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Hawaii News

Bill to keep data from public gets to the governor

By [Kevin Dayton](#)

May 18, 2015



"I don't think it's appropriate for people to know where judges live. I think there is a legitimate concern that they could be harmed if we're not protective of their personal information."

Karl Rhoads

Chairman, House Judiciary Committee

Lawmakers have approved a new exemption to the state open-records law that allows government records to be withheld from the public if releasing that information "would create a substantial and demonstrable risk of physical harm" to a person.

Advocates for open records are skeptical about the need for the measure, because

existing privacy requirements already prevent the government from releasing sensitive personal information such as home addresses.

"I think the passage of this bill and the failure of other bills that would have expanded public access demonstrates a disturbing trend toward continuing to limit public access," said Honolulu lawyer Jeffrey Portnoy, who specializes in First Amendment law and the Hawaii public-records law, known as the Uniform Information Practices Act (UIPA). Portnoy at times has represented the Honolulu Star-Advertiser in open-records cases.

"I think the Legislature is going in the wrong direction, not the right direction," Portnoy said. "The right direction is to continue to try to expand the public's right of access."

House Bill 287 was proposed by the state Judiciary, which initially asked state lawmakers this year to impose far more sweeping restrictions on records that can be released under the state open-records law.

The original bill would have allowed government agencies to withhold records that are "reasonably likely" to result in physical or other harm including "embarrassment, inconvenience, or unfairness to an individual caused by the unauthorized use or disclosure of the individual's personally identifiable information."

That broad language was rejected by the House Judiciary Committee, which "hacked way back" on the exemptions in the bill, said Judiciary Chairman Karl Rhoads. "We're happy to help protect judges from physical harm, but we're not willing to go that far," he said of the original bill.

In general, Rhoads said, situations do come up in which judges could be placed at risk. "When you put people in jail for 20 years, they tend to be kind of sore," Rhoads said. "That's what we were worried about: disgruntled inmates who get out, find the personal address of a judge and then try to cause trouble."

Rhoads acknowledged existing restrictions are in place to prevent the release of home addresses of any government worker but said that "it wouldn't be super hard to put two and two together, depending on the circumstance."

"I don't think it's appropriate for people to know where judges live," Rhoads said. "I think there is a legitimate concern that they could be harmed if we're not protective of their personal information."

Hawaii's chapter of the Society of Professional Journalists opposed the bill, with the Star-Advertiser's night city editor submitting testimony on behalf of the chapter.

Susan Pang Gochros, chief staff attorney and head of the Judiciary's Department of International and Community Relations, said there was no specific incident that prompted the Judiciary to seek the extra restrictions under the state open-records law. However, "judges have endured threats and security concerns that serve as constant

reminders of our need to promote security and safety," she said in written responses to questions.

One factor that led to the request was discussions on security issues with the National Center for State Courts, which served as a consultant to the state Judiciary, she said.

While state law makes clear that government records are not to be disclosed if disclosure constitutes a "clearly unwarranted invasion of personal privacy," the law "does not specifically address situations where disclosure could result in a threat to one's physical safety or security," she said in written comments. "We think that this added guidance is helpful in determining whether records should be released and are pleased that the Legislature decided to amend the UIPA to make physical safety or security part of the consideration before releasing government records."

Gerald Kato, associate professor of journalism at the University of Hawaii School of Communications, agreed with Portnoy that personal information about public workers including home addresses of judges is already withheld from public scrutiny because it is considered private information under the public-records law.

Kato said he is concerned about the possibility of a "slippery slope" argument that would lead to restrictions by other branches of government on the release of other kinds of information that should be public. That will depend on how the proposed new law is interpreted by agencies, he said.

"We should be very careful about making these sort of changes in the freedom of information law," he said.

House Bill 287 is pending before Gov. David Ige, who can sign the bill into law, let it become law without his signature or veto it. A spokeswoman for Ige said the bill is still undergoing legal and policy review.