

SB2937

Late

LINDA LINGLE
GOVERNOR OF HAWAII



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In reply, please refer to:
File:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

SB 2937, RELATING TO INFORMATION PRACTICES

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 23, 2010, 9:30 AM

1 **Department's Position:** The Department of Health strongly supports this bill.

2 **Fiscal Implications:** No material fiscal impact.

3 **Purpose and Justification:** This measure proposes to amend Chapter 92F, Hawaii Revised Statutes,
4 (HRS) to permit a governmental agency to request the Office of Information Practices (OIP) to place
5 limits on record requesters whose established patterns of requests are determined to be an abuse of the
6 process outlined in Chapter 92F, HRS. There are no current mechanisms for review of an agency's
7 belief that a requester is abusing the public records request process defined by this statute.

8 For more than a year, the Department of Health has continued to receive approximately 50 e-
9 mail inquiries a month seeking access to President Barack Obama's birth certificate in spite of the fact
10 that President Obama has posted a copy of the certificate on his former campaign website. Hawaii is a
11 "closed records" state, meaning that vital records are available only to those with a direct and tangible
12 interest as defined by statute; hence, they are not subject to disclosure under public records requests.

13 We have been able to identify about four to six individuals who engage in a pattern of repeated
14 requests. The time and state resources it takes to respond to these often convoluted inquiries are
15 considerable. The responses ultimately have required the time and involvement of the Attorney

1 General's office and the Office of Information Practices. We believe having to respond repeatedly to
2 essentially the same request or a variation of the request all centering on whether or not President
3 Obama was born in Hawaii is a frivolous use of department time and resources, particularly since the
4 outcome will not change no matter how many times we respond to these requests.

5 We respectfully request a facilitated passage of SB 2937 which could provide the desired relief
6 from the abuse and unnecessary burden that these vexatious requesters have placed upon the Department
7 of Health.

8 Thank you for your time and consideration of this measure.

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GOVERNOR

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**SENATE COMMITTEE ON JUDICIARY & GOVERNMENT OPERATIONS
TESTIMONY REGARDING SB 2937
RELATING TO INFORMATION PRACTICES**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 23, 2010

TIME: 9:30AM

ROOM: 016

This measure creates an abuse-of-process law for vexatious requesters of public records.

The Department of Taxation (Department) supports this measure.

The Department strongly supports this measure because it provides government agencies with a procedural remedy to resolve instances where members of the public abuse the freedom of information laws.

Under current law, a government agency is powerless to restrain groundless or compound requests for information. Moreover, the neutral, independent agency with oversight over government records requests—the Office of Information Practices—likewise has little means of recourse over those that abuse access to government records. In the interest of ensuring an efficient and fair process regarding government records requests, some means of resolving baseless requests for information should be instituted. The Department supports this measure as one means of leveling the playing field when it comes to administrative disputes of records requests.

One suggestion the Department offers as a means of minimizing baseless requests for records is a monetary fine or other penalty if the records requester is found to be vexatious. Another alternative could be to have the government's attorneys fees paid by the vexatious requester if the government is successful in litigation. Under current law, the government is punishable but not the requester. This "one-sided" penalty against the government but not a vexatious requester is unwarranted.

The Department recommends that this measure be passed.