



# SB3016

Measure Title:	RELATING TO THE UNIFORM INFORMATION PRACTICES ACT.
Report Title:	Public Records; Disclosure; Disciplinary Action
Description:	Allows disclosure of government records in cases where a police officer has been suspended or discharged in a disciplinary action.
Companion:	
Package:	None
Current Referral:	PSM, JDL
Introducer(s):	ENGLISH, ESPERO, IHARA, RUDERMAN, L. THIELEN, Baker, Gabbard, Inouye, Kim, Shimabukuro, Slom

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
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February 2, 2016

TESTIMONY TO THE  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY  
AFFAIRS

For Hearing on Thursday, February 4, 2016  
1:15 p.m., Conference Room 229

By

JAMES K. NISHIMOTO  
DIRECTOR, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

**Senate Bill 3016**  
**Relating to Uniform Information Practices Act**

CHAIRPERSON NISHIHARA, VICE CHAIR ESPERO AND MEMBERS OF THE  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND  
MILITARY AFFAIRS:

S.B. No. 3016 allows for disclosure of government records in cases where a  
police officer has been suspended or discharged in a disciplinary action.

The Department of Human Resources Development (DHRD) **supports** this  
measure. Information regarding a police officer's suspension or discharge due to  
disciplinary action will provide DHRD with factual information in the background check  
process to determine the suitability of a prospective employee for employment.

Thank you for the opportunity to testify regarding this measure.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental and  
Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 4, 2015, 1:15 p.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 3016  
Relating to Police Departments

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports this bill, which would amend the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS, to delete a clause giving special treatment to information about police officers’ misconduct.

In section 92F-14(b)(4), HRS, the UIPA recognizes a government employee’s significant privacy interest in information about possible misconduct, up to a point. While all other government employees’ misconduct information becomes public if the misconduct resulted in suspension or termination, the current law gives police officers a special statutory privacy interest even in information about misconduct that resulted in suspension. This bill puts police officers on the same footing as other government employees and is consistent with the Hawaii Supreme Court’s opinion in State of Hawaii Organization of Police Officers v. Society of Professional Journalists, University of Hawaii Chapter, 83 Haw. 378 (1996) (SHOPO opinion), which held that such information was not “highly personal and

intimate information” and thus not covered by Hawaii’s constitutional privacy protection.

Based on the Hawaii Supreme Court’s SHOPO opinion, OIP similarly concluded in its Opinion Letter Number 97-1 that the names of suspended police officers are publicly disclosable, notwithstanding the 1995 amendment to the UIPA that statutorily stated that suspended police officers had a significant privacy interest in their misconduct information. Following the SHOPO opinion, OIP reasoned that this statutory privacy interest was still outweighed by the public interest in disclosure, and thus the information remained public. Similarly, on June 10, 2014, First Circuit Court Judge Karl K. Sakamoto entered a judgment in favor of online news site Civil Beat in its lawsuit seeking Honolulu Police Department disciplinary suspension records under the UIPA. The State of Hawaii Organization of Police Officers, which intervened in the case, filed an appeal of the decision that is currently pending.

The UIPA amendment proposed by this bill is consistent with existing court decisions and OIP’s Opinion Letter Number 97-1, and would restore the UIPA’s statutory treatment of suspended police officers’ misconduct information to what it was prior to 1995. **Therefore, OIP supports this bill.**

Thank you for the opportunity to testify.

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**Subject:** \*Submitted testimony for SB3016 on Feb 4, 2016 13:15PM\*  
**Date:** Monday, February 01, 2016 1:27:52 PM

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**SB3016**

Submitted on: 2/1/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Rocca	Hawaii State Coalition Against Domestic Violence	Support	No

Comments:

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THE CIVIL BEAT  
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Honorable Clarence K. Nishihara, Chair  
Honorable Will Espero, Vice Chair

**RE: Testimony Supporting S.B. 3016,  
Relating to the Uniform Information Practices Act**  
Hearing: February 4, 2016 at 1:15 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on S.B. 3016. The Law Center **supports** this bill.

S.B. 3016 requires mandatory disclosure of specified disciplinary information about suspended police officers (as already required for all other government employees), notwithstanding the officers' privacy concerns.

In 1995, the Legislature removed the mandatory disclosure provision for suspended officers out of concern that police departments more frequently suspend for minor departmental infractions. H. Stand. Comm. Rep. No. 1584, in 1995 House Journal at 1627 ("Your Committee finds that police officers, unlike most government and private employees, are subject to para-military discipline which manifests itself in the form of frequently applied suspensions from duty for misconduct or violation of departmental rules. Your Committee further finds that the use of such tough disciplinary measures is accepted by most officers because they realize the necessity for strict regulation of the broad powers they wield."). As Representative Alcon expressed at the time, "You mean to say, just because the policeman did not shine his shoes that we will have to publish his name in the paper?" 1995 House Journal at 682.

The 1995 Legislature, however, only had anecdotal information on police discipline provided by the departments. Now, there is a substantial body of empirical evidence about the nature of police discipline based on the annual reports submitted to the Legislature pursuant to HRS § 52D-3.5. Those reports reveal that officers are suspended for misconduct concerning their performance of official duties – similar to any other government employee – not minor infractions of overly strict para-military rules.

Moreover, S.B. 3016 merely conforms the UIPA to judicial and OIP interpretations of existing law.<sup>1</sup>

In 1996, the Hawai'i Supreme Court balanced the privacy interests of suspended police officers under the Hawai'i Constitution (not the UIPA) and held that the public interest in disclosure of police misconduct far outweighed any privacy concerns. The Court summarized: "[I]nformation regarding charges of misconduct by police officers, in their capacities as such, that have been sustained after investigation and that have resulted in suspension or discharge is not 'highly personal and intimate information' and, therefore, is not within the protection of Hawai'i's constitutional right of privacy." *State of Hawai'i Organization of Police Officers v. Society of Professional Journalists, University of Hawai'i Chapter*, 83 Hawai'i 378, 399 (1996). OIP subsequently held that the same balancing applies to privacy claims by suspended police officers under the UIPA. OIP Op. No. 97-01 ("[T]he only possible conclusion that OIP can reach is that disclosure of this information would *not* be a clearly unwarranted invasion of personal privacy under the UIPA and, therefore, information required to be made public under section 92F-14(b)(4)(B) for discharged officers, must also be made public for suspended officers.").

Nevertheless, for more than 10 years, SHOPO has pressured county police departments into asserting an aggressive misreading of the UIPA. Under SHOPO's interpretation, no information about police misconduct may be distributed to the public – except the HRS § 52D-3.5 annual reports – unless the officer was discharged. Applying that interpretation, police departments routinely refused access to *any document that described police misconduct*. SHOPO even goes so far as to claim that police departments cannot release de-identified misconduct information that has been redacted to remove any personal information that would identify the disciplined police officer. *E.g., SHOPO v. City & County of Honolulu*, Civil No. 14-1-2625-12 KKS.

In effect, SHOPO continues to doggedly push the idea that the 1995 Legislature granted **absolute confidentiality** to any document that mentions police misconduct (unless the officer was discharged). A pending lawsuit is expected to resolve the interpretation of existing law. But if this Legislature wants to ensure that the public may access information about police misconduct beyond the annual reports, S.B. 3016 would provide clarity.

Thank you again for the opportunity to testify.

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<sup>1</sup> The Law Center represents the online publication Civil Beat in a lawsuit to enforce interpretations of existing law, which case is currently pending decision by the Hawai'i Supreme Court, No. SCAP-14-889.

# SHOPO



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TO: The Honorable Clarence Nishihara, Chair  
Senate Committee on Public Safety, Intergovernmental  
and Military Affairs

The Honorable Will Espero, Vice Chair  
Senate Committee on Public Safety, Intergovernmental  
and Military Affairs

Members of the Senate Committee on Public Safety,  
Intergovernmental and Military Affairs

FROM: Tenari Ma'afala, President   
State of Hawaii Organization of Police Officers

DATE: February 3, 2016

SUBJECT: Testimony on S.B. No. 3016, Relating to the Uniform  
Information Practices Act

HEARING DATE: Thursday, February 4, 2016  
1:15 p.m. Conference Room 229

Thank you for the opportunity to testify on this bill regarding amending Hawaii Revised Statutes section 92F-14, to remove the police exception. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill.

**This very issue of release of information on police officer suspensions is before the Hawaii Supreme Court. Oral arguments took place on June 18, 2015 and thus, we expect a decision at any time. It would be both prudent and wise to await the Court's opinion.**

Further, the legislature receives annual misconduct reports from each of the four county police departments. These reports are posted on the legislative website and available to the public with summaries of the violations and the discipline that was meted out. Additionally, the Chiefs of Police of the county police departments have internal policies in place to investigate police misconduct and to impose discipline. The Chiefs are accountable to their respective Police Commissions for handling police misconduct. These Commissions are made up of citizens from our community.

Finally, release of officers' names that have been suspended may have a chilling effect on the extent of action taken by officers who often have to make split second decisions. It impacts not only the officers but their families, too. Though other employees are subject to release of their names for suspensions, rarely, if ever, does that happen because of the level of news worthiness. Thank you for your consideration.



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**Date:** Monday, February 01, 2016 10:46:17 AM

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**SB3016**

Submitted on: 2/1/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rob Viela	Individual	Support	No

Comments: In strong support. All this measure seeks to do is require police transparency. Police officers hold a special place in the public trust and should be held accountable for their actions.

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**Subject:** Submitted testimony for SB3016 on Feb 4, 2016 13:15PM  
**Date:** Tuesday, February 02, 2016 10:20:21 AM

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Support	No

Comments: Please accept this as testimony in strong support of this measure. The police need to be held to a higher standard, where the public, which they interface with on a daily basis, knows about disciplinary actions. This information should not be kept in a black box. If an officer has been disciplined, fired, etc. the public should know who and why. I understand SHOPO fights this, as well as other modern ways of doing business. It needs to come into the 21st century and out of the 19th (this is not a typo) century. If this measure become law, the public will have a higher regard for police officers. As it stands no, the public has low regard for them. lynne matusow, 60 n. beretania, #1804, honolulu, hi 96817 531-4260

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**Subject:** Submitted testimony for SB3016 on Feb 4, 2016 13:15PM  
**Date:** Tuesday, February 02, 2016 10:57:02 AM

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Malcolm Lee	Individual	Support	No

Comments: In strong support

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**Date:** Tuesday, February 02, 2016 12:14:54 PM

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shane H.	Individual	Support	No

Comments: In strong support. Police officers should be accountable for their actions while protecting the public.

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**Date:** Tuesday, February 02, 2016 12:18:35 PM

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jordan R.	Individual	Support	No

Comments: In strong support. Police officers are able to view our records when stopped, we should be able to view an officer's record as well.

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harry Yoshida	Individual	Support	No

Comments: Sir: I am strongly in support of this bill and agree that police officers that abuse their authority and do wrong need to be exposed and their identifies need to be made public like any other state or public service worker. No one is above the law.

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Devoe	Individual	Support	No

Comments: In strong support

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**SB3016**

Submitted on: 2/2/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
DJ Heu	Individual	Support	No

Comments: Strongly support

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**From:** [Douglas Miki](#)  
**To:** [PSMTestimony](#)  
**Subject:** TESTIMONY for SENATE BILL 3016  
**Date:** Wednesday, February 03, 2016 9:08:07 AM

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Dear Senators,

I am writing in support of Senate Bill 3016.

I, along with many others in the community, find it somewhat ironic that our Police Department finds the need for a secrecy afforded no other state or county workers. In fact, based on recent and ongoing incidents, there seems to be an even greater and obvious need for increased transparency where our very own Police Chief as well as the officers under his command are concerned. As a kapuna in the community, I cannot remember a time when there has been such a loss of public confidence in not only the Police Department and its policies, but the department's Chief as well.

Although, as in any situation, there are indeed a number of officers who perform their duties well, the increasingly frequent and disturbing incidents involving officers charged with the safety and health of the public requires greater public awareness and knowledge. To hide behind a self-serving disclosure exemption does not reflect well on the department as well as the Chief himself who has consistently chosen to support policies and procedures which have been entirely self-serving and certainly not in the public's best interest.

Thank you for your kind consideration and support of SB 3016.

Sincerely,  
H. Douglas Miki  
Kuliouou

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**SB3016**

Submitted on: 2/3/2016

Testimony for PSM on Feb 4, 2016 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments: This is another measure that would provide public transparency and help protect the public and victims of police misconduct from further abuse. Mahalo, Ann S. Freed

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