

SB2937



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To: Senate Committee on Government Operations

From: Cathy L. Takase, Acting Director

Hearing: Tuesday, February 23, 2010, 9:30 a.m.
State Capitol, Room 016

Re: Testimony on S.B. 2937
Relating to Information Practices

Thank you for the opportunity to testify on S.B. 2937. OIP supports this bill, which would allow OIP, upon an agency's request, to place limitations on a requester who abuses the process of making record requests under the Uniform Information Practices Act, chapter 92F, HRS (the UIPA).

The UIPA currently contains no provision that would allow an agency to not respond to a record request even where there may be a legitimate justification for not responding. From time to time, requesters use the UIPA in a manner that is clearly not consistent with the UIPA's purpose or underlying policies. These uses may be unintentional abuses of the UIPA, such as where a requester is clearly mentally ill and unable to understand that a response to a request has already been properly given.

In other instances, however, they are intentional, such as where a requester or group of requesters repeatedly make the same request to which the agency has responded or make multiple requests a day, with the primary intent to harass agency employees rather than to obtain the records in question. For example, a group of non-Hawaii resident requesters maintaining websites recently indicated their intent to harass Hawaii state agencies and officials by flooding them on the same day with the same request. A directory of the agencies and government officials, containing their various contact information, was also provided on a website.

When agencies have turned to OIP for relief, OIP has sought to assist the agencies but has advised that it has no authority to sanction them to not respond to these requests under the UIPA. This absence of relief from abuses of the UIPA results in the diversion of precious staff

resources from fulfilling other records requests by citizens seeking records consistent with the purpose of the statute as well as from carrying out core agency functions. It also diverts OIP resources, because OIP will often assist agencies in responding, then must deal with the resulting disputes without the ability to provide relief to the agency where there is a genuine pattern of abuse of the UIPA. Abuse of the UIPA also creates frustration for agency personnel which tends to erode general agency compliance to the detriment of all record requesters. This in turn generates more complaints for OIP to resolve.

This bill would address this diversion of resources and the attendant frustration felt by agency employees where there is a genuine abuse of process. The bill protects public access by setting standards to determine what constitutes an abuse of process and by not allowing the complaining agency to make the determination as to whether and to what extent a limitation on a requester's UIPA rights is warranted. In addition, the bill provides a requester who has been declared to be a vexatious requester the opportunity to seek review of OIP's determination to the ombudsman.

Thank you for the opportunity to testify.



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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON S.B. NO. 2937, A BILL FOR AN ACT
RELATING TO INFORMATION PRACTICES**

**SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
FEBRUARY 23, 2010**

Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to present comments on S.B. No. 2937. The purpose of this bill is to establish a process to declare a person to be a vexatious requestor of public records. The bill authorizes the Office of Information Practices (OIP) to declare a person to be a vexatious requestor and to restrict that person's exercise of his or her rights under Chapter 92F, HRS. The bill also allows a person who is so restricted to request the Ombudsman's review of the restriction and authorizes the Ombudsman to affirm, modify, or overturn any restriction.

As you know, the Ombudsman is authorized under Chapter 96, HRS, to investigate complaints about the administrative acts of executive branch agencies and employees. These acts include any decision that the OIP would be empowered to make by this bill, including not only the decision to restrict a vexatious requestor's exercise of any rights under Chapter 92F but also the decision to declare a person to be a vexatious requestor. Therefore, even if the bill does not include specific language to allow a person to complain to the Ombudsman about a decision by the OIP to restrict that person's exercise of rights under Chapter 92F (or about the OIP's decision to declare the person to be a vexatious requestor), that person would have the right under Chapter 96 to file a complaint with the Ombudsman.

However, I am deeply concerned that authorizing the Ombudsman to affirm, modify, or overturn a restriction by the OIP provides the Ombudsman with enforcement power that is inconsistent with the Ombudsman's placement in the Legislative branch of government and contrary to the standards and models for classical governmental ombudsman offices that have been adopted by organizations such as the United States Ombudsman Association and the American Bar Association. The Hawaii Ombudsman Office is viewed nationally and internationally as a model for ombudsman offices. Consistent with its role as a legislative oversight agency, it is

authorized to recommend corrective action but not to modify or overturn an agency's decisions or actions and effectuates the correction of errors and improvements in administration by agencies through reasoned persuasion. I firmly believe that the Ombudsman should not be given the authority to modify or overturn a decision or action of an executive branch agency, and that such authority is more appropriately exercised through administrative review processes within the executive branch or the courts.

Therefore, I respectfully request that S.B. No. 2937 be amended to delete the following language pertaining to the ombudsman in lines 10 through 14 on page 3 of the bill:

“provided that the person may request the ombudsman to review any restriction to ensure that it is narrowly tailored to the vexatious requester’s abusive pattern of conduct. The ombudsman shall have the authority to affirm, modify, or overturn any restriction based on that person’s request.”

Also, since the Ombudsman is already authorized under Chapter 96 to investigate actions and decisions of the OIP, including those authorized in this bill, the amendments proposed in Section 3 of the bill are unnecessary and I request that Section 3 of the bill be deleted in its entirety.

Thank you, again, for the opportunity to present comments on S.B. No. 2937. If you have any questions, I would be happy to answer them.



HAWAII HEALTH SYSTEMS
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Written Testimony

**Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair**

**Tuesday, February 23, 2010
9:30 a.m.
Conference Room 016
Hawaii State Capitol**

**SB2937 Relating to Information Practices
Enacts an abuse of process law for vexatious requesters of public records.**

Testimony of Alice M. Hall, Interim President and Chief Executive Officer

Thank you for the opportunity to testify in support of SB2937 Relating to Information Practices that would enact an abuse of process law for vexatious requesters of public records.

This bill continues to protect the rights of individuals to make requests to state agencies for public information. It addresses a problem that state agencies have faced, however, of requests by individuals who repeatedly make requests despite previous responses to their requests, whose requests may be in review or have been denied; by adding a process to allow any agency to request that the Office of Information Practices declare the person to be a vexatious requester if it is determined that the person has established a pattern of conduct that amounts to an abuse of a process that is set forth in Chapter 92F-A. Such vexatious requests are not productive and divert staff resources from responding to valid requests for public information. We support this bill that provides access to public information and also applies an abuse of process provision for vexatious requesters of public records.

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