



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 Government Operations
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by

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SB 720 – RELATING TO GOVERNMENT RECORDS

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

Thank you for the opportunity to testify on this measure. The University of Hawai'i strongly supports SB 720.

Pursuant to [SCR 192 \(2022\)](#), the Working Group to Develop Recommendations for the Treatment of Deliberative and Pre-Decisional Agency Records (“Working Group”) has worked diligently and collaboratively to develop recommendations for a new Uniform Information Practices Act (UIPA), codified as Chapter 92F of the Hawai'i Revised Statutes (HRS Chapter 92F) statutory exception and other recommendations to reasonably balance the public's interest in disclosure and agencies' ability to fully consider and make sound and informed decisions. This work was necessitated by the ruling of the Hawaii Supreme Court in its 2018 Peer News LLC, dba Civil Beat v. City and County of Honolulu (“CBLC”) decision (3-2), which struck down the deliberative process privilege [despite thirty-plus years of its existence in Office of Information Practices \(OIP\) opinions and practice](#), as well its longstanding and current recognition in federal law under the Freedom of Information Act. The process followed by the Working Group involved months of research, writing, debate and discussion, a public meeting in October 2022 at which interested stakeholders offered comments on an earlier draft proposal, revisions made by the Working Group to account for those comments, and then a [final report and recommendations](#) being issued.

SB 720 is the outcome of that work, and represents a reasoned compromise, forged between and amongst experienced practitioners representing media, government and the public interest, as well as OIP, the agency charged with enforcement of open records (and open meetings). SB 720 amends the UIPA by specifically codifying the deliberative process privilege in HRS Chapter 92F, the absence of which the CBLC decision noted. As proposed, SB 720 greatly minimizes likelihood for abuse of the privilege by both agencies and requesting parties.

It is notable that HRS Chapter 92F largely excludes the [Legislature \(HRS §92F-13\(5\)\)](#) and the [Judiciary \(except for administrative functions, as set forth in the definition of “agency” in HRS §92F-3\)](#) from the mandatory disclosure of government records. To be able to make the best decisions possible, executive decisionmakers also should have the ability when appropriate to fully consider the input of agency personnel when making decisions without undue and improper interference during the decisionmaking process, whether the decision is about procurement, budgets or changes to laws and rules. Once a decision has been made or decisionmaking has been abandoned, however, SB 720 ensures that at least for the executive branch, disclosure is required of deliberative or pre-decisional government records relevant to that decision unless another exception applies. The bill further requires government agencies to report their use of the exception to OIP and requires OIP to convene a working group to examine agency use of the exception and report to the Legislature prior to the Regular Session of 2029.

For these reasons, the University of Hawai'i strongly supports SB 720. Thank you for the opportunity to testify.