



UNIVERSITY OF HAWAII SYSTEM
‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony
Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Judiciary & Hawaiian Affairs
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HB 131 – RELATING TO RESEARCH

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The University of Hawai'i (University) respectfully submits testimony in opposition to HB 131 as presently drafted. This bill creates another exception to the privacy protections and protections of government's ability to function provided under HRS § 92F-13 (Government records; exceptions to general rule).¹ While government transparency is clearly an important goal, concern for privacy protections and government operations and efficiency warrant careful consideration before advancing this measure.

HB 131 provides definitions of "research" and "researcher" that are so overly broad and subject to abuse by "researchers" that the "exception" it provides could swallow the whole of HRS 92F-13, which protects everything from personal privacy interests, to drafts maintained by agencies the disclosure of which would frustrate legitimate government function, to the draft working documents of legislative committees. The

¹ HRS §92F-13, provides as follows:

Government records; exceptions to general rule. 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 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.

choice to characterize requestors of information as “researchers” tries to pretend that such requests are to meet some specialized purpose other than to request 92F public records. The bill should more adequately define what is “non-commercial” use or objective so that government agencies can validate the applicability of the requestor(s). The bill, which broadly defines “researcher” to include entities such as “news media, nonprofit organization[s], or other similar organization[s],” is silent as to who pays the costs for compiling and anonymizing the data, and does not provide any protections against abuse of such “research” requests. HRS Chapter 92F currently provides for a balancing of legitimate government functions and privacy interests, and in the name of “research,” HB 131 would severely compromise this balance.

Specifically with respect to privacy and government operations concerns, while the bill defines “research purpose” as involving aggregate or anonymous information, this presumes the government agencies will be required to redact protected information, since no government agencies could turn over sensitive or identifiable data to an outside entity, including news media, and “trust” that that entity will redact and /or anonymize sensitive data in compliance with applicable State and federal laws pertaining to sensitive records. As just one example, existing federal laws, such as the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), impose strict safeguards for the handling and reporting of sensitive data. The University has established robust policies and procedures to govern the use of institutional data for research, consistent with State and federal laws. The University designed these policies to protect privacy and ensure compliance with legal standards.

Please note that even the ability of State agencies to research the records of other State agencies is restricted, requiring the requesting agency to honor the “same restrictions on disclosure of the records as the originating agency.” HRS Section 92F-19(b). HB 131 imposes no such obligations on the purported “researcher.”

In addition, and given the above presumption that it will be government agencies which will need to do the necessary aggregation and anonymization, HB 131 appears to require compilations be done by the government agencies, in direct conflict with HRS Section 92F-11(c) which plainly states that “an agency shall not be required to prepare a compilation or summary of its records.” HB 131’s provisions as written will conflict with these established frameworks, creating operational uncertainty and exposing the University and other State agencies to legal challenge.

While the University recognizes the value of research in advancing public knowledge and informing policy, HB 131 raises significant operational and privacy concerns that require further examination. The absence of clear definitions of “research” and “research purposes”, the lack of safeguards that comply with federal and State laws, the inability to reconcile HB 131 with the legal framework set forth in HRS Chapter 92F, and the substantial operational challenges associated with implementing the bill underscore the need for caution.

Thank you for the opportunity to provide testimony.