

 BREAKING NEWS

Hawaii GOP Lawmaker May  
Switch Parties **Full Story**

About 1 hour ago

Column

# Ian Lind: Public Interest Measures Surface At Legislature

On balance and when push comes to shove, money talks, and ethics walks.

1

By Ian Lind  / About 11 hours ago

Share 2

Share 2

Every year, about this time, I start start to wonder whether there are surprises buried in the mountain of bills introduced in the current legislative session that will impact public interest issues like openness, accountability and ethics.

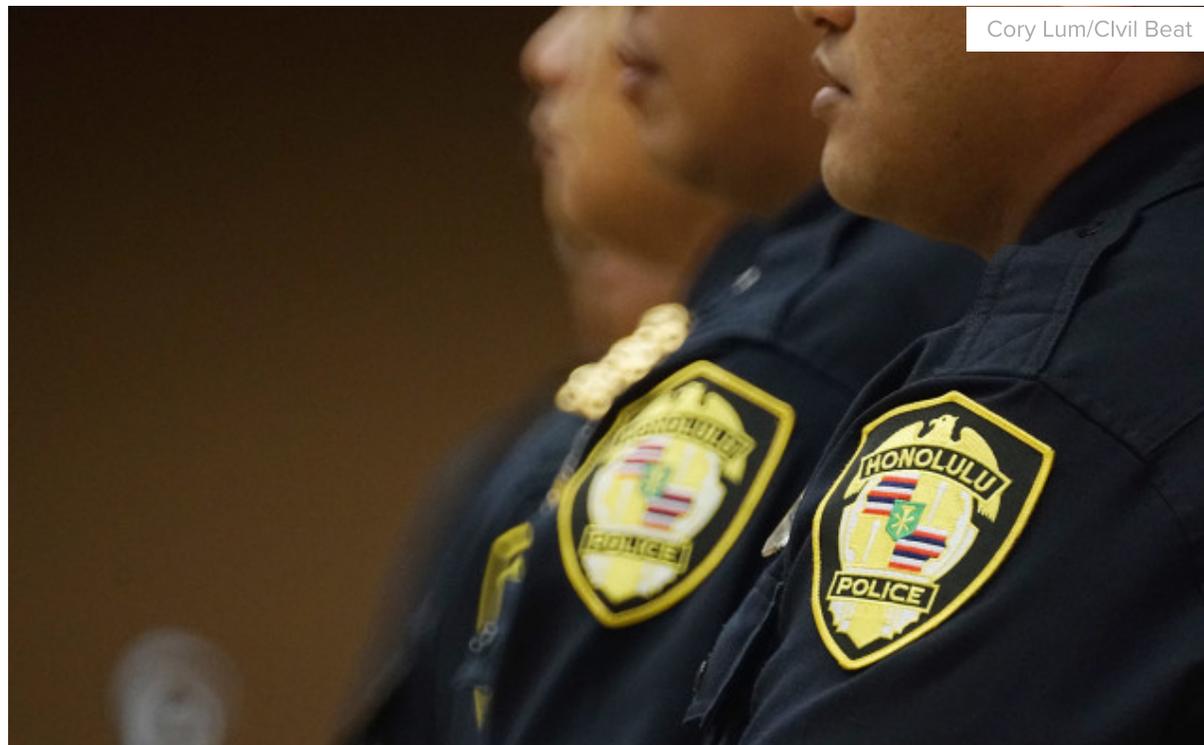
Sifting quickly through this year bills, there's some good news. Growing public concern about police misconduct has triggered several bills aimed at increasing public disclosure.

## Disclosure Of Police Misconduct

Under current state law, police officers are treated differently than all other public employees when it comes to the public's right to know about

violations of public trust. But judging from pending bills, this special treatment could be coming to an end.

Here's how police are singled out for special treatment under existing law. Although personnel records of public employees are generally considered confidential, state law allows disclosure of certain basic information when an employee is suspended or fired for on-the-job misconduct, and all appeals have been concluded.



The Honolulu Police Department has seen several of its officers put in handcuffs or booked into jail over the past several years.

Under those conditions, the law provides for the disclosure of the employee's name, a summary of the allegations of misconduct, the findings of fact and conclusions of law in their case, and the disciplinary action taken by the employing agency.

But not in cases involving police officers. Their names and case summaries are only subject to disclosure if the officers involved have been fired. And even then, the Honolulu Police Department has long history of avoiding the legally-required disclosure.

From the public's perspective, higher-than-normal standards of conduct and accountability would seem to be warranted for these employees who we arm, give law enforcement powers, and, when warranted, allow to use deadly force. But the police and their union have not seen it that way in the past.

[Senate Bill 424](#), introduced by Sen. Gil Keith-Agaran, chair of the Senate Judiciary and Labor Committee, would require disclosure of an offending officer's name and additional information if the officer is suspended twice in a five-year period. That's a step forward, but a small step. A companion measure, [House Bill 456](#), was introduced by Rep. Gregg Takayama, chair of the House Public Safety Committee, along with Rep. Scott Nishimoto, House Judiciary chair, and several others.

Other bills would go farther. Sens. Kalani English and Les Ihara are among the sponsors of [Senate Bill 557](#), which would repeal the provision giving police officers special protection from public disclosure. A similar measure, [Senate Bill 1038](#), was introduced by Sen. Clarence Nishihara, who chairs the Public Safety, Intergovernmental and Military Affairs Committee.

And [Senate Bill 263](#), introduced by Sen. Will Espero, would similarly repeal the special treatment accorded police officers, and also require names of officers involved in incidents of misconduct to be included in annual police department reports to the legislature.

Of course, getting a bill introduced is much easier than getting it passed into law, and there's no guarantee any of these measures will survive the legislative process. But if they do, it will be an overall boost for the principle of openness and accountability in public agencies.

## Body-Cam Videos — Public Or Private?

There are also a series of bills calling for regulation of police body cameras which take different approaches to whether, or under what conditions, the resulting videos become subject to public disclosure. All the measures

attempt to balance the public interest in serious crimes or instances of police misconduct caught on camera with the privacy interests of people and homes caught on camera.



The Kauai Police Department started using body cameras in December despite union protests.

however, that disclosure would be allowed if “the release furthers a law enforcement purpose.” A companion measure in the House was introduced by Takayama.

Another version introduced by Takayama ([House Bill 1380](#)) calls for treating body-cam videos in the same manner as other government records subject to the Uniform Information Practices Act. Generally, the bill provides that police videos would “be deemed to constitute a clearly unwarranted invasion of personal privacy unless the public interest in disclosure

One bill introduced by Keith-Agaran ([Senate Bill 331](#)) would exempt from public disclosure any body-cam videos taken in private homes or health care facilities, and in sensitive situations such as cases of sexual assault. It would also prohibit deleting, destroying or publicly disclosing any body-cam video until “until all criminal matters have been finally adjudicated and all related administrative investigations have concluded,” provided,

outweighs the privacy interests of the subject of the recording.” That same balancing test is central to the UIPA, and Takayama’s bill would rely on those existing procedures to govern as videos become available.

Given the public attention given to body-cam videos in controversial cases around the country, these bills are likely to generate significant debate.

## Sunshine And Public Records

Several other measures also address issues of openness and access.

Keith-Agaran’s [Senate Bill 245](#) would require all government agencies to “exercise reasonable care in the maintenance of all government records under its control that are required by chapter 92F to be available for public inspection.”

The bill is a response to a 2014 [decision by the Hawaii Supreme Court](#), which ruled against a plaintiff seeking damages after a key document regarding his property was missing from the Hawaii County Planning Department when he was provided relevant files to inspect.

The high court ruled that while the UIPA guarantees public access to government records maintained in agency files, it doesn’t require the agencies to “maintain government records in accurate, relevant, timely, and complete condition at all times.”

[As I observed at the time](#): “In other words, the court’s message to public agencies seems to be: You’ve got to show the public what’s in your files, but if some records go missing, through accident, negligence, or inattention, that’s just too bad, at least from the inquisitive public’s point of view.”

# Another important bill introduced by Keith-Agaran

# tries to bring state and local government a bit farther into the digital age, and it's long overdue.

Although passage of the bill wouldn't prevent files from being misplaced or lost, it would provide someone to seek damages from an agency if that standard of "reasonable care" was not complied with.

Another important bill introduced by Keith-Agaran tries to bring state and local government a bit farther into the digital age, and it's long overdue. [Senate Bill 312](#) amends the state Sunshine Law to require meeting notices, meeting packets, and minutes to be made available in digital as well as paper form, and delivered on request either electronically or by postal mail. Meeting minutes, which currently have to be available within 30 days, would also have to be posted on the agency's website or another appropriate state or county site at the same time.

A pair of bills would allow elected officials or appointed board members to meet privately "concerning the selection of board officers." Currently, discussions of internal organization (or reorganization) by county council members are limited to less than a quorum. That limit would be removed by [Senate Bill 1209](#) and [House Bill 1383](#).

The introductory section of the senate bill states that "a limited exemption from the sunshine law is necessary to permit a majority of board members to discuss internal organizational decisions such as when a council, commission, or board is reorganizing after an election or other infusion of new members," without undermining the integrity of the sunshine law.

These may not seem like changes with major consequences, but they will require some serious vetting in order to avoid unintended consequences.

## Commercialization Vs Ethics

A pair bills in Gov. David Ige's legislative package raise special concerns. The bills, [Senate Bill 1022](#) and [House Bill 1156](#), would authorize a University of Hawaii "Innovation and commercialization initiative." In the process, they would create giant loopholes in the UIPA, the Sunshine Law, and the state ethics code while trying to encourage the commercialization of "intellectual property" by the University of Hawaii system.

The proposed initiative would authorize the university to appoint advisory committees "as necessary," all of which would be exempted from the sunshine law.

It would dramatically change the way the state ethics code and other state laws apply to the university. Currently, for example, the [state ethics law](#) is required to be "liberally construed to promote high standards of ethical conduct in state government."

In their current form, these bills would abolish that prioritizing of high ethical standards and instead provide that ethics and other laws "shall be applied and construed on balance in recognition of the public benefits created and state interests advanced by university activities conducted pursuant to this subpart."

In other words, on balance and when push comes to shove, money talks, and ethics walks.

And that's not a good thing, since the bills would grant generous authority to the university to wheel and deal with public funds, property and personnel, to provide loans or other funding to start-up businesses, to use public resources broadly to "support and promote" those private businesses, or to pay for consulting or other services to support these businesses.

Since these appear to be the kind of transactions in which conflicts of interest are a constant danger, carving out an ambiguous exemption from the ethics code seems grandly inadvisable.

# That's not a good thing, since the bills would grant generous authority to the university to wheel and deal with public funds and property.

Further, the bills would authorize the university to create more secrecy than provided by the UIPA.

For example, the UIPA does not require government agencies to publicly disclose “records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.” This provision has been used to maintain the confidentiality of legitimate trade secrets and similar business records.

But the innovation initiative bills would go further and prohibit disclosure of records falling under this exemption. The UIPA doesn't require disclosure of these records. The university would now require they remain confidential, creating sort of a mini-official secrets law.

The tone of the bills imply that these many types and levels of commercial activity will be considered to involve confidential commercial information and therefore exempt from the UIPA, which generally requires records regarding government purchasing, loan programs, contracts, consultants, certified payroll records and other similar information be readily available for public inspection and disclosure.

The university has a poor track record when it comes to being open and responsive in its dealings with the public and the legislature, and that signals big problems ahead if the governor's innovation initiative passes without significant clarification.

Follow Civil Beat on [Facebook](#) and [Twitter](#). You can also sign up for Civil Beat's free [daily newsletter](#).

## About the Author



### Ian Lind

Ian Lind is an award-winning investigative reporter and columnist who has been blogging daily for 15 years. He has also worked as a newsletter publisher, public interest advocate and lobbyist for Common Cause in Hawaii, peace educator, and legislative staffer. Lind is a lifelong resident of the islands. [Read his blog here.](#)

[Use the RSS feed to subscribe to Ian Lind's posts today](#)

SHOW COMMENTS