

HAWAII

Freedom Of Information At

Stake In Legislature

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Citizens petition to save Hawaii's public records law.

APRIL 26, 2012 • By Beverly Deepe Kever

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More than a dozen community, media and open-government organizations are waging a desperate fight today to save Hawaii's Freedom of Information Law from its most serious erosion in its 24-year history.

Acting urgently before the Thursday afternoon deadline at the Legislature, the groups are petitioning House and Senate members sitting on a key committee to develop and agree to a new compromise Conference Draft on [Senate Bill 2858](#). Gov. Abercrombie's administration originated this bill.

The broad-based organizations ask that a new compromise draft delete portions of the bill that would permit a government agency to go to court to contest an official agency's decision compelling disclosure to the public of a record to which the law entitles it. The 17 organizations petitioning the legislators as of late yesterday range from Common Cause Hawaii, the Sierra Club, AARP and the Hawaii Chapter of the Society of Professional Journalists; the full list is included below.

By making this deletion in today's overly broad bill, legislators would preserve the provision expressed in the legislative history of the Freedom of Information Act (FOIA) that "the legislative intent for expediency and uniformity in providing access to government records would be frustrated by agencies suing each other."

This key language is overturned in the current draft by calling for a complex,

cumbersome process allowing a government agency to appeal to already overburdened courts an official decision mandating disclosure of a record to which the public is entitled.

Retaining FOIA in the existing bill would unnecessarily weaken OIP's powers, waste limited resources of OIP and other agencies, and make it even more difficult for citizens to obtain government records in a timely manner.

Some groups also fear that including FOIA in the draft being circulated could facilitate the governor's current campaign to curtail public participation in Hawaii's environmental review processes.

Earlier versions of SB 2858 and the proposed Conference Draft 1 distributed on Tuesday would set up a judicial appeal process for allowing agencies to challenge decisions made by the state's Office of Information Practices on the Sunshine Law ("open meetings," Hawaii Revised Statutes Chapter 92) as well as Hawaii's Freedom of Information Act, also known as the Uniform Information Practices Act ("open records," Chapter 92F).

Rather than relying on a informal dispute resolution process, the legislation advocated by the governor would permit—perhaps even invite—litigation that entangles competing taxpayer-funded government attorneys in court actions.

The Office of Information Practices (OIP) was established as part of FOIA 24 years ago and was "intended to provide a place where the public can get assistance on records questions at no cost and within a reasonable amount of time."

OIP has also advised numerous state and city/county agencies as they sought to sort out increasingly complex privacy and public-disclosure issues when the computer was beginning to impact government operations and citizen use. In 1998 the Legislature gave OIP the additional responsibility to administer the Sunshine Law.

The citizen groups are appealing today to the legislators to restrict the appeals process outlined in SB2858 ONLY to the Sunshine Law, and not the FOIA. A decision by Hawaii's Intermediate Court of Appeals in 2009 held that under the Sunshine Law, OIP could be sued and that OIP had erred in directing the Kauai County Council to make

public a requested record.

However, that Court decision left untouched the FOIA language that bars a taxpayer-funded government agency attorney from suing another taxpayer-funded government attorney.

In extensive testimony before three committees and conspicuous lobbying of legislators, OIP Director Cheryl Park has argued that because of the court decision the sweeping legislation is needed to create “a uniform procedure” applicable not only to the Sunshine Law but also to FOIA. She provided no specific reasons for the need for uniform procedures to cover FOIA, which was unaddressed in the court decision.

The current bill being considered today copies virtually word for word the original proposed by the Abercrombie administration. As the bill moved through three legislative committees, it drew strong oppositional comments from city/county officials as well as numerous citizen groups and individuals.

Three members of the Maui County Council, including the chair and the vice chair, and Kauai’s county attorney testified against the bill as did Honolulu’s Managing Director Douglas Chin.

In written testimony, Chin complained, “OIP does not have any rules or procedures for agencies to submit evidence, facts, or arguments in support of their positions.”

Brief statements of support for the bill came from a dozen other state agencies, including the Office of the Governor. However, no state agency official offered any instance or evidence that his or her government body had been adversely impacted by an OIP decision during the 24 years since Hawaii’s FOIA was enacted.

Organizations appealing to legislators meeting today on SB 2858 include:

- Media Council Hawaii
- The Hawaii Independent
- Common Cause Hawaii
- Earthjustice
- Society of Professional Journalists, Hawaii Chapter

- Disappeared News
- Sierra Club
- American Association of Retired Persons (AARP)
- Community Alliance on Prisons
- Citizen Voice
- Kapiolani Park Preservation Society
- Life of the Land
- Hawaii's Thousand Friends
- Americans for Democratic Action/Hawaii
- Right to Know Committee
- Hawaii Coalition for Health
- Non-Partisan Hawai'i Ohana

About the author: *Professor emerita from the University of Hawaii's School of Communications, Beverly Deepe Kever is the author of "News Zero: The New York Times and the Bomb." Her memoirs of Vietnam War reporting are forthcoming.*

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Beverly Deepe Kever

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**TC Lee** · Boston University

"Brief statements of support for the bill came from a dozen other state agencies, including the Office of the Governor. However, no state agency official offered any instance or evidence that his or her government body had been adversely impacted by an OIP decision during the 24 years since Hawaii's FOIA was enacted."

This paragraph begs an answer - What the hell is going on with Neil Abercrombie and his thugs? What's the motive behind this duplicity?

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**Jared I. Kuroiwa**

There does seem to be confusion on this bill as I don't understand the Counties position as they seem to think this bill strengthens rather than weakens OIP. The way I read it is that the bill adds a provision for an agency to take an OIP decision to court, effectively rendering OIP moot.

In reality, OIP should only be looking at whether the information being requested has any privacy concerns or legally protected material. If not, it should be released. Any other discussion should be immaterial to the OIP's decision making process as their role isn't a court. The role is to make sure transparency laws are carried out and public protections are in place.

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