bill establishes a robust Address Confidentiality Program to shield public servants from the unlawful disclosure of their personal information, such as home addresses, contact details, and other identifying information.

Additionally, this bill introduces penalties for the unlawful publication of protected personal information, ensuring accountability for individuals or organizations seeking to cause reputational harm, emotional distress, or bodily injury to public officials.

The Hawaii State AFL-CIO recognizes the importance of preserving the safety and security of our public servants as they carry out their duties to serve the people of Hawaii. This bill provides essential protections to enable public servants to fulfill their roles effectively, without fear of intimidation or violence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Perreira".

Randy Perreira
President



AMERICAN JUDICATURE SOCIETY

Advocating for a fair system of justice

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Testimony to the Thirty-Second Legislature
2024 Regular Session
Senate Committee on Judiciary
Hearing: Thursday, February 15, 2024 (9:30 a.m.)

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

FROM: American Judicature Society Ad Hoc Committee on Judicial Security

RE: SB2686
Relating to the Disclosure of Personal Information Associated with Certain
Public Servants

The American Judicature Society (AJS) Ad Hoc Committee on Judicial Security writes in support of the intent of SB2686 and notes its support of SB2379.

SB2686 would protect certain personal information of public servants in federal, state, and local government. While the safety of every public servant is inarguably a worthwhile goal, our testimony today is focused on SB2686's protections for judges. It is the AJS's mission to secure and promote an independent and qualified judiciary and a fair system of justice.

As the previous Legislature recognized, steps must be taken to protect our state's judges. SB2686 provides some of these long-overdue protections by prohibiting the unauthorized disclosure of judges' personal information—such as a home address or telephone number. Similar protections have already been adopted by Congress and numerous states nationwide. It is time for Hawai'i to do the same.

In recent years, federal and state court judges across the country have been barraged by a growing number of inappropriate communications and threats. The number of threats and inappropriate communications directed toward federal judges and other protected persons (including federal prosecutors and court officials) rose from 592 in 2003, to 4,511 in 2021. Between 2019 and 2022, the number of substantiated threats against federal judges rose from 178 to 311.

Here in Hawai'i, the trend is equally worrisome. The number of threats and inappropriate communications reported by state court judges more than quadrupled between 2017 and 2022. Since 2012, that number increased tenfold.

Just in December, it was reported that a woman broke into the home of a state court judge to serve on the judge a summons. Fortunately, there was no reported harm to the judge or the judge's family.

The experiences of U.S. District Judge Susan Oki Mollway also illustrate the appalling threats that our judges face. More than ten years after Judge Mollway sentenced a man to twenty-seven months' imprisonment, the man called Judge Mollway and threatened to assault her and to "blow [her] God [damn] brains out." Luckily, the caller never acted on these threats.

The threats confronted by judges, however, are not always empty. Details of horrific attacks on judges have consumed recent headlines. Last October, a state court judge in Maryland was fatally shot outside his home hours after awarding custody of the suspected shooter's children to his estranged wife. In June, a retired state court judge in Wisconsin was shot and killed in his home by a man whom the judge had sentenced more than fifteen years earlier. Finally, in July 2020, a man opened fire at the home of a federal district court judge in New Jersey after appearing in a case before the judge months earlier. During the shooting, the judge's son was killed, and her husband was critically wounded.

Currently, Hawai'i law does not specifically protect judges' personal information. Recognizing this void, in October 2023, the AJS issued a report encouraging the Legislature to introduce and enact a bill protecting judges' personal information.¹

Given the threats and attacks faced by judges, President Biden signed a law in December 2022—enacted with broad bipartisan support in both houses of Congress—protecting federal judges' personal information from appearing online. But the federal legislation only applies to federal judges and their immediate family. It does not apply to state judges. The law is limited to federal judges, and it does not apply to the posting of a judge's personal information by state or local agencies. A growing number of states—including Delaware, Illinois, and New Jersey, to name a few—have enacted laws protecting their judges.

We respectfully request that SB2686 incorporate protection provided under the Federal Act. More specifically, under the Federal Act any covered information posted on the internet about a federal judge (essentially location information such as a home address) is subject to removal. There is no requirement that the content posted include a threat. In sum, the Federal Act creates a notice-and-removal process whereby a person, business, or association that posts covered information of the federal judge has 72 hours to remove the information after receiving a written request for removal. If the information is not removed, the civil remedies in the Federal Act include declaratory and injunctive relief, as well as penalties and damages.

As Chief Justice Recktenwald, Chief Judge Watson, and Judge Clifton stated in a recent piece in the Honolulu Star-Advertiser, "[o]ur system of government depends upon judges being able to administer justice based on the law and facts before them, without fear of harm to them or their families." Rather than waiting for a tragic incident to lead our local news broadcasts, we should embrace this opportunity to protect our judges, our judicial system, and our democracy.

¹ The AJS report is available at <https://americanjudicaturesociety.org/wp-content/uploads/2023/11/11.27.23-REVISED-AJS-Report-Protecting-Personal-Information-of-Hawaii-Judges.docx>.

Thank you for the opportunity to offer this testimony.

American Judicature Society
Ad Hoc Committee on Judicial Security

SB-2565

Submitted on: 2/14/2024 4:44:09 PM

Testimony for JDC on 2/16/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lois Crozer	Individual	Support	Written Testimony Only

Comments:

I support this bill because if dogs are on a leash they should be able to go with their owners in a public place. I also love this bill because there are those bad actors who don't pick up after their dog, and so it reflects badly on all dog owners. There definitely should be penalties, at least the threat of a penalty so that one dog owner can have the backing of the bill when they confront another owner who ignores public health.